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DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 98–AGL–53]

Modification of Class E Airspace; Valparaiso, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects one error in the legal description of a final rule that was published in the **Federal Register** on Monday, November 16, 1998 (63 FR 63601), Airspace Docket No. 98–AGL–53. The final rule modified Class E Airspace at Valparaiso, IN.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–30585, Airspace Docket No. 98–AGL–53, published on November 16, 1998 (63 FR 63601), modified Class E Airspace at Valparaiso, IN. One error was discovered in the legal description for the Class E airspace for Valparaiso, IN. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace Valparaiso, IN, as published in the **Federal Register** November 16, 1998 (63 FR 63601), (FR Doc. 98–30585), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

AGL IN E5 Valparaiso, IN [Corrected]

On page 62302, Column 2, in the Class E airspace designation for Valparaiso, IN, incorporated by reference in Sec. 71.1, change the coordinates for the Valparaiso, Porter County Municipal Airport, IN to ''(lat. 41°27′15″ N, long. 87°00′21″ W)''.

Issued in Des Plaines, IL on November 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–32731 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–6]

RIN 2120–AA66

Modification of VOR Federal Airway V–485; San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on September 15, 1998 (Airspace Docket No. 95–AWP–6). In that rule, the airway legal description contained an inadvertent error. This action corrects that error.

EFFECTIVE DATE: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 98–24710, Airspace Docket No. 95–AWP–6, published on September 15, 1998 (63 FR 49284), modified a portion of V–485 by relocating the airway approximately 1 NM northeast from its previous routing. However, in the rule, the coordinates in the legal description were published as magnetic instead of true. Legal description coordinates for final rules must be published as true. This action corrects the legal description coordinates from magnetic to true.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for VOR Federal Airway V–204, published in the **Federal Register** on September 15, 1998 (63 FR 49284); **Federal Register** Document 98–24710, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 49284, in the third column, near the middle of the column, beginning on the second line of the description of V–485, correct ''INT Priest 306° and San Jose 121° radials'' to read: ''INT Priest 323° and San Jose 131° radials;''

Issued in Washington, DC, on December 2, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–32729 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0291]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in olefin polymers intended for use in contact with food. This action is in response to a petition filed by Asahi Denka Kogyo K.K.

DATES: The regulation is effective December 11, 1998; written objections and requests for a hearing by January 11, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 7, 1998 (63 FR 25212), FDA announced that a food additive petition (FAP 8B4592) had been filed by Asahi Denka Kogyo K.K., 5–2–13, Shirahata, Urawa City, Saitama 336, Japan. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the expanded safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in olefin polymers intended for use in contact with food (21 CFR 177.1520).

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3295 should be amended as set forth below.

FDA's review of this petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years, formaldehyde has been known to be a carcinogen by the inhalation route, but the Committee concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study, ''* * * that data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde'' (Ref. 3). This conclusion is based on a lack of critical detail in the study, questionable histopathological conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4592 (63 FR 25212). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 11, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

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

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biaggi, ''Formaldehyde: An Experimental Multipotential Carcinogen,'' *Toxicology and Industrial Health*, vol. 5, No. 5, pp. 699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, ''Two–Year Drinking Water Study of Formaldehyde in Rats,'' *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of Conference concerning ''Formaldehyde;'' Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3295 is amended in the table in the entry for ''Sodium 2,2′-methylenebis (4,6-di-*tert*-butylphenyl)phosphate'' by revising entry ''2.'' under the heading ''Limitations'' to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* * *	* * * *
Sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate (CAS Reg. No. 85209–91–2).	For use only: 1. * * * 2. As a clarifying agent at levels not exceeding 0.10 percent by weight of polypropylene complying with § 177.1520(c) of this chapter, items 1.1(a) or 1.1(b) and of olefin polymers complying with § 177.1520(c) of this chapter, items 3.1(a), 3.1(b), 3.1(c), 3.2(a), or 3.2(b) (where the copolymers contain not less than 85 weight percent of the polymer units derived from polypropylene.) The finished polymers shall be used in contact with foods only under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: December 1, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–32907 Filed 12–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 2935]

Documentation of Immigrants Under the Immigration and Nationality Act—International Organization and NATO Civilian Employee Special Immigrants

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations to comply with new statutory authority. The rule extends fourth preference special immigrant classification to civilian employees of the North Atlantic Treaty Organization (NATO) provided they meet certain qualifying criteria.

EFFECTIVE DATE: The rule was effective as of October 21, 1998.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Section 421 of Subtitle B of the American Competitiveness and Workforce Improvement Act of 1998 in the Omnibus Appropriations Act of 1998 (Pub. L. 105–277) enacted on October 21, 1998 amends the Immigration and Nationality Act (INA) by adding a new section (L) under section 101(a)(27). This new section entitles civilian NATO employees, who meet certain requirements, to apply for special immigrant status under INA 203(b)(4) as defined under INA 101(a)(27)(L). Subsection (L) extends special immigrant status to NATO civilian employees who meet the same criteria as that required by international organization employees under subsection (I). The Department regulation at 22 CFR 42.32(d)(5) permits international organization employees who are beneficiaries of a petition approved by the Immigration and Naturalization Service to be classified as a fourth preference special immigrant under INA 203(b)(4). The Department is, therefore, amending the regulation to include civilian NATO employees who have approved special immigrant petitions granting status under INA 101(a)(27)(L).

Final Rule

The implementation of this rule as a final rule, is based upon the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The provision of law being implemented became effective on October 21, 1998, the date of the enactment of the Omnibus Appropriation Act of 1998. Consular officers have been complying with it based on guidance essentially akin to that in this final rule but not yet codified in regulations. It is essential that a formal regulatory order undergird their actions at the earliest possible date. Promulgation of this rule without opportunity for public comment would not be contrary to public interest since it expands the special immigrant category to benefit additional qualified aliens as intended by the Congress.

It has been determined that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

List of Subjects in 22 CFR Part 42

Aliens, Immigration, Passports and visas.

The Rule

In view of the foregoing, the Department of State amends 22 CFR part 42 as follows:

1. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104

2. Amend § 42.32(d)(5) by revising paragraph (d)(5) to read as follows:

§ 42.32 Employment-based preference immigrants.

* * * * *

(d) * * *

(5) Certain international organization and NATO civilian employees—(i) Entitlement to status. An alien is classifiable under INA 203(b)(4) as a special immigrant defined in INA 101(a)(27)(I) or (L) if the consular officer has received a petition approved by the INS to accord such classification, or official notification of such approval, and the consular officer is satisfied from the evidence presented that the alien is within one of the classes described therein.

(ii) Timeliness of application.

An alien accorded status under INA 203(b)(4) because of qualification under

INA 101(a)(27)(I) or (L) must appear for the final visa interview and issuance of the immigrant visa within six months of establishing entitlement to status.

* * * * *

Dated: December 12, 1998.

Donna J. Hamilton,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 98–32758 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket# ME–057–01–7006a; FRL–6201–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Maine; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the Maine Department of Environmental Protection on April 15, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This direct final rule is effective on February 9, 1999 without further notice unless EPA receives adverse comment by January 11, 1999. If adverse comment is received by the above date, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: John Courcier, Office of Ecosystem Protection (CAP), U.S. EPA-New England, Region 1, JFK Federal Building, Boston, Massachusetts 02203–2211.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of materials submitted to EPA relative to this action may be examined during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency-New England, Region 1, Air Permits Unit, Office of Ecosystem Protection, 11th floor, One Congress Street, Boston, Massachusetts 02203.

Maine Department of Environmental Protection, Bureau of Air Quality, Ray Building, Hospital Street, Augusta, Maine 04333.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 565–9462.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), the EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxin and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with its opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

Under section 129 of the Act, emission guidelines are not federally enforceable. Section 129(b)(2) of the Act requires States to submit to the EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414. This action approves the State Plan submitted by Maine to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

The Maine Department of Environmental Protection (DEP) submitted to EPA on April 15, 1998 the following sections 111(d)/129 State Plan components for implementing and enforcing the emission guidelines for existing MWCs in the State: Legal Authority; Emission Standards and Limitations; Compliance Schedule; MWC Emissions and MWC Plant/Unit Inventories; Procedures for Testing and Monitoring Sources of Air Pollutants; Source Surveillance, Compliance Assurance and Enforcement; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Public Hearing Summary; and applicable State regulations (DEP regulations Chapter 121). DEP submitted its Plan after the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the Maine State Plan covers only large MWC units. Small units are not subject to the requirements of subpart Cb and not subject to this approval.

The approval of DEP's State Plan is based on EPA's finding that: (1) DEP provided adequate public notice of public hearings for the proposed rulemaking which allows Maine to implement and enforce provisions that are at least as protective as the EG for large MWCs, and (2) DEP also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In section 1.1 and appendix D of Maine's Plan, the DEP cites the following in support of its demonstration of legal authority: State of Maine Attorney General's Demonstration of the Legal Authority to Implement and Enforce MWC NSPS and Emissions Guidelines; Attorney General's Legal Opinion to Operate the Title V Operating Permit Program; 38 MRSA section 344; 38 MRSA section 585, Establishment of Emission Standards; 38 MRSA section 585–B, Hazardous Air Pollutant Standards; 38 MRSA section 590, Licensing. In

appendix A of the State Plan, DEP cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards are in DEP's Air Bureau Regulations Chapter 121, Emission Limitation and Emission Testing of Resource Recovery Facilities. On the basis of the Attorney General's Opinion and Demonstration, the statutes, and the rules of the State of Maine, these standards and limitations under Chapter 121 are approved as being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

In its State Plan and Chapter 121 MWC Regulations, DEP established a compliance schedule and legally enforceable increments of progress for each large MWC. This portion of the State Plan and Rule has been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

In section 1.4 of Maine's Plan, the DEP submitted an emissions inventory of all designated pollutants for each of its three large MWCs. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing large MWC units.

In section 1.7, Maine's Plan describes its legal authority to require owners and operators of designated facilities to maintain records and report to the State the nature and amount of emissions and any other information that may be necessary to enable the State to judge the compliance status of the affected facilities in section 1.3 of the Plan. Maine also cites its legal authority to provide periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with applicable emission standards, available to the general public. Maine incorporated by reference into Chapter 121 the testing, monitoring, reporting and record keeping requirements under 40 CFR part 60. All of these State rules have been reviewed and approved as being at least as protective as the Federal requirements for existing large MWC units.

As stated in section 1.9 of the State Plan, Maine is committed to provide annual progress reports of Plan implementation. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B and appendix D. This portion of the Plan has been reviewed and approved as meeting the minimum Federal requirement for State Plan reporting.

Final Action

EPA is approving the above referenced State Plan. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If no significant, material, and adverse comments are received by January 11, 1999, this action will be effective February 9, 1999.

If the EPA receives significant, material, and adverse comments by the above date, this action will be withdrawn before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. All public comments received will be addressed in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. The 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. If no such comments are received, the public is advised that this action will be effective February 9, 1999.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued E. O. 12875 on October 26, 1993, entitled ''Enhancing the Intergovernmental Partnership.'' Under E. O. 12875, EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the promulgated standards and emission guidelines.

In developing the MWC emission guidelines and standards, EPA consulted with affected State, local, and tribal governments, and kept those parties informed about the MWC standards and guidelines. EPA prepared a written statement pursuant to E. O. 12875 which it published in the 1995 promulgation notice (*see* 60 FR 65412 to 65413). The EPA has determined that this State Plan does not include any new Federal mandates or additional Federal requirements beyond those previously considered during promulgation of the 1995 MWC guidelines. Therefore, E.O. 12875 does not require further consultation or information. To the extent that the State Plan contains requirements that differ from, but that are at least as protective as, the Federal MWC guidelines, EPA notes that it has consulted with State government representatives during the State's development of the Plan, and that affected local and tribal governments have been provided with information and afforded opportunities to comment through Maine's public hearing and comment procedures.

C. 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 E.O. 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E. O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal

governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not create any new requirements on any entity affected by this State Plan. Thus, the action will not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111(d) and section 129(b)(2) of the Clean Air Act do not create any new requirements on any entity affected by this rule, including small entities. They simply approve requirements that the state is already imposing. Furthermore, in developing the MWC emission guidelines and standards, EPA prepared a written statement pursuant to the Regulatory Flexibility Act which it published in the 1995 promulgation notice (*see* 60 FR 65413). In accordance with EPA's determination in issuing the 1995 MWC emission guidelines, this State Plan does not include any new requirements that will have a significant economic impact on a substantial number of small entities. Therefore, because the Federal 111(d) Plan approval does not impose any new requirements and pursuant to section 605(b) of the Regulatory Flexibility Act, the Regional Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

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

In developing the MWC emission guidelines and standards, EPA prepared a written statement pursuant to section 202 of the Unfunded Mandates Act which it published in the 1995 promulgation notice (*see* 60 FR 65405 to 65412). The EPA has determined that this State Plan does not include any new Federal mandates above those previously considered during promulgation of the 1995 MWC guidelines. The State Plan does include an emission limitation for mercury that in some circumstances will be more stringent than the limit required by the EG. However, that limit is not the result of a Federal mandate. In approving the State Plan, EPA is approving pre-existing requirements under State law and imposing no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from EPA's approval of State Plan provisions that may be more stringent than the EG requirements, nor will EPA's approval of the State Plan significantly or uniquely affect small governments. Thus, this action is not subject to the requirements of sections 202, 203, 204, and 205 of the Unfunded Mandates Act.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In approving or disapproving state plans under section 129 of the Clean Air Act, EPA does not have the authority to revise or rewrite the State's rule, so the Agency does not have authority to require the use of particular voluntary consensus standards. Accordingly, EPA has not sought to identify or require the State to use voluntary consensus standards. Furthermore, Maine's Plan incorporates by reference test methods and sampling procedures for existing MWC units already established by the emissions guidelines for MWCs at 40 CFR part 60, subpart Cb, and does not establish new technical standards for MWCs. Therefore, the requirements of the NTTAA are not applicable to this final rule.

I. 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 February 11, 1999. 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), 42 U.S.C. 7607(b)(2)). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal Waste Combustors, Reporting and recordkeeping requirements.

Dated: November 24, 1998.

John P. DeVillars,

Regional Administrator, Region 1.

40 CFR Part 62 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. 7401–7642.

Subpart U—Maine

2. Part 62.4845 is amended by adding paragraphs (b)(4) and (c)(3) to read as follows:

§ 62.4845 Identification of plan.

* * * * *

(b) * * *

(4) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors, submitted on April 15, 1998.

(c) * * *

(3) Existing municipal waste combustors.

3. Part 62 is amended by adding a new § 62.4975 and a new undesignated center heading to Subpart U to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.4975 Identification of sources.

The plan applies to the following existing municipal waste combustor facilities:

(a) Penobscot Energy Recovery Company, Orrington, Maine.

(b) Maine Energy Recovery Company, Biddeford, Maine.

(c) Regional Waste Systems, Inc., Portland, Maine.

[FR Doc. 98–32986 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6201–2]

RIN 2060–A104

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; compliance extension.

SUMMARY: On December 2, 1994, the EPA issued the ''National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning'' (59 FR 61801). On May 5, 1998, the EPA announced an immediate 3-month stay of the effectiveness of that standard for continuous web cleaning machines using halogenated hazardous air pollutant (HAP) solvents for good cause pursuant to section 553(b)(3)(B) of the Administrative Procedures Act (63 FR 24768). In that same document, the EPA proposed a temporary extension of the applicable compliance date beyond the 3 months of the stay for up to 1 year to complete analysis of equivalent methods of control for continuous web cleaning machines using halogenated HAP solvents.

This document promulgates that compliance extension, and for reasons discussed in this notice, extends the compliance extension until December 2, 1999. This document also discusses the three comment letters received on the May 5, 1998 proposal notice.

DATES: The regulation is effective on December 11, 1998.

ADDRESSES: *Docket.* Interested parties may review items used to support this notice at: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–92–39, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0283. For information regarding the applicability of this action to a particular entity, contact Ms. Tracy Back, Manufacturing Branch, Office of Compliance (2223A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7076.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of individual continuous web cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents in a concentration greater than 5 percent by weight, as a cleaning or drying agent.

Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities engaging in cleaning operations using halogenated solvent cleaning machines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that the EPA is now aware potentially could be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in § 63.460 of the national emission standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaning operations that was promulgated in the **Federal Register** on December 2, 1994 (59 FR 61801) and codified at 40 CFR part 63, subpart T. If you have questions regarding the applicability of this action to a particular entity, consult Mrs. Tracy Back at the address listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented below is organized as follows:

I. Background
II. Comments Received on Proposed Compliance Changes and EPA Response to Comments
III. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866 Review
D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996
E. Submission to Congress and the General Accounting Office
F. Unfunded Mandates Reform Act
G. National Technology Transfer and Advancement Act
H. Executive Order 12875: Enhancing the Intergovernmental Partnership
I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

I. Background

On December 2, 1994 (59 FR 61801), the EPA promulgated the NESHAP for halogenated solvent cleaning operations. These standards were codified as subpart T in 40 CFR part 63. These standards established equipment and work practice standards for individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents in a concentration greater than 5 percent by weight, as a cleaning or drying agent.

Under § 63.469 of the halogenated solvent cleaning NESHAP, the Administrator may approve the use of equipment or procedures that have been demonstrated to be equivalent in terms of reducing emissions of methylene

chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform to the atmosphere, to those prescribed for compliance within a specified paragraph of the NESHAP.

After the rule was promulgated, two owners and operators of affected halogenated solvent cleaning machines requested approval for equivalent methods of control determinations for their continuous web cleaning machines because the final rule did not address their situation. In addition, the EPA has become aware of several other continuous web cleaning machines experiencing difficulties in determining how to comply with the NESHAP. In each case, the emission control requirements specified by the NESHAP would be difficult or impossible to implement due to the operating and emission characteristics of these machines. Without any action by the EPA to the contrary, individual case-by-case equivalency determinations would be required to ensure that each machine is applying alternative control measures that achieve the same or better emission reductions as the NESHAP-required controls. Such a case-by-case approach would be unduly burdensome for both the affected sources and the EPA. Therefore, the EPA is conducting an evaluation of methods of control for all continuous web cleaning machines to determine which emission control measures would be equivalent to the NESHAP.

As discussed below, the compliance extension promulgated today will allow sufficient time for the EPA to complete the evaluation of equivalent control technologies for continuous web cleaning machines, as well as time for industry to implement any required changes.

II. Comments Received on Proposed Compliance Changes and EPA Response to Comments

Three comment letters were received on the proposed extension of the compliance date for continuous web cleaning machines. All of these comments were from industrial facilities who believed that their operations fit the definition of ''continuous web cleaning.'' These comments have been included in the docket to the Halogenated Solvent Cleaning NESHAP (Docket No. A–92–39) as Items VI–D–01 through VI–D–03.

Each of these facilities commented on the proposed compliance extension, as well as provided additional information for consideration by the EPA during the review and analysis of continuous web cleaning machines. Because there were only three comment letters, no separate response to comment document has been prepared. This preamble serves as the only summary of the comments received on the proposed compliance extension.

The data provided by the commenters supported the EPA's conclusion that the continuous web cleaning machines warrant further evaluation. The design and operation, and, therefore, the emissions characteristics of these machines are different from the solvent cleaning machines (e.g., batch cold cleaning machines, in-line cleaning machines) that the EPA evaluated during the NESHAP development process. The types of units discussed in the comment letters as potentially fitting the definition of continuous web cleaners include web crawlers, wire drawers, thin strip cleaning machines, and photographic film cleaning equipment. According to the commenters, none of these units can unambiguously be classified as either a ''batch cold cleaning machine'' or as an ''in-line cold cleaning machine.''

All of the commenters supported the EPA's proposal to extend the comment period by 1 year. One commenter stated that a 1 year extension would not be sufficient to achieve compliance. As an alternative, the commenter recommended a minimum of 18 months after the promulgation of final standards applicable to continuous web cleaning machines. The commenter stated that the additional time would allow for the retrofit of existing equipment or the installation of new equipment if required by the revised rule.

The EPA shares the concern of the commenter that a 1 year extension to August 3, 1999 may not be sufficient time to allow both the EPA's analysis and a facility's compliance with the new requirements for these type of solvent cleaning machines. However, the EPA does not believe at this time that 18 months after the promulgated equivalency determination will be required. The time required for compliance with the new requirements will largely depend on the types of modification or enhancements required by the affected sources. Since the EPA agrees that some additional time will be necessary, the EPA is promulgating a small extension to the proposed August 3, 1999 date. The EPA will review this date during development of requirements for continuous web cleaning machines and may revise the date, if warranted. In today's action, the EPA is extending the compliance extension until December 2, 1999. The EPA currently believes that this will allow sufficient time for the EPA to conduct the technical analysis, propose and promulgate the equivalency determination for continuous web cleaners, and for industry to comply with such requirements. This date is also linked to the original compliance date of December 2, 1997, which should help to provide consistent dates for ongoing reports to the regulating agencies.

III. Administrative Requirements

A. Docket

Docket A–92–39 is an organized and complete file of all of the information submitted to, or otherwise considered by, the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to readily identify and locate documents to enable them to participate effectively in the rulemaking process. The contents of the docket serves as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

There are no additional information collection requirements contained in this final action. Therefore, approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is not required.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the EPA has determined that this final rule is not a ''significant regulatory action'' within the meaning of the Executive Order. The amendments issued today extend the compliance date for continuous web cleaning machines. These amendments do not add any new control requirements. Therefore, this regulatory action is considered ''not significant'' and OMB review is not required.

D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the Agency determines that a rule will have a significant economic impact on a substantial number of small entities.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final amendment to the rule because the compliance extension for continuous web cleaning machines will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. The changes to the rule merely extend the compliance date for continuous web cleaning machines and, therefore, do not create any additional burden for any of the regulated entities.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States 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). This rule will be effective December 11, 1998.

F. Unfunded Mandates Reform Act

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

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector in any one year. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this action. The EPA has likewise determined that the action promulgated today does not include any regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the Unfunded Mandates Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (the NTTAA) of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the 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 (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This regulatory action extends the compliance date for continuous web cleaning machines. Thus, this action does not involve any technical standards that would require the EPA to consider voluntary consensus standards pursuant to section 12(d) of the NTTAA.

H. Executive Order 12875: Enhancing Intergovernmental Partnership

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's amendments to the rule do not create a mandate on State, local, or tribal governments. The amendments do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. 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 the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is considered not ''economically significant'' as defined under Executive Order 12866 and, therefore, is not subject to Executive Order 13045.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's amendments to the rule do not significantly or uniquely affect the communities of Indian tribal governments. The amendments issued today extend the compliance date for continuous web cleaning machines, and do not add any new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Continuous web cleaning machines, Halogenated solvent cleaning machines, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 4, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I 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 T—National Emission Standards for Halogenated Solvent Cleaning

2. Section 63.460 is amended by revising paragraphs (c) and (d), and adding paragraph (g) to read as follows:

§ 63.460 Applicability and designation of source.

* * * * *

(c) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commences construction or reconstruction after November 29, 1993 shall achieve compliance with the provisions of this subpart immediately upon start-up or by December 2, 1994, whichever is later.

(d) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commenced construction or reconstruction on or before November 29, 1993 shall achieve compliance with the provisions of this subpart no later than December 2, 1997.

* * * * *

(g) Each continuous web cleaning machine subject to this subpart shall achieve compliance with the provisions of this subpart no later than December 2, 1999.

* * * * *

§ 63.470 [Removed and reserved].

3. Part 63 is amended by removing and reserving section 63.470.

[FR Doc. 98–32991 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL–6201–3]

RIN 2060–AH60

Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act: Allowance Transfer Deadline and Signature Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic particles and deposition and their serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health.

The allowance trading component of the Acid Rain Program allows utilities to achieve sulfur dioxide emissions reductions in the most cost-effective way. Allowances are traded among utilities and recorded in EPA's Allowance Tracking System for use in determining compliance at the end of each year. The Acid Rain Program's permitting and allowance trading, and emissions monitoring requirements are set forth in the ''core'' rules initially promulgated on January 11, 1993. This action amends certain provisions in the permitting and allowance trading rules for the purpose of improving the operation of the Allowance Tracking System and the allowance market, while still preserving the Act's environmental goals. The entities affected by this change fall under Standard Industrial Code 49 (Electric, Gas and Sanitary Services).

EFFECTIVE DATE: January 11, 1999.

ADDRESSES: *Docket.* Docket No. A–98–15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Permits and Allowance Market Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (202–564–9089).

SUPPLEMENTARY INFORMATION: This preamble contains all of the responses to public comments received on the revisions finalized in today's action. There is no additional background information document.

The information in this preamble is organized as follows:

I. Affected Entities
II. Background
III. Public Participation
IV. Summary of Major Comments and Responses
  A. Allowance Transfer Deadline
  B. Signature Requirement for Transfer Requests
  C. Impacts of Revisions on Acid Rain Permits
V. Administrative Requirements
  A. Docket

B. Executive Order 12866
C. Executive Order 12875: Enhancing Intergovernmental Partnerships
D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Act
F. Paperwork Reduction Act
G. Regulatory Flexibility
H. Applicability of Executive Order 13045: Children's Health Protection
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Affected Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry SIC 49—Electric, Gas and Sanitary Services.	Electric service providers, boilers from a wide range of industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 72.6 and § 74.2 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On January 11, 1993, EPA promulgated the ''core'' regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), as amended on November 15, 1990, including the Permits rule (40 CFR part 72) and the Sulfur Dioxide Allowance System rule (40 CFR part 73). Since promulgation, these rules have applied to three compliance years, 1995, 1996, and 1997, for which affected units were required to meet the annual allowance holding requirements established by the rules. During this time, the Agency gained experience in implementing the requirements and also discovered ways that the operation of the Allowance Tracking System and allowance market could be improved. On August 3, 1998, EPA proposed changes to certain provisions in 40 CFR parts 72 and 73 to make these improvements. (63 FR 41358 (1998)). These proposed changes were related to the allowance transfer deadline, compliance determinations, and the signature requirements for allowance transfer requests.[1]

The Agency received seven comment letters on the proposed revisions. All of the commenters strongly supported the revision to the allowance transfer deadline and the clarification of the signature requirements for allowance transfer requests. Today's action, therefore, finalizes these two revisions as proposed. EPA is not taking action at this time on the third proposed revision, which would allow deduction of allowances from other unit accounts after the allowance transfer deadline and on which EPA received adverse comment.

III. Public Participation

Revisions to 40 CFR parts 72 and 73 were proposed on August 3, 1998. (63 FR 41358). The notice invited public comments, and copies of the proposed rule were made available to interested parties.

EPA offered to hold a public hearing upon request, but no such request was made and no hearing was held. EPA did, however, receive a request to extend the comment period 15 days from September 2, 1998 to September 17, 1998. A notice granting the request was published on August 24, 1998. 63 FR 45037 (1998).

IV. Summary of Major Comments and Responses

EPA received seven comment letters regarding the proposed changes to the regulations. All of the commenters were representatives of utility companies or groups of utility companies. A copy of each comment letter received is included in the rulemaking docket.

All of the commenters supported the 30 day extension to the allowance transfer deadline and the clarification of the signature requirements on transfer forms. A summary of the comments received on these two revisions and the Agency responses are set forth in the following two sections.

A. Allowance Transfer Deadline

The ''allowance transfer deadline'' is the last day on which allowance transfers may be submitted to EPA for recordation in a compliance subaccount for use in meeting a unit's sulfur dioxide (SO_2) emissions limitation requirements for the year. 40 CFR 72.2 (definition of ''allowance transfer deadline''). EPA proposed to extend the allowance transfer deadline from the current date of January 30 to March 1 (or February 29 in any leap year) to reflect the Agency's experience in operating the Allowance Tracking System and the technological advances that have been made regarding the submission of continuous emissions monitoring system (CEMS) data.

Comments: All seven commenters strongly supported the proposed extension of the allowance transfer deadline to March 1 (or February 29 in any leap year). Five of the commenters reiterated the arguments EPA made in the proposal for extending the date, while the other two commenters simply acknowledged support of the change.

Response: Because EPA received only supportive comments on its proposed change to the allowance transfer deadline, EPA is extending the allowance transfer deadline to the proposed date of March 1 (or February 29 in any leap year) in today's final rule. The reasons for extending the deadline are more fully explained in the preamble to the proposed rule. 63 FR 41358.

B. Signature Requirement for Transfer Requests

Under the core rules, § 73.50(b)(1) required authorized account representatives seeking recordation of an allowance transfer to submit a request for the transfer that contains, among other things, signatures of the authorized account representatives for both the transferor and the transferee accounts. In its August 3, 1998 proposed rulemaking, the Agency proposed to add § 73.50(b)(2) to clarify that the authorized account representative for a transferee account can meet the signature requirement by submitting, along with or in advance of a transfer request from the authorized account representative for any transferor account, a signed statement identifying the accounts into which any transfer of allowances is authorized, on or after the date of EPA's receipt of the statement. Receipt by EPA of the signed statement satisfies the transferee signature requirement for all contemporaneous or subsequent transfers into accounts identified in the statement. The specific language for the statement was set forth in proposed § 73.50(b)(2).

Comments: All seven commenters strongly supported the clarification of the signature requirements for transfer forms. One commenter noted that the

[1] In addition, the proposal revised § 73.34(c)(4) to eliminate the reference to the direct sales provisions, which were previously removed from part 73. 61 FR 28761, 28762 (1996).

Agency's proposal would simplify and streamline the allowance transfer process. The same commenter and one other stated that advance approval of allowance transfers would make more feasible the electronic submission of electronic transfers. The other five commenters simply acknowledged support of the revision.

Response: Because EPA received only supportive comments on its proposed revision to the signature requirements for allowance transfer requests, EPA is finalizing this rule revision (with the correction of a minor citation error in § 73.50(b)(2)(i)). The reasons for this revision are more fully explained in the preamble to the proposed rule. 63 FR 41363.

C. Impacts of Revisions on Acid Rain Permits

Today's revisions are designed so that the contents of existing acid rain permits and the State regulations required to issue acid rain permits do not have to be changed in order for the revisions to become effective. With the exception of a change in the definition of ''allowance transfer deadline,'' all of today's revisions are made in 40 CFR part 73. As explained in the preamble to the proposed rule (63 FR 41364), it is unnecessary for State permitting authorities to revise the acid rain permits they have issued or regulations they have adopted to reflect today's final revisions to 40 CFR part 73.

Similarly, the revisions can go into effect without State permitting authorities revising acid rain permits or regulations to reflect the revised definition of ''allowance transfer deadline'' in 40 CFR part 72. Even if a State issued an acid rain permit before today's revision of the allowance transfer deadline becomes effective, the Agency will apply the revised deadline to the units covered by the permit in determining end-of-year compliance for all calendar years beginning with 1998. *See* 63 FR 41364.

While EPA will apply the revised allowance transfer deadline in § 72.2, State permitting authorities should revise their own regulations to reflect the new deadline after it is finalized. This will avoid any potential confusion on the part of regulated entities and the public as to when EPA determines end-of-year compliance.

IV. Administrative Requirements

A. Docket

A docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the preambles of the proposed and final rule (which include EPA responses to significant comments), the contents of the docket will serve as the record in case of judicial review to the extent provided in section 307(d)(7)(A) of the Act.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that today's rule is not a ''significant regulatory action.''

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a new mandate on State, local or tribal governments. It modifies an existing mandate in a way that imposes no additional duties and no additional costs on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or unless EPA consults with those governments. If EPA complies by consulting, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely effect, or impose any substantial direct compliance costs on, the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA must 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 explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially 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.

Because today's rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

Today's final revisions to parts 72 and 73 will potentially reduce the burden on regulated entities by streamlining the allowance transfer process and extending the allowance transfer deadline. The revisions will not otherwise have any significant impact on State, local, and tribal governments.

F. Paperwork Reduction Act

Today's final revisions to parts 72 and 73 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The extension of the allowance transfer deadline does not result in any new information requirements and the revisions made to the signature requirement simply clarify EPA's existing practice of accepting the signature of the authorized account representative for a transferee account in advance of an allowance transfer form. OMB has previously approved the relevant information collection requirements contained in parts 72 and 73 under the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060–0258. 58 FR 3590, 3650 (1993).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the previously approved ICR may be obtained from the Director, Regulatory Information Division; EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564-2740. Include the ICR and/or OMB number in any correspondence.

G. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

As discussed above, today's final revisions will reduce the burden on regulated entities by streamlining and adding flexibility to the regulations. For these reasons, EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

H. Applicability of Executive Order 13045: Children's Health Protection

Executive Order 13045 (62 FR 19885, April 29, 1997) applies to any rule if EPA determines (1) that the rule is economically significant as defined under Executive Order 12866, and (2) that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final action is not subject to Executive Order 13045, because the action is not economically significant as defined by Executive Order 12866 and does not address an environmental health or safety risk having a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, or business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the NTTAA.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after publication in the **Federal Register**.

List of Subjects in 40 CFR Parts 72 and 73

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Compliance plans, Electric utilities, Penalties, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 4, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by removing from the definition of ''Allowance transfer deadline'' the words ''January 30 or, if January 30'' and adding, in their place, the words ''March 1 (or February 29 in any leap year) or, if such day.''

PART 73—[AMENDED]

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

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

4. Section 73.34 is amended by removing from paragraph (c)(4) the words ''or direct sale pursuant to subpart E of this part''.

5. Section 73.50 is amended by redesignating paragraph (b)(2) as (b)(3) and adding new paragraph (b)(2) as follows:

§ 73.50 Scope and submission of transfers.

* * * * *

(b) * * *

(2)(i) The authorized account representative for the transferee account can meet the requirements in paragraphs (b)(1)(iii) and (iv) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement in a format prescribed by the Administrator and signed by the authorized account representative retracting the authorization for the account.

(ii) The statement under paragraph (b)(2)(i) of this section shall include the following: ''By this signature, I authorize any transfer of allowances into each Allowance Tracking System account listed herein, except that I do not waive any remedies under 40 CFR part 73, or any other remedies under State or federal law, to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any authorized account representative for such account unless and until a statement signed by the authorized account representative retracting this authorization for the account is received by the Administrator.''

* * * * *

[FR Doc. 98–32990 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 120798A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Virginia

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the Commonwealth of Virginia has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Virginia for the remainder of calendar year 1998, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the Commonwealth of Virginia that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Virginia.

DATES: Effective 0001 hours, December 9, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, or 2,368,569 lb (1,074,365 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1997, a total of 2,305,985 lb (1,045,977 kg) were landed in Virginia, creating a 11,192 lb (5,077 kg) overage that was deducted from the amount allocated for landings in the state during 1998 (63 FR 23227, April 28, 1998). The resulting quota for Virginia is 2,357,377 lb (1,069,288 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Virginia has attained its quota for 1998.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 9, 1998, further landings of summer flounder in Virginia by vessels holding commercial Federal

fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective December 9, 1998, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Virginia for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 8, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–32996 Filed 12–8–98; 2:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 238
Friday, December 11, 1998

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Form 545, Central Office Equipment Contract (Not Including Installation)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction to add a RUS Form 545 Central Office Equipment Contract (Not Including Installation) and to rescind REA Form 545, Central Office Equipment Contract (Not Including Installation). RUS is proposing this new contract form in order to incorporate contractual and technological changes.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than February 9, 1999.

ADDRESSES: Comments should be mailed to Orren E. Cameron, III, Director, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington, DC, 20250–1598. RUS requests an original and three copies of all comments (7 CFR part 1700). All comments received will be available for public inspection at Room 2835 (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington DC, 20250–1598, telephone number (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. A Final Rule related Notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) exempts RUS loans and loan guarantees from coverage under this Order.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with § 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 35, as amended) under control number 0572–0059.

Send questions or comment regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034-South Building, Washington, D.C. 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees; and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Unfunded Mandates

This rule contains no Federal mandates for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

The last revision to the REA Form 545 Contract was September 1966. Since that date, divestiture and competition legislation and regulation have brought about many changes in the conduct of telecommunications business. Notable advances of central office equipment technology such as Signaling System No. (SS7), Advanced Intelligent Network (AIN), and Integrated Services Digital Network, have made many new services available. In order to address the above, significant changes have been made in the way business is conducted in the telecommunications industry.

The proposed RUS Form 545 Contract incorporates those changes into the Central Office Equipment Contract. The main changes to the Contract are new requirements that: (1) Provide for a software license, (2) provide for patent, copyright, and trademark infringement protection, (3) provide a cap on consequential damages, and (4) provide Equal Employment Opportunity requirements. In addition, it revises and updates provisions for (1) delivery of equipment, (2) inspection and testing of the completed installations, (3) payments to the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. The above actions will make it possible for RUS telecommunications borrowers to continue to provide their subscribers with the most modern and efficient telecommunications service, implemented in a predictable and orderly fashion.

RUS has issued a series of 7 CFR chapter XVII parts, which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments that provide for and secure RUS financing. The revision to 7 CFR part 1755 codifies RUS Form 545, Central Office Equipment Contract (Not Including Installation). The 7 CFR part 1755 also describes where copies of the contract may be obtained. RUS telecommunications borrowers are required to use the RUS Form 545 Contract where major central office facilities are being procured but not installed under this contract. The present RUS Form 545 has become outdated due to technological advancements and other reasons. Advanced technology and equipment concepts have introduced new issues. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues addressed in this proposed RUS Form 545 contract are: expansion of patent infringement protection to include copyrights, trademarks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; insurance; independent contractor provisions; and support of discontinued products. All these additions and changes have been made so that RUS telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Following the existing practice of the RUS, this proposed rule contemplates publication of the complete text of standard contract Form 545 in the CFR. However, interested parties are advised that RUS is considering and anticipates publishing a proposed rule providing for an alternative procedure for the publication of standard forms of contracts pursuant to which the full text of the contract form will not be set forth as codified text in the CFR. Should such alternative procedure be adopted pursuant to applicable rulemaking procedures, the full text of this contract, as promulgated through final rulemaking, may not be codified in the CFR.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, Chapter XVII of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 7941 *et seq.*

2. Section 1755.93 is amended by revising the entry for Form 545 in the table and footnote 1 at the end of the table to read as follows:

§ 1755.93 List of standard forms of telecommunications contracts.

* * * * *

RUS form No.	Issue date	Title	Purpose	Source of copies
*	*	*	*	*
545	[TBD]	Central Office Equipment Contract (Not Including Installation).	Purchase and deliver Central office equipment	RUS.[1]
*	*	*	*	*

[1] A limited number of copies of the publication will be furnished by RUS upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to Program Development and Regulatory Analysis United States Department of Agriculture, Rural Utilities Service, Washington, DC 20250–1522. The telephone number is (202) 720–8674.

* * * * *

3. Section 1755.545 is added to read as follows:

§ 1755. 545, Form 545, central office equipment contract (not including installation.)

RUS Form 545, Central Office Equipment Contract (Not Including Installation), as contained in this section shall be used for all purchases of central office equipment (other than such purchases of special equipment using Form 397) using RUS financial assistance when the equipment is supplied but not installed by the seller as explained in 7 CFR part 1753, subparts E and H. RUS Form 545 Central Office Equipment Contract follows:

Central Office Equipment Contract (Not Including Installation)

Notice and Instructions to Bidders;

Central Office Equipment Project (Not Including Installation)

1. Sealed proposals for the engineering, furnishing, and delivery, of central office equipment, materials, and software for the

_____

_____

(hereinafter called the ''Owner'') which is to be part of the system known as

_____

_____

to be financed pursuant to a loan contract between the Owner and the United States of America (hereinafter called the ''Government'') by the Administrator (hereinafter called the ''Administrator'') of the Rural Utilities Service (hereafter called ''RUS'') will be received by the Owner on or before _____ o'clock, _____.M.,

_____,

at _____

_____

at which time and place the proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

2. The Bid Documents (composed of plans, specifications, and drawings), together with

all necessary forms and other documents for bidders, may be obtained from the Owner or from the Owner's Engineer, (hereinafter called the ''Engineer'') at the latter's office at _____

. _____

The Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract between the Owner and the Government may be examined at the office of the Owner.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number with the name of the bidder will be recorded by the Engineer. Bids will be accepted only from original bidders, or other qualified bidder to whom such a set has been transferred by the original bidder with the approval of the Engineer prior to the pre-bid technical session.

3. A pre-bid technical session will be held with each bidder during the week of _____, (year), at

. _____

for the purpose of receiving the bidder's technical proposal, discussing details of the Project, and considering suggestions from bidders. The Owner shall attach to this Notice a list of the information required in the bidder's technical proposal. Each bidder will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the bidder shall fully describe to the Owner any exceptions to the Specifications the bidder may request. In addition, the bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner decides to incorporate any changes into the Specifications, the Owner shall furnish all prospective bidders a copy of the Specifications containing such revisions (the ''Revised Specifications'') and all bids shall be made on the basis of the Revised Specifications. At this session, the bidder shall identify all documentation and materials that it claims constitute agreed excluded documentation under Section (2)(xi) of the Software License. The bidder shall claim only those items it may be unable to provide to the Owner as required by said (2)(xi). The Engineer shall immediately provide a list of all items so identified to the [appropriate RUS Area office]. The Engineer shall inform the bidder at least _____ days before the scheduled bid opening whether either the Engineer or [RUS] will reject the bid because of items so identified. Licensor agrees that certain Licensed Software cannot be excluded from the requirements of section (2)(xi), including but not limited to, software, the absence or improper operation of which would significantly impair the operation of the system, would significantly impair the ability of the Owner to generate revenue, or would pose a risk to RUS loan security. If allowed, the agreed excluded documentation shall be individually identified in an attachment to the bid. No bid shall be accepted from a bidder who fails to attend the pre-bid technical session or fails to demonstrate to the Owner that its equipment meets the requirements of the Plans and Specifications.

4. Proposals shall be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the bidder, its license number, if a license is required for bidding on a project by the State, and the date and hour of the opening of bids must appear on the envelope in which the proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the proposal, the bidder shall make and shall be deemed to have made a careful examination of the Specifications, forms of bidder's proposal and acceptance, and shall become informed as to the location and characteristics of the proposed central office and remote terminal features and services, the transportation facilities, the kind of facilities required before and during the delivery of the equipment and materials, the general local conditions and all other matters that may affect the cost. Bidders will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the ''Anti Kick-Back Acts,'' as amended, (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001.

6. If requested by the Owner or the Administrator, the bidder shall furnish evidence, satisfactory to the Owner and the Administrator, that the bidder has the necessary facilities, ability, and financial resources to perform the Contract.

7. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

8. The Owner reserves the right to waive minor irregularities or minor errors in any proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the proposal in which they occur prior to the execution of any Contract, which may be awarded thereon.

9. The Owner reserves the right to reject any or all proposals.

10. The equipment to be furnished for all central offices and remote switching terminals included in the proposal is to be of the same basic design. A proposal submitted on any other basis will not be considered.

11. Equal Opportunity and Employment.

(a) The Offeror's or Bidder's attention is called to the ''Equal Opportunity Clause'' and the ''Standard Federal Equal Employment Specifications'' contained herein.

(b) The goals and timetables for minority and female participation are available from the Office of Federal Contract Compliance Programs (OFCCP) which has the sole responsibility for enforcing Executive Order 11246, as amended.

The goals set forth in Executive Order 11246, as amended, are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with Executive Order 11246, as amended, and the implementing regulations at 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and, the geographical area in which the subcontract is to be performed.

Bidder's proposal to Engineer, Furnish, and Deliver Equipment, Materials and Software

(Proposal shall be submitted in ink or typewritten)

To: _____

(HEREINAFTER CALLED THE ''OWNER'')

The undersigned (hereinafter called the ''Bidder'') hereby proposes to engineer, furnish, and deliver, and install the equipment, materials and software for each Project listed under Column 1, ''Project,'' in Article I, 1, and described in the plans, specifications and drawings (hereinafter called the ''Specifications'') prepared by the Owner and attached hereto and made a part hereof, financed by a loan to the Owner made or guaranteed by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the ''Administrator''), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, and designated _____.

The Bidder has become informed as to the location and characteristics of the proposed Project, has become informed as to the kind of facilities required before and during the delivery and installation of the equipment, material, and software and has become acquainted with all other matters that may affect the cost and time of delivery of the Project.

The Bidder agrees that if its bid is accepted the following terms and conditions shall govern.

If, in submitting this proposal, the Bidder has taken any exception to the form of proposal furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit and they may exclude the proposal from consideration in determining the award of the Contract.

ARTICLE I.—Section 1. Bid Price. The Bidder Will Engineer, Furnish, and Deliver to the Delivery Points Specified Below the Equipment Described in the Specifications for the Following Sums

Project (see notes 1, 2 and 3)	Base bid	Delivery point	Delivery (see note 4)	Completion of the project (see note 5)	Spare parts	Item	Maintenance tools
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	$				$	a	$
	$				$	b	$
	$				$	c	$
	$				$	d	$
	$				$	e	$
	$				$	f	$
Totals	$	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	$	XXXXXX-XX	$
Total Base Bid	$	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXX-XXX
Alternate 1	$				$	g	$
Alternate 2	$				$	h	$
Alternate 3	$				$	i	$
Alternate 4	$				$	j	$

Note 1: If a remote switching terminal, so designate and list after host office.
Note 2: All items included in a Project shall have the same completion schedule.
Note 3: Each Project shall be separated by a blank line.
Note 4: Delivery time in calendar days.
Note 5: Time in calendar days for Completion of the Project shall be no later than 90 days after the time established for Delivery.

Section 2. Acceptable Equipment. Unless otherwise specified by the Owner (and with advance written agreement by RUS), the Bidder agrees to furnish under this proposal only equipment which is currently listed in RUS Information Publication 344–2 or covered by a letter of technical acceptance issued by the Chairman, Technical Standards Committee ''A'' (Telecommunications). The Bidder agrees also to furnish only materials, equipment, and software which are new and of most recent issue and manufacture, as of the date of the bid opening, or of near future release for which the Bidder can assure timely delivery.

Section 3. Changes in Project. The Owner, with the approval of the Administrator, may from time to time prior to the delivery of equipment or software under this Contract effected by the acceptance of this proposal, make reasonable changes, additions to or subtractions from the Specifications which are part of the proposal as conditions may warrant. However, if substantial changes in the Project shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within thirty (30) days after any such change is made. Further, if the cost to the Bidder shall be increased or decreased by any such change or addition, the Contract price shall be increased or decreased by a reasonable amount in accordance with a contract amendment signed by the Owner and the Bidder and approved by the Administrator. No claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The delivery times specified under Column 4, ''Delivery'', in Article I, Section 1, can only be changed by a Contract amendment approved by the Bidder, the Owner and RUS.

Section 4. Taxes. The bid prices herein set forth do not include any amounts payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase, or use of materials, supplies, equipment, or software to be incorporated in the Project(s). If any such tax is applicable to the sale, purchase, or use of materials, supplies, equipment, or software hereunder, the amount thereof shall be stated separately on all invoices and paid by the Owner.

Article II

Delivery

Section 1. Time of delivery. The time of delivery of materials, equipment, and software is of the essence in this Contract. The Bidder shall deliver the materials, equipment, and software required hereunder for each Project upon the time intervals established under Column 4, ''Delivery,'' in Article I, 1, after the Administrator shall have approved this Contract in writing. The times for such delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. However, no such extension of time shall be granted the Bidder unless within thirty (30) days after Bidder becomes aware of the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner. Further, no delay in such time for delivery of materials, equipment, and software shall result in any liability on the part of the Owner, except that the Owner shall be responsible for and shall pay the Bidder on demand all additional, supportable costs, and expenses incurred by the Bidder due to delays to the extent such delays are caused by the Owner's failure to perform its obligations under this Contract unless the Owner's failure to perform is caused by forces beyond its control.

Section 2. Sequence of Delivery. All Projects shall be delivered in the sequence in which they are listed under Column 1, ''Project,'' in Article I, Section 1.

Section 3. Inspection and Tests. All materials, equipment, and software used therein shall be subject to the inspection, test, and approval of the Owner and Administrator, in accordance with the Specifications. The Bidder shall furnish all pertinent information required concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect pertinent records (other than manufacturing cost information) of the Bidder and of any subcontractor relevant to this Project(s). The Bidder shall provide all reasonable facilities necessary for such inspection and tests, except that the Bidder is not required to provide test equipment for the Owner's tests unless specifically required in the Specifications. Failure of the Owner to make inspections shall not release the Bidder from performance required hereunder.

The Owner shall make inspections and tests of each Project for compliance with the Specifications and provide the Bidder the results of such inspections and tests in writing. If the Owner has not completed its inspections and tests and provided the

Bidder the results within thirty sixty (60) days after the date of delivery as set forth under Column 4,'' delivery'' in Article I, 1, the Owner shall (1) pay to the Bidder the costs incurred by the Bidder as a result of this delay, and (2) grant an extension of time for the Completion of the Project equal to the number of days from the date of the end of the sixty (60) day period until the date the Owner provides such results to the Bidder. A longer period of time for inspection and tests can be allowed if agreed to in writing by the Bidder and the Owner.

Within thirty (30) days of receipt of the results of the inspections and tests from the Owner, the Bidder shall correct all deficiencies, if any, listed on the test results summary and notify the Owner in writing of such corrections, at which time a final Owner's inspection and test of each Project shall be conducted. If tests subsequent to this are made necessary by the Bidder's failure to satisfactorily resolve all such deficiencies as previously listed, the Bidder shall pay the Owner for the cost incurred by the Owner for all such subsequent tests.

Section 4. Defective Workmanship, Materials Equipment, or Software. Throughout the warranty period defined below the Bidder shall, within thirty (30) days of written notice from the Owner, and without charge to the Owner, at the Bidder's option, either remedy or replace any materials, equipment, or software found to be defective in material, or workmanship, or not in conformity with the Specification. This is subject to the following definitions and conditions:

(a) The warranty start date for a Project is the scheduled date of Completion of the Project as set forth under Column 5, ''Completion of the Project,'' in Article I, 1, or such earlier date that such Project is certified complete. The warranty period is twelve (12) months from the warranty start date. If circumstances or events under the control of the Bidder cause a delay beyond the scheduled date of Completion of the Project, the warranty period is twelve (12) months from the actual date of Completion of the Project, as defined in Article VII, 1. The warranty period shall not be extended due to delays caused by the Owner.

(b) Without regard to the expiration of the warranty period set forth above, the Bidder warrants to the Owner that any Software furnished under this Contract shall function, for a period of five (5) years from the warranty start date defined in subsection (a) above, in accordance with the specifications and any written or printed technical material provided by the Bidder to explain the operation of the Software and aid in its use. The Bidder shall correct all deficiencies within thirty (30) days from the date of receipt by the Bidder of written notice of such deficiencies from the Owner. An extension of this thirty (30) day period may be allowed only if agreed upon by the Owner. It shall be the Bidder's obligation to insert and thoroughly test, at no charge to the Owner, any software amendment or alteration provided to satisfy the obligations of this 6. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be extended to a date ninety (90) days after the deficiency has been corrected.

(c) The Owner shall pay the Bidder for any use of the Bidder's technical assistance center except for usage to diagnose defects as provided in this 4.

(d) The warranty continues in full force and effect whether or not the Owner has accepted the materials, equipment, or software, or by the issuing of any certificate with respect to Completion of the Project.

(e) The warranty does not cover defects in materials, equipment, or software that are caused by modifications to or abuse of materials, equipment, or software by the Owner or the Owner's agents, including but not limited to, the Firm contracted by the Owner to install the materials, equipment, and software.

(f) The Owner shall bear the cost and risk of shipping defective components to the Bidder's designated repair center. The Bidder shall bear the cost and risk of shipping new or repaired replacement components to the Owner.

Article III

Payments

Section 1. Payment of 90 percent.

The Bidder shall provide the Owner with written estimates, including the prices, of the materials, equipment, and software delivered to the site of each Project listed under column 2, in Article I, section 1. If the Owner approves these estimates, the Owner will pay the Bidder 90 percent of the estimates when all materials, equipment, and software required to put each Project into operation have been delivered to the site of such Project.

Section 2. Payment of balance. Upon completion of installation (by others) of the equipment, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Owner shall make a final inspection of the materials, equipment, and software provided hereunder as set forth under Article II, 3, Inspections and Tests. If the materials, equipment, and software shall be found to be in accordance with the Specifications and all provisions hereunder, the owner shall certify such fact to the Administrator for approval and as to the amount of the balance found to be due to the bidder. When such approval has been given, the Owner shall pay to the Bidder all unpaid amounts to which the Bidder shall be entitled hereunder. However, such final payments shall be made not later than one hundred twenty (120) days after delivery as set forth under Column 4, ''Delivery'' in Article I, section 1, unless approval by the Administrator shall be withheld or delayed due to Bidder's actions or failure to act.

Section 3. Interest on unpaid amounts. Payment on undisputed invoices submitted by the Bidder shall be due thirty (30) days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate one and one-half percent (1 1/2%) per year higher than the ''Prime Rate'' published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

Section 4. Acceptance not waiver. Acceptance by the Owner of equipment, materials, or software while the Bidder is in default under any provision of this Contract shall not be construed as a waiver by the Owner of any right hereunder including, without limitation, any right to liquidated damages the Owner may have by virtue of Article V, section 2.

Article IV

Particular Undertakings of the Bidder

Section 1. Possession and Control. The equipment, materials, and software purchased under this Contract, until such date or dates when the Owner may take possession and control, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith, and in connection with the equipment, materials, and software to be used therein, shall be borne by the Bidder. The Bidder shall make good and fully repair all damages to the equipment, materials, and software under the control of the Bidder by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

Section 2. Termination of Bidder's Risks and Obligations. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of delivery. Upon such delivery of possession and control of any Project the Bidder's risks and obligations as set forth above pertaining to such Project shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of its obligation for full performance under the Specifications, or its liability with respect to defective materials, equipment, or software as specified in Article II, section 4, hereof. The equipment shall not be installed until delivery of possession and control to the Owner has been accomplished, as set forth above.

Section 3. Purchase of Materials. The Bidder shall purchase all materials and supplies except software outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title, or interest therein. Materials and supplies other than software shall become the property of the Owner as the Owner makes payments therefor to the Bidder in accordance with Article III, section 1(a).

Section 4. Software License. If the Bidder requires a software license agreement covering the rights, terms, and conditions of the use and assignability of all software integral to the operation of the Project, the license shall be in the form of Addendum 1 to this Contract (See 7 CFR 1753.38(c)).

Section 5. Assignment of Guarantees. All guarantees of materials, equipment, workmanship, and software running in favor of the Bidder shall be transferred and assigned to the Owner upon Completion of the Project and at such time as the Bidder receives final payment. Any such guarantees shall be in addition to the Bidder's warranty defined in Article II, section 4. This provision may be modified with respect to a particular warranty if the Bidder

demonstrates to the satisfaction of RUS and the Owner that a transfer is not possible.

Section 6. Patent, Copyright, Trademark, and Trade Secret Infringement. The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent, copyright, trademark, or violation of trade secrets covering any equipment or software used in the work, except for items of the Owner's design or selection. If the Owner's use of equipment or software is enjoined, the Bidder shall promptly, at its own expense, modify or replace the infringing equipment or software so that it no longer infringes but remains functionally equivalent, or obtain for the Owner a license or other right to use the equipment or software. This shall be in addition to any other rights or claims, which the Owner may have. The Bidder shall, at its own expense, (and the Owner agrees to permit Bidder to do so,) defend any suits which may be instituted by any party against the Owner for alleged infringement of patents, copyright, trademark, or violation of trade secrets relative to the Bidder's performance hereunder. Either party shall notify the other promptly of any such claims, and the Owner shall give to the Bidder full authority and opportunity to settle such claims, and shall reasonably cooperate with the Bidder in obtaining information relative to such claims.

Section 7. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable laws, statutes, ordinances, rules, and regulations. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Anti-Kickback Acts, as amended (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*), and any rules and regulations issued pursuant thereto, and 18 U.S.C. 201, 286, 287, 641, 666, 874, 1001, 1361 and 1366, as amended.

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985–1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101–121, section 319, 103 Stat. 701, 750–765 (31 U.S.C. 1352), entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and any rules and regulations issued pursuant thereto.

Article V

Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder in the material, equipment, or software furnished hereunder, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within thirty (30) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall have been made by the Bidder, the Owner may take over the performance of the Bidder's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder shall be liable to the Owner for any supportable cost or expense in excess of the bid price occasioned thereby. The Owner, in such contingency, may exercise any rights, claims, or demands which the Bidder may have against third persons in connection herewith and for such purpose the Bidder does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

Section 2. Liquidated Damages. Should the Bidder fail to complete any Project as shown under Column 5, ''Completion of the Project,'' in Article I, section 1, due to circumstances or events under control of the Bidder, within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall, so long as the subject Project shall not have been placed in service, have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder, the sum of:

_____ dollars ($_____)
for
_____
(Project)
_____ dollars ($_____)
for
_____
(Project)
_____ dollars ($_____)
for
_____
(Project)

per day for each and every day that such completion is delayed beyond the scheduled time for Completion of the Project, as liquidated damages and not as a penalty, up to the amount of the respective Base Bid plus accepted alternates for the affected Project; provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount claimed as liquidated damages was computed. The Bidder shall pay to the Owner the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Bidder.

At the technical sessions, each Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner allows these features to be bid as separate Projects, then they are to be individually listed under Columns 1 through 8, in Article I, section 1. These unproven features and capabilities are to be individually listed in this section 2 also, with liquidated damages amounts determined by the Owner and stated for each. If a Bidder neglects to identify any such feature at the technical session, delay in providing the feature is considered a delay in completing the associated Project and the Owner may assess liquidated damages listed for that Project regardless of whether the Project is placed in service.

Section 3. Consequential Damages. In no event shall the Bidder's liability for incidental or consequential loss or damage, except for personal injury or tangible property damage, exceed the amount of 10 times the total contract price, as amended.

Section 4. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Owner exercise any right or enforce any remedy, which the Owner may exercise or enforce hereunder.

Section 5. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of section 2 of this Article V shall be the exclusive measure of damages for failure by the Bidder to have effected the Completion of Project within the time herein agreed upon.

Article VI

Equal Employment

Section 1. The Bidder.

(a) The Bidder represents that:

(1) It has, _____ does not have _____, 100 or more employees, and if it has, that

(2) It has _____, has not _____, furnished the Equal Employment Opportunity Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246, as amended, and Title VII of the Civil Rights Act of 1964.

(b) The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

(c) The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this proposal.

(d) The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal

Opportunity Clause in this contract. As used in this certification, the term ''segregated facilities'' means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 2. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which the Bidder has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in the said Executive Order 11246 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including actions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 3. Equal Employment Opportunity Specifications.

(a) As used in these specifications:

''Covered area'' means the geographical area described in the solicitation from which this contract resulted;

''Director'' means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

''Employer identification number'' means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941; and

''Minority'' includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g) (i) through (xvi) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal

employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(ii) above.

(vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60–3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(xiv) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (g)(i) through (xvi). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g)(i) through (xvi) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246 and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246.

(m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum

results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 4. In this Article VI.

(a) The term ''Contractor'' shall also mean ''Bidder'' or ''Subcontractor'' as applicable.

(b) The provisions of sections 2 & 3 are applicable to the extent required by law. In determining whether these sections are applicable, reference should be made to Office of Federal Contract Compliance Programs regulations (41 CFR Part 60).

Article VII

Miscellaneous

Section 1. Definitions.

The term ''Completion of the Contract'' shall mean accomplishment of completion of the Project for all central offices (and associated remote switching terminals), features and services listed under Column 1, ''Project,'' in Article I, section 1, and all alternates accepted by the Owner, on the Owner's acceptance.

The term ''Completion of the Project'' shall mean full performance by the Bidder of the Bidder's obligations herein set out and all amendments and revisions thereof for a central office (and all associated remote switching terminals), feature or service. The scheduled date for completion of the Project is ninety (90) days after delivery as specified under Column 4, ''Delivery,'' in Article I, section 1, as amended or adjusted under Article II, section 1, and section 3. The scheduled date for Completion of the Project is the date from which liquidated damages are computed. The actual date of completion of the Project shall be the date of the receipt by the Owner from the Bidder of written notification that all deficiencies listed on the results of acceptance tests have been corrected; provided, that the final inspection and tests by the Owner finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of completion of the Project shall be the date that the deficiencies are fully and satisfactorily resolved as determined by subsequent Owner's tests. The Certificate of Completion approved and signed by the Owner and approved in writing by the Administrator shall be conclusive evidence as to the fact of Completion of the Project and the date thereof. Full compliance with the procedure for ''Completion of the Project'' and an individual Certificate of Completion is required for each Project listed under Column 1, ''Project,'' in Article I, section 1.

The ''Contract'' shall consist of the Notice and Instructions to Bidders, the Bidder's proposal and the Owner's acceptance, and the Specifications.

The term ''days'' shall mean calendar days.

The term ''minor errors or irregularities'' shall mean a defect or variation in a Bidder's bid that is a matter of form and not of substance. Errors or irregularities are ''minor'' if they can be corrected or waived without being prejudicial to other Bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the Owner determines whether an error or irregularity is ''minor.''

The term ''placed in service'' shall mean used by the Owner to earn revenue.

The term ''Project'' shall mean a central office and all associated remote switching terminals (if any), a remote switching terminal if purchased without a supporting central office, a feature (or group of features), or a service (or group of services), which is listed under Column 1, ''Project,'' in Article I, section 1. The only instance in which a remote switching terminal can constitute a separate Project is where such remote switching terminal is purchased with associated modifications to its supporting host switch but no other modifications to the host switch are specified. A Project will have a single completion schedule listed under Column 5 ''Completion of the Project,'' in Article I, section 1, and a single liquidated damages amount shown in Article V, section 2. The Contract may consist of one or more Projects.

The term ''Software'' shall mean computer programs contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the central processor, control and perform input/output operations, perform error diagnostic and recovery routines, control call processing, and perform peripheral control, and administrative and maintenance functions; as well as associated documentation, excluding source code, used to describe, maintain, and use the programs provided under the Contract.

The term ''Specifications'' shall mean the minimum performance requirements of the Owner as contained in the documents listed below, and attached to this agreement:

RUS Form _____

dated _____

RUS Form _____

dated _____

RUS Form _____

dated _____

RUS Form _____

dated _____

requirements may have been amended by specific written exceptions in the Bidder's proposal which have been agreed to by the Owner and accepted by the Administrator.

Section 2. Continuing Equipment Support—Parts, Service, and Software. In addition to warranty repairs and replacement, the Bidder shall offer repair service and repair parts to the Owner in accordance with the Bidder's practices and terms then in effect, for the Bidder's manufactured equipment furnished pursuant to this Agreement. Such repair service or repair parts shall be available for as long as the Bidder is manufacturing or stocking such equipment, or for no less than eight (8) years after the Bidder has ceased manufacturing or offering such equipment for sale. The Bidder shall also offer software support services to the Owner in accordance with the Bidder's practices, terms, and charges then in effect, but in any event for no less than five (5) years after the Bidder has ceased manufacturing or offering for sale such software.

Section 3. Materials and Supplies. The Bidder shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, or in any eligible country, substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, or in any eligible country, provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly authorize in writing such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For purposes of this section, an ''eligible country'' is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificate or certificates, signed by the Bidder and all subcontractors, with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Confidentiality. All information supplied by the Bidder to the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Owner, shall be treated by the Owner as confidential information, and the Owner shall not reproduce any such information except for its own internal use and as authorized by this Contract, and shall use any information only for archival backup, in-house training, operating, maintenance, and administrative

purposes and in conjunction with its use of the equipment, materials, and software furnished hereunder. All information supplied to the Bidder by the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Bidder, shall be treated by the Bidder as confidential information, and shall not be used by the Bidder for any purpose adverse to the interests of the Owner, and shall not be reproduced or distributed by the Bidder except for the Bidder's use in its performance under this Contract. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. If the Bidder has failed to provide continuing equipment support as described in Article VII, section 2, the Owner is released from this obligation. This provision does not restrict release of information by the United States of America pursuant to the Freedom of Information Act or other legal process.

Section 5. Entire Agreement. The terms and conditions of this Contract as approved by RUS supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

Section 6. Survival of Obligations. The rights and obligations of the parties, which by their nature, would continue beyond the termination, cancellation, or expiration of this Contract, shall survive such termination or expiration.

Section 7. Non-Waiver. No waiver of any terms or conditions of this Contract, or the failure of either party to enforce strictly any such term or condition on one or more occasions, shall be construed as a waiver of the same or of any other terms or conditions of this Contract on any other occasion.

Section 8. Releases Void. Neither party shall require releases or waivers of any personal rights from representatives or employees of the other in connection with visits to its premises, nor shall such parties plead such releases or waivers in any action or proceeding.

Section 9. Nonassignment of Contract. The Bidder shall not assign the Contract, effected by acceptance of this proposal, or any part hereof, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof, without the approval in writing of the Owner, the Surety, and the Administrator.

Section 10. Choice of Law. The rights and obligations of the parties and all interpretations and performance of this Contract shall be governed in all respects by the laws of the State of _____ except for its rules with respect to the conflict of laws.

Section 11. Approval of the Administrator. The acceptance of this proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date hereof:

By _____
(Signature of Bidder)

_____
(Name—Type or Print)

_____
(Title)

_____
(Company Name of Bidder)

_____

_____
(Address of Bidder)

Attest:

_____
(Secretary)

_____
(Date)

The proposal must be signed with the full name of the Bidder. In the case of a partnership, the proposal must be signed in the firm name by each partner. In the case of a corporation, the proposal must be signed in the corporate name by a duly authorized officer and the Corporate seal affixed and attested by the Secretary of the Corporation. (If executed by other than the President, a Vice-President, the partners or the individual owner, a power of attorney or other legally acceptable document authorizing execution shall accompany this contract, unless such power of attorney is on file with RUS.)

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the proposal of

_____

_____

for the Project(s) herein described for the Total Base Bid of $_____ and

Alternate For

Spare Parts, Item(s)	$
Maintenance Tools, Item(s)	$
Alternate No. 1 add (deduct)	$
Alternate No. 2 add (deduct)	$
Alternate No. 3 add (deduct)	$
Alternate No. 4 add (deduct)	$
Alternate No. 5 add (deduct)	$
Alternate No. 6 add (deduct)	$
The total contract price is	$

By _____
Owner

_____
President

Attest:

_____
Secretary

_____
Date Of Acceptance

Dated: December, 7, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–32883 Filed 12–10–98; 8:45 am]

BILLING CODE 3410–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–034–0113; FRL–6200–7]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Nevada State Implementation Plan (SIP). This action specifically includes proposed approval of revisions to Clark County Health District's wintertime oxygenated fuels program. The intended effect of this SIP revision is principally to regulate CO emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposal will incorporate it into the federally approved SIP for the Clark County nonattainment area. EPA has evaluated this revision and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Comments may be mailed to: Air Planning Office [AIR–2], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP revision and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted SIP revision are also available for inspection at the following locations:

Nevada Division of Environmental Protection, Bureau of Air Quality, 123 W. Nye Lane, Carson City, NV

Clark County Health District, PO Box 3902, 625 Shadow Lane, Las Vegas, NV

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1225.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revision being proposed for approval into the Nevada SIP includes:

Clark County District Board of Health, (CCDBH), Air Pollution Control (APC) Section 53, *Oxygenated Gasoline Program* (as amended and approved on September 25, 1997). This SIP revision was submitted by the Nevada Division of Environmental Protection to EPA on August 7, 1998.

II. Background

Section 211(m) of the CAA requires states with CO nonattainment areas with design values of 9.5 parts per million (ppm) or more to submit revisions to their SIPs for those areas, and implement an oxygenated gasoline program, requiring gasoline to meet a minimum oxygen content of 2.7% by weight.

The Clark County nonattainment area design value was based on data for the required two year period of 1988 and 1989. The design value was greater than 12.7 ppm (i.e., 14.4 ppm using 1988 data); therefore the area was classified as moderate CO nonattainment under section 186 of the Act. Because the nonattainment area did not attain the CO standard by the required attainment date of December 31, 1996 [1], the nonattainment area of Clark County was reclassified to serious for CO. As a serious area, Clark County now has until December 31, 2000 to meet the national CO standard.

CO remains the greatest air quality challenge in Clark County, especially in the Las Vegas Valley. While a number of programs have helped reduce CO levels each year since 1976, CO levels are directly affected by the ever-increasing number of car miles traveled each year. Nearly all CO in the Valley comes from gasoline powered vehicles. Especially challenging are winter months which bring weather inversions which trap cold air under warm air, preventing the CO emitted from motor vehicles from escaping the Valley. This phenomenon causes several nights of high CO levels each winter. Overall, the District continues to have a good experience with implementing its oxygenated fuels program as a cost effective method of reducing CO emissions in the Valley.

The oxygenated gasoline program was initially adopted on November 17, 1988. The initial program included: a 2.5% oxygen level for the first wintertime season, a 2.6% oxygen level for the next wintertime season, and a choice of methyl tertiary butyl ether (MTBE) or ethanol as oxygenates. The regulation was amended in June 1990 to increase the time period of each succeeding wintertime season and again in July 1991 to increase the oxygen level from 2.6% to 2.7% oxygen by weight.

The District's new submittal requires wintertime oxygenated gasoline from October 1 through March 31. The minimum oxygen level is 3.5% by weight.

The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of this SIP revision, EPA must evaluate the revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

(a) 3.5% oxygenated fuels program. The Clark County area of applicability is the hydrographic basins containing the Las Vegas Valley, the Eldorado Valley, the Ivanpah Valley, the Boulder City limits, and any area within 3 miles of any such hydrographic basins and which is within Clark County, Nevada.

In 1995, the Board of Health adopted a resolution committing to the adoption in 1998 of a regulation that would mandate 3.5% oxygen commencing October 2001. In March 1997, the Clark County Commission adopted a resolution requesting that the Board of Health adopt such a program for implementation for the fall of 1997. The program was adopted by the Board on September 25, 1997 and requires that the minimum oxygen content of wintertime gasoline shall be 3.5% oxygen by weight, starting October 1, 1997.

The District calculated the CO emission reduction benefit for a 3.5% oxygen program in the Valley, compared to no oxygen. The calculation showed approximately a 38% emission benefit. The District's oxygenated gasoline program remains the more cost effective CO control measure when compared to its smog check/repair, traffic flow improvements, winter RVP limit, transit pass program, and the federal motor vehicle emission control program.

The Clark County oxygenated fuels SIP revision included all the EPA required information (under appendix V, 40 CFR part 51) including: A letter from the designated state official requesting that the revision be incorporated into the SIP; evidence that the District has legal authority to adopt, implement and enforce the adopted revision; evidence of the public notice listing the rule or plan revision; evidence that a public hearing was held; and copies of public comments generated during the public comment period.

The SIP revision also included the required technical support information which included: Identification of regulated pollutants affected by the revision; and identification of the locations of the affected major areas.

(b) Analysis of Las Vegas oxygenated gasoline preemption issues.

In response to concerns raised by the Western States Petroleum Association during the District's rule adoption process, the District requested EPA's opinion regarding whether the 3.5% oxygen requirement is preempted under the CAA. EPA's analysis was provided to the District and WSPA by letter dated May 26, 1998, from Margo T. Oge, Director, U.S. EPA Office of Mobile Sources, and is summarized below. The full analysis is contained in the docket for this action.

EPA does not believe that Clark County's requirement is preempted under the Clean Air Act. State requirements like Clark County's are governed by the following provisions in the Act: (1) Section 211(m), which requires certain states with areas exceeding the National Ambient Air Quality Standard for carbon monoxide (CO) to establish wintertime oxygenated gasoline programs, (2) section 211(c)(4), which prohibits certain state fuel regulations adopted for purposes of control of pollution from motor vehicles; and (3) section 116 and other provisions in Title I of the CAA, which give the states primary responsibility for meeting the NAAQS and reserve authority to the states to establish more stringent air pollution control limitations than those established by EPA. State provisions can also potentially be preempted based on conflict with the CAA and federal fuel specifications of the oxygen content of gasoline.

Clark County's 3.5% fuel oxygen content requirement is neither barred by section 211(m) of the CAA, nor preempted by the CAA, either explicitly under section 211(c)(4)(A) or implicitly based on the judicial doctrines of conflict preemption or field preemption.

Section 211(m) requires that certain states adopt a requirement that gasoline be blended to contain not less than 2.7 % oxygen by weight. EPA believes that a state may satisfy this requirement by requiring gasoline to contain 2.7% oxygen or by setting a content requirement higher than 2.7%. This is consistent with the text of the section 211(m), the structure of the Act, and the legislative history of this provision.

[1] Clark County was granted a one-year extension of the December 31, 1995 attainment date. 61 FR 575407 (November 6, 1996).

Clark County's requirement that gasoline contain 3.5% oxygen by weight is not prohibited by section 211(m)(2).

Clark County's 3.5% oxygen requirement also is not preempted by section 211(c)(4)(A) of the Act. Congress required states to adopt the elements of an oxygenated gasoline program specified in section 211(m) and to submit them as a SIP revision, which would be approved by EPA. Congress' specification of the necessary elements of an approvable SIP revision in section 211(m) indicates Congress' intent that this provision take precedence over the more general provisions of section 211(c)(4)(A) and that EPA approve a SIP revision that includes the program elements specified under section 211(m) without a further showing of necessity under section 211(c)(4)(C). A state requirement of greater than 2.7% oxygen content is within the range of oxygen content requirements that Congress authorized and envisioned under section 211(m) and is not subject to section 211(c)(4).

Clark County's requirement of 3.5% oxygen content is also not preempted by the Clean Air Act based on conflict. Conflict occurs when it is impossible for a private party to comply with both state and federal requirements, or where state law is an obstacle to the accomplishment of Congressional purpose. Such conflict does not exist in this instance. It is practically and legally possible to blend and supply gasoline that meets the federal conventional gasoline requirements and has an oxygen content of 3.5%. Clark County's program is not an obstacle to accomplishing Congressional purpose; rather it is consistent with the requirements of sections 211(m) and 211(C)(4).

Clark County's requirement of 3.5% oxygen content is also not preempted by the Clean Air Act based on field preemption because federal regulation in this area is not so pervasive as to preclude supplementation by the states, nor is the federal interest in the field sufficiently dominant to preempt state action.

In summary, EPA has evaluated the submitted oxygenated gasoline program revision and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, Clark County Health District, Air Pollution Control (APC) Section 53, *Oxygenated Gasoline Program* is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. 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 E.O. 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 rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the

Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 1, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–32891 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. ME–057–01–7006b; FRL–6200–9]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Maine; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/129 State Plan submitted by Maine Department of Environmental Protection on April 15, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb. The Plan was submitted by the Maine DEP to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the Maine State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by January 11, 1999.

ADDRESSES: Written comments should be addressed to: John Courcier, Office of Ecosystem Protection (CAP), U.S. EPA, JFK Federal Building, Boston, Massachusetts 02203–2211. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits Unit, Office of Ecosystem Protection, 10th Floor, One Congress Street, Boston, Massachusetts 02203.

Maine Department of Environmental Protection, Bureau of Air Quality, Ray Building, Hospital Street, Augusta, Maine 04333, (207) 287–2437.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 565–9462.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Dated: November 24, 1998.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 98–32987 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[CC Docket No. 98–177; FCC 98–238]

1998 Biennial Regulatory Review—Petition for Section 11 Biennial Review.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 8, 1998, SBC Communications (''SBC'') filed a petition for rulemaking in which SBC presents a number of proposals designed to reduce or eliminate Commission regulations as part of the 1998 biennial review. The attached Notice of Proposed Rulemaking (''NPRM'') commences a biennial review proceeding to seek comment on SBC's proposals to reduce or eliminate regulations pertaining to incumbent local exchange carriers (''LECs''). Specifically, the NPRM seeks comments on SBC's proposals to revise the Commission's rate of return represcription rules, to eliminate the requirement to use the lead lag study methodology for calculating the cash working capital of large incumbent LECs, to detariff certain services subject to competition, to further streamline the cost allocation manual filing procedures, and to simplify the Commission's wireless radio rules. The NPRM declines to seek comment on the remaining SBC proposals because such proposals either involve rules promulgated as a result of the 1996 Act of the proposals or involve rules or

proposals that are already the subject of biennial review or other proceedings.

DATES: Submit comments on or before January 11, 1999.

Submit reply comments on or before January 25, 1999.

ADDRESSES: Federal Communications Commission, 445–12th Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anthony Dale, Common Carrier Bureau, Accounting Safeguards Division, (202) 418–2260, or via E-mail to ''adale@fcc.gov''.

SUPPLEMENTARY INFORMATION:

Released: November 24, 1998

1. In this NPRM we sought comments on several proposals submitted by SBC Communications, Inc. (SBC) in a recently filed Petition for Section 11 Biennial Review. Section 11 of the Communications Act of 1934, as amended (the Act), instructs the Commission, in every even-numbered year beginning in 1998, to ''review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service'' and to ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.'' (*See* 47 U.S.C. 161(a)). Section 11 further instructs the Commission to ''repeal or modify any regulation it determines to be no longer necessary in the public interest.'' (*See* 47 U.S.C. 161(b)). In addition, section 202(h) of the Telecommunications Act of 1996 (the 1996 Act) requires the Commission to review its broadcast ownership rules biennially as part of the review conducted pursuant to section 11. (*See* Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996)). Specifically, section 202(h) of the Act provides that the Commission ''shall review . . . all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.'' (*See* Section 202(h)) of the Telecommunications Act of 1996.

2. On November 18, 1997, the Chairman announced that the Commission was commencing the 1998 biennial regulatory review of telecommunications regulations and broadcast ownership regulations, earlier than required. In addition, the announcement indicated that the scope of the first biennial regulatory review would be broader than statutorily required. Specifically, the announcement indicated that the first biennial review presented a key opportunity for serious ''top-to-bottom'' examination of the Commission's rules and procedures to determine which of them need to be revised or eliminated. (*See* FCC News Release, ''1998 Biennial Review of FCC Regulations Begun Early'' (Nov. 18, 1997)). Commission staff then undertook a broad review of Commission regulations. A two-fold approach was followed: (1) each of the operating Bureaus and the Office of Engineering and Technology (OET) conducted a review of rules under its jurisdiction; and (2) a team made up of representatives of the Office of Plans and Policy (OPP), the Chief Economist and his staff and the Competition Division of the Office of General Counsel (OGC) conducted a parallel review of Commission rules on a cross-cutting basis. In order to maximize the universe of rules that might be candidates for modification or elimination, the staff did not focus simply on the statutory standard of whether ''meaningful economic competition'' justified changes in the rules. Thus, for example, despite the lack of the development of such competition in the local exchange market, the staff nevertheless included rules relating to local exchange carriers as within the scope of the review.

As part of this process, the staff sought and received substantial public input. Specifically, beginning on December 17, 1997 and continuing through January 30, 1998, each of the five operating bureaus, together with OGC, hosted a series of public forums to receive ideas from the public regarding Commission regulations that are potential candidates for repeal or modification during the first biennial regulatory review conducted pursuant to section 11 of the Act. In addition, staff from the Bureaus and OGC attended a series of five meetings held by practice groups of the Federal Communications Bar Association (FCBA), also to receive ideas about biennial review candidates. The staff also sought input from the Commissioners. Following this broad review of Commission regulations, on February 5, 1998, the Commission staff released a list of 31 proceedings it proposed the Commission initiate as part of the 1998 biennial regulatory review. (*See* February 5 News Release)). The list of proposed rulemaking and notice of inquiry proceedings proposed examining a wide variety of subsets of Commission's rules. Nearly two-thirds of the proposed proceedings involved common carriers, and the proceedings covered hundreds of individual rules. The staff also noted that the Commission had many ongoing proceedings consistent with the deregulatory and streamlining goals of section 11.

3. As the News Release specifically noted, the list of proposed biennial review proceedings was a working document that reflected the Commission staff's plans. The staff established an electronic mailbox <biennial@fcc.gov> specifically for the purpose of soliciting ongoing deregulatory input from the public. In this regard, the process of determining which rules are likely candidates for modification or streamlining has been ongoing, and consequently the list of 31 proceedings proposed by the Commission staff was neither exhaustive nor static. We disagree with SBC that this process, including the proceedings that we have initiated and will initiate, does not comply with the statutory requirements. It appears that SBC may be suggesting that the Commission should instead have initiated a single mega-rulemaking proceeding to review every rule relating to common carriers (including wireline, wireless and international). We believe such a mega-proceeding is not required by statute, would be unworkable, and would result in less meaningful deregulation and streamlining than the approach the Commission is taking. The statute does not require a rulemaking determination by the Commission with respect to every rule that continues to serve the public interest and such an approach would inevitably fall under its own weight, thereby undermining the goal of section 11—to identify rules that no longer serve the public interest and modify or eliminate them.

We ask for comment on the following SBC proposals:

4. *Rate-of-Return Prescription* (*47 CFR 65.101*). SBC argues that section 65.101 *et seq.* of our regulations, which trigger an inquiry into whether a revised rate-of-return prescription is needed once certain financial triggers are met, are a ''vestige of rate of return regulation which is no longer needed under price cap regulation.'' We seek comment on SBC's statement and whether these rules continue to serve any purpose for carriers subject to price cap regulation.

5. *Cash Working Capital Studies* (*47 CFR 65.820(d)*). SBC asserts that the lead-lag study method required for Class A carriers to calculate the working capital element of the interstate rate base is an overly burdensome endeavor for calculating what ''traditionally

makes up far less than 1% of the total rate base.'' As detailed in Exhibit A of the SBC Petition, SBC recommends that carriers be given the option of including a cash working capital allowance in the rate base or else foregoing recovery. SBC further proposes that to the extent carriers elect an allowance for cash working capital, carriers should be allowed to freeze the amount of cash working capital or else choose from three methods of calculating the cash working capital allowance: the lead-lag study method currently required by Commission regulations; the balance sheet method; or the 45-day formula method detailed in Exhibit A to the SBC petition. We seek comment on SBC proposals to reduce the burdens currently imposed on Class A carriers by the lead-lag studies.

6. *Detariffing of Services Subject to Competition.* SBC states that certain local exchange carrier (LEC) services are competitive and that the Commission should detariff these services. Specifically, SBC indicates its belief that special access services, direct trunked transport, operator services, directory assistance and interexchange services are competitive and should be detariffed for all carriers. We seek comment on SBC's conclusions about competition for these services and whether detariffing would be appropriate as an exercise of our section 10 forbearance authority. (*See* 47 U.S.C. 160). Commenters supporting detariffing should indicate whether they favor permissive detariffing or complete detariffing.

7. *Part 64 Cost Allocation Manual (CAM) Simplification.* SBC asserts that the Part 64 CAM requirements are too complex. SBC further argues that price cap regulation adequately guards against ratepayer subsidization of nonregulated activities, which the CAM requirements originally were designed to protect against. Exhibit D to the SBC Petition contains detailed suggestions for how many of the current CAM requirements could be simplified. We seek comment on these recommendations to simplify the CAM process in a manner consistent with its underlying purposes of discouraging, and facilitating detection of, improper cost allocations and cross-subsidization. (*See Accounting Safeguards Under the Telecommunications Act of 1996,* Report and Order, 12 FCC Rcd 2993, paras. 13, 24, 50 (1996) (*Accounting Safeguards Order*), *recon. pending.*

8. We note that some of SBC's CAM simplification proposals are already the subject of pending biennial review proceedings or other Commission proceedings. In the *Accounting Reductions NPRM,* we proposed streamlining certain CAM filing and CAM audit requirements, particularly with respect to mid-size incumbent local exchange carriers. In the *Accounting Reductions NPRM,* we proposed to establish less burdensome CAM procedures for the mid-sized incumbent LECs and to reduce the frequency with which independent audits of the cost allocations based upon CAMs are required. In addition, we note that the Accounting Safeguards Division of the Common Carrier Bureau recently streamlined certain CAM filing procedures with respect to an incumbent local exchange carrier's affiliate transactions. Finally, we note that SBC's proposal regarding cost allocation procedures for incidental interLATA services is an issue raised by SBC in its Petition for Reconsideration of the *Accounting Safeguards Order.* Because we plan to address the resolution of these proposals in existing proceedings, commenters should avoid submitting redundant comments in this docket.

9. *Affiliate Transaction Rules.* SBC suggests that, like the Part 64 CAM process, the Commission should be able to simplify its affiliate transactions rules. We note that the two issues raised by SBC are issues raised by either SBC or other parties in Petitions for Reconsideration of the *Accounting Safeguards Order.* Without seeking comment on the two issues raised by SBC, we seek general comments on other ways the affiliate transactions rules might be simplified in a manner consistent with the underlying purposes of discouraging, and facilitating detection of, improper cost allocations and cross-subsidization.

10. *Wireless Radio Rules.* SBC states that process and procedure rules for wireless radio services are located in various rule parts. It suggests that ''[t]o ensure consistent application and understanding of the rules related to the provision of wireless services, the rules must be streamlined and/or eliminated as appropriate to remove duplication.'' The Commission has already initiated a proceeding to substantially streamline and consolidate these regulations to facilitate conversion to the universal licensing system. The goals of that proceeding are ''to establish a simplified set of rules that (1) minimizes filing requirements as much as possible; (2) eliminates redundant, inconsistent, or unnecessary submission requirements; and (3) assures ongoing collection of reliable licensing and ownership data.'' We believe that the universal licensing system proceeding addresses many of the issues that SBC raises in its petition. We also note that the Commission has recently requested comments on whether there are any regulations of wireless telecommunications carriers from which we should forbear under section 10 of the 1996 Act. Because we want to ensure that we receive as full a record as possible, and as many suggestions as possible, we therefore seek comment on SBC's general proposals that may go beyond the proposed changes set out in these proceedings, including specific suggestions for rule changes.

11. Many additional SBC proposals mirror the staff's list of proposed biennial review proceedings. The Commission has already initiated proceedings on these matters, or will do so in the near future. Accordingly, we do not seek comment on those matters here. The proposals contained in the SBC Petition that track the staff's proposals have been incorporated by reference into each of the recently released notices. Other biennial review proposals advocated by SBC involve regulations only recently adopted as part of the Commission's implementation of the Telecommunications Act of 1996. With implementation just recently underway, and in some instances appellate review still pending, we believe it premature to modify or eliminate these rules as part of the 1998 biennial review. Yet another subset of biennial review proposals included in the SBC Petition involves issues that are already the subject of ongoing proceedings, either before the Commission or the courts. We think it more appropriate to handle these proposals in the context of such existing proceedings. These various proposals may be further considered at an appropriate time in the future. Finally, we do not request comment on SBC's suggestion that we reduce our enforcement efforts with respect to those rules that do remain on the books and on its request that we use the biennial review to increase regulation of others. We believe neither of these proposals is consistent with the thrust of section 11. Specifically, we do not believe it is appropriate that section 11 be used as a shield for carriers to avoid the consequences of violations of the Communications Act or Commission rules, or as a sword to impose new regulatory burdens on others.

12. By this NPRM, we solicit comment on those proposals submitted by SBC so identified above. Commenters should frame their discussion and analysis in a manner consistent with the analytical framework set forth by Congress in section 11 of the Act. In addition to our more specific requests for comment above, we invite

commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of our proposed modifications. We also ask commenters to provide data and evidence to support their positions so as to facilitate objective analysis of the issues raised.

13. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's revised ex parte rules, which became effective June 2, 1997. *See Amendment of 47 CFR 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95–21, Report and Order, 12 FCC Rcd 7348, 7356–57, ¶ 27 (citing 47 CFR 1.1204(b)(1)). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

14. This Notice of Proposed Rulemaking contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 114–13. Public and agency comments are due at the same times as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this *NPRM* in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

15. The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA defines the term ''small entity'' as having the same meaning as ''small business concern'' under the Small Business Act (SBA), which defines ''small business concern'' as ''one which is independently owned and operated and which is not dominant in its field of operation.'' Section 121.201 of the SBA regulations defines small telecommunications entities in SIC Code 4813 (Telephone Communications, Except Radiotelephone) as any entity with fewer than 1,500 employees at the holding company level. Some entities employing fewer than 1,500 employees at the holding company level may be affected by SBC's proposals. We, however, do not consider such entities to be ''small entities'' under the RFA because they are either affiliates of large corporations or dominant in their field of operations. Therefore, we do not believe that the proposed rules will affect a substantial number of small entities that are incumbent local exchange carriers.

16. The rule changes proposed in the NPRM, if adopted, will affect all small businesses filing new wireless license applications or modifying or renewing an existing wireless license. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide estimates of the number of small entities who will be affected by the rules proposed in this *NPRM*. The Commission estimates the following number of small entities that provide wireless telecommunications service may be affected by the proposed rule changes.

(a) Cellular Radiotelephone Service

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

(b) Broadband and Narrowband PCS

Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. (*See* 47 CFR 24.720(b)(1)). This definition of ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS

licensees, a total of 178 licensees, are small entities.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

(c) 220 MHz Radio Services

Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not more than $6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding three years. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

(d) Paging

The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 ''paging and other mobile'' carriers reporting that they engage in these services. Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

(e) Air-Ground Radiotelephone Service

The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

(f) Specialized Mobile Radio (SMR)

The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

(g) Private Land Mobile Radio Services (PLMR)

PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. The Commission has not developed a definition of small entities specifically applicable to PLMR licensees due to the vast array of PLMR users. 23. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Any entity engaged in a commercial activity is eligible to hold a PLMR license, therefore these proposed rules could potentially impact every small business in the United States.

(h) Aviation and Marine Radio Service

Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this IRFA, the Commission estimates that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA.

(i) Offshore Radiotelephone Service

This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.

At present, there are approximately 55 licensees in this service. The

Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

(j) General Wireless Communication Service

This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission has scheduled the GWCS auction for May 27, 1998. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

(k) Fixed Microwave Services

Microwave services includes common carrier fixed, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier fixed licensees and approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity with less than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the Fixed Microwave licensees (excluding broadcast auxiliary radio licensees) would qualify as small entities under the SBA definition for radiotelephone communications.

(l) Commercial Radio Operators (restricted and commercial)

There are several types of commercial radio operator licenses. Individual licensees are tested by Commercial Operator License Examination managers (COLEMs). COLEMs file the applications on behalf of the licensee. The Commission has not developed a definition for a small business or small organization that is applicable for COLEMs. The RFA defines the term ''small organization'' as meaning ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *'' (*See* 5 U.S.C. 601(4)). The Commission's rules do not specify the nature of the entity that may act as a COLEM. However, all of the COLEM organizations would appear to meet the RFA definition for small organizations.

(m) Amateur Radio Services

Amateur Radio service licensees are coordinated by Volunteer Examiner Coordinators (VECs). The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term ''small organization'' as meaning ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *'' (*See* 5 U.S.C. 601(4)). The Commission's rules do not specify the nature of the entity that may act as a VEC. All of the sixteen VEC organizations would appear to meet the RFA definition for small organizations.

(n) Personal Radio Services

Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS). Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition.

(o) Public Safety Radio Services and Governmental Entities

Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small business. (*See* 5 U.S.C. 601(5)). There are approximately 37,566 governmental entities with populations of less than 50,000. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. The definition of a small governmental entity is one with a population of less than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000; however, this number includes 38,978 counties, cities, and towns and of those, 37,566 or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 96 percent or 81,600 are small entities that may be affected by our rules.

(p) Rural Radiotelephone Service

The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

(q) Marine Coast Service

The Commission has not adopted a definition of small business specific to the Marine Coast Service. The Commission will use the SBA definition applicable to radiotelephone companies; *i.e*, an entity employing no more than 1,500 persons. There are approximately 10,500 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

(r) Wireless Communications Services (WCS)

WCS is a wireless service, which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. There were seven winning bidders who qualified as very small business entities and one small business entity in the WCS auction. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected include these eight entities. In addition to the above estimates, new applicants in the wireless radio services will be affected by these rules, if adopted. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide information regarding how many small business entities will be affected by the proposed rules. Comments relating to the number

of small business entities affected are due by the deadlines contained in the NPRM.

17. In this NPRM, we seek comment on proposals to revise the Commission's rate-of-return prescription regulations, the methodologies used for calculating cash working capital, the detariffing of certain telecommunications services, streamlining cost allocation manual filing procedures, and consolidating the Commission's wireless radio rules. These proposals are specifically designed to streamline regulations that apply to incumbent local exchange carriers (LECs), including the Bell operating companies (BOCs) and GTE, and to wireless telecommunications providers. We therefore expect that the potential impact of the proposals, if adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

18. We therefore certify, pursuant to section 605(b) of the RFA, that the rules proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. The Commission will publish this certification in the **Federal Register** and will provide a copy of the certification to the Chief Counsel for Advocacy of the SBA. The Commission will also include this certification in the report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act. (*See* 5 U.S.C. 801(a)(1)(A)).

19. Pursuant to applicable procedures set forth in section 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. 1.415, 1.419, interested parties may file comments on or before January 11, 1999 and reply comments on or before January 25, 1999. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Anthony Dale, Legal Branch, Accounting Safeguards Division, FCC, Suite 201, Room 200D, 2000 L Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

20. Written comments by the public on the proposed and/or modified information collections are due January 11, 1999 and reply comments on or before January 25, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

21. Parties are also asked to submit comments and reply comments on diskette. Such diskette submission would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Anthony Dale, Legal Branch, Accounting Safeguards Division, FCC, Suite 201, Room 200D, 2000 L Street, N.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS Dos 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

22. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97–113, Report and Order, FCC 98–56 (rel. April 6, 1998). Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is CC Docket No. 98–177. Parties may also file informal comments or an exact copy of your formal comments electronically via the Internet at <http://www.fcc.gov/e-file/> or via e-mail at <biennial@fcc.gov>. Only one copy of electronically-filed comments must be submitted. You must put the docket number of this proceeding in the subject line if you are using e-mail (CC Docket No. 98–177), or in the body of the text if by Internet. Parties must note whether an electronic submission is an exact copy of formal comments on the subject line. Parties also must include their full name and Postal Service mailing address in their submission.

List of subjects in 47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–32910 Filed 12–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–207, RM–9408]

Radio Broadcasting Services; Wellsville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by RP Communications to allot Channel 246A to Wellsville, NY, as the community's second local FM service. Channel 246A can be allotted to Wellsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42–07–12 North Latitude and 77–56–54 West Longitude. Canadian concurrence in the allotment is required since Wellsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 9, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert N. Felgar, Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th Street, Arlington, VA 22209–3801 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–207, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32912 Filed 12–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–211, RM–9349]

Radio Broadcasting Services; Logan, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by L. Topaz Enterprises, Inc., proposing the allotment of Channel 252C3 to Logan, Utah. The channel can be allotted to Logan with a site restriction 4.3 kilometers (2.6 miles) south of the community at coordinates 41–42–08 and 111–50–12.

DATES: Comments must be filed on or before January 25, 1999, and reply comments on or before February 10, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dale A. Ganske, President, L. Topaz Enterprises, Inc. 5546–3 Century Avenue, Middleton, Wisconsin 53562.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–211, adopted November 25, 1998, and released December 4, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32911 Filed 12–10–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 238
Friday, December 11, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Anthony Lakes Mountain Resort Master Development Plan Wallowa-Whitman National Forest—Union, Baker and Grant Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service, will prepare an environmental impact statement (EIS) for Anthony Lakes Mountain Resort's (ALMR) proposed Master Development Plan (MDP). The proposed development includes construction of one new chairlift, relocation of the existing handle tow and replacement with a short chairlift, and construction of one new surface lift. In addition, the proposed MDP includes the addition of approximately 1.2 acres of ski terrain, renovation of the day lodge, construction of a small on-mountain food services facility, enlargement of parking areas by 2.4 acres, an addition to the maintenance shop, construction of a snowmobile rental and staging area, and other utilities and infrastructure required to support resort upgrades.

The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received by January 11, 1999.

ADDRESSES: Send written comments concerning this proposal to Charles L. Ernst, District Ranger, 3165 10th Street, Baker City, Oregon 97814. Fax: 5(41) 523–1965.

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS to Charles L. Ernst, District Ranger, 3165 10th Street, Baker city, Oregon 97814. Phone (541) 523–4476.

SUPPLEMENTARY INFORMATION: The proposed action would increase the year-round recreational opportunities within the existing Special Use Permit Boundary (2,046 acres). Implementation of the proposed MDP would increase the Comfortable Carrying Capacity (CCC) from 600 Skiers-At-One-Time (SAOT) to 1,200 SAOT.

Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the Forest Service and administered by the Wallowa-Whitman National Forest (WWNF).

Purpose and Need: To resolve existing operational deficiencies at ALMR. To meet public expectations for quality recreational experiences through the improvements proposed at ALMR in the MDP.

The purpose of the proposed action and alternatives considered is to equip ALMR with the necessary base area and on-mountain amenities to meet current and anticipated future demand for alpine recreation and the expectations of the skiing public on the WWNF at ALMR. The specific proposed improvements are oriented toward the rehabilitation of the resort by rectifying existing deficiencies and providing a resort-wide balance of capacities. In addition, the proposed action would provide financial stability and growth potential to ALMR, while respecting natural resources and other issues of importance to the Forest Service and the public, thereby insuring that ALMR provides the public with a quality recreational experience with the implementation of the MDP and into the future.

Review and analysis of the relevant national and local market data indicate there is an ever-increasing level of customer awareness of quality, service, and value in the ski experience. Progressive ski areas have catered to the changing demands of the skier population by providing quality accommodations, a heightened service orientation, a refined, and technologically improved ski experience, and other recreational amenities. Ski areas that have invested in faster and more comfortable ski lifts, snowmaking capabilities, terrain expansion, and increased trail grooming have created higher expectation of quality and service among the skiing public. ALMR competes with other ski areas in the local and regional marketplace, the majority of which have recently made or are in the process of undertaking substantial facilities improvements. Conversely, declines in capital investment for facilities upgrades at ALMR have led to erosion of market share and may eventually lead to a decline in skier visitation. The need for the proposed action is generally demonstrated by the stagnation of skier visitation to ALMR over the past decade and evidence of significant export of skier visits to other ski resorts, particularly outside the local market. Stagnant visitation has occurred despite population growth in the local market area. On this basis, actions proposed under the MDP are necessary for ALMR to remain competitive, and to provide the level of customer service expected by the skiing public and the Agency.

The Proposed Action: The proposed action would increase recreational opportunities within the existing SUP area (2,046 acres). Implementation of the proposed MDP would increase the CCC from 600 SAOT to 1,200 SAOT. The proposed development includes: construction of one new chairlift; replacement of the handle tow with a short chairlift; construction of one new surface lift; addition of approximately 1.2 acres of ski terrain; expansion of the existing day lodge; construction of a small on mountain food service facility; seasonal use of a yurt (circular tent); snowmobile rental and staging facility to support ongoing public use of National Forest System lands to the north of the resort; a 2.4 acre expansion of parking areas; expansion of the maintenance facility and other utilities and infrastructure required to support the proposed MDP.

Management Direction: The proposed MDP tiers to the *Wallowa-Whitman National Forest Land and Resource Management Plan* (Forest Plan) as amended. The ALMR SUP area is located within Management Area 16—Administrative and Recreation Site Retention. Although alpine and downhill skiing are not directly addressed in the Forest Plan, pertinent direction is presented on pages 4–92 and 4–93. For a more detailed

description of Management Area 16, refer to the Forest Plan.

Public Involvement: Public Involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, tribes and other individuals or organizations who may be interested in, or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comments.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protest trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without names and addresses within thirty (30) days.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) in October 1999 and will be available for public review at that time. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The final EIS is scheduled for completion in April of 2000.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after the completion of the final EIS. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The responsible official is Karyn L. Wood, Forest Supervisor for the Wallowa-Whitman National Forest. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

Dated: December 2, 1998.

Kurt R. Wiedenmann,

Acting Forest Supervisor, Wallowa-Whitman National Forest.

[FR Doc. 98–32951 Filed 12–10–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 11, 1999.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 9, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (63 FR 54436) of proposed addition to the Procurement List.

The Following Comments Pertain to Janitorial/Custodial, U.S. Couthouse and Annex, Tallahassee, Florida

Comments were received from the current contractor for this janitorial service. The contractor noted that a number of its Federal janitorial projects had been lost to the Committee's Javits-Wagner-O'Day (JWOD) Program or the Small Business Administration's 8(a) Program over the past several years. The contractor also noted changes in its gross revenues over the past five years as evidence of the impact of these project losses.

Those projects lost by the contractor which were added to the JWOD Program, with the exception of the instant one and two others, were added between October 1989 and January 1992. In assessing the severity of impact on a contractor of the addition of a project to the JWOD Program, the Committee concentrates on the cumulative impact of its actions over the most recent three years unless there is compelling evidence of the continuing effects of prior impacts. The reason for this is that contractors which are still in existence are generally assumed to have recovered from previous impacts. This contractor's sales increased throughout the period of the earlier previous impacts. While the contractor's estimated revenues for the current fiscal year are below those of five years ago, it should be noted that

the contractor's revenues by its own figures continued to increase until last year. Consequently, the Committee has concluded that these earlier impacts, each of which represented a very small percentage of the contractor's sales, do not have a continuing impact on the contractor.

The project currently being added to the JWOD Program, along with another added this year and a project which was added in 1997, in combination represent a very small percentage of the contractor's estimated total revenues for this year. This percentage is well below the level which the Committee considers possible severe adverse impact. Considering the way the contractor's total sales have moved over the past few years, the Committee does not believe that adding in the contractor's alleged losses to the 8(a) Program would result in a finding of severe adverse impact on this contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, U.S. Courthouse and Annex, Tallahassee, Floridia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–33000 Filed 12–10–98; 8:45 am]

BILLING CODE 6353–01–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 11, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Strap, Webbing
5340–00–753–3740
5340–00–543–3271
5340–00–543–3398
5340–00–052–9481
5340–00–664–0364
5340–00–534–7110
5340–00–543–3173
5340–00–479–2949
5340–00–751–9013
5340–00–543–3557
5340–00–403–7674
5340–00–664–0365
5340–00–001–4837
5340–00–854–6737
5340–00–020–5067
5340–00–034–4835
5340–00–454–5967
5340–00–454–5969
NPA: The Charles Lea Center for Rehabilitation & Special Education, Inc. Spartanburg, South Carolina

Services

Grounds Maintenance, U.S. Geological Survey, Wildlife Research Center, Patuxent, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland
Janitorial/Custodial, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, Florida
NPA: Goodwill Industries of South Florida, Inc. Miami, Florida
Janitorial/Custodial, Various U.S. Army Reserve Centers, Fort Indiantown Gap, Pennsylvania,
NPA: United Cerebral Palsy of Schuylkill, Carbon and Northumberland Counties Pottsville, Pennsylvania
Operation of Individual Equipment Element Store, Vandenberg Air Force Base, California, NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–33001 Filed 12–10–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 1998, the Department of Commerce published the preliminary results of its first administrative review of the antidumping duty order on certain pasta from Turkey. The review covers three exporters of the subject merchandise. The period of review is January 19, 1996, through June 30, 1997.

For our final results, we have found that, for one exporter, sales of the subject merchandise have been made below normal value. We will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

We find that, for the one company that had shipments during the review period and participated in the review, sales have not been made below normal value. We will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

EFFECTIVE DATE: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or John Brinkmann, Office of AD/CVD Enforcement, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3530 and (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Case History

This review covers three manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Turkey: Pastavilla Kartal Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla), Filiz Gida Sanayi ve Ticaret (Filiz), and Nuh Ticaret ve Sanayi A.S. (Nuh Ticaret). Since the publication of the preliminary results of this review on August 7, 1998, (*see Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 63 FR 42373 (*Preliminary Results*)), the following events have occurred. From August 10 through 14, 1998, we verified the cost information submitted by Pastavilla. From August 17 through 21, 1998, we verified the sales information submitted by Pastavilla and its affiliated sales agent Duzey Pazarlama A.S. (Duzey). On September 2 and 3, 1998, we verified Pastavilla's sales information at its affiliated sales agent Vitelli Foods, Inc. (Vitelli Foods), in the United States. On September 24 and 25, 1998, respectively, we received case briefs from Pastavilla and the petitioners (Borden Foods Corp., Hershey Pasta and Grocery Group, Inc., and Gooch Foods, Inc.). We received rebuttal briefs from both parties on October 1, 1998.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Scope Ruling

On October 26, 1998, we self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On November 18, 1998, the Department received comments from interested parties regarding this scope inquiry. The Department received rebuttal comments on November 30, 1998. In accordance with 19 CFR 351.225(f)(iii)(5), the Department will issue a scope ruling within 120 days of initiation of the inquiry.

Partial Rescission

We originally initiated a review of three companies: Pastavilla, Filiz, and Nuh Ticaret (*see Notice of Initiation of Antidumping Duty Administrative Review*, 62 FR 45621 (August 28, 1997)). However, as noted in the preliminary results, Nuh Ticaret notified us that it had no shipments of subject merchandise during the period of review (POR). We have confirmed this with information from the Customs Service. We received no comments concerning Nuh Ticaret for the final results. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of Nuh Ticaret (*see, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35191 (June 29, 1998) and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997)).

Use of Facts Available

Filiz did not respond to the Department's antidumping questionnaire. We have confirmed that the questionnaire was received by Filiz (*see* Memorandum to the File dated March 4, 1998) and, accordingly, for the reasons described below, we are assigning to Filiz a margin based on adverse facts available for these final results.

Section 776(a) of the Act requires the Department to resort to facts available if necessary information is not available on the record or when an interested party or any other person ''fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782.'' As provided in section 782(c)(1) of the Act, if an interested party ''promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner,'' the Department may modify

the requirements to avoid imposing an unreasonable burden on that party. Since Filiz did not provide any notification or information to the Department, subsections (c)(1) and (e) do not apply in this situation. Accordingly, we find, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Filiz for these final results.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. Filiz's failure to respond to our antidumping questionnaire demonstrates that it has failed to act to the best of its ability to comply with requests for information. Accordingly, we have determined that an adverse inference with respect to Filiz is warranted.

Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the antidumping investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

In this instance, we have no reason to believe that the application of the highest petition margin for Turkish pasta, as revised by Commerce, is inappropriate. Therefore, we have assigned Filiz the rate of 63.29 percent as adverse facts available. This margin is the same margin derived from the petition that was corroborated and assigned to Filiz during the investigation (*see, Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309 (June 14, 1996)). For purposes of these final results, we find that this margin continues to be of probative value. We note that the SAA, at 870, states that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.* * *'' In addition, the SAA at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

Price Comparisons

For Pastavilla, we calculated constructed export price (CEP) and normal value based on the same methodology used in the *Preliminary Results*, with the following exceptions:

1. We applied the domestic inland freight expense, exclusive of value added tax (VAT), to Pastavilla's U.S. sale (*see* Comment 2).
2. We revised Pastavilla's freight expense for home market sales based upon our verification findings (*see* Comment 4).
3. We calculated an inventory carrying cost for the period of time between when the merchandise entered the United States and when it was shipped to the U.S. customer (*see* Comment 5).
4. We have recalculated the free pasta discount (*see* Comment 6).

Cost of Production

As discussed in the preliminary results, we conducted an investigation to determine whether Pastavilla made home market sales of the foreign like product during the POR at prices below its cost of production (COP) within the meaning of section 773(b)(1) of the Act.

We calculated the COP following the same methodology as in the preliminary results, with the following exceptions:

1. We adjusted Pastavilla's monthly per-unit semolina and vitamin costs by dividing the monthly cost of each material by the monthly quantity of ''packed pasta'' (*see* Comment 9).
2. We included Pastavilla's severance reserve in the calculation of COP and constructed value (CV) to reflect the fully absorbed cost of producing the pasta (*see* Comment 11).
3. To calculate the general and administrative (G&A) expense ratio, we have excluded packing costs from the cost of sales figure used in the calculation (*see* Comment 12).
4. We indexed Pastavilla's monthly G&A expenses and cost of sales figures using the wholesale price index, published by the International Monetary Fund, in order to compute a constant currency G&A expense ratio (*see* Comment 13).
5. We have computed Pastavilla's interest expense rate on an unconsolidated basis and included the foreign exchange losses in Pastavilla's interest expense calculation (*see* Comment 15).

Analysis of Comments Received

We gave interested parties an opportunity to comment on these preliminary results. As noted above, we received case briefs and rebuttal comments from the petitioners and Pastavilla.

Sales Comments

Comment 1: Application of Facts Available

The petitioners argue that the Department should apply total adverse facts available because Pastavilla did not report its U.S. sales of 5 lb. 1 oz. packages of pasta. The petitioners contend that Pastavilla's sales of 5 lb. 1 oz. packages of pasta to the United States are subject to this review because: (1) the questionnaire instructed Pastavilla to report products sold that contained between 2251 and 2500 grams of pasta; (2) several of the U.S. sales documents, including the customer's purchase order and Pastavilla's U.S. affiliates invoice to the customer, described the pasta as ''5lb'' pasta; (3) the pasta in 5 pound and 5 lb. 1 oz. packages are identical, except that the label is changed to avoid paying antidumping duties; and (4) the pasta was sold to distributors and retailers for sale in the retail market.

The petitioners further contend that, because it is the industry standard to overfill packages, packages containing slightly over five pounds (*i.e.*, 5 lb. 1 oz.) are within the scope of the order. Finally, the petitioners argue that total adverse facts available is warranted because the Department allowed Pastavilla to truncate its reporting period based on its assertion that Pastavilla made no sales to the United States prior to January 1997, and, at verification, it was revealed that Pastavilla made U.S. sales in 1996. The petitioners contend that Pastavilla should be assigned the adverse facts available rate of 63.29 percent, in accordance with sections 776(a) and 782(d) of the Act.

Alternatively, the petitioners request that the Department use the facts

available margin of 63.29 percent for the U.S. sales that Pastavilla did not report.

Pastavilla argues that the scope of the order includes only pasta in packages of five pounds or less and that the Department's questionnaire did not require Pastavilla to report sales of 5 lb. 1 oz. packages. It states that the Department confirmed at verification that the 5 lb. 1 oz. packages weighed in excess of the 5 lb. 1 oz. weight and that packaging was specifically printed for this production. Pastavilla further asserts that the petitioners erred in their claim that, because Pastavilla's 5 lb. 1 oz. packages may be within the packaging tolerance for five-pound pasta, they are subject merchandise. Pastavilla points out that while the scope has a numerical upper limit of five pounds, it makes no mention of manufacturing tolerances, and asserts that when a numerical measure is stated in a scope notice, that the numerical measure governs (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Notices Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10899, 10958 (February 28, 1995) (*Antifriction Bearings*)).

Pastavilla contends that it imported a negligible quantity of 5 lb. 1 oz. packages, and the importation of these 5 lb. 1 oz. packages does not warrant total facts available. Concerning the petitioners claim that the pasta was sold to distributors and retailers for sale in the retail market, Pastavilla argues that the 5 lb. 1 oz. packages are not ''typically sold in the retail market'' as the scope language states, but rather are sold to distributors and as bulk products in ''price clubs.'' Pastavilla acknowledged that Vitelli Foods' invoice to the customer stated ''five pound'' pasta rather than 5 lb. 1 oz. pasta because the company had not changed its product descriptors in its computer system, but maintains that the sales were of 5 lb. 1 oz. packages and are therefore excluded from the scope of the order. Finally, Pastavilla states that while the pasta in five pound packages can be identical to the pasta in 5 lb. 1 oz. packages, it does not imply that the quantity in the two packages are the same.

DOC Position

We disagree with the petitioners that the Department should apply total adverse facts available to Pastavilla or facts available to Pastavilla's U.S. sales of 5 lb. 1 oz. packages. The scope of the orders states, that ''[i]mports covered by this review are shipments of certain non-egg dry pasta packages of five pounds (or 2.27 kilograms) or less . . .'' In its questionnaire, the Department instructed Pastavilla to report pasta sold in packages of five pounds or less. We broke out the packing size ranges into 250 gram increments for uniformity in reporting, and while the largest range (2,251 to 2,500 grams) would include packages greater than five pounds, those reporting instructions do not constitute a scope ruling.

Our normal basis for determining whether a product is included within the scope of the order is the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission (*see* 19 CFR 351.225(k)(1)). If these descriptions are not dispositive, the Department may conduct a scope inquiry in accordance with 19 CFR 351.225(k)(2), and examine the following criteria: (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; and (iv) the channels of trade in which the product is sold. On October 26, 1998, the Department initiated a scope inquiry to determine whether a package weighing over five pounds may be within the scope of the order (*see* October 26, 1998 memorandum to Richard W. Moreland). It would be inappropriate to conclude that Pastavilla failed to report certain sales until the scope inquiry is finished.

Concerning the petitioners' argument that total adverse facts available is warranted because Pastavilla did not report sales to the United States that were made prior to January 1997, at verification we confirmed that these were sales of 5 lb. 1 oz. packages.

Comment 2: Calculation of Inland Freight Expenses for the U.S. Sale

Pastavilla alleges that the Department erred in adding VAT to its reported domestic inland freight expense when calculating U.S. price. Pastavilla contends that the Department did not adjust its other expenses for VAT and that, if this adjustment is to be applied, to achieve parity, it should be applied on the home market side as well as the U.S. side. Pastavilla cites the SAA concerning tax neutrality in support of its argument (*see* SAA, H.R. Doc. No. 103–316, 103d Cong., 2d Sess. at 157 (1994)).

The petitioners argue that the Department was correct in revising Pastavilla's reported inland freight expenses in the preliminary results to include the taxes shown on the freight invoice. They contend that it is Department practice to exclude taxes from the prices of the merchandise, but that this tax exclusion does not extend to movement charges because adjustments for movement charges should reflect the actual costs incurred to transport the merchandise. Concerning Pastavilla's reference to achieving parity, the petitioners state that notes on the sample home market freight invoice submitted by Pastavilla indicated that taxes were included in Pastavilla's reported home market freight expenses.

DOC Position

We agree with Pastavilla that the VAT should be excluded from the calculation of domestic inland freight expenses for the U.S. sale. However, we must note that our decision is not based on the ''tax neutrality'' argument Pastavilla presents, but is based solely on our requirement to achieve parity in our calculations. In other words, if home market expenses are reported exclusive of the VAT, U.S. expenses should also be reported exclusive of the VAT. As Pastavilla suggests, if this VAT adjustment were to be applied to the inland freight expense on the U.S. side it should be applied to Pastavilla's home market expenses as well. We find no basis for the petitioners' claim that Pastavilla included VAT expenses in its reported home market expenses. Therefore, for these final results we have revised our calculations from the preliminary results by excluding VAT from inland freight expenses.

Comment 3: Elimination of Sales Failing Arm's-Length Test

Pastavilla argues that the Department should include in its calculation of normal value sales by its affiliated reseller, Sok, which failed the Department's arm's-length test. Pastavilla contends that sales to Sok failed the arm's-length test because of Sok's status as a ''hard-discount retailer,'' not because of its affiliation with Pastavilla.

The petitioners assert that the Department was correct in applying its standard arm's-length test to sales to Sok because Pastavilla failed to provide Sok's sales to its unaffiliated customers and, at the same time, has not provided any suggestions concerning an alternate method for determining whether these sales were at arm's-length prices. Furthermore, the petitioners cite the preamble to the Department's regulations stating that the Department will continue to apply the current 99.5 percent test unless, and until, it develops a new method (*see*

Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27355 (May 19, 1998)).

DOC Position

We agree with the petitioners that the Department should continue to apply its standard arm's-length test to Pastavilla's sales to Sok for the final results. We conducted the arm's-length analysis of Pastavilla's sales to Sok, because Pastavilla stated, and we agreed, that it was unable to report Sok's sales to the first unaffiliated customer. The arm's-length test is based on the affiliation between Sok and Pastavilla, irrespective of Sok's status as an alleged ''hard-discount retailer.''

In conducting the arm's-length analysis, we followed our standard practice and compared sales prices to unaffiliated customers to sales prices to affiliated customers at the same level of trade and, where prices to affiliated customers were, on average, less than 99.5 percent of prices to unaffiliated customers, we rejected the sales to affiliated parties as not representing arm's-length prices (*see Certain Pasta from Italy; Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 30326, 30332 (June 14, 1996)).

Comment 4: Overstatement of Home Market Freight Expenses

The petitioners argue that the Department should correct Pastavilla's overstatement of its home market freight expenses noted in the Department's September 16, 1998, *Sales Verification Report (SVR).*

Pastavilla argues that the adjustment is negligible and may be ignored (*see* 19 CFR 351.413).

DOC Position

We agree with the petitioners and have corrected Pastavilla's home market freight expenses to reflect verification findings.

Comment 5: U.S. Inventory Carrying Cost

The petitioners argue that the Department should calculate imputed U.S. inventory carrying costs for the period of time between when the merchandise entered the United States and when it was shipped to the customer. They assert that the Department should calculate these costs based on the cost of manufacturing, the interest rate used to calculate imputed credit expenses, and the inventory period noted by the Department in the *SVR*.

Pastavilla argues that it should not be subjected to U.S. inventory carrying costs for this period of time because: (1) its importer did not take the pasta into inventory, but rather shipped the merchandise to the customer directly from the port of entry; and (2) shipment was not made until 16 days after entry because of delays in Customs.

DOC Position

We agree with the petitioners that U.S. inventory carrying costs should be calculated for Pastavilla. In accordance with section 772(d)(1) of the Act, we made deductions from CEP, where appropriate, for those indirect selling expenses that related to economic activity in the United States, including U.S. inventory carrying costs (*see Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12754 (March 16, 1998)). Pastavilla was instructed specifically to report U.S. inventory carrying costs for the period of time between when the merchandise entered the United States and when it was shipped to the U.S. customer both in the Department's original and supplemental questionnaires. Pastavilla reported that the merchandise was not held in inventory in the United States. However, at verification we noted that Pastavilla's shipment remained at the port of entry for 16 days before being shipped to the customer.

Concerning Pastavilla's argument that we should not apply inventory carrying cost due to the delay in Customs, we maintain that regardless of the cause of the delay, inventory carrying costs are meant to capture the opportunity cost of Pastavilla for having the merchandise in inventory.

For these final results, we calculated Pastavilla's U.S. inventory carrying expenses based on net price, the interest expense used in calculating credit, and the inventory period verified by the Department. We did not base our calculations on cost of manufacturing, as the petitioners suggest, because to do so would have been inconsistent with Pastavilla's other inventory carrying cost calculations. Pastavilla calculated its other inventory carrying expenses based on net price and explained in its questionnaire responses that to have based its calculations on cost of manufacture would have been a significant burden.

Comment 6: Valuation of Discounted Pasta

The petitioners argue that the Department should not accept the free pasta discount claimed by Pastavilla because Pastavilla's method of calculating the discount based on the list price and quantity on the invoice (1) does not reflect the actual cost of the discount to Pastavilla and (2) overstates the actual value of the discount. Alternatively, if the Department does allow the merchandise discount, the petitioners contend that the Department should recalculate the discount based on the cost of manufacture because the discount amounts, as reported by Pastavilla, are overstated.

Pastavilla argues that it was correct in valuing its free pasta discount based on the price of the free goods rather than the cost of the free goods. According to Pastavilla, this methodology is consistent with how the discount is entered into Pastavilla's accounting records and how it is reflected on the invoice. From an opportunity cost perspective, Pastavilla contends that what is given up in providing the free goods is the revenue of the sale, not the cost of production. Finally, Pastavilla claims that the cost data necessary to re-value the discount at cost is not easily available. According to Pastavilla, this task is particularly complex in a case such as this that involves indexing for inflation and averaging of the cost data by the Department.

Pastavilla agrees with the petitioners that the free goods discount should be recalculated using the total quantity on the invoice and a net unit price.

DOC Position

We disagree with the petitioners that Pastavilla's claimed free pasta discount should be denied. We verified that Pastavilla's free merchandise discount is a legitimate discount that must be taken into account in our calculations. However, we agree with the petitioners that Pastavilla's methodology overstated the actual value of the discount. We have recalculated the free pasta discount based on the total quantity of merchandise the customer received, including the free pasta. Additionally, we used the invoice price, net of any other discounts, in our calculation (*See* December 7, 1998, *Final Results Analysis Memorandum*).

We disagree with the petitioners' claim that the free goods discount should be based on the cost of manufacture. To value the free goods discount on the net invoice value of the merchandise is consistent with Pastavilla's normal accounting practices, which are in accordance with Turkish standards and International Accounting Standards (*see* Comment 7 below), and it is a reasonable representation of Pastavilla's costs of providing the free goods discount to its customers.

Comment 7: Valuation of Home Market Warranty Expense

The petitioners claim that Pastavilla overstated its home market warranty expenses because these expenses were calculated based on the sale price of the returned pasta rather than on the cost of manufacture of the returned pasta. In addition, the petitioners allege that Pastavilla should have reduced its claimed warranty expenses by the amount of revenue obtained from any resales of the returned pasta. The petitioners argue that the Department should deny these warranty expenses entirely or, at a minimum, they should be recalculated based on the cost of manufacture.

Pastavilla argues that it properly calculated its home market warranty expenses based on the invoice value of the damaged pasta. It claims that this methodology is consistent with its normal accounting practices, as warranty claims are entered into the accounting system at the invoice value and it has no accounting record of the quantity of goods to which the warranty claim applies. Pastavilla contends that its accounting system does not record information to calculate warranty expenses based on cost, and, since its accounting system is in accordance with Turkish standards and International Accounting Standards, the Department should accept it.

DOC Position

We agree with Pastavilla and have accepted its calculation of home market warranty expenses. To base the calculations on the invoice value of the merchandise is consistent with Pastavilla's normal accounting practices, which are in accordance with Turkish standards and International Accounting Standards, and it is a reasonable representation of Pastavilla's warranty expenses. Further, Pastavilla is unable to calculate warranty expenses as the petitioners suggest because its warranty claims are entered into the accounting system at the invoice value and Pastavilla has no accounting record of the revenue obtained from resales of the returned pasta or the quantity of goods to which the warranty claim applies.

Comment 8: Direct Warranty Expenses for U.S. Sales

The petitioners contend that Pastavilla's claims are incorrect that it did not incur warranty expenses in connection with its U.S. sale and that the loss from the damaged pasta is reflected in the invoice. They argue that the loss from the damaged pasta was directly related to the U.S. sale and should be treated as a direct warranty expense. The petitioners allege that the Department should calculate direct warranty expenses for the final results based on the cost of manufacture of the damaged pasta. Alternatively, the petitioners contend that the Department should calculate direct warranty expenses for Pastavilla's U.S. sale based on the invoice price of the damaged pasta.

Pastavilla argues that it did not incur warranty expenses on its U.S. sale. Pastavilla explains that of the 1,300 cases of pasta shipped to the United States, only three were damaged. Pastavilla contends that because its U.S. affiliate only invoiced and received payment for 1,297 cases, the damaged cases were already adjusted for in the sales response. Pastavilla argues that it would have been necessary to account for the damaged goods in the sales response only if Pastavilla had received payment for the three cases and had later issued a credit. According to Pastavilla, its sales response reflects the lack of revenue from the damaged cases and to calculate a U.S. warranty expense as the petitioners suggest would double-count the loss to Pastavilla.

DOC Position

We agree with Pastavilla that the loss from the damaged cases is already reflected in the U.S. sales response. The invoice to the customer reflects a quantity net of the damaged cases and, at verification, we confirmed that Pastavilla's U.S. affiliate did not receive payment for the damaged cases. Warranty expenses typically involve replacing the defective merchandise or crediting a customer for the defective merchandise. In this instance, the damaged cases were not part of the sale and, therefore, it would be inappropriate to make an adjustment for warranty expenses.

Cost Comments

Comment 9: Yield Loss

Pastavilla claims that the methodology used to calculate COP and CV fully captures all yield losses. It argues that in its ordinary cost accounting system, a theoretical production amount (*i.e.*, naked pasta), which includes scrap, is used to calculate COM. However, because this was a theoretical amount, Pastavilla used finished goods (*i.e.*, packed pasta) quantities to calculate the per-unit COM for the antidumping review.

The petitioners argue that the Department should revise Pastavilla's reported semolina costs to account for yield losses occurring during the production of pasta. Because the methodology used by Pastavilla does not account for the semolina that was lost during the production of pasta, the petitioners contend that Pastavilla's reported per-unit cost of semolina are understated.

DOC Position

While we agree with Pastavilla that it adequately accounted for yield loss related to its reported conversion costs, we disagree that its methodology used to calculate the monthly materials costs included in COP and CV captures the impact of yield loss associated with the production of pasta. Pastavilla used finished ''packed pasta'' quantities to calculate its per-unit conversion costs (*i.e.*, direct labor, variable overhead, and fixed overhead). By using ''packed pasta'' quantities, Pastavilla's reported conversion costs reasonably capture the yield loss incurred during the manufacturing process (*e.g.*, waste, moisture evaporation). To calculate its reported per-unit material costs (*i.e.*, semolina and vitamins), however, Pastavilla did not rely on its ''packed pasta'' quantities. Instead, the company relied on the monthly quantities of semolina consumed during the production process. Thus, Pastavilla understated its cost of materials because it used the cost per unit of semolina consumed rather than the cost per unit of ''packed pasta.'' In other words, Pastavilla's material costs do not reflect the yield loss associated with the manufacturing process. To capture the cost associated with its material yield losses, Pastavilla should have calculated its per-unit material cost using the same ''packed pasta'' quantities that it used to calculate its per-unit conversion costs. Thus, for the final results, we adjusted Pastavilla's monthly per-unit semolina and vitamin costs by dividing the monthly cost of each material by the monthly quantity of ''packed pasta.''

Comment 10: Vitamin Replacement Costs and First Day Corrections

The petitioners assert that the Department should not accept the minor correction made to the vitamin costs submitted at verification. They state that Pastavilla's revised methodology calculates per-unit vitamin costs by dividing by the quantity of semolina used in the production of pasta, rather than by the quantity of packed pasta. Thus, the petitioners contend that the per-unit cost of vitamins are understated. In addition, according to the petitioners, Pastavilla's vitamin costs are not based on the replacement cost methodology.

Pastavilla states that the Department should use the verified vitamin costs as reported in the clerical error submission. As for making the other corrections asserted by the petitioners, Pastavilla disagrees.

DOC Position

For the final results, we revised Pastavilla's per-unit vitamin costs using the replacement cost methodology. The replacement cost methodology values the vitamins used in production at the vitamins' monthly purchase price within each respective month. Adopting this methodology accounts for the monthly fluctuations in costs for inventories, due to the high inflation experienced during the POR. To calculate Pastavilla's per-unit vitamin cost, we relied on packed pasta quantities and not the quantity of vitamins input into the production process (*see* Comment 9 for more details). As for the concerns about accepting Pastavilla's vitamin costs reported in its clerical error submission, they are moot because we did not rely on the information for the reasons discussed above.

Comment 11: Severance Reserve Benefits

Pastavilla argues that the Department should not adjust its reported COP and CV figures to include its severance reserve. Instead, Pastavilla claims that the reserve should be treated differently than the actual severance expense paid to employees which it included in the calculation of COP and CV. According to the company, the reserve merely represents a possible liability that may never have to be paid. If an employee quits or is fired for cause, there is no severance obligation due to the employee. Thus, the severance reserve is not a reserve for actual expenses incurred, but only for the maximum possible expense that might be incurred. Moreover, the reserve is never actually funded by the company. Therefore, Pastavilla contends that it is inappropriate to classify the reserve as an element of cost, and cites as support for its position the Department's decision in *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 58 FR 15467, 15479 (March 23, 1993) (*DRAMs from Korea*). In that case, the Department found that ''it would not be reasonable to make an adjustment for royalty expenses which were not actually incurred, and may not be incurred.''

The petitioners argue that the Department should include the reserve for severance benefits in the COP and CV calculation. According to the petitioners, the severance expense is a normal operating cost which is recorded on Pastavilla's income statement. Moreover, even if the expense was recorded as a reserve account, the amount still represents a liability that was incurred by Pastavilla as a result of operations during the POR. Therefore, the Department should include the severance reserve in the calculation of COP and CV.

DOC Position

We agree with the petitioners that Pastavilla's reserve for severance benefits should be included in the calculation of COP and CV. Under Turkish law, an employer is required to establish a reserve for severance benefits. The employer then pays these severance benefits to an employee who is terminated after a minimum period of service. In its normal course of business, Pastavilla accrues the monthly cost of this liability in accordance with Turkish GAAP, and the accrual is reflected as an expense on the monthly income statement. Hence, Pastavilla recognizes the accrual as an expense in accordance with Turkish GAAP even though it requires no cash funding. Our established practice is to include this type of cost in the calculation of COP and CV, because this severance reserve represents an expense recognized within the POR and should be reflected in the product cost, in accordance with full absorption costing principle (*see Certain Cut-to-Length Carbon Steel Plate From Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 61 FR 13834, 13838 (March 28, 1996)). As a result, we included Pastavilla's severance reserve in the calculation of COP and CV to reflect the fully absorbed cost of producing the pasta.

We disagree that *DRAMS from Korea* supports Pastavilla's claim that severance expenses should not be included in the calculation of COP and CV. In that proceeding, the Department was asked to include an estimated royalty expense which was not recorded in the company's financial statements, nor was the company under any legal or accounting obligation to pay or record the expense. In the instant review, the reserve for severance benefits is a recognized expense which is regularly accounted for in Pastavilla's books.

Comment 12: Calculation of G&A Expense Ratio

Pastavilla contends that it correctly computed its G&A expense ratio by including packing costs in the denominator. Pastavilla argues that G&A expenses benefit the entire company (including the packing activities of the company) and therefore the cost of the packing must be included in the denominator. To support its position, Pastavilla cites the decision made in *Notice of Final Determination of Sales at Less Than Fair Value: Steel Reinforcing Bars from Turkey*, 62 FR 9737, 9748 (March 4, 1997) (*Steel Reinforcing Bars from Turkey*). In that proceeding, the Department stated that G&A expenses must be allocated over all activities if they support such activities.

The petitioners argue that packing costs should be excluded from the cost of sales (COS) when calculating the G&A and financial expense rates. The petitioners claim that when calculating these rates, COS is used as the denominator. The calculated rates should then be applied to a COM which is on the same basis. According to the petitioners, packing costs should be excluded from the COS because it is not included in the COM.

DOC Position

We disagree with Pastavilla that packing cost should be included in the denominator (*i.e.*, COS figure) used to calculate the G&A expense ratio. If the Department calculated the G&A expense ratio as Pastavilla suggests, the result would be distortive because we would be applying a ratio which includes packing cost in the denominator to a base which does not include packing cost. In order to correctly reflect the G&A expenses incurred by Pastavilla, the G&A ratio must be calculated using a COS figure that excludes packing costs and applied to a COM that excludes packing costs. This is consistent with methodology used in the *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 32833, 32837 (June 16, 1998) and the *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8910, 8933 (February 23, 1998).

As to the respondent's citation to *Steel Reinforcing Bars from Turkey*, we disagree that this case supports the company's claim that packing should be included in the cost of sales figure. In that proceeding, the petitioners argued that the Department should exclude specific non-manufacturing activities

(*i.e.*, cost associated with a port and a cafeteria) from the COS figure. We denied the exclusion because we found these costs related to a separate line of business and, thus, the company should allocate a portion of the G&A expense to those activities. To calculate the G&A expense ratio for the final results, we have excluded packing costs from the cost of sales figure used in the calculation.

Comment 13: Indexing Monthly G&A Expenses and Cost of Sales Figures

The petitioners argue that the Department should index Pastavilla's monthly G&A expenses to account for the high inflation that incurred in Turkey during the POR. According to the petitioners, the Department's practice is to index G&A expenses in cases involving inflationary economies.

Pastavilla contends that G&A should not be indexed and recalculated. Pastavilla states that G&A expenses are period costs, and it is distortive to calculate a monthly G&A and then index it for constant currency. Pastavilla claims that since both the numerator and denominator of the G&A calculation are equally affected by the high inflation, the ratio between them for an annual period is an appropriate measure of G&A expense, without further adjustment. In addition, Pastavilla claims that G&A expenses are not affected by inventory valuation practices which distort costs in an inflationary economy, and a constant-currency restatement is not necessary for the calculation of the G&A expense rate.

DOC Position

We agree with the petitioners that Pastavilla's monthly G&A expenses and cost of sales figures should be indexed when calculating the G&A expense ratio. During Pastavilla's accounting year, the Turkish currency lost its purchasing power at such a rate that comparisons of unadjusted general expenses and cost of sales occurring at different times are not comparable to the same expenses incurred at the beginning of the year. That is, the ratio of G&A to cost of sales is not necessarily constant for each month throughout the year. Without indexation, the calculation of a general expense ratio produces a potentially meaningless result because the ratio is applied to an indexed COM. The two figures have to be on the same basis. To calculate a meaningful general expense ratio, it is necessary to restate each month's general expenses and cost of sales figures in equivalent terms, that is, the currency value at a given point in time. For the final results, we indexed Pastavilla's monthly G&A expenses and cost of sales figures using the wholesale price index, published by the International Monetary Fund, in order to compute a constant currency G&A expense ratio.

Comment 14: Omission of Year-end Adjustments and Production Quantities

The petitioners argue that the Department should include Pastavilla's 1997 year-end adjustments in the COP and CV calculations. The petitioners state that year-end adjustments represent actual costs which were incurred during the POR, and therefore, the adjustments should be included in the calculations of COP and CV.

Further, the petitioners state that the Department should adjust Pastavilla's conversion costs for the final results to correct the error in the per-unit costs resulting from an overstatement of the production quantities of approximately ten tons.

Pastavilla argues that the Department determined at verification that the year-end adjustments had no impact on their costs, and there is no reason to make an adjustment to its reported costs. With respect to the ten ton production quantity discrepancy, Pastavilla states that it has reported the production quantity correctly. In addition, according to Pastavilla, even if the adjustment was reflected in the calculation of COP and CV it would have no impact.

DOC Position

We agree with the petitioners that the year-end adjustments and the corrected production quantities should be included in the calculation of COP and CV. However, we reviewed the information on the record and note that adjusting for the excluded year-end adjustments and the corrected production quantities would have no impact on the margin for the final results (*see Final Results of Antidumping Administrative Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands*, FR 61 51406, 51408 (October 2, 1996) and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, FR 61 38185, 38166 (July 23, 1996)). Therefore, for the final results we are not revising the reported costs to reflect the year-end adjustments and ten additional tons of pasta produced.

Comment 15: Financial Expense Ratio

Pastavilla argues that the Department should continue to use its parent company's (Koc Group) consolidated financial statements to calculate interest expense. It asserts that the Department's practice has been that where a respondent is a member of a group of companies; use of the parent company's consolidated financial expense ratio is appropriate. Citing *Dupont* v. *United States*, Slip Op. 98–7 at 12 (Ct. Int'l Trade, January 29, 1998), the court stated that where (i) the group controls the held company, (ii) there are consolidated financial statements, and (iii) there are inter-company financing agreements, the consolidated financial statements should be used to calculate the financial expense rate. Pastavilla states that they have met all three of those criteria. Thus, the Department should remain consistent with its normal methodology and use Pastavilla's group-wide interest expense.

Further, Pastavilla contends that the reclassification of the interest expense was due to the capitalization of interest, for an investment project, which is in conformity with Turkish law. Pastavilla states that they did not reclassify interest expense and the foreign exchange loss to depreciation expense as a directive from the parent company.

In addition, Pastavilla argues that there is no reason to assume that any other subsidiary within the Koc Group capitalized interest or foreign expenses. Pastavilla states that capitalization of interest is permitted under International Accounting Standard (IAS) 23, and must be disclosed in the audited financial statements. According to Pastavilla, since the Koc Group's financials are in accordance with the IAS, capitalization would be noted in the financial statements, and the lack of any reference in the audited consolidated financial statements indicates that no company in the Koc Group capitalizes interest to a degree of having a material effect on the financial statements. Therefore, the Department has no reason to assume capitalization of interest is occurring among Koc Group members.

Finally, Pastavilla argues that the reported short-term interest income used to offset the interest expense at the consolidated level is a reasonable estimation. It states that even if half of the Koc Group's financial income were from long-term sources, which is unlikely in Turkey's high inflationary environment, the income from short-term sources would exceed the total interest expense.

The petitioners contend that the Department should use Pastavilla's company-specific financial data to calculate the financial expense rate. According to the petitioners, although the Department's practice is to use consolidated financial statements to calculate financial expenses, when errors are discovered in the consolidated data the Department should deviate from its normal practice.

In addition, the petitioners assert that the interest expense and foreign exchange losses which were reclassified as depreciation expense, and not included in the reported COP and CV, should be included in the financial and G&A expense rate calculation, respectively. According to the petitioners, the interest expense should have been included in Pastavilla's reported financial expenses because the expenses were incurred during the period of review. The foreign exchange losses are normally included in the COP and CV when a respondent realized these losses on the purchases of inputs needed to produce subject merchandise. Pastavilla did not provide information to show that these losses were not incurred for purchases of inputs. Therefore, the interest expense and foreign exchange losses should be included in the calculation of the financial and G&A expense rates.

DOC Position

We agree with Pastavilla that the Department's general practice is to use a company's consolidated financial statements to calculate the financial expense ratio. Pastavilla's reported consolidated interest expense computation, however, is critically flawed, thus making it unusable for the final results. Specifically, Pastavilla did not provide monthly interest expenses and cost of goods sold amounts for the consolidated Koc Group entity. This information was requested in both our supplemental section D questionnaire and in the cost verification agenda in order for us to have the necessary information to calculate an indexed financial expense ratio. In both instances, company officials asserted that the Koc Group's monthly interest expense and cost of goods sold amounts was too difficult to obtain and calculate. Consequently, they did not provide the information. As a result, we do not have the necessary information to calculate an indexed consolidated financial expense ratio. Consequently, we are forced to use facts available, pursuant to section 776(a) of the Act. Pastavilla did, however, submit POR monthly interest expense and cost of sales amounts for the unconsolidated entity, thus, enabling us to compute an indexed interest expense rate. Because it does not appear that Pastavilla's consolidated interest expense rate would be higher than its indexed unconsolidated rate, we used its unconsolidated interest expense rate as facts available for the final results.

The issues concerning Pastavilla's capitalization of interest expense are moot because we have computed Pastavilla's interest expense rate on an unconsolidated basis as facts available.

Finally, we note that because we have calculated Pastavilla's interest expense rate at the unconsolidated level as facts available, it does not matter whether we treat its foreign exchange losses as G&A or interest expense. The same amount of costs related to these items are captured either way. For the final results, we included the foreign exchange losses in Pastavilla's interest expense calculation.

Final Results of Review

As a result of our review, we find that the following margins exist for the period January 19, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Pastavilla Kartal Makarnacilik Sanayi Ticaret A.S.	0.00
Filiz Gida	63.29

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. As determined by the zero margin in these final results, we will instruct the Customs Service not to assess antidumping duties on Pastavilla's entries of the merchandise subject to the review. We will direct the Customs Service to assess antidumping duties on Filiz's entries of the merchandise subject to review by applying the assessment rate listed above to the entered value of the merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) the cash deposit rate for Pastavilla will be zero and the cash deposit rate for Filiz will be 63.29 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 60.87 percent, the ''all others'' rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–33003 Filed 12–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Revision to MTMC Freight Traffic Rules Publication No. 10, Item 350, ''Mileage Allowances''

AGENCY: Military Traffic management Command, DOD.

ACTION: Notice (Request for comments).

SUMMARY: The Military Traffic Management Command (MTMC) as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (DTR vol. 1, pg. 101–113), intends to replace the entire text of the existing

rule entitled ''Mileage Allowances'' in MFTRP No. 10, Item 350, with the proposed text herein. The purpose of the change is to ensure appropriate reimbursement to DOD for the use of its freight cars by commercial rail carriers.

DATES: Comments must be submitted on or before February 9, 1999.

ADDRESSES: Comments may be mailed to: Headquarters, Military Traffic Management Command, ATTN: MTOP–TS, Room 608, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. George Gounley at (201) 823–6283 or Mr. Jerome Colton at (703) 681–1417.

SUPPLEMENTARY INFORMATION: The proposed effective date for the change will be March 1, 1999 and will affect the reimbursement paid by commercial rail carriers for the use of DOD's freight cars (except tank cars). The purpose of the change is to ensure that DOD's maintenance costs for its freight cars are adequately reimbursed by their users.

The current regulation reads: Mileage Allowances: The mileage allowances set forth in Railroad Publication Services, Agent Tariff ICC RPS 6007–series (PHJ Series) will be the minimum allowances accepted by the Government from the railroads for use of Government owned rail cars, except that mileage allowances for other than tank cars published in Tariff ICC CR 9337 will apply for account Consolidated Rail Corporation.

The proposed regulation will replace the current regulation in its entirety with the following:

Item 350—Mileage Allowances

1. This item applies to all freight cars bearing the reporting marks of the Department of Defense or of any of its services, including but not limited to DODX, USAX, USA, USNX, USN, DAFX, USAF, hereinafter ''DOD freight cars.''

2. Whenever DOD freight cars are used by a carrier for a revenue movement, such movement shall be considered a loaded movement (except empty tank cars subject to excess empty tank car mileage computations in accordance with the provisions of Agent's Freight Tariff, RPS 6007, Item 187) and a mileage allowance shall be payable by the carrier to DOD.

3. The mileage allowances specified in this item are based on actual mileage. If specified in advance of the movement, the carrier may choose to pay the mileage allowances based on short-line rail mileage. In such cases, the minimum amount payable to DOD shall be the relevant allowance shown in the table in paragraph 6 plus 30 percent.

4. The allowances specified in this item apply only to movements for which the freight transportation rate specifies the use of DOD freight cars. In all other cases, such as when the freight transportation rate:

a. Specifies use of railroad-supplied cars, or

b. Specifies use of either railroad-supplied cars or DOD freight cars, or

c. Fails to specify the ownership of the car to be used; and DOD freight cars are actually used for the movement, the minimum allowances payable shall be the time and mileage payments that would have applied had non-deprescribed cars of the same type bearing railroad reporting marks been used.

5. The mileage allowances specified in this item are to be calculated on the basis of US dollars per mile, regardless of where the mileage accumulated. Allowances not paid in US dollars will be paid based on the exchange rate in effect at the close of the service month. For example, the minimum allowance for a movement of DODX freight car 36000 traveling 200 miles in Canada shall be 200 US dollars, or 300 Canadian dollars assuming an exchange rate of US $1.00=$1.50 Canadian dollars.

6. The minimum mileage allowances for DOD freight cars shall be as follows:

For DOD freight cars	Minimum mileage allowance (US dollars per actual mile) For short-line miles, add 30%
DODX 900–905 (Caboose)	$0.50
DODX 29500–29508 (Refrigerator Cars)	$1.00
DODX 36000–36006 (Two-platform container flat car)	$1.00
DODX 40000–40573 (Six-axle flat car)	$0.376
Tanks Cars (as defined in Agent's Freight Tariff, RPS 6007, Item 187)	As listed in Agent's Freight Tariff, RPS 6007, Item 187
All other DOD freight cars	$0.065 per axle, Examples: _____ (4-axle $0.26) (6-axle $0.39) (8-axle $0.52) (12-axle $0.78)

7. Detailed car hire reports, as defined in the Railway Equipment Register, Rule 3.B.1, in the format specified by the Code of Car Hire Rules, Appendices G and I, shall be sent to: Military Traffic Management Command, Deployment Support Command, ATTN: MTDC–RF, Fort Eustis, VA 23604–5000.

8. Mileage allowances shall be paid by check payable to ''DFAS–OM/ACT'' and sent to: DFAS–OM/ACT, ATTN: DBOF–T, PO Box 7050, Bellevue, NE 68005–1950.

(If a carrier's preferred practice is to mail the check and the car hire report in the same envelope, the MTMC address in paragraph 7 should be used for the combined mailing.)

Francis A. Galluzzo,

ADCOPS, Transportation Services.

[FR Doc. 98–32948 Filed 12–10–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Draft Environmental Impact Statement, Water Allocation for the Alabama-Coosa-Tallapoosa (ACT) River Basin, Alabama and Georgia (Extension of Comment Period)

AGENCY: U.S. Army Corps of Engineers, Mobile District, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District, Alabama, is announcing today the extension of the comment period for the Draft Environmental Impact Statement (EIS)

on the Water Allocation for the Alabama-Coosa-Tallapoosa (ACT) River Basin, Alabama and Georgia.

DATES: The public comment period for the Draft EIS has been extended through February 26, 1999.

ADDRESSES: To receive a copy of the Draft EIS, or to submit comments, contact: U.S. Army Corps of Engineers, Mobile District, Inland Environment Section, Post Office Box 2288, Mobile, AL 36628–0001 or call 1–800–421–7637. Copies are available in hard copy or CD–ROM format. A copy of the full document may also be viewed at 61 libraries in the major cities and universities within the States of Alabama, Florida, and Georgia, or the Main Report can be viewed on the Mobile District Web Page (http://www.sam.usace.army.mil/sam/pd/actacfeis).

FOR FURTHER INFORMATION CONTACT: Michael J. Eubanks, ACT Basin EIS Project Manager, (334) 694–3861, facsimile number (334) 694–3815, e-mail address michael.j.eubanks@sam.usace.army.mil.

SUPPLEMENTARY INFORMATION: A previous Notice of Availability was published in the **Federal Register**, Vol. 63, No. 191, pages 53022–53023, Friday, October 2, 1998, for public comment. The original comment period was to close on December 18, 1998. The comment period has been extended through February 26, 1999. Extension of the public comment period has been based on requests from several agencies, organizations, and individuals, as well as the likely extension of the water allocation formula development deadline by the ACT Compact Commission.

Dated: December 3, 1998.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 98–32946 Filed 12–10–98; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Draft Environmental Impact Statement, Water Allocation for the Apalachicola-Chattahoochee-Flint (ACF) River Basin, Alabama, Florida and Georgia (Extension of Comment Period)

AGENCY: U.S. Army Corps of Engineers, Mobile District, DoD.

ACTION: Noticed.

SUMMARY: The U.S. Army Corps of Engineers, Mobile District, Alabama, is announcing today the extension of the comment period for the Draft Environmental Impact Statement (EIS) on the Water Allocation for the Apalachicola-Chattahoochee-Flint (ACF) River Basin, Alabama, Florida and Georgia.

DATES: The public comment period for the Draft EIS has been extended through February 26, 1999.

ADDRESSES: To receive a copy of the Draft EIS, or to submit comments, contact: U.S. Army Corps of Engineers, Mobile District, Inland Environment Section, Post Office Box 2288, Mobile, AL 36628–0001 or call 1–800–421–7637. Copies are available in hard copy or CD–ROM format. A copy of the full document may also be viewed at 61 libraries in the major cities and universities within the States of Alabama, Florida, and Georgia, or the Main Report can be viewed on the Mobile District Web Page (http://www.sam.usace.army.mil/sam/pd/actacfeis).

FOR FURTHER INFORMATION CONTACT: Joanne Brandt, ACF Basin EIS Project Manager, (334) 690–3260, facsimile number (334) 694–3815, e-mail address joanne.u.brandt@sam.usace.army.mil.

SUPPLEMENTARY INFORMATION: A previous Notice of Availability was published in the **Federal Register**, Vol. 63, No. 191, pages 53023–53024, Friday, October 2, 1998, for public comment. The original comment period was to close on December 18, 1998. The comment period has been extended through February 26, 1999. Extension of the public comment period has been based on requests from several agencies, organizations, and individuals, as well as the likely extension of the water allocation formula development deadline by the ACF Compact Commission.

Dated: December 3, 1998.

Curtis M. Flakes,

Chief, Planning and Environmental Division.

[FR Doc. 98–32947 Filed 12–10–98; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel*__d@al.eop.gov.

The Department of Education wants very much to make the final application packages for these programs available to the public as soon as possible. Therefore, it would appreciate receiving directly from the public a copy of any comments addressed to the Office of Management and Budget. Any copy of these written comments should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651 and Louis J. Venuto, Higher Education Programs, Office of Postsecondary Education, 1280 Maryland Ave. S.W., Cy–80, Portals Building, Washington, D.C. 20202–5329. A copy of comments also may be electronically mailed to the internet address *Pat*__Sherrill@ed.gov and *Louis*__Venuto@ed.gov, or faxed to Patrick J. Sherrill at 202–708–9346 and Louis J. Venuto at 202–708–9046. In addition, the Department of Education and the Office of Management and Budget will carefully review all written comments received within 30 days of publication of this notice. However, as a courtesy to those working to prepare the final application packages for these programs, the Department respectfully requests receipt of written comment as early as possible, preferably on or before December 28, 1998.

Requests for copies of the proposed information collection requests should be addressed to: Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address, *Pat*__Sherrill@ed.gov or faxed to (202) 708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

The Department anticipates that application packages for the State Grants Program, Partnership Grants for Teacher Education Program, and the Teacher Recruitment Program will be available in late January of 1999. It is proposing that the Department receive all applications under each of these programs by April 16, 1999, so that grant awards may be made by mid to late July. However, because of the particular complexity of the Partnership Grants for Teacher Education Program, the Department is considering use of a pre-application procedure for this program. Under this procedure, all applicants first would submit synopses of their proposals. Reviewers would assess the quality of these synopses, and invite applicants whose synopses are found to be of highest quality to submit full applications. Grant awards issues under the Partnership Grants for Teacher Education Program might not be issued until early September, 1999. By law, the Department must award these grants no later than September 30, 1999.

The Department is considering this option out of concern that partnerships choosing to apply for grants under this program (1) may need a significant period of time to plan their working relationships and activities, and (2) should only need to spend the time and resources preparing the full program application if their proposals are deemed to be of sufficiently high quality. In addition, a pre-application process might enable peer reviewers to better focus their attention on those applications that most warrant it.

The Department specifically requests written comment from potential applicants on (1) whether the Department should adopt this proposal for a pre-application procedure even though doing so will delay grant awards and (2), if so, how the Department should address key issues such as: the information the pre-applications should contain; the criteria reviewers should use to select those applicants who they would recommend be invited to submit full applications, the length of the pre-applications; and the length of time that applicants will need to prepare pre-applications and, if requested to do so, the final program applications. In considering these issues, the public may find it useful to review the proposed selection criteria for the Partnership Grants for Teacher Education Program that are contained in the program's application package. In addition, the public should be aware that if a pre-application procedure is used, the Department estimates it may need over three and one half months to process, peer-review, and select applicants for both phases of the application process.

Written comments on these and other matters should be sent as early as possible to the addresses identified at the beginning of this notice.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Louis Venuto at the address specified above.

Dated: December 7, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Applications under the Teacher Quality Enhancement Grants.

Frequency: Annually.

Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 100

Burden Hours: 4,000

Abstract: This application package is essential for Governors, State and Local agencies, and institutions of higher education to apply for new awards under the Teacher Quality Enhancement Grants fiscal year 1999 competition.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–32940 Filed 12–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation Entitled Reservoir Class Field Demonstration Program—Class Revisit

AGENCY: National Petroleum Technology Office (NPTO) through the Federal Energy Technology Center (FETC), DOE.

ACTION: Notice of Issuance of Financial Assistance Solicitation.

SUMMARY: The U. S. Department of Energy's National Petroleum Technology Office (NPTO) in conjunction with the Federal Energy Technology Center (FETC) announces that it intends to issue a competitive Program Opportunity Notice (PON), DE–PS26–99BC15144, and to award financial assistance (Cooperative Agreements) to qualified recipients. Through the issuance of this PON, the DOE is presenting the next round of solicitations which addresses U.S. vulnerability to supply disruptions by expanding the domestic supply of oil production from the domestic resource. Proposals will be subjected to a comparative merit review by DOE technical panel, and awards will be made to a limited number of proposers on the basis of the scientific merit of the proposals, application of relevant program policy factors, and the availability of funds.

DATES: The Program Solicitation is expected to be ready for release on or about December 18, 1998. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Opportunity Notice and must be received by the DOE by April 1, 1999. Prior to submitting your application to the solicitation, check for any changes (i.e. closing date of solicitation) and/or amendments, if any.

FOR FURTHER INFORMATION CONTACT: Mr. Keith R. Miles, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 10940 (MS 921–143), Pittsburgh, PA 15236–0940; (Telephone: 412–892–5984; Facsimile: 412–892–6216; E-Mail: miles@fetc.doe.gov).

ADDRESSES: The solicitation will be available through the Internet at FETC's Home Page (http://www.fetc.doe.gov/business). TELEPHONE REQUESTS WILL NOT BE ACCEPTED FOR ANY

FORMAT VERSION OF THE SOLICITATION.

SUPPLEMENTARY INFORMATION: This solicitation supports two of the 1998 Comprehensive National Energy Strategy (CNES) goals, which are (1) to ensure against energy disruptions and (2) to promote energy production and use in ways that reflect human health and environmental values. The focus is to reduce U. S. vulnerability to supply disruptions by expanding the domestic oil supply. Petroleum reservoirs have been classified based on the geology of the reserve and the environment of deposition. Depositional environments of the fluvial dominated deltaic type (Class I), shallow shelf carbonates (Class II), and slope and basin clastics (Class III), support these goals because they contain 50% of the domestic remaining oil in place. Further background material is given in the DOE Oil and Gas R & D Programs (DOE/FE–0359, March 1997) document. The strategy targets three groups of depositionally similar reservoirs based on the premise that demonstrated methodologies and technologies that overcome specific producibility problems in representative reservoirs have a higher probability of being applicable to other members of that same class than to non-class reservoirs. This solicitation addresses program goals of preserving access to reservoirs with high potential for increased productivity. These goals will be accomplished by conducting technology transfer activities that motivate operators to identify producibility problems and apply underutilized technologies to overcome these problems.

These reservoirs represent the higher priority reservoir classes. An assessment of about 2000 domestic reservoirs in the Total Oil Recovery Information System (TORIS) showed these classes to have a large volume of remaining oil, a large potential for additional recovery using conventional recovery technologies, and a high risk of abandonment of the resource in the next five years.

Advanced recovery technologies represent a significant improvement in process effectiveness (i.e., greater sweep efficiencies, improved economics, or evaluation techniques) or applicability over currently available technologies or represent a new or innovative technology not successfully demonstrated in the field.

Advanced technologies, as defined in this PON, include advanced reservoir characterization techniques, advanced recovery technologies and advanced reservoir management techniques. The understanding of the interaction of the reservoir architecture is essential to these advanced technologies. These technologies should not have been previously addressed in the same region and reservoir class. DOE discourages repeating the same suite of technologies in the same plays as the previous class programs.

Some examples of advanced technologies or some combination of technologies are:

Advanced Reservoir Characterization Technologies or Tools:

- New geophysical imaging or interpretation techniques.
- Three-dimensional simulation.
- Advanced or high resolution 3–D seismic.
- Geochemical techniques.
- Advanced well and tracer tests.
- Advanced logging techniques such as borehole imaging or permeability logging.

Advanced Recovery Technologies:

- Mobility control agents.
- Steam processes.
- Gas processes.
- Horizontal & lateral(s) (radial) wells.
- Miscible solvents.
- Chemical processes.
- In-situ combustion.

Advanced Reservoir Management Techniques

- Reservoir modeling/simulation.
- Fracture stimulation.
- New geostatistical methodologies.
- Novel or innovative recompletions.
- Injection strategies and pressure maintenance.
- Material balance decline curve techniques.

Note: Pure tool development is excluded under this solicitation.

DOE currently has available $8.3 million for this Program Opportunity Notice (PON) and intends to bring total DOE support to $18 million for this solicitation. Projects must include: reservoir characterization (Budget Period 1), demonstration/field activities (Budget Period 2), continued project monitoring activities (Budget Period 3); moreover, technology transfer should be a major component of all Budget Period activities and should aim to motivate operators toward broader application of cost-effective technologies/methodologies. It is anticipated that between 10–20 cost-shared awards, with a *total* project value estimated at $1.5 million to $10.0 million each (i.e., DOE share of project costs estimated at between $500K–$3,000K), will be made under this solicitation. The proposer must cost share at least 55 percent of the total allowable cost of Budget Period 1 for reservoir characterization, at least 65 percent of the total allowable cost of Budget Period 2 for the demonstration phase, and at least 90 percent of the total allowable cost of Budget Period 3 for continued project monitoring activities. Each project is expected to have a period of performance of approximately five (5) to six (6) years.

Issued in Pittsburgh, Pennsylvania on December 2, 1998.

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 98–32994 Filed 12–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice of Restricted Eligibility.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (cooperative agreements) to small independent oil production operators, operating on shore in the lower contiguous 48 states. Small independent oil-producing operators are defined as companies employing less than 50 full time employees; and those having no affiliation with a major oil or gas producer (domestic or foreign). The program seeks solutions to oil production problems. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a limited number of applicants based on a scientific and engineering evaluation of the responses received to determine the relative merit of the approach taken in response to this offering by the DOE, and funding availability.

FOR FURTHER INFORMATION CONTACT: Mary Beth Pearse, U.S. Departement of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsubrgh PA 15236–0940, Telephone: (412) 892–4949, FAX: (412) 892–6216, E-mail: pearse@fetc.doe.gov. The solicitation (available in both Word 97 and Portable Document Format (PDF)) will be released on DOE's FETC World Wide Web Server Internet System (http://www.fetc.doe.gov/business/solicit) on or about December 15, 1998.

SUPPLEMENTAL INFORMATION:

Title of Solicitation: ''Research and Development with Small Independent Oil Operators''.

Objectives: Through Program Solicitation No. DE–PSS26–99FT15146, The Department of Energy seeks applications from small independent oil producing operators for research and development, advocating solutions for production problems experienced by small independent oil producers.

Eligibility: Eligibility for participation in this Program Solicitation is restricted to small independent oil producing operators. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor.

Areas of Interest: The Department is interested in innovative field technologies which increase production, reduce operating costs, reduce environmental concerns, or combinations thereof.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year and the first quarter of fiscal year 2000. Approximately $600,000 is planned for this solicitation. The estimated funding or cost sharing by the DOE is $75,000 per award, or less. Cost sharing by the applicant is to be not less than 50% of the total proposed amount, which may consist of in-kind contributions.

Solicitation Release Date: The Program Solicitation is expected to be ready for release on or about December 15, 1998. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation. To be eligible, the designated DOE office must RECEIVE applications by the closing time and date specified in the Program Solicitation (anticipated to be on or about December 31, 1999, at 5:00 PM Eastern Standard Time).

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 98–32995 Filed 12–10–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Planning Guidance for Contractor Work Force Restructuring

AGENCY: Department of Energy.

ACTION: Notice of final planning guidance.

SUMMARY: The Department of Energy publishes Final Planning Guidance that it has issued to its field organizations, which are responsible for planning and implementing contractor work force restructuring at defense nuclear facilities and other Department of Energy facilities. The Final Planning Guidance supercedes interim guidance published for comment in the **Federal Register** on March 5, 1996.

DATES: The changes made by the Final Planning Guidance will take effect January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Terence L. Freese, U.S. Department of Energy, Office of Worker and Community Transition, WT–1, 1000 Independence Avenue, S.W., Washington, D.C. 20585; phone: 202–586–5907.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Atomic Energy Act of 1954 (AEA), the Department of Energy (DOE) owns defense nuclear facilities in various locations in the United States. These facilities are operated for DOE by management and operating contractors. As a result of the end of the Cold War, many DOE defense nuclear facilities are undergoing work force downsizing and restructuring as the result of changes in the activities at these facilities.

Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, requires DOE to develop a site-specific plan for restructuring the work force at any defense nuclear facility where DOE determines that a change in the work force is necessary. Defense nuclear facilities within the meaning of section 3161 include (1) facilities conducting atomic energy defense activities involving the production or utilization of special nuclear material, (2) nuclear waste storage or disposal facilities, (3) testing and assembly facilities, and (4) atomic weapons research facilities. The actual execution of any work force restructuring plan is subject to the availability of funds for that purpose.

On March 5, 1996, DOE published a notice of Interim Planning Guidance in the **Federal Register** and invited comments from stakeholders and the general public (61 FR 8593). The Interim Planning Guidance set forth procedures and policies for coordinating work force restructuring activities by DOE field organizations, pursuant to section 3161 and the DOE's broad authority under the AEA (42 U.S.C. 161(i)(3) and 2201(p)) to develop generally applicable policies covering all aspects of defense nuclear facilities. The Interim Planning Guidance was preceded by use of preliminary guidance and extensive consultation with various stakeholders, including DOE and DOE contractor employees, representatives of bargaining units of employees, interested Federal, State and local government agencies, educational institutions, and groups in the communities that would be affected by restructuring at DOE defense nuclear facilities.

DOE received written comments covering fifty issues from twelve commenters on the Interim Planning Guidance. These commenters included DOE employees, DOE contractors and contractor unions. DOE also sought comments on the Interim Planning Guidance at a national stakeholder meeting held in Atlanta, Georgia, on March 13–15, 1996. In response to concerns raised with respect to the process for reviewing and approving work force restructuring plans from DOE field organizations and other stakeholders, a team of DOE Headquarters and field organization representatives developed recommendations for streamlining the process for plan review and providing additional flexibility for development of such plans. Comments on subsequent revised drafts of the guidance based on these comments and recommendations were sought at national stakeholder meetings in Oakland, California, on April 9–11, 1997, and Alexandria, Virginia, on June 17–18, 1998.

II. Discussion of Stakeholder Comments and Final Planning Guidance

The Final Planning Guidance is intended to streamline the process for review and approval of work force restructuring plans, and to provide increased flexibility for defense sites to meet the objectives of section 3161 consistent with changing missions, new contract mechanisms and business efficiencies. In addition, this document also reflects revised Congressional direction with respect to funding limitations for enhanced benefits under section 3161. Separate guidance on implementing this Congressional direction was provided to field organizations by the Office of Worker and Community Transition on March 2, 1998.

The Final Planning Guidance calls on each defense nuclear facility to develop a work force restructuring plan that will establish general strategies for work force restructuring as it may occur at a given site. This new emphasis on a general strategy instead of a detailed

blueprint recognizes a shift in the nature of restructuring activities from large episodic reductions primarily driven by changes in the budget to restructuring that occurs on a smaller, but more frequent, scale and is more directly related to project completion, changes in skill mix requirements and improved business efficiency. In such an environment, many stakeholders, including DOE Field Managers and DOE contractors, commented that specific thresholds to trigger separate, detailed plans were unworkable.

Many stakeholders perceived the itemized description of benefits set out for consideration in the Interim Planning Guidance as prescriptive rather than as suggestions for consideration by each facility. In light of Congressional direction limiting the funding for enhanced separation benefits under section 3161 to the Worker and Community Transition appropriation, and recognizing the increasingly varied requirements among facilities slated for early closure, those implementing new contracting mechanisms, and those continuing to utilize traditional management and operating contracts, it seemed more appropriate for DOE to limit discussion in the Final Planning Guidance to only those specific benefits that were prescriptive. Information on best practices, including model legal documentation, in restructuring will be provided through direct consultation between the Office of Worker and Community Transition and stakeholders, as well as through other published sources including the DOE's Annual Report on Contractor Work Force Restructuring, the Office of Worker and Community Transition web page at http://www.wct.doe.gov, and a handbook that the Office of Worker and Community Transition is preparing.

III. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, DOE will submit to Congress a report regarding the issuance of this notice of Final Planning Guidance prior to the effective date. The report will note that the Office of Management and Budget has determined that this notice of Final Planning Guidance does not constitute a ''major rule'' under that Act. 5 U.S.C. 804(2).

IV. Review Under the National Environmental Policy Act

This guidance establishes procedures for work force planning. The planning guidance is intended to increase consistency and streamline reporting throughout the Department of plans for work force restructuring. Implementation of the guidance will not result in environmental impacts. The Department has reviewed this guidance in accordance with its procedures for implementing the National Environmental Policy Act, 10 CFR Part 1021 and has determined that this guidance is covered under the Categorical Exclusions found at paragraph A–13 of Appendix A to Subpart D of those regulations, which applies to administrative, organizational or procedural guidelines. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

Issued in Washington, D.C. on December 2, 1998.

Robert W. DeGrasse, Jr.,

Director, Office of Worker and Community Transition.

Final Planning Guidance for Contractor Work Force Restructuring

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Planning Guidance for Contractor Work Force Restructuring

I. Introduction

The Department of Energy's Office of Worker and Community Transition (the Office) has prepared this planning guidance to assist Department of Energy (DOE or Department) field organizations to plan for, and mitigate the impacts of, changes in the Department's contractor work force.

This guidance supercedes the earlier interim guidance issued by the Office on February 1, 1996, and published in the **Federal Register** on March 5, 1996. This document is a product of the Department's experience over the past two years—an extensive process of employee and public stakeholder involvement in shaping our worker and community transition policies.

This guidance provides common objectives for work force restructuring while emphasizing the importance of a tailored approach at each site to meet these objectives. This revision also addresses: (1) formal comments received in response to the publication of earlier guidance in the **Federal Register**; (2) steps to streamline and make more efficient the process for development, review and approval of work force restructuring actions; and (3) changes in Departmental contracting approaches and development of long-range strategic plans.

Except as otherwise noted, this guidance is not intended to be prescriptive. Cognizant field organizations have primary responsibility for assuring planning and overseeing implementation of work force restructuring. The Department's field organizations are in the best position to consult with affected stakeholders on these plans, to understand the unique needs of work force restructuring at field facilities, and to develop work force restructuring strategies best suited to each individual facility. The Office will develop a Handbook for Contractor Work Force Restructuring that provides information on experiences at DOE sites for consideration by field organizations.

II. Legislative Provisions

Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (the Act) requires the Secretary of Energy to develop a plan for restructuring the work force for a defense nuclear facility when there is a determination that a change in the work force is necessary. The plan is to be developed in consultation with local, state, and national stakeholders, and submitted to the Congress 90 days after notice of a planned work force restructuring has been given to the affected employees and communities.

Section 3161 of the Act provides specific objectives to guide the preparation of the plan to minimize worker and community impacts. Relevant sections of the Act are included as Appendix A. DOE facilities that have been determined to be defense

nuclear facilities for the purposes of section 3161 are listed in Appendix B. For reasons of fairness, the Secretary directed that the objectives set forth in section 3161 should be applied to the extent practicable whenever work force restructuring takes place in the Department.

III. General Guidance

The Office encourages field organizations to utilize the combination of work force restructuring strategies that will most effectively accomplish a site's restructuring objectives. In developing these strategies, field organizations are expected to consider best practices in the public and private sectors. The cognizant field organization should administer work force changes consistent with the DOE Order 350.1 covering Reductions in Contractor Employment or any subsequent applicable DOE Order. A work force restructuring plan developed by the field organization should be consistent with program objectives, budget constraints, contractual provisions, collective-bargaining agreements, and other legal obligations. The plan should be developed in consultation with the stakeholders at the affected facility and other appropriate stakeholders to ensure, among other things, the most effective expenditure of public funds.

IV. Work Force Planning

The primary objective of work force planning and restructuring is to retain employees with the skills, knowledge and abilities necessary to effectively and safely meet assigned and future missions within budget constraints. Restructuring strategies must be closely integrated with planning based on identified work force requirements. Effective work force planning should consider both short-term requirements for immediate tasks, as well as long-term requirements for skills based on missions identified in strategic plans for the site. Improvements in organizational and operational efficiency should also be considered, including changes in internal organizational structure and contracting mechanisms.

V. Contractor Roles and Responsibilities

The Department will of necessity seek the assistance of its contractors in developing work force restructuring plans. Nevertheless, the plans are Department of Energy products. In addition, it is generally the Department's policy to make information available to the public that has bearing on the plans and is available to the operating contractors, unless such information is protected by law or regulation. Contractors will have responsibility for implementing the provisions of the work force restructuring plan subject to oversight from the appropriate DOE field organization.

VI. Developing Work Force Restructuring Plans

A. When Plans Are Needed

In order to provide appropriate long-term planning of site operations, and to allow potentially affected workers to know how their situations may be accommodated, work force restructuring plans should be developed that are not limited to a single episode of restructuring but will apply for any restructuring that may occur at a particular site. This planning differs from past practice where a new plan was developed with each restructuring action over a certain threshold. Plans may identify options that may be utilized in a particular restructuring action, subject to the availability of funds.

The cognizant field organization for a non-defense site should consider whether a work force restructuring plan is appropriate based on the contracting arrangements at the site, the prospect for significant work force change, the potential impact on the community, and the extent to which provision of separation benefits beyond contract requirements would be consistent with best business practices and fair treatment of workers.

B. Amendments to Established Plans

When modifications of established site work force restructuring plans are necessary due to changing circumstances, stakeholder input or implementation experience, proposed changes in the established plan shall be submitted to the Office for expeditious Headquarters review and approval.

VII. Elements of Work Force Restructuring Plans

A. Long-Term Strategic Plan and Work Force Implications

Ongoing plans should identify a site's long-term strategic plan, including anticipated closure and the anticipated work force implications of that plan.

B. Stakeholder Input to Plans

Consultation with local, state, and national stakeholders is an essential element of the work force restructuring process. Special attention should be given to consultation with the existing work force, their representatives, and local communities. Input should be solicited and considered at appropriate points throughout the development of plans for implementing work force restructuring. In order to facilitate participation by stakeholders, the Office has made this Final Planning Guidance available through the **Federal Register** and through electronic means.

C. Work Force Planning

A description of the objectives and processes used to plan for short-and long-term work force requirements should be included in the plan. Plans should incorporate flexible work force planning and retraining to minimize layoffs in the work force.

D. Define Application of the Plan

Each site has a unique mix of contractors and subcontractors performing work for the Department. Work force restructuring plans should identify the conditions under which categories of employees may be eligible for particular benefits.

E. Departmental Policy on Benefits

It is the Department's policy that preference in hiring and displaced worker medical benefits, are to be offered to all eligible separating employees. Appendix C provides guidance that has been developed for implementing preference in hiring. The guidelines for displaced workers medical benefits are set out in DOE Order 350.1 and Department of Energy Acquisition Letter No. 93–4, as modified by memorandum on August 12, and December 2, 1993. These documents are included as Appendix D.

Additional programs that may be provided to affected workers and any applicable eligibility requirements should be fully described in the plan. Plans should clearly state that enhanced benefits are subject to availability of funds from the Worker and Community Transition Appropriation. Plans should set out the considerations that will be used to determine when requests to seek funds to implement enhanced benefits programs will be considered, consistent with Congressional direction. Prior to implementing or announcing any program which anticipates providing enhanced benefits, field organizations shall submit to the Office an estimate of the number of participants and costs associated with a proposed benefit offering.

In implementing the objectives of section 3161 of the Act, the Department recognizes a special responsibility to minimize the impact of work force restructuring on employees who participated in efforts to maintain the Nation's nuclear deterrent during the

Cold War. September 27, 1991, the day President Bush announced the first unilateral reduction of the Nation's nuclear weapons stockpile, has generally been recognized by this Department as the end of the Cold War. In developing a work force restructuring plan, the following are among the potential benefits that may be considered for affected workers.

1. Programs to Minimize Layoffs

After work force planning has identified the classifications of workers at risk, consideration should be given to strategies that minimize involuntary separations while also retaining appropriate job skills. Strategies should be selected based upon prior work force planning and restructuring experience at the site and best practices in the public and private sectors, and may include early retirement programs, voluntary separation incentives, and retraining for new missions, including cleanup.

2. Involuntary Separation

Each affected individual should be provided as much individual notice as practicable of his or her termination. In some cases, a minimum amount of specific notice is required by contract or collective-bargaining agreement. Involuntarily separated employees shall be fully advised of any benefits or services for which they are eligible. Appropriate notification to workers, labor representatives, and local, county and state governments shall be provided in accordance with DOE Order 350.1, or subsequent Order, and the Worker Adjustment and Retraining Notification Act (WARN), if applicable.

3. Programs to Assist Separating Workers

Requests for funding educational, relocation, and outplacement assistance should be considered to minimize the social and economic impact of work force changes, as well as a one-time construction worker benefit.

F. Local Impact Assistance to Communities

The work force restructuring plan should be developed in coordination with, and in support of, the regional development objectives of communities significantly impacted by the Department's downsizing. The local Community Reuse Organization should be contacted in the development of the plan to address anticipated economic and social impacts resulting from the Department's actions.

VIII. Departmental Review and Approval

A. Approval of Plans

By law, the Secretary submits work force restructuring plans subject to the provisions of section 3161 to Congress, and thus, is the official responsible for final approval. In order to reduce the number of involuntary layoffs, and pending Secretarial transmittal of the plan to Congress, enhanced benefits may be provided after receipt of written approval by the Office. The Office will seek concurrence from the affected program office or offices, the Office of General Counsel, and the Office of Congressional Affairs prior to providing such approval. It is the policy of the Department to obtain from employees who separate under voluntary separation programs, including early retirement incentives, a release of claims related to their employment and separation. A sample release is available on the Office's web page at http://www.wct.doe.gov. The cognizant field organization should consult with the Office prior to approving enhanced benefits at non-defense nuclear facilities. Draft plans should be submitted to the Office for Headquarters concurrence prior to their release to stakeholders.

B. Notification and Approval of Plan Implementation

Advance notification of intent to implement work force restructuring actions should be provided as early as possible, to maximize notification to the work force and the community, with an objective of 90 days advance notice to Congress. This reflects the need to be able to respond to changing business requirements and budget uncertainties. Headquarters review of work force restructuring plan implementation will take into consideration the time sensitivity of actions to meet business requirements.

IX. Performance Evaluation

The Office of Worker and Community Transition, in consultation with various stakeholders, has developed a set of performance objectives to determine the effectiveness of work force planning and restructuring activities. Those objectives—which are available upon request to the Office—are used to evaluate the effectiveness of those activities.

Appendix A—Section 3161 and 3163 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484, October 23, 1992)

The Department of Energy is making the text available at *http://www.wct.doe.gov/owct/Documentation/sec.3161.html.*

Appendix B—Listing of Defense Nuclear Facilities

The list below reflects facilities receiving funding for Atomic Energy Defense activities of the Department of Energy, with the exception of activities under Naval Reactor Propulsion. It is recognized that these facilities have varying degrees of defense activities, ranging from a total defense dedication to a small portion of their overall activity. This may cause certain difficulties in implementing the intent of the section 3161 legislation. Regardless, this listing will be used by the Office for possible application of funding received for defense worker assistance and community transition purposes.

Kansas City Plant
Pinellas Plant
Mound Facility
Fernald Environmental Management Project Site
Pantex Plant
Rocky Flats Environmental Technology Site, including the Oxnard Facility
Savannah River Site
Los Alamos National Laboratory
Sandia National Laboratory
Lawrence Livermore National Laboratory
Oak Ridge National Laboratory
Nevada Test Site
Y–12 Plant
East Tennessee Technology Park
Hanford Site
Idaho National Environmental Engineering Laboratory
Waste Isolation Pilot Project
Portsmouth Gaseous Diffusion Plant
Paducah Gaseous Diffusion Plant

Appendix C—Preference in Hiring

Section 3161 provides that, to the extent practicable, terminated employees at a defense nuclear facility should receive preference in filling vacancies in the work force of the Department of Energy and its contractors and subcontractors. The Department has determined that employees must be identified as having helped maintain the Nation's nuclear deterrent in order to qualify for this preference. The preference should be honored by all prime contractors, and subcontractors whose contracts with the Department equal or exceed $500,000 in value.

The Department has established the following criteria for determining eligibility for the hiring preference. The individual must be a former employee who (1) was involuntarily terminated (except if terminated for cause); (2) meets the eligibility standards described below; and (3) is qualified for the job at the time the work is to begin. Where qualifications are approximately equal, eligible individuals will be given preference in hiring. However,

the preference will be administered consistent with applicable law, regulation, or executive order, and collective-bargaining agreements. This preference is not immediately applicable through an outsourcing action or follow-on contract in which the current employees are first offered their same or similar jobs with the replacement contractor in order to avoid a layoff.

An individual's hiring preference continues until termination by the action (or inaction) of that individual. Initially, and on an annual basis thereafter, eligible individuals must certify their desire to retain their hiring preference. Actions that would terminate an individual's hiring preference include: voluntary termination or termination for cause from a position that was obtained through the exercise of the preference, or failure to comply with the annual certification requirement.

Each field organization should develop procedures to ensure that the hiring preference is being honored by all prime contractors and designated subcontractors. Field organization procedures should also describe how the Job Opportunity Bulletin Board System is to be utilized by affected contractors and eligible individuals.

Eligibility Criteria

A. Regular Employees

1. Must have been working at a defense nuclear facility on September 27, 1991;
2. Must have worked full-time (or regular part time) at a facility from that date through the date of the restructuring notification; and
3. Must have been involuntarily separated other than for cause.

B. Intermittent Workers, Including Construction Workers

1. Must have worked at a defense nuclear facility on or before September 27, 1991;
2. Must have worked at a facility within 180 days preceding the work force restructuring notification;
3. Must have worked at a facility a total time, including time worked prior to September 27, 1991, equivalent to an employee having worked full-time from September 27, 1991, to the date of the restructuring notification, or have actually worked the industry standard of full-time from September 27, 1991, through the date of the restructuring notification; and
4. Must have been affected by the announced restructuring within a reasonable period of time (one year is suggested). For an intermittent worker, this includes the interruption of a project before its anticipated completion, or the completion of the assignment or project without prospect for a follow-on assignment at the site where the employee had a reasonable expectation of a follow-on assignment.

Appendix D—Department of Energy Order 350.1

Contractor Human Resource Management Programs, September 30, 1996

Chapter 1—Labor Relations

Chapter 2—Labor Standards

Chapter 3—Reduction in Contractor Employment

The Department of Energy is making the text available at http://www.wct.doe.gov/owct/Documentation/350order.html.

Department of Energy Acquisition Letter No. 93–4

The Department of Energy is making the text available at http://www.wct.doe.gov/owct/Documentation/acq93.html.

[FR Doc. 98–32906 Filed 12–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–180–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1998.

Take notice that on December 2, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of January 1, 1999.

National Fuel states that the purpose of this filing is to (i) revise its storage transfer tariff provisions to allow cross-contract storage balance transfers and to prevent ISS shippers from avoiding injection charges under the ISS Rate Schedule by a transfer of storage balances from a firm storage agreement, (ii) provide for additional notice and a return schedule under the IAS Rate Schedule, (iii) provide for the cash-out of imbalances for inactive in-kind shippers, (iv) exclude automatically balanced EFT receipts from balancing fee and cash-out calculations, and (v) make various corrections.

National Fuel states that it is serving copies of this filing with its firm customers and interested state commissions. National Fuel also states that copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32923 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–90–000]

Tennessee Gas Pipeline Company; Notice of Application To Abandon

December 7, 1998.

Take notice that on November 24, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP99–90–000 pursuant to Section 7(b) of the Natural Gas Act for authority to abandon 7,000 Dth/day of firm transportation service for New England Power Company (NEPCO) under Tennessee's Rate Schedule NET and Part 157 of the Commission's regulations. Tennessee further requests that the Commission grant such abandonment authorization retroactively effective April 1, 1996. Tennessee's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that on April 1, 1996, Tennessee and NEPCO amended the Rate Schedule NET contract to reduce the transportation, quantity from 60,000 Dth/day to 53,000 Dth/day. In addition, Tennessee and NEPCO entered into a new contract which provided that 7,000 Dth/day would be transported pursuant to Tennessee's Rate Schedule NET–284 and Part 284 of the Commission's regulations.

Tennessee explains that 7,000 Dth/day of NEPCO's part 157 service was converted to Part 284 service after posting, from March 14, 1996 through December 31, 1996, on Tennessee's EBB of an offer to waive the deadline for

notice by a Rate Schedule NET shipper of its election to convert, contained in Section 1(b) of Rate Schedule NET–284. Tennessee states that the wavier was made pursuant to Article XXXIII (formerly Article XXXI) of the General Terms and Conditions of Volume No. 1 of Tennessee's FERC gas tariff which provides that Tennessee may waive such provisions without seeking the Commission's approval if the waiver is uniformly applicable to all affected customers. Tennessee further states that all Rate Schedule NET shippers were given the opportunity to elect to convert all or a portion of their NET transportation quantity to service under Rate Schedule NET–284.

On August 21, 1998, Tennessee filed an application in Docket No. CP98–739–000 requesting authorization to abandon 53,000 Dth/day of service to NEPCO under the amended NET contract and to permit USGen New England, Inc. to assume NEPCO's service entitlement pursuant to a new firm transportation agreement under Rate Schedule NET. By letter dated November 6, 1998, in Docket No. CP98–739–000, the Director of the Commission's Office of Pipeline Regulation informed Tennessee that it must file an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon part of NEPCO's Part 157 service earlier converted to Part 284 service.

Any person desiring to be heard or make any protest with reference to said application should on or before December 28, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–32919 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–179–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1998.

Take notice that on December 2, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain new and revised tariff sheets listed on Appendix A attached to the filing. The proposed effective date of such tariff sheets is January 1, 1999.

Transco states that the purpose of this filing is to modify the General Terms and Conditions of Transco's tariff to specify the types of rate discounts that are permissible and, as such, would not constitute a material deviation from the pro forma service agreement. These proposed tariff provisions would be applicable to Transco's Rate Schedules FT, IT, FT–G, FTN, WSS, ESS, and ISS. Transco has made corresponding changes in the provisions of each applicable Rate Schedule to reference the new provisions in Section 40 of the General Terms and Conditions of its tariff.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–32924 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–13–000, et al.]

Upper Peninsula Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 4, 1998.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. EC99–13–000]

Take notice that on November 30, 1998, Upper Peninsula Power Company (UPPCo) tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b, for authority to sell certain transmission facilities, consisting primarily of a tie line between the Presque Isle Power Plant and the City of Marquette, to the Marquette Board of Light and Power.

A copy of this Application was served on the Michigan Public Service Commission.

Comment date: December 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Light Company

[Docket No. EC99–14–000]

Take notice that on November 30, 1998, Central Illinois Light Company (CILCO) filed an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b, to transfer operational control over substantial portions of its transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

CILCO states that this filing is intended to reflect the fact it has joined the Midwest ISO, and to allow for the transfer of control of the identified facilities to the Midwest ISO.

Comment date: December 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Laguna Irrigation District

[Docket No. EL98–46–002]

Take notice that on December 1, 1998, Pacific Gas and Electric Company (PG&E) tendered for filing a form of Interconnection Agreement Between Pacific Gas and Electric Company and Laguna Irrigation District (Agreement), along with a letter explaining the Agreement and other matters. PG&E's filing was made pursuant to a ''Proposed Order Directing Interconnection and Establishing Further Procedures,'' issued in this case on September 16, 1998 (Proposed Order).

Citing ongoing settlement discussions among the parties, PG&E and Laguna also jointly request that the Commission: (1) defer briefing on matters still in dispute, as directed in the Proposed Order; and (2) take no further action in this docket pending the outcome of the settlement discussions.

Copies of PG&E's filing have been served upon Laguna and all other parties to this proceeding.

Comment date: December 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. EL98–62–002]

Take notice that on November 12, 1998, Southern California Edison Company (SCE) submitted a filing in compliance with the Commission's order dated October 28, 1998 in Docket Nos. ER98–2843–004, *et al.*

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER97–4573–001]

Take notice that on December 1, 1998, Florida Power Corporation tendered for filing a compliance filing in the above-captioned proceeding.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Rocky Mountain Reserve Group, Public Service Company of Colorado, Black Hills Corporation, UtiliCorp United Inc.

[Docket No. ER98–498–001; ER98–3347–000; ER98–3351–000; ER98–3358–000]

Take notice that on December 1, 1998, Public Service Company of Colorado (PS Colorado), on behalf of itself and the other two jurisdictional members of the Rocky Mountain Reserve Group (RMRG), namely Black Hills Corporation and UtiliCorp United Inc., filed revised versions of Policies B and C of the RMRG bylaws and policies. PS Colorado states that the purpose of the revisions is to reflect the conditions of the Commission's August 3, 1998, order in this docket conditionally approving the RMRG by-laws and policies.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. USGen New England, Inc.

[Docket No. ER99–776–000]

Take notice that on November 25, 1998, USGen New England, Inc. tendered for filing its quarterly report regarding transactions entered into pursuant to the tariffs identified in the Commission's February 25, 1998 order in Docket No. ER98–6–000.

Comment date: December 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Light Company

[Docket No. ER99–777–000]

Take notice that on December 1, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Strategic Energy Limited.

CILCO requested an effective date of November 20, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER99–778–000]

Take notice that on December 1, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and three service agreements for three new customers, Amoco Energy Trading Corporation; Madison Gas & Electric Company and Strategic Energy Limited.

CILCO requested an effective date of November 20, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER99–779–000]

Take notice that on December 1, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 30, 1998, Pepco Services, Inc., d/b/a Power Choice under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Pepco Services, Inc., d/b/a Power Choice as a customer under the Tariff.

DLC requests an effective date of November 30, 1998, for the Service Agreement.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER99–780–000]

Take notice that on December 1, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Kansas City Power & Light Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–781–000]

Take notice that on December 1, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed an Amendment No. 8, to the APS Power Agreement with a requested effective date of January 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER99–782–000]

Take notice that on December 1, 1998, Tampa Electric Company (Tampa Electric), tendered for filing a letter agreement that amends an existing letter of commitment providing for the sale of capacity and energy to the Utilities Commission, City of New Smyrna Beach (New Smyrna).

Tampa Electric proposes that the letter agreement be made effective on March 1, 1999.

Copies of the filing have been served on New Smyrna and the Florida Public Service Commission.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Southwest Power Pool

[Docket No. ER99–783–000]

Take notice that on December 1, 1998, Southwest Power Pool (SPP), as agent for its participating member public utilities, and on behalf of all its members, tendered for filing a revised Regional Open Access Transmission Tariff (Tariff), to be effective on April 1, 1999.

SPP states that it files the revised Tariff to add long-term firm point-to-point transmission service as a service under the Tariff and to make a few other changes.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER99–784–000]

Take notice that on December 1, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Tractebel Energy Marketing, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 30, 1998.

Copies of this filing were served upon Customer.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–785–000]

Take notice that on December 1, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with New Energy Ventures, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 30, 1998.

Copies of this filing were served upon Customer.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Citizens Utilities Company

[Docket No. ES99–15–000]

Take notice that on December 3, 1998, Citizens Utilities Company (Applicant), tendered for filing an application in the above-referenced docket with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act, requesting authorization for the issuance by Applicant of shares of Common Stock proposed to be issued on or before January 18, 1999 as interest payments on outstanding debentures for a two-year period (which will require up to $21,175,605) or such longer time as the Commission deems appropriate.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32918 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention/ Declaratory Order

December 7, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Declaratory Order.

b. *Project No.:* DI99–1–000 (P–1952).

c. *Date Filed:* November 3, 1998.

d. *Applicant:* Maverick County Water Control And Improvement District No. 1.

e. *Name of Project:* Maverick County Project.

f. *Location:* On the Rio Grande River in Maverick and Kinney Counties, Texas.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. *Applicant Contact:* Jim Harbison, Interim General Manager, Maverick County Water Control And Improvement District No. 1, 2252 East Garrison Street, Eagle Pass, Texas 78852, (830) 773–5129.

i. *FERC Contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* January 15, 1999.

k. *Description of Project:* The existing project consists of: (1) A diversion dam, 11.5 feet high, 440 feet long; (2) an intake canal, with a 1,500 cfs capacity; (3) a 32-mile long main canal; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or waterpower from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* This project diverts water for hydroelectric and irrigation purposes.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. 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.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. 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.

David P. Boergers,

Secretary.

[FR Doc. 98–32920 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

December 7, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Amendment of license.

b. *Project No*: 2530–021.

c. *Dated Filed*: September 14, 1998.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project*: Hiram.

f. *Location*: On the Saco River, in Cumberland and Oxford Counties, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 792(a)–825(r).

h. *Applicant Contact*: F. Allen Wiley, Managing Director of Generation, Central Maine Power Company, 41 Anthony Avenue, Augusta, ME 04330, Tel: (207) 621–4412.

i. *FERC Contact*: John K. Novak, (202) 219–2828.

j. *Comment date*: January 22, 1999.

k. *Description of Amendment*: Licensee is requesting an amendment to Article 35 of the existing license to incorporate minimum flow requirements of the Instream Flow Agreement for Hydroelectric Projects on the Saco River dated April 30, 1997, as it pertains to the Hiram Project. For the period from November 16 through September 30, a minimum flow of 300 cubic feet per second (cfs) would be released from the project, with reservoir drawdown limited to 2 feet or less from full pond elevation during normal operation or from the spillway crest when the flashboards are down. From October 1 through November 15, the project would operate run-of-river, with reservoir drawdown limited to 1 foot or less from full pond elevation or from the spillway crest when the flashboards are down. The timing of the 6-week fall flow period would be determined as further described in the agreement. Run-of-river operation is defined as outflow equal to inflow, with pond elevation limited to 1 foot or less during normal operation.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. 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.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. 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 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.

David P. Boergers,

Secretary.

[FR Doc. 98–32921 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Comments

December 7, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11622–000.

c. *Date filed:* October 26, 1998.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* White Tank Mountain.

f. *Location:* Beardsley Canal, in Maricopa County, Arizona. Would Utilize Bureau of Land Management lands in the White Tank Mountain Regional Park.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank L. Mazzone, President, Arizona Independent Power, Inc., 746 Fifth Street East, Sonoma, CA 95476, (707) 996–2573.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell, E-mail address, robert.bell@ferc.fed.us, or telephone 202–219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors 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 intervenor 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.

k. *Description of Project:* The proposed project would consist of: (1) a proposed 250-foot-high, 1,300-foot-long upper reservoir dam; (2) a proposed reservoir having a surface area of 270 acres, with a storage capacity of 30,000 acre-feet, and normal water surface elevation of 2,480 feet mean sea level; (3) a proposed 250-foot-high, 2,500-foot-long lower reservoir dam; (4) a proposed reservoir having a surface area of 240 acres, with a storage capacity of 36,000 acre-feet; (5) proposed underground penstocks; (6) a proposed powerhouse containing 5 generating units having a total installed capacity of 1,250 megawatts; (7) two 40-mile-long, 500-kilovolt transmission lines; and (8) appurtenant facilities. The lower reservoir would be filled by running a pipeline from Beardsley Canal.

The project would have an annual generation of 1,682 GWh and would be sold to a local utility.

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, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. 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.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional coy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. 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.

David P. Boergers,

Secretary.

[FR Doc. 98–32922 Filed 12–10–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–7]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed November 30, 1998

Through December 04, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980488, FINAL SUPPLEMENT, EPA, LA, Atchafalaya River Bar Channel Ocean Dredged Material Disposal Site Designation, Updated Information, St. Mary Parish, LA , Due: January 11, 1999, Contact: Joe Swick (214) 665–7456

EIS No. 980489, DRAFT EIS, IBR, CA, Groundwater Replenishment System, Implementation to Repurifying Water from Orange County Water District (OCWD) Orange County Sanitation District (OCSD), Funding and COE Section 404 Permit, Orange County, CA, Due: February 01, 1999, Contact: Del Kidd (702) 293–8698

EIS No. 980490, FINAL EIS, TVA, TN, GA, MS, VA, AL, KY, NC, Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley, Mainstream Tennessee River and Tributary Reservoirs in AL, KY, NC, TN, GA, MS and VA, Due: January 11, 1999, Contact: Harold M. Draper (423) 632–6889

EIS No. 980491, FINAL EIS, STA, NM, TX, Programmatic EIS—International Bridge Crossing Project, Construction and Operation, Along the United States-Mexico Border from EL Paso to Brownsville, TX, Presidential Permit, NM and TX, Due: January 11, 1999, Contact: Eric Verwers (817) 978–0202.

EIS No. 980492, FINAL SUPPLEMENT, JUS, CA, Service Processing Center (SPC) for Detainees, Construction and Operation, Possible Sites, Stockton and Tracy Sites, San Joaquin Counties, CA, Due: January 11, 1999, Contact: William A. Kopitz (202) 307–1877

EIS No. 980493, DRAFT EIS, AFS, MT, Swamp Timber Sales Project, Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT, Due: January 25, 1999, Contact: Robert G. Carlin (406) 882–4451.

EIS No. 980494, FINAL EIS, COE, MN, WI, Duluth-Superior Harbor Phase II, Dredge Material Management Plan, Cities of Duluth, St. Louis County, MN and Douglas County, WI, January 11, 1999, Contact: Mr. Terry A. Long (313) 226–6758.

EIS No. 980495, DRAFT EIS, FHW, IN, IN–641 Terre Haute Bypass, Improve access between US 41 South to I–70 East of Terre Haute, Funding and COE Section 404 Permit, Vigo County, IN, Due: March 01, 1999, Contact: Douglas N. Head (317) 226–7487.

EIS No. 980496, DRAFT EIS, NPS, DC, The White House and President's Park, Comprehensive Design Plan, Implementation of a Framework for Future Management, Washington, D.C., Due: March 11, 1999, Contact: James I. McDaniel (202) 619–6344.

EIS No. 980497, DRAFT EIS, FTA, WA, Central Link Light Rail Transit Project, (Sound Transit), Construct and Operate an Electric Rail Transit System, Funding and COE Section 10 and 404 Permit, In the Cities of Seattle, Sea Tac and Tukwila, King County, WA, Due: February 05, 1998, Contact: Helen Knoll (206) 220–4464.

EIS No. 980498, DRAFT EIS, AFS, UT, Brighton Ski Resort Master Development Plan Updated, Implementation, Wasatch-Cache National Forest, Salt Lake City, UT, Due: January 26, 1999, Contact: Steve Scheid (801) 943–9483.

Amended Notices

EIS No. 980396, DRAFT EIS, COE, AL, GA, FL, Apalachicola-Chattahochee-Flint (AFC) River Basin Water Allocation, Allocation Formula Approval, AL, FL and GA, Due: February 26, 1999, Contact: Joanne Brandt (334) 690–3260. Published FR 10–09–98—Review Period extended.

EIS No. 980401, DRAFT EIS, COE, AL, GA, Alabama-Coosa-Tallapoosa (ACT) River Basin Compact, Water Allocation, several counties, AL and GA, Due: February 26, 1999, Contact: Michael L. Eubank (334) 694–3861. Published FR 10–09–98 Review Period Extended.

EIS No. 980435, DRAFT EIS, USA, GA, U.S.

Army/Fort Benning and The Consolidated Government of Columbus Proposed Land Exchange, Muscogee and Chattahoochee Counties, GA, Due: December 14, 1998, Contact: John Brent (706) 545–4766. Published FR–10–30–98 EIS Status. Correction. Changed from Preliminary DEIS to DEIS.

EIS No. 980453, DRAFT EIS, NPS, TX, Lyndon B. Johnson National Historical Park, Package 227, General Management Plan, Implementation, Blanco and Gillespie Counties, TX, Due: December 28, 1998, Contact: Leslie Starhart (830) 868–7128 ext. 226. Published FR 11–13–98 Correction to Telephone Number.

EIS No. 980460, DRAFT EIS, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helene National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT, Due: February 01, 1999, Contact: Dave Turner (406) 449–5490.

Published FR–11–13–98—Review Period Extended.

Dated: December 8, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–33004 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 23, 1998 through November 27, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7153. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–COE–G39031–AR Rating EC2, Grand Prairie Area Demonstration Project, Implementation, Water Conservation, Groundwater Management and Irrigation Water Supply, Prairie, Arkansas, Monroe and Lonoke Counties, AR.

Summary: EPA expressed environmental concerns regarding water quality, wetlands, environmental justice, land use, noise, visual and asethetic impact, and historic preservation.

ERP No. D–COE–K39052–CA Rating LO, Hamilton Wetland Restoration Project, Tidal Salt Marsh Habitat, Alameda County, CA.

Summary: EPA expressed a lack of objections with the DEIS and the proposed wetland restoration project.

ERP No. D–IBR–K39048–CA Rating EC2, Truckee River Operating Agreement (TROA, Modify Operation and Selected Non-Federal Reservoirs, Implementation, Truckee River Basin, EL Dorado, Nevada, Placer and Sierra Counties, CA and Douglas, Lyon, Storey and Washoe Counties, NV.

Summary: EPA expressed environmnetal concern that the proposed agreement does not significantly improve Lahontan cutthroat trout (LCT) habitat and recommended that the negotiating parties take this opportunity to better improve LCT habitat. EPA also requested additional information in the

EIS regarding water quality, water quantity and conservation, biological resources, groundwater effects, air quality, and population growth.

ERP No. D–IBR–K39050–CA Rating LO, Programmatic—CALFED Bay-Delta Program, Long-Term Comprehensive Plan to Restore Ecosystem Health and Improve Water Management, Implementation, San Francisco Bay—Sacramento/San Joaquin River Bay-Delta, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. DS–AFS–K65273–AZ Rating LO, Grand Canyon/Tusayan Growth Area Improvements, Updated Information on three New Alternatives, General Management Plan (GMP), Special-Use-Permit, Land Exchange Options, Approval and Licenses Issuance, Coconino County, AZ.

Summary: EPA expressed lack of objections and that the final EIS examine a mix of water supply sources which would limit reliance and dependence on any one water source and minimize adverse effects to the scarce and susceptible water supply sources.

Final EISs

ERP No. F–COE–K36108–CA, Santa Rosa Subregional Long-Term Wastewater Project, Implementation, Reclaimed Water Disposal from the Laguna Wastewater Treatment Plant, COE Section 10 and 404 Permits, Sonoma County, CA.

Summary: EPA recommended support for the Santa Rosa City Council's preferred alternative, Modified Geyers Recharge, because it concentrates on maximizing reuse of reclaimed water while minimizing adverse effects on wetlands, sensitive habitats, water quality, drinking water wells, air quality, and existing resource such as aggregate material. EPA reiterated concerns with the West County Reclamation, South County Reclamation, and Discharge alternatives due to potential adverse impacts to surface and groundwater quality and potential conversion of sensitive wetland habitats. EPA urged continued aggressive efforts toward maximum reduction of effluent volume and maximum reuse of treated water.

ERP No. F–COE–K36116–CA, San Pedro Creek Section 205 Flood Control Project, Construction, Flood Protection, COE Section 10 and 404 Permits and Permits Approval, San Mateo County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K36123–CA, South Sacramento County Streams Investigation, Proposed to Increase Flood Protection, Non-Federal Sponsor, Sacramento Waste Water Treatment Plant and along portions of Morrison, Elder, Unionhouse and Florin Creeks, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K36124–CA, Yuba River Basin Investigation Study, Flood Protection, Also Portions of the Feather River Basin below Oroville Dam, City of Maryville Yuba County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K36125–CA, Hansen Dam Water Conservation and Supply Study, Flood Protection, Implementation, Los Angeles County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–IBR–K34010–AZ, Tucson Aqueduct System Reliability Investigation (TASRI), Central Arizona Project, Surface Storage Reservoir Construction, COE Section 404 Permit, Gila River, City of Tucson, Pima County, AZ.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F1–COE–K35012–CA, Sacramento River Bank Protection Project, Implementation of Streambank Protection for the Lower American River between RM–0 and 13.7, Updated Information, City of Sacramento, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: December 8, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–33005 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6201–6]

Notice of Stakeholder Meetings on the Implementation of the Interim Enhanced Surface Water Treatment Rule and the Stage I Disinfectants/Disinfection Byproducts Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of stakeholder meetings.

SUMMARY: The Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage I Disinfectants/Disinfection Byproducts Rule (Stage I DBPR), were signed by the EPA Administrator on November 30, 1998, as the first of a series of rules referred to as the ''Microbial-Disinfectants/Disinfection Byproducts Rule Cluster.'' These two new rules are intended to increase control of microbial pathogens while simultaneously broadening regulatory coverage for, and minimizing the public health risks from, disinfectants and disinfection byproducts. At this time, the EPA would like to obtain stakeholder comments on the implementation of these rules and will hold two public meetings to solicit comments and suggestions from parties who will be affected by or are otherwise interested in the implementation of the IESWTR and the Stage I DBPR. To facilitate participation by interested stakeholders, meetings will be held in Denver, Colorado, on January 13, 1999, and in Washington, D.C., on January 22, 1999. Conference call-in lines will be available to be reserved by interested parties who are unable to attend in person. The meetings will begin at 9:00 am local time with an hour for public comment following the morning presentation on the IESWTR. A presentation on the Stage I DBPR will follow the IESWTR public comment period. Another public comment period will begin immediately following the Stage I DBPR presentation and will close when all public comments have been received. EPA will consider the comments and views expressed at the meetings in the implementation of these rules. EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meetings regarding the implementation of the IESWTR and the Stage I DBPR will be held as follows:

(1) In Denver, Colorado, on Wednesday, January 13, 1999, at 9:00 am MT until all public comments have been received.

(2) In Washington, DC, on Friday, January 22, 1999, at 9:00 am ET until all public comments have been received.

ADDRESSES: The January 13, 1999 stakeholder meeting will be held at the Loews Giorgio Hotel (1–800–243–1166 or 303–782–9300), 4150 E Mississippi Avenue, Denver, Colorado. The January 22, 1999 stakeholder meeting will be held at the Renaissance Washington Plaza Hotel (202–898–9000), 999 9th Street, NW, Washington, DC.

To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800-426–4791, or Jennifer Melch of EPA's Office of Ground Water and Drinking Water at (202) 260–7035. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines are limited and will be allocated on the basis of first-reserved, first-served.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on activities related to the IESWTR and the Stage I DBPR, contact: Jennifer Melch, U.S. EPA at (202) 260–7035 or e-mail at melch.jennifer@epamail.epa.gov.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–32988 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6201–5]

1999 National Resource Conservation and Recovery Act Program Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public invitation to Plenary Sessions of National Meeting.

SUMMARY: Notice is hereby given of public invitation to the plenary sessions of the forthcoming regular meeting of the National Resource Conservation and Recovery Act (RCRA) Program, ''RCRA 99—Partnerships for a Cleaner Environment.'' This meeting brings together representatives from the U.S. Environmental Protection Agency (EPA), States and Tribes involved in the RCRA program. It promotes new EPA Headquarters initiatives, and fosters discussion and education concerning Regional and State issues.

DATES: The plenary sessions will be held in Washington, DC, on January 12, 1999, from 9:00 a.m. until noon and on January 14, 1999, from 8:00 a.m. to 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, (703–308–8761), or Timothy Elder, (703–308–6081), Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460.

STATUS: The plenary sessions of this meeting will be open to the public. At the plenary sessions Federal, State, and Tribal Officials will discuss current topics related to the RCRA program and latest agency initiatives. The rest of the meeting will be closed to the public.

SUPPLEMENTARY INFORMATION: Pre-registration is required to attend the plenary sessions. There will be no registration at the door on the day of the sessions. Seating is limited, so early pre-registration is recommended. EPA, State, and Tribal representatives who have pre-registered to attend the 1999 National RCRA Program Meeting do not need to register for the plenary sessions. To pre-register, contact HAZMED at, (301) 577–9700 ext. 245, Hazmed, 10001 Derekwood Lane Suite 115, Lanham, MD 20706. Information on the location of the plenary session will be provided upon pre-registration.

Dated: December 1, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–32992 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6195–5]

Salt River Pima-Maricopa Indian Community; Final Approval of an Alternative Liner System Design and Use of Alternative Daily Cover Material for the Salt River Municipal Solid Waste Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency approves two requests by the Salt River Pima-Maricopa Indian Community (''Community'') for approval to use flexible standards at the Salt River Municipal Solid Waste Landfill. The first approval allows the Community to install a geosynthetic clay liner in place of a composite liner. The second allows the Community to use a tarp system as cover in place of earthen material.

Subtitle D of the Resource Conservation and Recovery Act (RCRA), requires EPA to establish minimum federal criteria to ensure that municipal solid waste landfills are designed and operated in a manner that protects human health and the environment. Generally, these criteria are technical standards that are ''self-implementing,'' meaning that the criteria are in effect as soon as they are published. For many of these criteria, the regulations also establish a flexible performance-based standard as an alternative to the self-implementing regulations. Without EPA's approval, the flexible standards could not be used at the Salt River Municipal Solid Waste Landfill. EPA's approvals will allow the Salt River Municipal Solid Waste Landfill to install a geosynthetic clay liner and to use a tarp system as cover at the Landfill. This approval applies solely to the Salt River Municipal Solid Waste Landfill located on Salt River Pima-Maricopa Indian Reservation in Arizona.

DATES: Effective December 11, 1998.

FOR FURTHER INFORMATION CONTACT: US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Susanna Trujillo, Mail Code WST–7 telephone (415) 744–2099.

SUPPLEMENTARY INFORMATION:

A. Regulatory Background

Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6941–6949a, governs the disposal of nonhazardous solid waste and of small-quantity hazardous waste not regulated under Subtitle C of RCRA. Subtitle D prohibits ''open dumping'' and EPA established criteria for determining which solid waste facilities should be classified as ''municipal solid waste landfills'' and which as ''open dumps.'' Pursuant to HSWA, EPA added revised criteria to establish minimum federal standards to ensure that municipal solid waste landfills (MSWLF) are designed and operated in a manner that protects human health and the environment. The Federal revised criteria are codified at 40 CFR part 258. RCRA also requires states to implement permit programs to ensure that MSWLF facilities comply with the revised criteria (40 U.S.C. 6945(c)). EPA determines whether each state has developed an adequate solid waste permitting program and ''approves'' those states. In states that do not develop an adequate program, the regulations set forth in part 258 are self-implementing and apply to owners and

operators of MSWLF units without additional EPA approval or review (40 CFR 258.1).

For many of the criteria, part 258 establishes a flexible performance standard as an alternative to the self-implementing regulation. The flexibility provided in the MSWLF criteria allows for the consideration of site-specific conditions in designing and operating a MSWLF at the lowest cost possible while ensuring protection of human health and the environment. The flexible standard is not self-implementing, and use of the alternative standard is generally approved by the Director of an approved state. Part 258 does not currently provide owners and operators of MSWLF units located in Indian Country with a mechanism for obtaining approval of the flexible performance standards.

Indian tribes are defined as ''municipalities'' under RCRA section 1004(13), 42 U.S.C. 6903. As a ''municipality,'' the tribe would seek approval of design flexibility from the appropriate approved state. However, states are generally precluded from enforcing their civil regulatory programs in Indian Country absent an explicit Congressional authorization. *California* v. *Cabazon Band of Mission Indians,* 480 US 202 (1987). Including tribes as part of section 1004(13) was a definitional expedient, to avoid adding the phrase ''and Indian tribes or tribal organizations or Alaska Native villages or organizations'' wherever the term ''municipality'' appeared. By this definition, Congress did not intend to change the sovereign status of tribes for purposes of RCRA. In *Backcountry Against Dumps* v. *EPA,* 100 F.3d 147, 151 (D.C. Cir. 1996), the District of Columbia Circuit Court determined that the inclusion of Indian Tribes as ''municipalities'' ''does not strip the tribe of its sovereign authority to govern its own affairs * * * [the tribe has the authority] to create and enforce its own solid waste management plan.'' RCRA does not grant this kind of regulatory authority to municipalities.

Owners and operators of MSWLF units in Indian Country are not subject to state authority and cannot obtain approval from the state for the performance standards included in part 258. Yet, the Federal revised criteria are silent as to the process by which MSWLF units in Indian Country can apply for the alternate standards.

This site-specific provision allows the Salt River Pima-Maricopa Indian Community (''Community''), an owner/operator of an MSWLF in Indian Country, the same flexibility as owners and operators of MSWLF units in approved states. EPA derives its authority to promulgate this document from sections 4004, 4005, and 4010 of RCRA, 42 U.S.C. 6944, 6945, and 6949a. These sections provide the basis on which EPA developed the criteria distinguishing open dumps from landfills and the revised criteria in part 258. Nothing in these provisions limits EPA's ability to issue site-specific criteria. In this instance, where the existing part 258 regulations do not contain a process for approval of the flexible performance standards for MSWLF units in Indian Country, it is appropriate to issue a site-specific provision to supplement Part 258 and address this unique situation. The US District Court in the District of South Dakota reviewed this issue directly and upheld EPA's authority to issue a site-specific provision to provide design flexibility under subtitle D of RCRA. (*Yankton Sioux Tribe* v. *US EPA*), 950 F. Supp. 1471 (D.S.D. 1996). The *Yankton* court determined that EPA appropriately created an ''alternative mechanism'' to provide flexibility to the relevant MSWLF in Indian Country. The US Court of Appeals for the D.C. Circuit also supports EPA's authority to issue such a site-specific provision under RCRA Subtitle D. (See *Backcountry Against Dumps* v. *EPA,* 100 F.3d at 152 (1996)). For a description of the suggested process used to apply for and approve flexibility requests in Indian Country, see EPA draft guidance entitled ''Submitting Site-Specific Rulemaking Requests for 40 CFR part 258.''

Prior to making this Final Determination, EPA provided opportunity for public participation through a public comment period and a public hearing. A document was published on May 8, 1998, (amended on May 27, 1998) describing EPA's tentative determination to approve the two flexibility requests and announcing the public comment period and public hearing. Notice was also published in two newspapers of general circulation as well as the tribal newspaper. In addition, EPA sent information on the tentative determination and public participation opportunities directly to interested parties. August 5, 1998, was the final date to submit public comments. EPA has not received either written or verbal comments on the Tentative Determinations.

B. EPA's Final Determinations

1. Alternative Liner System Design (40 CFR 258.40)

The Salt River Landfill (Landfill) is located on 200 acres of property east of Phoenix, Arizona. It is operated by the Salt River Pima-Maricopa Indian Community and serves as a sanitary landfill for the tri-city area of Mesa, Tempe, and Scottsdale, Arizona. Landfill operations began in October 1993, and are expected to continue until at least the year 2003. The landfill currently consists of three lined cells and three undeveloped cells. The three operational cells are lined with the composite liner prescribed by 40 CFR 258.40(b). On May 23, 1997, the Community submitted an application to the EPA requesting approval to use a geosynthetic clay liner (GCL) in place of a composite liner for the undeveloped cells of the Landfill.

The regulations at 40 CFR 258.40(b) require that the composite liner have the following components: (1) A two-foot thick soil layer with a maximum permeability of 1×10^{-7} cm/sec; (2) a geomembrane layer with a minimum thickness of 60-mil if constructed out of high density polyethylene, or 30-mil for other materials; and (3) ensure protection of ground water.

The federal revised criteria do not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in § 258.40 as a guideline for analyzing the Community's application.

Generally, §§ 258.40(a)(1), (c), and (d) require the following:

- The alternative liner design ensures that constituent concentrations of the chemicals listed in Table 1 of the criteria will not be exceeded in the uppermost aquifer at the relevant point of compliance; and
- The alternative liner design addresses the hydrogeologic characteristics of the landfill site, climate, volume, and physical and chemical characteristics of the leachate, and models potential contaminant migration.

The reinforced GCL to be used at the Landfill consists of a layer of pure sodium bentonite fixed between two layers of geotextiles. The GCL is used to replace the two-foot thick soil layer required by 40 CFR 258.40(b) and forms a composite liner using a geomembrane. A geomembrane is a polymeric material that cannot be penetrated by liquid as long as it maintains its integrity.The bentonite used in the GCL is an extremely absorbent, granular clay formed from volcanic ash. It rapidly hydrates when exposed to liquid, such as water or leachate. As the bentonite hydrates, it swells, providing a strong barrier layer. Hydration of the bentonite is critical. Laboratory tests demonstrate that dry, unconfined bentonite's

permeability is only approximately 1×10^{-6} cm/sec. When saturated, the permeability of the GCL used at the Landfill is less than 5×10^{-9}. The GCL approved for the Landfill is therefore less permeable than the prescriptive liner, provided that the bentonite is well hydrated when it is installed. While the GCL is thinner than a compacted soil liner at this level of permeability, the alternative liner design ensures that the performance standards are met. In addition to its low permeability, the GCL has many advantages over the composite liner. The GCL is rolled out like carpet and is quick and easy to install. It is cost effective, particularly in areas where clay is not available. Because bentonite swells readily when hydrated, it can repair itself if rips or holes occur. It is also more resistant to cracking than compacted clay. The GCL is thin, yet strong. It allows the Landfill to maximize its capacity while continuing to protect ground water, but can also absorb a large amount of stress without losing structural integrity.

The Salt River Pima-Maricopa Indian Community submitted site-specific demonstration to the US EPA Solid Waste Program, showing that its alternative liner design proposal meets the environmental performance criteria set forth in 40 CFR part 258. 40. EPA staff reviewed the Community's site-specific demonstration to determine if the proposed alternative design meets the environmental performance requirements and does not allow for degredation of the groundwater. EPA's review determined that concentration values for parameters listed in Table 1 of 40 CFR 258.40(a)(1) will not be exceeded in the uppermost aquifer.

EPA's review also determined that groundwater models used in the evaluation were appropriate and appropriately used and that results of the computer modelling presented in the evaluation likely provide a reasonable worst case estimate of the concentration of chemicals in the groundwater.

EPA approves use of the GCL at the Landfill. Based on the information submitted by the Community and as discussed above, EPA determined that the alternative liner meets or exceeds the performance standards set forth in § 258.40(a)(1), (c), and (d).

2. Alternative Daily Cover Material (40 CFR 258.21)

The federal revised criteria requires that MSWLF units must use six inches of earthen material to cover disposed solid waste each day. Section 258.21(b) provides flexibility by allowing use of alternative materials and an alternative thickness if control of disease carrying insects and animals, fires, odours, blowing litter, and scavenging is provided without presenting a threat to human health and the environment.

On June 2, 1997, the Community submitted an application to the EPA requesting approval to use any alternative daily cover material that Arizona has approved for that state. These materials consist of tarps, foams, chipped green waste, drinking water treatment residues, and chipped tires. The Community subsequently restricted their current application to the use of tarps as an alternative daily cover material.

The federal revised criteria does not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in § 258.21 as a guideline for analyzing the Community's application. The Community proposes to use the Tarpomatic tarping operation, consisting of a polypropylene tarp rolled over the landfill material at the end of each business day and retrieved at the beginning of the next business day. The Tarpomatic is a polypropylene tarp that is automatically deployed and retrieved by machine. It is fast, easy, and eliminates direct employee contact with waste. Field tests and industry usage show that tarps meet the requirements of § 258.21. In addition, use of the tarping system rather than earthen material extends the life of the landfill, reduces labor in covering the waste, and saves landfill space. However, tarps cannot be used during wind storms as the winds will pick up the tarp and the landfill will not remain covered.

EPA approves use of a tarp at the Landfill. Based on the information submitted by the Community and as discussed above, the proposed alternative daily cover meets or exceeds the performance standards set forth in § 258.21(b).

Authority: This notice is issued under the authority of sections 2002, 4004, 4005, and 4010 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912, 6944, 6945, and 6949a. The Regional Administrator is making this decision in accordance with EPA Delegations Manual No. 8–47 (October 8, 1993).

EPA approves the applications by the Salt River Pima-Maricopa Indian Community to use an alternative liner system design and an alternative daily cover material for the Salt River Municipal Solid Waste Landfill.

Dated: November 20, 1998.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 98–32579 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–844; FRL 6043–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–844, must be received on or before January 11, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Daniel Kenny	Rm. 227, CM #2, 703–305–7546; e-mail: kenny.daniel@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA
Cynthia Giles-Parker	Rm. 247, CM #2, 703–305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number PF–844 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number PF–844 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 25, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim with minor, non-substantive editorial changes. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Industry Task Force II

PP 4E3060

EPA has received a pesticide petition (PP) 4E3060 from Industry Task Force II, on 2,4-D Research Data, McKenna & Cuneo, 1900 K St., NW., Washington, DC 20006–1108, proposing pursuant to section 408(d) of the (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending for 3 years, until December 31, 2001, the existing time-limited tolerance for residues of 2,4-dichlorophenoxyacetic acid (2,4-D) in or on the raw agricultural commodity soybeans at 0.02 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant and animal metabolism*. The nature of the residue in plants is adequately understood. Acceptable wheat, lemon, and potato metabolism studies have been submitted. The nature of the residue in animals is adequately understood based upon acceptable ruminant and poultry metabolism studies submitted.

2. *Analytical method*. The residue field tests on soybeans used as gas chromatography (GC) method with electron capture detection (ECD), ENCAS Method ENC–2/93. This GC/ECD method is adequate for determining residues in or on soybeans with a limit of quantitation (LOQ) of 0.01 ppm.

3. *Magnitude of residues*. In 27 tests on soybeans conducted in Arkansas, Illinois, Louisiana, Missouri, and Tennessee, residues of 2,4-D were non-detectable (< 0.01 ppm) in/on all samples of forage and seeds from soybeans treated with a preplant application of 2,4-D (acid, ester, or amine) at 0.5, 1.25, and 2.75 lb active ingredient per acre at lx, 2.5x, and 5.5x rates. Residues of 2,4-D were also non-detectable (< 0.01 ppm) in/on 21 of 27 hay samples from the same tests. Hay samples with detectable residues of 0.01–0.04 ppm only came from 2.5x and 5.5x applications of the 2,4-D 2-ethylhexyl ester (2-EHE). Since the label restriction against feeding/grazing, soybean forage and hay is not proposed for deletion at this time, no tolerances are necessary for these feed items. Since data from the 5.5x application demonstrate that 2,4-D residues on soybean seeds are non-detectable or (<0.05 ppm), a soybean processing study is not required. Based on the residue data for seeds from soybeans, a tolerance of 0.02 ppm in or on the raw agricultural commodity soybeans is more appropriate than the current time-limited tolerance of 0.1 ppm.

B. Toxicological Profile

1. *Acute toxicity*. The oral LD_{50} of 2,4-D acid is 699 milligram/kilogram (mg/kg) in the rat. The dermal LD_{50} in the rabbit is > 2,000 mg/kg. The acute inhalation LC_{50} in the rat is > 1.8 mg/liter. A primary eye irritation study in the rabbit showed severe irritation. A dermal irritation study in the rabbit showed moderate irritation. A dermal sensitization study in the guinea pig showed no skin sensitization. An acute neurotoxicity study in the rat produced a no observed adverse effect (NOAEL) of 227 mg/kg for systemic toxicity and a neurobehavioral NOAEL of 67 mg/kg with a lowest observed effect level (LOEL) of 227 mg/kg.

2. *Genotoxicity*. Mutagenicity studies including gene mutation, chromosomal aberrations, and direct DNA damage tests were negative for mutagenic effects.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study was conducted in rats with NOAELs for parental and developmental toxicity of 5 mg/kg/day. The LOELs for this study are established at 20 mg/kg/day based on reductions in body weight gain in F_0 and F_{2b} pups, and reduction in pup weight at birth and during lactation. A teratology study in rabbits given gavage doses at 0, 10, 30, and 90 mg/kg on days 6 through 18 of gestation was negative for developmental toxicity at all doses tested. A teratology study in rats given gavage doses at 0, 8, 25, and 75 mg/kg on days 6 through 15 of gestation was negative for developmental toxicity at all doses tested. A NOAEL for fetotoxicity was established at 25 mg/kg/day based on delayed ossification at the 75 mg/kg dose level. The effects on pups occurred in the presence of parental toxicity.

4. *Subchronic toxicity.* A subchronic dietary study was conducted with mice fed diets containing 0, 1, 15, 100, and 300 mg/kg/day with a NOAEL of 15 mg/kg/day. The LOEL was established at 100 mg/kg/day based on decreased glucose and thyroxine levels, increases in absolute and relative kidney weights, and histopathological lesions in the liver and kidneys. A 90–day dietary study in rats fed diets containing 0, 1, 15, 100, or 300 mg/kg/day resulted in a NOAEL of 15 mg/kg/day and an LOEL of 100 mg/kg/day. The LOEL was based on decreases in body weight and food consumption, alteration in clinical pathology, changes in organ weights, and histopathological lesions in the kidney, liver, and adrenal glands of both sexes of rats. A 90–day feeding study was conducted in dogs fed diets containing 0, 0.3, 1, 3, and 10 mg/kg/day with a NOAEL of 1 mg/kg/day. The LOEL was established at 3 mg/kg/day based on histopathological changes in the kidneys of male dogs.

5. *Chronic toxicity.* A 1–year dietary study was conducted in the dog using doses of 0, 1, 5, and 7.5 mg/kg/day. The NOAEL was 1 mg/kg/day and the LOEL was 5 mg/kg/day based on clinical chemistry changes and histopathological lesions in the liver and kidney. A 2–year feeding/carcinogenicity study was conducted in mice fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOAEL of 1 mg/kg/day. The systemic LOEL was established at 15 mg/kg/day based on increased kidney and adrenal weights and homogeneity of renal tubular epithelium due to cytoplasmic vacuoles. No carcinogenic effects were observed under the conditions of the study at any dosage level tested. A second 2–year oncogenicity study was conducted in mice fed diets containing 0, 5, 62.5, and 125 mg/kg/day (males) and 0, 5, 150, and 300 mg/kg/day (females). No treatment-related oncogenicity was observed. A 2–year feeding/carcinogenicity study was conducted in rats fed diets containing 0, 1, 15, and 45 mg/kg/day with a NOAEL of 1 mg/ kg/day. Although there appeared to be a slight treatment-related incidence of benign brain tumors (astrocytomas) in male rats fed diets containing 45 mg/kg/day, two different statistical evaluations found no strong statistical evidence of carcinogenicity in male rats. There were no carcinogenic effects observed in female rats. A second 2–year feeding/carcinogenicity study was conducted in rats fed diets containing 0, 5, 75, and 150 mg/kg/day. The NOAEL was 5 mg/kg/day and the LOEL was 75 mg/kg/day based on decreased body weight, body weight gain and food consumption; clinical chemistry changes; organ weight changes and histopathological lesions. No treatment-related carcinogenic effects or increased incidences of astrocytomas were observed.

6. *Animal metabolism.* The metabolism of phenyl ring labeled ^{14}C-2,4-D was studied in the rat following a single intravenous or oral dose of approximately 1 mg/kg/day. At 48 hours after treatment, recovery of radioactivity in urine was in excess of 98%. Parent 2,4-D was the major metabolite (72.9% to 90.5%) found in the urine.

7. *Metabolite toxicology.* Because 2,4-D is rapidly excreted without significant metabolism, the toxicology data on the parent compound adequately represents metabolite toxicology.

8. *Endocrine disruption.* Although tests explicitly designed to evaluate the potential endocrine effects of 2,4-D have not been conducted, a large and diverse battery of toxicology studies is available including acute, subchronic, chronic, reproductive and developmental toxicity tests. The results of these studies do not provide a pattern of effects suggestive of endocrine modulated toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* Residues are below the limit of quantification (LOQ = 0.01 ppm) in soybeans. Tolerances have been established (40 CFR 180.142) for residues of 2,4-D as the acid or various of its salts and esters, in or on a variety of raw agricultural commodities. In addition, there are also tolerances for 2,4-D for meat, milk, and eggs.

2. *Drinking water.* 2,4-D is soluble in water. The average field half-life is 10 days. The chemical is potentially mobile, but rapid degradation in soil and removal by plant uptake minimizes leaching. A maximum contaminant level (MCL) of 0.07 mg/liter has been established. In addition, the following Health Advisories have been established: for a 10–kg child, a range of 1 mg/liter from 1–day exposure to 0.1 mg/liter for longer-term exposure up to 7 years; for a 70 kg adult, a range of 0.4 mg/liter for longer-term exposure to 0.07 mg/liter for lifetime exposure.

3. *Non-dietary exposure.* 2,4-D is currently registered for use on the following residential non-food sites: ornamental turf, lawns, and grasses, golf course turf, recreational areas, and several other indoor and outdoor uses. 2,4-D is a commonly-used pesticide in non-agricultural settings. No data exist upon which to base calculation of non-dietary exposure of 2,4-D for purposes of inclusion in an aggregate risk assessment. However, there are several characteristics of 2,4-D which suggest the chemical presents a low risk from non-dietary, non-occupational exposure, particularly the chemical's high acute toxicity NOAEL, the short half life in soil, low dermal penetration, and high acute dietary MOE. Further, EPA has concluded that for the purposes of short- and intermediate-term risk, the inhalation route was of no health concern.

D. Cumulative Effects

There are no available data to determine whether 2,4-D has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, 2,4-D does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination

1. *U.S. population.* For chronic dietary exposure, EPA has established the RfD for 2,4-D at 0.01 mg/kg/day. This RfD is based on a 1–year oral toxicity study in dogs with a NOAEL of 1 mg/kg/day and an uncertainty factor of 100. In the most recent final rule establishing tolerances for 2,4-D (time-limited tolerance in wild rice associated with EPA's granting of an emergency exemption under section 18 of the FIFRA (62 FR 46900; September 5, 1997), EPA calculated aggregate risks for the existing uses of 2,4-D at that time (including soybeans and all other existing uses). Since those uses have not changed in the interim, it is appropriate to utilize the same calculations to

support removal of the expiration date for tolerances in or on soybeans. Using anticipated residue contributions for existing uses and the high-end residue value of 57.1 mg/liter in drinking water, the aggregate exposure to 2,4-D from food and water utilizes 47% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

For acute dietary exposure, the NOAEL of 67 mg/kg/day from the rat acute neurotoxicity study should be used for risk assessment. As neurotoxicity is the effect of concern, the acute dietary risk assessment should evaluate acute dietary risk to all population subgroups. Again, relying upon the EPA calculations underlying the most recent final rule establishing tolerances for 2,4-D cited above, which included soybeans and all other existing uses, EPA calculated acute aggregate risk taking into account MOEs from food and MOEs from water. For the U.S. population, the MOE for food is 223, the MOE for water is 42,000, and together the aggregate MOE is 222. This figure does not exceed EPA's level of concern for acute dietary exposure.

Regarding dietary cancer risk assessment, EPA's Cancer Peer Review Committee has classified 2,4-D as a Group D chemical ''not classifiable as to human carcinogenicity'' on the basis that, ''the evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect.''

2. *Infants and children*. The database on 2,4-D relative to pre-and post-natal toxicity is complete with respect to current data requirements. Since the developmental NOAELs for rats and rabbits are 25-fold greater and 90-fold greater, respectively, than the RfD NOAEL of 1 mg/kg/day in the 1–year oral toxicity study in dogs, an additional uncertainty factor to protect infants and children is not warranted.

Using conservative EPA calculations underlying the most recent final rule establishing tolerances for 2,4-D cited above, which included soybeans and all other existing uses, aggregate acute MOEs for exposure to 2,4-D from food and water are 111 for infants less than 1 year old, 147 for children 1–6 years old, and 556 for females 13 and older.

Also using these same conservative assumptions to estimate chronic risk to aggregate chronic exposure to 2,4-D from food and water, 87% of the RfD is utilized for nursing infants, 115% for non-nursing infants, 114% for children 1–6 years old, and 100% for children 7–12 years old.

Further refinement using additional anticipated residue values in crops and percent crop-treated information, and well water monitoring data would result in lower chronic dietary (food) and chronic dietary (water) exposure estimates, thus reducing the aggregate risk estimate.

F. International Tolerances

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for use of 2,4-D on soybeans. FAO review in September 1998 has preliminarily proposed an MRL of 0.01 mg/kg for soybeans. (Dan Kenny)

2. Zeneca Ag Products

PP 8F4995

EPA has received a pesticide petition (PP 8F4995) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing permanent tolerances for residues of azoxystrobin (methyl (*E*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and the Z isomer of azoxystrobin (methyl (*Z*)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on the raw agricultural commodities bananas at 2.0 parts per million (ppm), canola at 1.0 ppm, potatoes at 0.03 ppm, stone fruit at 1.5 ppm, and wheat aspirated grain fractions at 15.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the tolerances. Plant metabolism has been evaluated in three diverse crops, grapes, wheat and peanuts, which should serve to define the similar metabolism of azoxystrobin in a wide range of crops. Parent azoxystrobin is the major component found in crops. Azoxystrobin does not accumulate in crop seeds or fruits. Metabolism of azoxystrobin in plants is complex, with more than 15 metabolites identified. These metabolites are present at low levels, typically much less than 5% of the total recoverable residue (TRR).

2. *Analytical method*. An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The Analytical Chemistry Section of the EPA concluded that the method(s) are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry and eggs which also underwent successful independent laboratory validations.

3. *Magnitude of residues*. Six banana trials were carried out in Central America (Mexico - 2, Guatemala - 2, and Costa Rica - 2) during 1998 in typical commercial banana growing areas in each designated country. Maximum residues of 1.15 ppm in whole bananas resulted from post-harvest treatments. Residue trials on canola were conducted in Canada and the United States in 1996 and 1997 in 12 locations. Maximum residues of 0.8 ppm in canola resulted from multiple foliar applications. No concentration of residues was observed in processing the canola to oil. Sixteen potato trials were carried out in the United States in 1997. Maximum resides of 0.03 ppm in potatoes resulted from multiple foliar applications. No concentration of residues was observed on processing of the potatoes. Over 27 trials were carried out on stone fruits (cherries, peaches and plums) in 1997. Maximum residues of 1.5 ppm on peaches resulted from multiple foliar applications. No concentration of residues were observed in processing of plums to prunes.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >5,000 milligrams/kilogram (mg/kg) (limit test) for both males and females. The acute dermal toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >2,000 mg/kg (limit dose). The acute inhalation study of technical azoxystrobin in rats resulted in an LC_{50} of 0.962 milligrams/liter in males and 0.698 milligrams/liter in females. In an acute oral neurotoxicity study in rats dosed once by gavage with 0, 200, 600, or 2,000 mg/kg azoxystrobin, the systemic toxicity no observed adverse effect level (NOAEL) was <200 mg/kg and the systemic toxicity NOAEL was 200 mg/kg, based on the occurrence of transient diarrhea in both sexes. There

was no indication of neurotoxicity at the doses tested.

2. *Genotoxicity*. Azoxystrobin was negative for mutagenicity in the *salmonella/mammalian* activation gene mutation assay, the mouse micronucleus test, and the unscheduled DNA synthesis in rat hepatocytes/mammalian cells (*in vivo/in vitro* procedure) study. In the forward mutation study using L5178 mouse lymphoma cells in culture, azoxystrobin tested positive for forward gene mutation at the TK locus. In the *in vitro* human lymphocytes cytogenetics assay of azoxystrobin, there was evidence of a concentration related induction of chromosomal aberrations over background in the presence of moderate to severe cytotoxicity.

3. *Reproductive and developmental toxicity*. In a prenatal development study in rats gavaged with azoxystrobin at dose levels of 0, 25, 100, or 300 mg/kg/day during days 7–16 of gestation, lethality at the highest dose caused the discontinuation of dosing at that level. The developmental NOAEL was greater than or equal to 100 mg/kg/day and the developmental lowest observed adverse effect level (LOAEL) was >100 mg/kg/day because no significant adverse developmental effects were observed. In this same study, the maternal NOAEL was not established; the maternal LOAEL was 25 mg/kg/day, based on increased salivation.

In a prenatal developmental study in rabbits gavaged with 0, 50, 150, or 500 mg/kg/day during days 8–20 of gestation, the developmental NOAEL was 500 mg/kg/day and the developmental LOAEL was >500 mg/kg/day because no treatment-related adverse effects on development were seen. The maternal NOAEL was 150 mg/kg/day and the maternal LOAEL was 500 mg/kg/day, based on decreased body weight gain.

In a 2-generation reproduction study, rats were fed 0, 60, 300, or 1,500 ppm of azoxystrobin. The reproductive NOAEL was 32.2 mg/kg/day. The reproductive LOAEL was 165.4 mg/kg/day; reproductive toxicity was demonstrated as treatment-related reductions in adjusted pup body weights as observed in the F_{1a} and F_2 pups dosed at 1,500 ppm (165.4 mg/kg/day).

4. *Subchronic toxicity*. In a 90–day rat feeding study the NOAEL was 20.4 mg/kg/day for males and females. The LOAEL was 211.0 mg/kg/day based on decreased weight gain in both sexes, clinical observations of distended abdomens and reduced body size, and clinical pathology findings attributable to reduced nutritional status.

In a subchronic toxicity study in which azoxystrobin was administered to dogs by capsule for 92 or 93 days, the NOAEL for both males and females was 50 mg/kg/day. The LOAEL was 250 mg/kg/day, based on treatment-related clinical observations and clinical chemistry alterations at this dose.

In a 21–day repeated-dose dermal rat study using azoxystrobin, the NOAEL for both males and females was greater than or equal to 1,000 mg/kg/day (the highest dosing regimen); a LOAEL was therefore not determined.

5. *Chronic toxicity*. In a 2–year feeding study in rats fed diets containing 0, 60, 300, and 750/1,500 ppm (males/females), the systemic toxicity NOAEL was 18.2 mg/kg/day for males and 22.3 mg/kg/day for females. The systemic toxicity LOAEL for males was 34 mg/kg/day, based on reduced body weights, food consumption, and food efficiency; and bile duct lesions. The systemic toxicity LOAEL for females was 117.1 mg/kg/day, based on reduced body weights. There was no evidence of carcinogenic activity in this study.

In a 1–year feeding study in dogs to which azoxystrobin was fed by capsule at doses of 0, 3, 25, or 200 mg/kg/day, the NOAEL for both males and females was 25 mg/kg/day and the LOAEL was 200 mg/kg/day for both sexes, based on clinical observations, clinical chemistry changes, and liver weight increases that were observed in both sexes.

In a 2–year carcinogenicity feeding study in mice using dosing concentrations of 0, 50, 300, or 2,000 ppm, the systemic toxicity NOAEL was 37.5 mg/kg/day for both males and females. The systemic toxicity LOAEL was 272.4 mg/kg/day for both sexes, based on reduced body weights in both at this dose. There was no evidence of carcinogenicity at the dose levels tested.

According to the new proposed guidelines for Carcinogen Risk Assessment (April, 1996), the appropriate descriptor for human carcinogenic potential of azoxystrobin is therefore ''Not Likely.'' The appropriate subdescriptor is ''has been evaluated in at least two well conducted studies in two appropriate species without demonstrating carcinogenic effects.''

6. *Animal metabolism*. In this study, azoxystrobin, unlabeled or with a pyrimidinyl, phenylacrylate, or cyanophenyl label, was administered to rats by gavage as a single or 14–day repeated doses. Less than 0.5% of the administered dose was detected in the tissues and carcass up to 7–days post-dosing and most of it was in excretion-related organs. There was no evidence of potential for bioaccumulation. The primary route of excretion was via the feces, though 9 to 18% was detected in the urine of the various dose groups. Absorbed azoxystrobin appeared to be extensively metabolized. A metabolic pathway was proposed showing hydrolysis and subsequent glucuronide conjugation as the major biotransformation process.

7. *Endocrine disruption*. EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect.'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry, and research scientists, to develop a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3–years from the passage of the Food Quality Protection Act (FQPA) (until August 3, 1999) to implement this program. When this program is implemented, EPA may require further testing of azoxystrobin and end-use product formulations for endocrine disrupter effects. There are currently no data or information suggesting azoxystrobin has any endocrine effects.

C. Aggregate Exposure

1. *Food*. Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm on pecans to 1.0 ppm on grapes. In addition, time-limited tolerances have been established (40 CFR 180.507(b)) at levels ranging from 0.006 ppm in milk to 20 ppm in rice hulls. The following risk assessments have been conducted to assess dietary exposure and risks from azoxystrobin as follows:

i. *Acute exposure and risk*. The Agency has concluded that there is no toxicological end-point of concern from the review of available data for this scenario. Therefore an acute dietary risk assessment is not necessary.

ii. *Chronic exposure and risk*. In conducting this chronic dietary risk assessment Zeneca has made the a conservative assumption that 100% of all commodities having azoxystrobin tolerances or proposed tolerances will contain azoxystrobin residues at the level of the tolerance. This assumption is termed the Theoretical Maximum Residue Concentration (TMRC). Zeneca's chronic dietary exposure analysis was performed (for combined

years 1989 – 1992 of the U. S. Department of Agriculture's Nationwide Food Consumption Survey) using the Novigen DEEM89N Software.

Population Sub-Group	TMRC (mg/kg/day)	% RfD
U.S. population (48 States)	0.0027	1.8
All infants (<1 year)	0.0087	5.8
Nursing infants (<1 year old)	0.0025	1.7
Non-nursing infants (<1 year old)	0.0113	7.6
Children (1–6 years old)	0.0065	4.3
Children (7–12 years old)	0.0036	2.4
Hispanics	0.0036	2.4
Non-Hispanics Others	0.0047	3.1
U.S. Population (summer season)	0.0032	2.1
Northeast region	0.0031	2.0
Western	0.0030	2.0
Pacific	0.0033	2.2
Females (13–19, non-pregnant or nursing)	0.0020	1.3
Females (13+/nursing)	0.0031	2.0

The subgroups listed above are those for infants and children, females 13–19 not pregnant or nursing and other subgroups for which the percentage of the Reference Dose (RfD) occupied is greater than that occupied by the U.S. population (48 States).

2. *Drinking water*. There is no established Maximum Concentration Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established.

i. *Acute exposure and risk*. An assessment is not appropriate since no toxicological end-point of concern was identified by the Agency for this scenario during review of the available data.

ii. *Chronic exposure and risk*. Based on the chronic dietary (food) exposure estimated, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and summarized in the following table. EPA has estimated that the highest estimated environmental concentration (EEC) of azoxystrobin in surface water is from the application of azoxystrobin on grapes (39µg/L) and is substantially lower than the DWLOC's calculated.

Sub-group	RfD (mg/kg/day)	TMRC (Food) (mg/kg/day)	Max Water Exposure (mg/kg/day)	DWLOC (µg/L)
U.S. Population	0.18	0.0027	0.177	6195
Females (13+ not pregnant or nursing)	0.18	0.0020	0.178	5300
Non-nursing infants (<1 year old)	0.18	0.0113	0.169	1690

iii. *Non-dietary exposure*. The Agency evaluated the existing toxicological database for azoxystrobin and assessed appropriate toxicological end-points and dose levels of concern that should be assessed for risk assessment purposes. Dermal absorption data indicate that absorption is less than or equal to 4%. No appropriate end-points were identified for acute dietary or short term, intermediate term, and chronic term (noncancer) dermal and inhalation occupational exposure. Therefore, risk assessments are not required for these exposure scenarios. Azoxystrobin is currently registered for use on residential non-food sites, only on turf.

D. Cumulative Effects

Azoxystrobin is related to the naturally occurring strobilurins. One other strobilurin-type pesticide has recently been registered with the EPA. Zeneca has concluded that further consideration of a common mechanism of toxicity is not appropriate at this time since there are no data to establish whether a common mechanism exists with any other substance.

E. Safety Determination

1. *Acute risk*. This safety determination is not applicable since no toxicological end-point of concern was identified for this scenario during Agency review of the available data.

2. *Chronic risk*. The RfD for azoxystrobin is 0.18 mg/kg/day, based on the NOAEL of 18.2 mg/kg/day from the rat chronic toxicity/carcinogenicity feeding study in which decreased body weight and bile duct lesions were observed in male rats at the LOAEL of 34 mg/kg/day. This NOAEL was divided by an uncertainty factor of 100, to allow for interspecies sensitivity and intraspecies variability.

The chronic dietary exposure analysis showed that exposure from the proposed new tolerances in or on bananas, canola, potatoes, stone fruit, and wheat aspirated grain fractions for non-nursing infants (the subgroup with the highest exposure) would be 7.6% of the RfD. The exposure for the general U.S. population would be 1.8% of the RfD.

3. *Short- and intermediate-term risk*. This risk assessment has not previously been performed since no dermal or systemic effects were seen in the repeated dose dermal study at the limit dose. Also, the only indoor or outdoor residential exposure use currently registered for azoxystrobin is residential turf.

F. Additional Safety Factor for Infants and Children

Federal Food, Drug, and Cosmetic Act (FFDCA) section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the

completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOAEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/MOE is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard hundredfold margin/factor but not the additional tenfold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor.

The Agency ad hoc FQPA Safety Factor Committee removed the additional 10x safety factor to account for sensitivity of infants and children.

Zeneca has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concludes that aggregate exposure is not expected to exceed 100% of the RfD and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to azoxystrobin residues.

G. International Tolerances

There are no Codex Maximum Residue Levels established for azoxystrobin. (Cynthia Giles-Parker)

[FR Doc. 98–32884 Filed 12–11–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6200–2]

Proposed CERCLA Administrative Cost Recovery Partial Settlement, Leavenworth Auto Parts Site, Leavenworth, Kansas

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement with the following parties, and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), notice is hereby given of a proposed Superfund administrative cost recovery settlement between EPA and Jack and Bess Sokolov and Leavenworth Auto Parts and Supply Co., Inc. The proposed settlement, pursuant to CERCLA section 122(h), would recover a portion of the federal government's past response costs at the Leavenworth Auto Parts Site, 777 Cherokee St., Leavenworth, Kansas. Mr. and Mrs. Sokolov would pay to the Hazardous Substance Superfund $100,000 plus 65% of gross revenues from any sale or rental of the property. Leavenworth Auto Parts and Supply Co., Inc. would pay $5,000. The settlement provides a covenant not to sue to the settling parties.

The Agency will receive written comments relating to the settlement until January 11, 1999. The agency will consider all comments received during this period, and may modify or withdraw its consent to the settlement if comments disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region VII office at 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Hearing Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7630. Comments should reference the ''Leavenworth Auto Parts Site Ability-to-Pay Settlement'' and EPA Docket No. VII–95–F–0029 and should be addressed to Ms. Cobbs at the above address.

FOR FURTHER INFORMATION CONTACT: Jonathan Kahn, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7252.

Dated: December 2, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–32893 Filed 12–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Emergency Management Institute Resident Course Evaluation Form.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0237.

Abstract: Students attending the Emergency Management Institute residential program courses at FEMA's National Emergency Training Center will be asked to complete a course evaluation form. EMI staff will use the information and management to identify problems with course materials, evaluate the quality of the course delivery, facilities, and instructors. The data received will enable them to recommend changes in course materials, student selection criteria, training experience and classroom environment.

Affected Public: State, Local or Tribal Government, Individuals or Households, and Federal Government.

Number of Respondents: 4,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 667.

Frequency of Response: The form is completed at the end of each course.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: December 8, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–32971 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998, and related determinations.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, 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 November 5, 1998:

Johnson, Leavenworth, Marion, and Wyandotte Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers CCFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32975 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998, and related determinations.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, 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 November 5, 1998:

Chase, Coffey, Franklin, Harvey, Lyon, and Marion Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers CCFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32976 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1247–DR]

Commonwealth of Puerto Rico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–1247–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 20, 1998, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from Hurricane Georges on September 20, 1998, through and including October 27, 1998, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act'') for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs. This 90 percent reimbursement applies to all eligible Public Assistance costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for Individual and Family Grant and Hazard Mitigation programs. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the Commonwealth of Puerto Rico and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 98–32972 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1247–DR]

Puerto Rico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico, (FEMA–1247–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: In a letter dated November 20, 1998, the President amended his initial declaration letter to reflect the incident period for this disaster as September 20, 1998, through and including October 27, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32973 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

San Patricio County for Public Assistance (already designated Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32974 Filed 12–10–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011624–002

Title: Lykes/MLL Space Charter Agreement

Parties:

Mexican Line Limited (''MLL'')

Lykes Lines Limited, LLC (''Lykes'')

Synopsis: The proposed amendment would add United States North Atlantic ports to the geographic scope of the Agreement and outline the amount of space Lykes will make available to MLL under the Agreement. The amendment would also permit MLL to make available to Lykes space MLL has access to in other space chartering agreements under which MLL serves North Atlantic ports.

Agreement No.: 224–201006–001

Title: Ceres Gulf, Inc./Port of New Orleans Lease

Parties:

Ceres Gulf, Inc.

The Board of Commissioners of the Port of New Orleans

Synopsis: The proposed amendment revises the leased premises under the basic lease and the schedule of rental rates applied to the number of loaded containers moved through the leased premises.

Agreement No.: 224–201065

Title: New Orleans Marine Contractors, Inc./Port of New Orleans Lease

Parties:

New Orleans Marine Contractors, Inc.

The Board of Commissioners of the Port of New Orleans

Synopsis: Under the proposed agreement, the port will lease certain premises to the lessee for an initial period of three years.

Agreement No.: 224–201066

Title: Maritrend, Inc./Port of New Orleans Lease

Parties:

Maritrend, Inc.

The Board of Commissioners of the Port of New Orleans

Synopsis: Under the proposed agreement, the port will lease certain premises to the lessee for an initial period of one year.

By Order of the Federal Maritime Commission.

Dated: December 8, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32984 Filed 12–10–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

LICENSE NUMBER: 2264

NAME: Elizabeth Ann Lumpkin and Jimmy Franklin Lumpkin, Partners, d/b/a J.F. Lumpkin, CHB

ADDRESS: 190 Lime Quarry Road, Suite 110, Madison, AL 35758

DATE REVOKED: October 22, 1998

REASON: Failed to maintain a valid surety bond

LICENSE NUMBER: 1877

NAME: John F. Mahoney d/b/a Mahoney Export Services

ADDRESS: 400 Valley Drive, Brisbane, CA 94005

DATE REVOKED: October 30, 1998

REASON: Failed to maintain a valid surety bond

LICENSE NUMBER: 4017

NAME: William J. Siemens, III

ADDRESS: 2209 Tilden Way, Bakersfield, CA 93309

DATE REVOKED: October 29, 1998

REASON: Surrendered license voluntarily

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–32909 Filed 12–10–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

World Shipping America Inc., 333 Sylvan Avenue, Suite 209, Englewood Cliffs, NJ 07632, Officers: Kun Zhang, President, Joseph Chin Aleong, Vice President.

Drake International, Inc., 1590 Phoenix Blvd., Suite 260, College Park, GA 30349–5462, Officer: Augustine E. Clarke, III, President.

Dated: December 8, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32985 Filed 12–10–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, December 16, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Proposed 1999 Federal Reserve Bank budgets.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33031 Filed 12–2–98; 12:30 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: Approximately 10:30 a.m., Wednesday, December 16, 1998, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

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: December 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33032 Filed 12–9–98; 12:30 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–4002–GNC]

RIN 0938–AJ15

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance: Millennium Compliance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This notice revises the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program. This revision establishes a performance standard requiring these contractors to meet requirements for millennium compliance. We require contractors to certify that they have made all necessary system(s) changes and have tested those systems in accordance with HCFA guidelines.

DATES: *Effective date:* This notice is effective December 11, 1998.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 9, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–4002–GNC, P.O. Box 31850, Baltimore, MD 21207–8850

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–09–26, 7500 Security Blvd, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA4002GNC@hcfa.gov. E-mail comments must include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–4002–GNC–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409; Rich Morrison, (410) 786–7142.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1816 of the Social Security Act (the Act) authorizes us to enter into agreements with fiscal intermediaries to determine whether medical services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the health care providers on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement.

Section 1842 of the Act authorizes us to enter into contracts with carriers for the payment of Part B claims for Medicare-covered services. Under

section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. We refer to these fiscal intermediaries and carriers as Medicare ''contractors''.

On September 7, 1994, we published in the **Federal Register** (59 FR 46258) the criteria and standards to be used to evaluate the performance of our contractors under their agreements or contracts with us.

The criteria and standards we published help us determine if a contractor's performance measures up to the expectations that we have for the activities being evaluated to ensure that our beneficiaries and providers are being properly served. We announced that we would use the results of the performance evaluations in our contract management activities, which might result in the initiation of administrative actions. These actions could include entering into, renewing/extending, or terminating contracts or contract amendments with our contractors. We also announced that we would consider revising the criteria and standards if changes were required as a result of administrative mandate or congressional action. If changes are necessary, we are required to issue a **Federal Register** notice before implementing a change.

II. Provisions of This Notice

With the approach of the year 2000, we have been focusing on our readiness to move into the next century and taking all appropriate steps to ensure that Medicare claims are processed without interruption. Millennium compliance of all claims processing and related systems is our highest priority. We believe it is appropriate to add a requirement to our contracts and agreements with our Medicare contractors to ensure that all Medicare contractors are making the commitment and taking necessary action to meet our requirements in that regard. In addition, we are requiring each contractor to certify, under the normal penalties that apply to false certifications, that it has made all necessary systems changes and has tested its systems in accordance with the guidelines we have established. The normal penalties for false certification include criminal and/or civil prosecution as well as appropriate administrative action, not limited to suspension of the contractor from the Medicare program, as well as the termination or nonrenewal of a contract or agreement.

Listed below are the revisions to the ''Administrative Activities'' criterion and section VII. ''Action Based on Performance Evaluations'' to incorporate the addition of the certification requirements for the contractors' systems changes.

Under the ''Administrative Activities'' criterion in sections IV and V for fiscal intermediaries and carriers, respectively, the following introductory paragraph is added:

''A contractor must efficiently and effectively manage its operations to ensure constant improvement in the way it does business. Proper systems security, ADP maintenance, and disaster recovery plans must be in place. It must also ensure that all necessary actions and system changes have been made and tested so that it is meeting established milestones along the critical path of HCFA's requirements for millennium compliance.'' Year 2000 compliant means information technology that accurately processes date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the nineteenth, twentieth, and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, Year 2000 compliant information technology, when used in combination with other information technology, must accurately process date and time data if the other information technology properly exchanges date and time data with it. [adapted from: FAR 39.002 Definitions]

The remaining section of the criterion is unchanged, except for the reference to implementation reviews of ''Task management plans''. This reference should be to implementation reviews of ''Change management plans'' to conform with our recent implementation of the ''Change management system'' for issuing instructions to our contractors.

We are also adding the following requirement to section VII. ''Action Based on Performance Evaluations'' after the existing requirements:

''A contractor must certify that it has made all necessary systems changes and has tested its systems in accordance with the guidelines HCFA has established.''

Authority: Section 1816(f) and 1842(b)(2) of the Social Security Act (42 U.S.C. 1395h and 1395u).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 24, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–32977 Filed 12–10–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. The purpose of this meeting is to write the Annual Report to the President and to plan the 1999 meeting agenda. Premature disclosure of the specific details of these discussions and recommendations would be likely to significantly frustrate the subsequent implementation of proposed recommendations made by the Panel.

Name of Committee: President's Cancer Panel.

Date: December 7, 1998.

Time: 11:00 am to 5:00 pm

Agenda: Preparation of the 1998 Annual Report to the President and 1999 panel meeting agenda planning.

Place: NOVA Research Company, 4600 East-West Highway, Suite 700, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32934 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee A—Cancer Centers.

Date: December 3–4, 1998.

Time: 7:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—EPN 643A, Bethesda, MD 20892–7405, 301/496–2330.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32936 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: December 17–18, 1998.

Time: 8:00 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: December 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32937 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 7, 1998.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, PhD, DDS, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 1:00 pm to 2:45 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7816, Bethesda, MD 20892, (301) 435–0684.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anthony C. Chung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7802, Bethesda, MD 20892, (301) 435–1213.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 4:00 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Garrett V. Keefer, PhD, Scientific Review Administrator, Center for Scientific Review, national Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 12:00 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 15, 1998.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–BDCN–1 (06).

Date: December 16, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joe Marwah, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 10:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 10:00 a.m. to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1998.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, ev__sinnettnih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32935 Filed 12–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.C.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of

applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *ENERGY:* Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6G–058, Washington, DC 20585; (202) 586–0426: *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: December 4, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/11/98

Suitable/Available Properties

Buildings (by State)

Maryland

Waldorf Housing
Country Lane and Spruce Street
Waldorf Co: Charles, MD
Landholding Agency: GSA
Property Number: 549840012
Status: Excess
Comment: 12 unit townhouse complex = 5 two bedroom, 1 bath; 5 three bedroom, 1 bath; 2 three bedroom, 2 bath; need rehab
GSA Number: 4–N–MD–0546.

Rhode Island

Facility 700
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840029
Status: Unutilized
Comment: 6230 sq. ft., most recent use—wastewater treatment plant, off-site use only.

Facility 994
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840030
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only.

Facility 449
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840031
Status: Unutilized
Comment: 140 sq. ft., most recent use—chlorination shed, off-site use only.

Facility 1324
Naval Station
Newport, RI 02841–
Landholding Agency: Navy
Property Number: 779840032
Status: Unutilized
Comment: 107 sq. ft., most recent use—lift station controls shed, off-site use only.

Virginia

Bldg. SP–70
Naval Air Station
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 779840026
Status: Excess
Comment: 8926 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. SP–71
Naval Air Station
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 779840027
Status: Excess
Comment: 8926 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. U106
Naval Air Station
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 779840028
Status: Excess
Comment: 950 sq. ft., most recent use—repair shop, off-site use only.

Bldg. SC424
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number: 779840033
Status: Excess
Comment: 1323 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC425
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840034
Status: Excess
Comment: 696 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC426
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840035
Status: Excess
Comment: 1173 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC427
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840036
Status: Excess
Comment: 646 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC428
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840037
Status: Excess
Comment: 2058 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC429
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840038
Status: Excess
Comment: 646 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC430
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840039
Status: Excess
Comment: 2058 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Bldg. SC431
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840040
Status: Excess
Comment: 782 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only.

Bldg. SC100
Armed Forces Staff College, Naval Base
Norfolk, VA 23505–
Landholding Agency: Navy
Property Number 779840041
Status: Excess
Comment: 3160 sq. ft., possible asbestos/lead paint, most recent use—residential, off-site use only.

Land (by State)

North Carolina

Greenville Relay Station
Site C
Greenville Co: Pitt, NC
Landholding Agency: GSA
Property Number 549840013
Status: Excess
Comment: 589 acres w/27,830 sq. ft., concrete block bldg., (2 acre chemical waste storage site located on SE portion of property)
GSA Number: 4–GR–NC–0721–B.

Unsuitable Properties

Buildings (by State)

Hawaii

Facility S–721
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840042
Status: Excess
Reason: Secured Area.

Facility S–897
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840043
Status: Excess
Reason: Secured Area.

Facility S–937
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840044
Status: excess
Reason: Secured Area.

Facility 19
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840045
Status: Excess
Reason: Secured Area.

Facility 173
Naval Station
Pearl Harbor Co: Honolulu, HI 96860–
Landholding Agency: Navy
Property Number: 779840046
Status: Excess
Reason: Secured Area.

Ohio

Bldg. 77
Fernald Environmental Management Project
Fernald Co: Hamilton, OH 45013–
Landholding Agency: Energy
Property Number: 419840003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

[FR Doc. 98–32624 Filed 12–10–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the City of Seattle Habitat Conservation Plan, King County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application and availability for public comment.

SUMMARY: This notice advises the public that the City of Seattle has applied to the Fish and Wildlife Service and the National Marine Fisheries Service (together, the Services) for an Incidental Take Permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize the take of the following endangered or threatened species incidental to otherwise lawful management activities in the Cedar River Municipal Watershed and within the Cedar River in King County, Washington: northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), bald eagle (*Haliaeetus leucocephalus*), grizzly bear (*Ursus arctos*), gray wolf (*Canis lupus*), and peregrine falcon (*Falco peregrinus*). The proposed permit also would authorize future incidental take of 77 currently unlisted fish (anadromous and resident) and wildlife species, including the chinook salmon (*Oncorhynchus tshawytscha*) and the Coastal Puget Sound distinct population segment of the bull trout (*Salvelinus confluentus*), which are proposed for listing under the Act, should they become listed in the future. The permit would be in effect for 50 years.

The application includes: (1) the proposed Habitat Conservation Plan (Plan), which fully describes the proposed projects and mitigation, and details a strategy for minimizing and mitigating all anticipated incidental take, as required in Section 10(a)(2)(B) of the Act; and (2) the proposed Implementing Agreement. Activities covered by the requested Permit and addressed by the proposed Plan include: (1) drinking water supply operations; (2) management of land and forest resources (timber and other forest resources); (3) hydroelectric power generation; and, (4) fishery mitigation. The Services also announce the availability of an Environmental Assessment for the Permit application.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations. The Services are furnishing this notice in order to announce the availability of these documents and allow other agencies and the public an opportunity to review and comment upon these documents. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments on the permit application, Environmental Assessment, Plan, and Implementing Agreement must be received from interested parties no later than February 9, 1999.

ADDRESSES: Requests for documents should be made by calling the City of Seattle at (206) 684–4144. Copies are also available for viewing, or partial or complete duplication, at all King County and City of Seattle libraries, and at four University of Washington main campus libraries, including the Fisheries and Oceanography Library, Forest Resources Library, Engineering Library, and at the Federal Publications desk of the Suzzallo Library. Comments should be mailed to Seattle Public Utilities, P.O. Box 21105, Seattle, Washington 98111–3105. Comments and materials received will also be available for public inspection, by appointment, during normal business hours by calling (206) 684–4144. Requests for information on the draft Plan should be directed to Jim Erckmann, Project Manager. Requests for information on the draft Environmental Assessment and a draft Environmental Impact Statement, prepared pursuant to the State of Washington's Environmental Policy Act, should be directed to Jim Freeman, Senior Watershed Planner. Both can be contacted at Seattle Public Utilities, 19901 Cedar Falls Road S.E., North Bend, Washington, 98045 (telephone: 206/233–1512; facsimile: 206/233–1527).

FURTHER INFORMATION: Contact Brian Bogaczyk, Project Biologist, Fish and Wildlife Service, 510 Desmond Drive, S.E., Suite 102, Lacey, Washington, 98503–1273, (telephone: 360/753–5824; facsimile: 360/534–9331), and Matt Longenbaugh, Project Biologist, National Marine Fisheries Service, 510 Desmond Drive, S.E., Suite 103, Lacey, Washington, 98503–1273 (telephone: 360/753–7761; facsimile: 360/753–9517). The Plan, Implementing Agreement, and the Environmental Assessment are also available for inspection at the above Service offices.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of a species listed as endangered or

threatened. The term take is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Services, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22; regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Background

The Cedar River Municipal Watershed (Watershed) is located about 30 miles southeast of the City of Seattle (City), just south of the Interstate 90 corridor. The City has prepared the proposed Plan to comply with the Act and to address a variety of related natural resource issues. The Plan will cover the City's 90,546-acre Watershed and the City's water supply and hydroelectric operations on the Cedar River, which discharges into Lake Washington. The proposed Plan is a set of mitigation and conservation commitments related to ongoing water supply, hydroelectric power supply, fishery mitigation, and watershed management activities.

The draft Plan is based on a decade of studies and the results of over 4 years of analysis and negotiations with five State and Federal agencies as documented in an Agreement in Principle, dated March 14, 1997. The Agreement in Principle addresses not only issues under the Act but also related issues under state law and issues with the U.S. Army Corps of Engineers (Corps). The Corps manages lake levels in Lake Washington, and navigational traffic between Lake Washington and Puget Sound, through operation of the Hiram Chittenden Locks (Ballard Locks) and Lake Washington Ship Canal.

Covered lands in the proposed action include the City-owned lands upon which the Permit would authorize incidental take of covered species. This includes the Watershed, totaling about 90,546 acres. The Cedar River discharges into Lake Washington at the city of Renton. City operations in the municipal watershed influence the Cedar River between the Landsburg Diversion Dam, where the City diverts water for municipal and industrial use, and Lake Washington, which is 21.8 mi in length. The City owns essentially all of the Watershed. Most of the watershed is forested, primarily with conifers.

Proposed covered activities include City operations on the Cedar River in conjunction with its water supply, hydroelectric power generation, land management activities, and fishery mitigation. Water supply and hydroelectric generation activities include management of the reservoir complex, including an overflow dike, which impounds Chester Morse Lake, and the Masonry Dam, which impounds the Masonry Pool to the west of the lake. These activities also include instream flow management for fish for 12.4 mi above and 21.8 mi downstream of the Landsburg Diversion Dam. Covered activities downstream of Landsburg are restricted specifically to the impacts of City operations and facilities on species using those waters and covered by this Plan, and does not apply to the impacts of activities by other public agencies or private parties. In general, covered activities downstream of Landsburg include mitigation, conservation, research, and monitoring activities carried out under the Plan and two related agreements, an Instream Flow Agreement and a Landsburg Mitigation Agreement.

Municipal watershed management activities include forest practices as described in the Washington State Forest Practices Act (RCW 76.09) and Forest Practices Rules and Regulations (WAC 222–08), including timber harvest, thinning, reforestation, and mechanical brush control; construction, repair, reengineering, decommissioning, and maintenance of forest roads, including use of gravel pits and other rock sources, as well as maintenance and replacement of culverts and bridges; and sale of forest products.

Fishery mitigation activities include provision of streamflows for chinook, coho (*Oncorhynchus kisutch*), and sockeye (*Oncorhynchus nerka*) salmon and steelhead trout (*Oncorhynchus mykiss*), and expansion of a pilot hatchery for sockeye salmon; construction of fish passage facilities (both upstream and downstream) for chinook and coho salmon, and steelhead and cutthroat trout (*Oncorhynchus clarki*) at Landsburg Dam; and funding salmon habitat restoration in the lower Cedar River.

Other covered watershed activities include actions to protect and restore watershed habitats, both aquatic and upland; cultural resource management and educational programs within the municipal watershed, including a public tour and field trip program and construction of educational and cultural facilities, such as the planned educational resource center at Cedar Falls; scientific research, both by City staff and outside scientists; and other activities or facilities as identified in the Plan.

The Plan includes habitat-based conservation and mitigation strategies for all species addressed in the Plan, and species-specific conservation and mitigation strategies for the 14 species of greatest concern, which include all currently listed species. The species addressed in the Plan include resident and anadromous salmonid fishes, and a variety of amphibians, birds, mammals, and invertebrates.

The Federal action of issuing an Incidental Take Permit has the potential to affect the human environment. The Services' decision of whether to issue the proposed Permit, is an action subject to review under the National Environmental Policy Act (40 CFR 1506.6). In addition to the National Environmental Policy Act requirements, the City's proposed actions are subject to review under the Washington State Environmental Policy Act. The Services' Environmental Assessment and the City's Environmental Impact Statement are combined into one document. Following public review of the proposed Plan and Environmental Assessment/Environmental Impact Statement, the Services and the City must review any comments received and respond to those comments in writing or in changes to the documents, where appropriate.

The Environmental Assessment/Environmental Impact Statement will analyze the proposed action as well as a full range of reasonable alternatives, and the associated impacts of each. The proposed action contains three components, including: (1) Watershed Management; (2) Anadromous Fish Mitigation; and (3) Instream Flows. Alternatives have been developed through public and internal scoping for each of these three components, and are compared and analyzed in the Environmental Assessment/Environmental Impact Statement.

Watershed management alternatives include: (1) No Action (continue current harvest practices, with 58 percent of the lands in a no-commercial harvest reserve); (2) Proposed Action (including conservation strategies for habitats and wildlife, with 64 percent of the lands in a no-commercial harvest reserve); (3) Long-term Sustainable Thinning Alternative (including conservation strategies for habitats and wildlife, with 64 percent of the lands in a no-commercial harvest reserve); (4) Thinning Alternative with phased out commercial harvest over the 50-year life of the Permit (including conservation strategies for habitats and wildlife, with 68 percent of the lands initially in a no-commercial harvest reserve and increasing over the life of the Permit);

and (5) No Commercial Timber Harvest Alternative (including conservation strategies for habitats and wildlife, with 100 percent of the lands in a no-commercial harvest reserve). Alternatives 3, 4, and 5 include essentially the same conservation strategies for streams, riparian areas, upland habitat, and special habitat areas, as Alternative 2, the Proposed Action.

Anadromous fish mitigation alternatives include: (1) No Action (continued operation of a pilot sockeye salmon hatchery with no guarantee of mitigation for chinook salmon, coho salmon, or steelhead trout); (2) Proposed Action (conservation strategies for chinook salmon, coho salmon, sockeye salmon, and steelhead trout, including upstream and downstream passage facilities, and habitat restoration and protection measures, with expansion of the sockeye hatchery to produce 34 million fry annually); (3) Down-sized Sockeye Hatchery Alternative with savings going towards downstream habitat restoration (with expansion of the sockeye hatchery to produce 17 million fry annually); (4) Deferred Hatchery Construction Alternative contingent on further studies; and (5) All Downstream Habitat Restoration and Protection Alternative (all funding would be used for habitat restoration and protection, and none for sockeye hatchery expansion).

Instream flow alternatives include: (1) No Action (continue current flow management practices); and (2) Proposed Action, with primary features including guaranteed flows and supplemental flows for salmon and steelhead trout spawning and fry outmigration for sockeye salmon in the lower Cedar River; adaptive management of flows for protection of salmon and steelhead redds (egg clusters); funding for improvements at Ballard Locks for juvenile outmigration, establishment of minimum flows necessary for anadromous and resident fish in bypass reach below Masonry Dam; established downramping rates, maintain existing annual municipal water yield; public service announcements promoting water conservation for fish; Lower Cedar River monitoring study of tributary and subsurface inflows; and establishment of a multi-agency commission to advise the City with respect to managing flows for fish.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations, and the Services will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act and National Environmental Policy Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of listed species. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: December 4, 1998.

Anne Badgley,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–32950 Filed 12–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–01; N–56784]

Notice of Realty Action for Proposed Agricultural Lease of Public Lands, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: The conversion of an existing Agricultural Land Use Permit to an Agricultural Lease.

The proposed action is in conformance with the Paradise-Denio Management Framework Plan, dated July 9, 1982.

The public lands proposed for leasing under provisions of section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920 are described as follows:

Mount Diablo Meridian, Nevada

T. 36 N., R. 34 E.,
Sec. 20: W½W½, S½SE¼;
Sec. 28: W½W½, S½SE¼SW¼, S½SE¼SE¼;
Sec. 30: Lot 1, N½N½NE¼, N½NE¼NW¼;
Sec. 32: Lots 2 and 3;
Sec. 34: W½NW¼.

The proposal would encumber 123± acres of public land.

The public lands affected by the proposed lease are adjacent to Crawford Farms, north of Jungo Road, approximately 25 miles west of Winnemucca, Nevada on the west side of Blue Mountain. The lands are currently under cultivation, so no additional surface disturbance of the area would occur as a result of this lease.

No other proposals will be accepted. The affected parcels are currently being farmed by the applicant. The proposed lease would be issued in order to convert an existing Agricultural Land Use Permit to an Agricultural Lease. The original land use permit was issued to resolve an unintentional trespass, that was discovered when a dependent resurvey of township was completed. Use of the parcels by the applicant has been permitted since 1993. The proposed lease would be in effect until a determination is made by the Bureau of Land Management on whether it is in the public's interests to sell the lands to the applicant for agricultural purposes, or terminate the agricultural use of the public lands. Therefore, no other proposals would be acceptable.

The proposal would be authorized by a lease for a term of 10 years. The lease could be renewed at the discretion of the authorized officer.

Fair annual rental has been determined to be $1,200.00 per year. The rental determination was made, by appraisal completed on October 9, 1998, and approved by the BLM Nevada Chief, State Appraiser on October 15, 1998. The rental will be subject to review and adjustment every five (5) years to reflect the current fair market value.

The United States shall reserve the right to issue compatible rights-of-way or use permits over the leased lands. Such uses, however, shall not unduly impair the use of the lands for authorized purposes nor damage authorized improvements therein. The United States shall also reserve all of the coal, oil, gas, and other mineral deposits in the leased land together with the right to enter upon and prospect for, mine, and remove such minerals. The proposed lease would be issued subject to valid existing rights, easements, and rights-of-way of record.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445. In the absence of adverse comments, an application for the proposed use will be processed in accordance with proper application procedures.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, or call (702) 623–1500.

Dated: December 2, 1998.

Michael R. Holbert,

Acting Field Manager, Winnemucca, Nevada.

[FR Doc. 98–32917 Filed 12–10–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of Information Collection Solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Net Profit Share Leases (OMB Control Number 1010–0073), which expires on May 31, 1999.

FORM: None.

DATES: Written comments should be received on or before February 9, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information which expires May 31, 1999. We are requesting OMB approval for a three year extension of this existing collection authority. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

To encourage exploration and development of oil and gas leases on submerged lands of the Outer Continental Shelf (OCS), regulations were promulgated at 30 CFR 260.110(4) implementing a net profit share bidding system. The Net Profit Share Lease (NPSL) bidding system was established to properly balance a fair market return to the Federal Government for the lease of its lands, with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development, and provides for a sharing of the risks by the lessee and the Government. The bidding system incorporates a fixed capital recovery system as the means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

The Government does not receive a profit share payment from an NPSL until the lessee shows a credit balance in its capital account; that is, cumulative revenues and other credits exceed cumulative costs. The credit balance is multiplied by the net profit share rate (usually 50%), resulting in the amount of profit share (royalty) due. The lessee is able to recover exploration and development expenses, plus a reasonable return on its investment, prior to payment of any royalty to the Government.

Lessees are required (30 CFR 220.010) to maintain an NPSL capital account and to provide annual and monthly reports using data taken from the capital account (30 CFR 220.031). This collection of information is necessary in order to determine when royalty payments are due, and to determine the proper amount of payment.

The Department of the Interior (DOI) is the department within the Federal Government responsible for matters relevant to mineral resource development on the OCS. The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary.

Under the NPSL bidding system, a notice of OCS lease sale is published in the **Federal Register** with a net profit share rate and a capital recovery factor (CRF) established for each tract within the sale. The CRF allows the lessee to inflate certain allowable costs by multiplying costs by the CRF. This additional allowance results in a type of risk-sharing arrangement with the Government. Tracts within the same sale may have different profit share rates and different CRF's. The last OCS lease sale involving NPSL's was in August 1983.

After entering into a lease agreement, the lessee is required to maintain an NPSL capital account (30 CFR 220.010). The capital account balance represents the cumulative total of all costs and credits received over the life of the lease. Once the account balance reaches zero, or the lease becomes profitable, royalty payments are due.

When companies enter into NPSL agreements, they agree to submit the reports required by 30 CFR 220.031. There are no reporting forms required, but the lessees must submit updates containing specific information. Before production begins, reports are required on an annual basis. These reports must document costs incurred, credits received, and the balance in the NPSL capital account. Once production begins, monthly reports are required that include the amount and disposition of oil and gas saved, removed, or sold; the amount of production revenue; the amount and description of costs and credits to the NPSL capital account; the balance in the capital account; the net profit share base and net profit share payment due the Government; and the lessee's monthly profit share. All information submitted is taken directly from the lessee's own records. No unique information is required by MMS.

Royalty payments are made based on the individual lease's net profit share rate, multiplied by the quantity (revenues and other credits, less costs). MMS uses the data submitted in the annual and monthly reports to verify costs claimed, revenues earned, and royalty payments due. No royalties are paid until the lessee recovers exploration and development expenses. Information provided in the reports is used by MMS auditors. Failure of the respondent to submit the information results in noncompliance with the requirements of 30 CFR 220 and could result in loss of royalty payments to the Government.

We estimate that about 16 hours are required to prepare each annual and monthly lease report in order to extract from company records the data required by 30 CFR 220.031. Information required to complete these reports comes from records maintained by the companies for their own use. One additional hour for recordkeeping may be required as companies set up files for each lease.

Dated: December 3, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98–32949 Filed 12–10–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 13, 1998, Cauldron Inc., DBA Cauldron Process Chemistry, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture amphetamine for the purpose of performing bioequivalency studies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuances of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 9, 1999.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32979 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 20, 1998, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the manufacture of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 11, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32980 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 18, 1998, Glaxo Welcome Inc., Attn: Jeffrey A. Weiss, 1011 North Arendell Avenue, P.O. Box 1217, Zebulon, North Carolina 27597–2309, made application by renewal to the Drug Enforcement Administration to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in Schedule II.

The remifentanil is being imported for the production of Ultiva dosage forms and for research and new product development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 11, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32981 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 18, 1998, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture the listed controlled substance for product development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 9, 1999.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32982 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on September 18, 1998, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 11, 1999.

This procedure is to be conducted simultaneously with and independent of the procedure described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: December 2, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–32983 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Violence Against Women Grants Office; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, without change, of a previously approved collection for which approval has expired. STOP Violence Against Women Formula Grants 28 C.F.R. Part 90 Certification.

The Department of Justice, Office of Justice Programs, Violence Against Women Grants Office has submitted the following information collection request to the office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by December 23, 1998. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Alex Hunt, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Preet Kang, Information Specialist, OJP Violence Against Women Grants Office, 810 Seventh Street, NW, Sixth Floor, Washington, DC 20531, or facsimile at (202) 305–2589.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) Type of Information Collection: Reinstatement of collection for which OMB Clearance has expired.

(2) Title of the Form/Collection: Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Violence Against Women Grants Office, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be as or required to respond, as well as a brief abstract: Primary: State Governments. Other: None.

The STOP Violence Against Women Formula Grants were authorized through the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, to make funds available to States to combat domestic violence, sexual assault, and stalking crimes against women.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: The time burden of the 56 respondents to complete the certification form is estimated to be 15 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual burden to complete the certification form is 14 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: December 1, 1998.

Robert B. Briggs,

Clearance Officer, United States Department of Justice.

[FR Doc. 98–32913 Filed 12–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
- NY980002 (Feb.13, 1998)
- NY980003 (Feb.13, 1998)
- NY980007 (Feb.13, 1998)
- NY980008 (Feb.13, 1998)
- NY980013 (Feb.13, 1998)
- NY980018 (Feb.13, 1998)
- NY980021 (Feb.13, 1998)
- NY980022 (Feb.13, 1998)
- NY980026 (Feb.13, 1998)
- NY980060 (Feb.13, 1998)

Volume II

Virginia
- VA980066 (Feb. 13, 1998)
- VA980100 (Feb. 13, 1998)
- VA980104 (Feb. 13, 1998)

West Virginia
- WV980002 (Feb. 13, 1998)
- WV980003 (Feb. 13, 1998)
- WV980006 (Feb. 13, 1998)
- WV980009 (Feb. 13, 1998)
- WV980010 (Feb. 13, 1998)

Virginia
- Index (Feb. 13, 1998)

Volume III

None

Volume IV

Illinois
IL980018 (Feb. 13, 1998)

Volume V

Iowa
IA980005 (Feb. 13, 1998)
IA980009 (Feb. 13, 1998)
IA980013 (Feb. 13, 1998)
IA980016 (Feb. 13, 1998)
Oklahoma
OK980013 (Feb. 13, 1998)
OK980014 (Feb. 13, 1998)
OK980016 (Feb. 13, 1998)
OK980017 (Feb. 13, 1998)
OK980018 (Feb. 13, 1998)
OK980024 (Feb. 13, 1998)
OK980028 (Feb. 13, 1998)
OK980030 (Feb. 13, 1998)
OK980031 (Feb. 13, 1998)
OK980033 (Feb. 13, 1998)
OK980034 (Feb. 13, 1998)
OK980035 (Feb. 13, 1998)
OK980036 (Feb. 13, 1998)
OK980037 (Feb. 13, 1998)
OK980038 (Feb. 13, 1998)
OK980040 (Feb. 13, 1998)
OK980041 (Feb. 13, 1998)
OK980043 (Feb. 13, 1998)

Volume VI

None

Volume VII

California
CA980028 (Feb. 13, 1998)
CA980029 (Feb. 13, 1998)
CA980030 (Feb. 13, 1998)
Nevada
NV980001 (Feb. 13, 1998)
NV980003 (Feb. 13, 1998)
NV980005 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 4th day of December 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–32660 Filed 10–12–98; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and continued approval of information collection requirements currently approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: IAEA Form N–71—Design Information Questionnaire.
2. Current OMB approval number: 3150–0056.
3. How often the collection is required: Once.
4. Who is required or asked to report: Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.
5. The number of annual respondents: One.
6. The number of hours needed annually to complete the requirement or request: 360.
7. Abstract: Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71, to provide information concerning their installation for use of the International Atomic Energy Agency.

Submit comments that address the following by February 9, 1999.

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 4th day of December 1998.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Chief Information Officer.

[FR Doc. 98–32956 Filed 12–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and continued approval of information collection requirements currently approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 75—Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.

2. Current OMB approval number: 3150–0055.

3. How often the collection is required: Installation information is submitted upon written notification from the Commission. Changes are submitted as they occur. Nuclear Material accounting and control information is submitted in accordance with specified instructions.

4. Who is required or asked to report: All persons licensed or certified by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U. S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.

5. The number of annual respondents: One reporting and recordkeeping and five others recordkeeping only. The NRC-licensed facility selected for inspection will be reporting design information. This facility and the five facilities selected pursuant to a separate protocol will maintain transfer and material balance records, but reporting to the IAEA will be through the U.S. State system (Nuclear Materials Management and Safeguards System).

6. The number of hours needed annually to complete the requirement or request: 4,848 (48 hours for reporting and 800 hours each for 6 recordkeepers).

7. Abstract: 10 CFR Part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA. Currently, the IAEA has selected and is inspecting one NRC-licensed facility pursuant to 10 CFR 75.41.

Submit comments that address the following by February 9, 1999:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS@NRC.GOV.

Dated at Rockville, Maryland, this 4th day of December 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Chief Information Officer.

[FR Doc. 98–32957 Filed 12–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission: Revision.

2. The title of the information collection: 48 CFR 20, U.S. Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion; one time.

5. Who will be required or asked to report: Offerors responding to NRC solicitations and contractors receiving awards from NRC.

6. An estimate of the number of responses: 3,624.

7. The estimated number of annual respondents: 355.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 26,710 hours (7.4 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The mandatory requirements of the NRCAR implement and supplement the government-wide Federal Acquisition Regulation, and ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

Submit, by January 1, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. The proposed rule indicated in (insert the title of the information collection) is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package of the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by January 11, 1999:

Erik Godwin,

Office of Information and Regulatory Affairs (3150–0169), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 1st day of December, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32958 Filed 12–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Wolf Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Nuclear Generating Station located in Coffey County, Kansas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Wolf Creek Generating Station (WCGS) technical specifications to allow an increase in the WCGS spent fuel pool (SFP) storage capacity and to allow an increase in the maximum nominal fuel enrichment to 5.0 nominal weight percent U–235.

The proposed action is in accordance with the licensee's application for amendment dated March 20, 1998, as supplemented by letters dated May 28, 1998, June 30, 1998, August 28, 1998, and September 4, 1998.

The Need for the Proposed Action

WCGS received its low power operating license on March 11, 1985. At that time, the SFP was authorized to store no more than 1340 fuel assemblies. Current projection, based on expected future spent fuel discharges, indicate that loss of full-core discharge capability will occur at the end of Cycle 14 in 2005. Operation of WCGS beyond loss of full-core discharge capability is possible for Cycles 15 and 16 to provide an additional three to four years of operation until 2008. Wolf Creek has evaluated spent fuel storage alternatives that have been licensed by the NRC and which are currently feasible for use at the WCGS site. The evaluation concludes that re-racking is currently the most cost-effective alternative. Re-racking would provide an increase in storage capacity to 2642 fuel assemblies, which would maintain the plant's capability to accommodate a full-core discharge, through the end of the current plant license in 2025.

The proposed action to increase the maximum nominal fuel enrichment to 5.0 nominal weight percent U–235 is needed so that the licensee can use higher fuel enrichment to provide additional flexibility in the licensee's reload design efforts and to increase the efficiency of fuel storage cell use in the spent fuel pool.

Environmental Impacts of the Proposed Action

Radiological Impacts

The Wolf Creek Nuclear Generating Station uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated June 1982. The proposed spent fuel pool (SFP) expansion will not involve any change in the waste treatment systems described in the FES.

Radiological Material Released to the Atmosphere

The storage of additional spent fuel assemblies in the SFP is not expected to affect the releases of radioactive gases from the SFP. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases is released to the reactor coolant from the small number of fuel assemblies which are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the SFP and are subsequently released into the air. Since the frequency of refuelings (and therefore the number of freshly offloaded spent fuel assemblies stored in the SFP at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased SFP fuel storage capacity.

The increased heat load on the SFP from the storage of additional spent fuel assemblies could potentially result in an increase in the SFP evaporation rate, which may result in a slight increase in the amount of gaseous tritium released from the pool. However, the overall release of radioactive gases from Wolf Creek will remain a small fraction of the limits of 10 CFR 20.1301.

Solid Radioactive Wastes

Spent resins, which are generated by the processing of SFP water through the SFP purification system, are changed about once a year at Wolf Creek. These spent resins are disposed of as solid radioactive waste. The water turbulence caused by the SFP reracking may result in some resuspension of particulate matter in the SFP. This could result in a temporary increase in the resin changeout frequency of the SFP purification system during the SFP reracking operation. The licensee will use a Tri-Nuke underwater filtration unit to clean the floor of the SFP following removal of the old SFP rack modules. Vacuuming of the SFP floor will remove any extraneous debris and crud and ensure visual clarity in the SFP (to facilitate diving operations). Debris and crud will be filtered and stored underwater in special handling baskets purchased for this operation. Additional solid radwaste will consist of the old SFP rack modules themselves as well as any interferences or SFP hardware that may have to be removed from the SFP to permit installation of the new SFP rack modules. Other than the radwaste generated during the actual raracking operation, the staff does not expect that the additional fuel storage made possible by the increased SFP storage capacity will result in a significant change in the generation of solid radwaste at Wolf Creek.

Liquid Radioactive Waste

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble radioactive materials from the SFP water. When the resins are changed out, the small amount of resin sluice water that is released is processed by the radwaste system. As stated above, the frequency of resin changeout may increase slightly during the installation of the new racks. However, the amount of liquid radioactivity released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Occupational Doses

Radiation protection personnel will constantly monitor the doses to the workers during the SFP expansion operation. If it becomes necessary to utilize divers for the SFP reracking operation, the licensee will equip each diver with electronic dosimeters with remote, above surface, readouts, which will be continuously monitored by Health Physics personnel. The total occupational dose to plant workers as a result of the SFP expansion operation is estimated to be between 6 and 12 person-rem. This dose estimate is comparable to doses for similar SFP modifications performed at other plants. The upcoming SFP rack installation will follow detailed procedures prepared with full consideration of as low as is reasonably achievable (ALARA) principles.

On the basis of the review of the Wolf Creek proposal, the staff concludes that

the Wolf Creek SFP rack installation can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated dose of 6 to 12 person-rem to perform the proposed SFP rack installation is a small fraction of the annual collective dose accrued at Wolf Creek.

Accident Considerations

In its application, the licensee evaluated the possible consequences of a fuel handling accident to determine the thyroid and whole-body doses at the exclusion area boundary (EAB), low population zone (LPZ), and control room. The proposed SFP rack installation at the Wolf Creek Nuclear Generating Station will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and therefore will not result in an increase in the doses from a postulated fuel handling accident.

Uranium Fuel Cycle and Transportation

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322), in connection with Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

Details of the radiological consequences of the proposed action will be discussed in the staff's safety evaluation for the proposed changes.

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipment of Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing wastes at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipment of Fuel to a Reprocessing Facility

Reprocessing of spent fuel from the Wolf Creek Nuclear Generating Station is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipment of Fuel to Another Utility or Site for Storage

The shipment of fuel to another utility for storage would provide short-term relief from the storage problem at the Wolf Creek Nuclear Generating Station. The Nuclear Waste Policy Act and 10 CFR Part 53, however, clearly place the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The shipment of fuel to another source is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

Reduction of Spent Fuel Generation

Improved usage of fuel and/or operation at a reduced power level would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer offloads would be necessary. The licensee is planning on operation of an 18-month refueling cycle, and, as part of this proposed amendment, the licensee plans to increase the enrichment to 5 percent. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on Wolf Creek Nuclear Operating Corporation and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The staff also considered denial of the proposed action (no-action alternative). Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Wolf Creek Nuclear Generating Station dated June 1982.

Agencies and Persons Consulted:

In accordance with its stated policy, on December 4, 1998, the staff consulted with the Kansas State official, Mr. Vick Cooper of the Kansas Department of Health and Environment, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 20, 1998, as supplemented by letters dated May 28, 1998, June 30, 1998, August 28, 1998, and September 4, 1998, which are available for public

inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 7th day of December 1998.

For the Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32955 Filed 12–10–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23589; File No. 812–10996]

Cova Financial Services Life Insurance Company, et al.; Notice of Application

December 4, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order pursuant to Sections 17(b) and 26(b) of the Investment Company Act of 1940 (the ''1940 Act'').

SUMMARY OF APPLICATION: Applicants request an order pursuant to 26(b) of the 1940 Act, approving the proposed substitution of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

APPLICANTS: Cova Financial Services Life Insurance Company (''Cova Life''), First Cova Life Insurance Company (''First Cova Life''), Cova Financial Life Insurance Company (''Cova Financial Life) (collectively, the ''Life Companies''), Cova Variable Annuity Account One (''Cova Account One''), Cova Variable Life Account One (''Cova Life Account One''), First Cova Variable Annuity Account One (''First Cova Account One''), Cova Variable Annuity Account Five (''Cova Account Five'') (collectively, the ''Accounts''), Cova Series Trust (''Cova Trust''), Lord Abbett Series Fund, Inc. (''Lord Abbett Fund''), and General American Capital Company (''General American Fund'') (collectively, the ''Management Companies'').

FILING DATE: The application was filed on February 5, 1998, and amended and restated on November 4, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 29, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, CT 06880, Attn: Raymond A. O'Hara III, Esq.

FOR FURTHER INFORMATION CONTACT: Megan L Dunphy, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Life Companies are affiliated stock life insurance companies, whose parent is General American Life Insurance Company (''General American''). Cova Life is incorporated in Missouri and does business in the District of Columbia and in all states except California, Maine, New Hampshire, New York and Vermont. First Cova is incorporated in and licensed to do business only in the state of New York. Cova Financial Life is incorporated in and licensed to do business only in the state of California.

2. Each of the Accounts is registered with the Commission as a unit investment trust. The assets of each Account support variable annuity contracts and, with respect to Cova Life Account One, variable life insurance policies (the ''Contracts''). Interests under the Contracts have been registered under the Securities Act of 1933 (File Nos. 33–39100; 33–14979; and 333–34741).

3. The Accounts are divided into subaccounts, each of which reflects the investment performance of corresponding portfolios of Cova Trust, Lord Abbett Fund, and the General American Fund.

4. Cova Trust is registered under the 1940 Act as an open-end management investment company and is currently comprised of twenty portfolios, nine of which are involved in the proposed substitution; Stock Index Portfolio, Large Cap Stock Portfolio, Quality Income Portfolio, Quality Bond Portfolio, High Yield Portfolio, Bond Debenture Portfolio, Money Market Portfolio, VKAC Growth and Income Portfolio and the Lord Abbett Growth and Income Portfolio.

5. Cova Investment Advisory Corporation (''Cova Advisory''), an indirect wholly owned subsidiary of General American, is the investment adviser for Cova Trust. Cova Advisory has engaged sub-advisers for each of the portfolios of Cova Trust. The sub-adviser for the Large Cap Stock and Quality Bond Portfolios is J.P. Morgan Investment Management, Inc. (''JPM''). The sub-adviser for the Stock Index, Quality Income, High Yield, Money Market and VKAC Growth and Income Portfolios is Van Kampen American Capital Investment Advisory Corp. (''VKAC''). Lord Abbett is the sub-adviser for the Lord Abbett Growth and Income Portfolio and the Bond Debenture Portfolio of Cova Trust.

6. Lord Abbett Fund is registered under the 1940 Act as an open end management investment company and is currently comprised of two portfolios, one of which—the Growth and Income Portfolio—is relevant to the proposed substitution. Lord Abbett & Co. (''Lord Abbett'') is the investment manager of the Lord Abbett Fund.

7. General American Fund is registered under the 1940 Act as an open-end management investment company and is comprised of eight series, one of which—the Money Market Fund—is relevant to the proposed substitution. Conning Asset Management Company, an affiliate of General American, is the investment adviser to the Money Market Fund.

8. Applicants propose to substitute shares of certain portfolios of Cova Trust and the General American Fund (''Substitute Funds'') for shares of certain other portfolios of Cova Trust, the General American Fund, and the Lord Abbett Fund (the ''Replaced Funds'') as follows:

Substitute fund	Replaced fund
Cova Trust	Cova Trust
1. Large Cap Stock Portfolio	1. Stock Index Portfolio.
2. Quality Bond Portfolio	2. Quality Income Portfolio.
3. Bond Debenture Portfolio	3. High Yield Portfolio.
4. Lord Abbett Growth and Income Portfolio	4. VKAC Growth and Income Portfolio.
Cova Trust	Lord Abbett Fund
5. Lord Abbett Growth and Income Portfolio	5. Growth and Income Portfolio.
General American Fund	Cova Trust
6. Money Market Portfolio	6. Money Market Portfolio.

9. Applicants represent that the Substitute Funds have investment objectives that are the same as, similar to, or consistent with those of the Replaced Funds. For each of the substitutions numbered 1–4 in Table 1, above, Applicants state that the Replaced Fund and Substitute Fund are not the same, but are substantially similar. For the substitution numbered 5 above, Applicants state that the Replaced Fund and Substitute Fund are ''clone'' funds with identical investment objectives and policies, and the investment adviser of the Replaced Fund will continue to provide investment advice to the Substitute Fund as a sub-adviser to the fund. Applicants state that the substitution numbered 6 involves two money market funds with substantially identical investment objectives.

10. Applicants state that five of the six proposed substitutions involve Replaced Funds that are sub-advised by VKAC which is no longer an affiliated entity of the Life Companies. These five Portfolios are: the Stock Index Portfolio, the Quality Income Portfolio, the High Yield Portfolio, the VKAC Growth and Income Portfolio and the Money Market Portfolio. The Life Companies examined the historical investment performance records of the proposed sub-advisers/advisers for the Substitute Funds and determined that such records compared favorably, or were better than, those of VKAC, the sub-adviser for five Replaced Funds. Applicants also maintain that the expense ratios of these Replaced Funds is likely to increase over time as assets decline and therefore, the performance of these funds will be hurt. Applicants state that, given the desire of the Life Companies to improve performance, the Life Companies have determined that it is in their best interest and in the best interest of the Contract owners to pursue the proposed substitutions.

11. The Lord Abbett Growth and Income Portfolio of Cova Trust is a newly created investment portfolio that will not begin operations until the proposed substitution takes place and therefore does not have an operating history. Applicants state that the Substitute Fund's investment objectives and policies are a ''clone'' of the Replaced fund, and therefore, the Applicants expect the Substitute Fund to have portfolio characteristics that are substantially the same as the Replaced Fund.

12. Applicants state that certain of the Substitute Funds are substantially larger than the Replaced Funds. Applicants maintain that other Substitute Funds, although smaller than the Replaced Funds, are growing at a much faster rate than the Replaced Funds. Applicants assert that the increased asset size of the Substitute Funds is more likely to result in economies of scale and in lower operating expenses which inure to the benefit of Contract owners.

13. Applicants state that certain of the Replaced Funds of Cova Trust have experienced more favorable expense ratios than the Substitute Funds. Applicants state, however, that the Cova Trust Replaced Funds are no longer offered for sale and therefore their assets are likely to decrease over time given normal levels of transfers and redemptions. Accordingly, Applicants maintain that the expense ratios of these Replaced Funds will rise given the declining assets and the resulting loss of economies of scale.

14. Furthermore, Applicants state that Life Companies have been voluntarily subsidizing the Cova Trust Replaced Funds for all operating expenses exclusive of investment advisory fees. Applicants maintain that the Life Companies have already expended considerable amounts of money voluntarily subsidizing these portfolios, and it is likely that the Life Companies will cease any future expense reimbursements. Without expense reimbursements, Applicants maintain that the expense ratios of the Cova Trust Replaced Funds will likely exceed their Substitute Fund counterparts over time.

15. Applicants state that the proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of their investment in the Accounts. The substitutions will be effected by redeeming shares of the Replaced Funds on the date of substitution at net asset value and using the proceeds to purchase shares of the Substitute Funds at net asset value on the same date. At all times, the Contract values will remain unchanged and fully invested. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by the Life Companies. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

16. Applicants state that it is expected that certain of the substitutions will be effected by redeeming the shares of the Replaced Fund partly in cash and partly in-kind. Those assets will then be contributed to the Substitute Fund to purchase shares of that fund. Redemptions and contributions in-kind will reduce the brokerage costs that would otherwise be incurred in connection with the redemption. The use of in-kind redemptions and contributions will be done in a manner consistent with the investment objectives and policies and diversification requirements of the applicable Substitute Fund, and the adviser and each Substitute Fund's sub-adviser will review the in-kind redemptions to assure that the assets proposed for the fund are suitable for the Substitute Fund. The assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the redeeming and purchasing funds. Applicants state that any inconsistencies in valuation

procedures between the Replaced Fund and the Substitute Fund will be reconciled so that the redeeming and purchasing values are the same.

17. Applicants state that after the substitutions have been completed there will be one instance where more than one sub-account of an Account will hold shares of a single Substitute Fund. The Life Companies intend to consolidate those sub-accounts. Specifically, Applicants state the subaccounts currently investing in the VKAC Growth and Income Portfolio and the Growth and Income Portfolio of the Lord Abbet Fund will be merged in to new sub-accounts which will invest in the Lord Abbett Growth and Income Portfolio of Cova Trust. Shares held by the existing sub-accounts will be transferred to the new sub-accounts at net asset value so there will be no financial impact to the Contract owner.

18. Applicants state that the Life Companies have supplemented the Contract prospectuses to reflect the proposed substitutions. The supplements identify which funds are being replaced and advise Contract owners that they may transfer assets from any subaccount involved in the proposed substitution to any other subaccount available under a Contract without any limitation or charge prior to the date of the substitution and for a period of 30 days after the substitution. Contract owners who are affected by the substitution will be sent notice of the substitutions within five days following the substitution date confirming that the substitutions have been completed and reiterating their right to make transfers to any other subaccount for a period of 30 days from the date of the notice without any limitation or charge being imposed.

19. Applicants state that following the substitutions, Contract owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts, as they currently have.

Applicant's Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part, that '[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such a security unless the Commission shall have approved such substitution.'' Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purpose fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to 26(b) of the 1940 Act approving the proposed substitutions by the Life Companies. Applicants assert that the purposes, terms, and conditions of the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the proposed substitutions will not result in the type of costly forced redemption that Section 26(b) of the 1940 Act was intended to guard against.

3. Applicants state that the Contracts reserve the Life Companies' right, subject to Commission approval, to substitute shares of one management investment company for another in situations where it could benefit the Life Companies and the Contract owners. Applicants also state that the Contract prospectuses disclose this right. Applicants maintain that each of the Substitute Funds is a suitable and appropriate investment vehicle for Contract owners and each of the Substitute Funds has either a substantially identical investment objective or an investment objective that is similar to or comparable with the Replaced Fund.

4. Applicants submit that the proposed substitutions meet the following standards that have been applied to substitutions in the past in that:

a. The investment objectives of the Substitute Funds are substantially identical to, similar to, or comparable with those of the Replaced Funds;

b. The substitutions, in all cases, will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge;

c. The Life Companies have undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commission, relating to the substitutions;

d. The substitutions in no way will alter the insurance benefits to Contract owners or the contractual obligations of the Life Companies;

e. The substitutions in no way will alter tax benefits to Contract owners; and

f. Contract owners may choose simply to withdraw amounts credited to them following the substitutions under the conditions that currently exist without incurring any charges (other than any applicable withdrawal charges).

5. Section 17(a)(1) of the 1940 Act prohibits an affiliated person, or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person from purchasing any security or other property from such registered investment company.

6. Applicants state that certain portfolios of the Management companies may be affiliated persons of each other or affiliated persons of affiliated persons of each other. In addition, Applicants state that the proposed substitutions by the Life Companies, which may entail the indirect purchase of shares of the Substitute Funds with portfolio securities of the Replaced Funds and the indirect sale of portfolio securities of the Replaced Funds for shares of the Substitute Funds, may also entail the purchase or sale of such securities by each of the portfolios of the Management Companies involved, acting as principal, to one of the other portfolios of the Management Companies and therefore may be in contravention of Section 17(a) of the 1940 Act.

7. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the in-kind redemptions and purchases from the provisions of Section 17(a). Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants represent that the terms of the proposed substitution, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contract owners will not be diluted. The in-kind redemptions and purchases will take place at relative net asset value with no change in the amount of any Contract owner's Contract or accumulation value or death benefit or in the dollar value of his or her investment in any of the Accounts. Both the investment advisers/and or

sub-advisers will examine the portfolios securities being offered to each Portfolio and accept only those securities as consideration that they would have acquired directly in a cash transaction. The Applicants represent that the transactions are consistent with the policies of each investment company and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitution and related transactions involving in-kind redemptions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32933 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40749; File No. SR–Amex–98–29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change Relating to the Listing Under Rules 1000A et seq. of Select Sector SPDRs SM and Technology 100 Index Fund Shares

December 4, 1998.

I. Introduction

On July 17, 1998, the American Stock Exchange, Inc. (''AMEX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 list and trade under AMEX Rules 1000A et seq. (''Index Fund Shares'') the following securities: (1) nine series of Select Sector SPDRs SM.; and (2) one series of the Technology 100 Index Fund (collectively, the ''Funds'').

Notice of the proposed rule change, together with substance of the proposal, was published for comment in Securities Exchange Act Release No. 40391 (September 1, 1998), 63 FR 48280 (September 9, 1998). On November 12, 1998, the Exchange filed Amendment No. 2.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to list and trade under Rules 1000A et seq.[4] the following securities issued by an open-end management investment company: (1) nine series of Select Sector SPDRs SM, as described herein;[5] and (2) one series of the Technology 100 Index Fund.[6]

(a) Select Sector SPDRs

The Exchange proposes to list and trade nine investment series of Select Sector SPDRs to be offered by the Select Sector SPDR Trust, an open-ended investment company and a Massachusetts business trust. The Select Sector SPDRs offered by the Trust are: The Basic Industries Select Sector SPDR; The Consumer Services Select Sector SPDR; The Consumer Staples Select Sector SPDR; The Cyclical/Transportation Select Sector SPDR; The Energy Select Sector SPDR; The Financial Select Sector SPDR; The Industrial Select Sector SPDR; The Technology Select Sector SPDR; and The Utilities Select Sector SPDR.[7]

Each Select Sector SPDR offers and issues Select Sector SPDR shares at their net asset value only in aggregations of a specified number of shares (''Creation Unit''), generally in exchange for a basket of common stocks consisting of some or all of the component securities (''Fund Securities'') of a specified market sector index (''Select Sector Index''), together with the deposit of a specified small cash payment known as the ''cash component'' and reflecting, for example, net accrued dividends. It is anticipated that the deposit of Fund Securities and the specified cash payment, in exchange for Select Sector SPDRs will be made primarily by institutional investors, arbitrageurs and the Exchange specialist. Creation Units are separable upon issue into identical shares which are listed and traded on the AMEX. Similarly, shares are also redeemable only in Creation Unit size aggregations and usually in exchange for Fund Securities and a specified cash payment. It is anticipated that a Creation Unit will consist of 50,000 shares of the relevant series of Select Sector SPDRs. The Select Sector SPDR Trust reserves the right to offer a ''cash'' option for creations and redemptions of Select Sector SPDRs, although it has no current intention of doing so. For each Select Sector, SPDR, the Administrator (State Street Bank and Trust Company) makes available through the National Securities Clearing Corporation (''NSCC''), immediately prior to the opening of business on the AMEX, the list of names and the required number of share of stocks of each relevant Select Sector Index to be included in the securities deposit required in connection with the creation of Select Sector SPDRs in Creation Unit size aggregations.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 changes the name of the Sector SPDRs to Select Sector SPDRs; clarifies the duties and identity of the lending agent; changes and explains the method of the dissemination of product information by the Exchange; delineates the construction and maintenance standards for the Select Sector Indices and the Technology 100 Index; and clarifies that in the event of market wide circuit breakers trading in the Select Sector SPDRs and the Technology 100 Index Fund would be suspended pursuant to Amex Rule 117. The substance of this amendment is incorporated into this order. *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Heather Seidel, Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 11, 1998 (''Amendment No. 2'').

[4] Amex Rules 1000A et seq. provide for the listing and trading of Index Fund Shares, which are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 63 FR 2348 (March 14, 1996). The Exchange currently lists under Rules 1000A et seq. seventeen series of World Equity Benchmark Shares ™ (''WEBS ™'') based on Morgan Stanley Capital International foreign stock indices. ''World Equity Benchmark Shares'' and ''WEBS'' are service marks of Morgan Stanley Group, Inc.

[5] ''S&P'' ®, ''Standard & Poor's 500'' ®, ''Standard & Poor's Depository Receipts'' ® and ''SPDRs'' ® are trademarks of The McGraw-Hill Companies, Inc., and ''Select Sector SPDR'' is a service mark of The McGraw-Hill Companies, Inc.

[6] The Select Sector SPDR Trust (with respect to Select Sector SPDRs) and The Index Exchange Listed Securities Trust (with respect to the series of the Technology 100 Index Fund) filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 (''1940 Act'') as amended, for the purpose of exempting Select Sector SPDRs and the series of the Technology 100 Index Fund from Sections 2(a)(32), 5(a)(1), 22(d), 17(a)(1) and (a)(2), and Rule 22c–1 under the 1940 Act. *See* Investment Company Act Release No. 23492 (October 20, 1998), 63 FR 57332 (October 27, 1998).

[7] Information on the component stocks of the Select Sector Indices and the Technology 100 Index is available in the public file.

[8] The procedures for the creation and redemption of Select Sector SPDRs and Technology 100 Index Fund shares are similar to those applicable for SPDRs, for utilize processes of the National Securities Clearing Corporation in connection with the transmittal of trade instructions, the transfer of component securities and the cash component, and the transfer of Select Sector SPDRs or Technology 100 Index Fund shares and component securities on creation or redemption. This contrasts with procedures for the creation and redemption of other Index Fund Shares currently listed on the Amex (i.e., WEBS™), which, while similar in certain respects to SPDR procedures, do not utilize such National Securities Clearing Corporation processes.

Continued

Each of the nine Select Sector Indices, which is the benchmark for a Select Sector SPDR, is intended to give investors an efficient way to track the movement of baskets of the equity securities of public companies that are components of the Standard & Poor's 500 Composite Stock Index (''S&P 500'') and are involved in specific sectors.[9] Each stock included in a Select Sector Index (the ''Component Stocks'') will be selected from companies represented in the S&P 500.[10] The nine Select Sector Indices together will include all of the companies represented in the S&P 500 and all of the stocks in the S&P 500 will be allocated to one and only one of the Select Sector Indices. Each Select Sector Index will be calculated by the AMEX's Index Services Group (''AMEX ISG'') using the ''market capitalization'' methodology (the same method used in calculating the S&P 500). This design ensures that each of the component stocks within a Select Sector Index is represented in a proportion consistent with its percentage with respect to the total market capitalization of the Select Sector Index. Under certain conditions, the number of shares of a component stock may be adjusted to conform to requirements of Subchapter M under the Internal Revenue Code.[11]

The stocks included in a Select Sector Index have been assigned to a Select Sector Index by Merrill Lunch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch'' or ''the Index Compilation Agent''). The Index Compilation Agent, after consultation with Standard & Poor's, assigns Component stocks to a particular Select Sector Index with the aim of categorizing a company's fundamental businesses on the basis of the company's sales and earnings composition and its predominant source of revenue among the company's business lines. In addition, such assignment is based on the sensitivity of the company's stock price and business results to the common factors that affect other companies in the specific Select Sector Index.[12] Standard & Poor's has sole control over the removal of stocks from the S&P 500 and the selection of replacement stocks to be added to the S&P 500, but only plays a consulting role in the assignment of the S&P 500 component securities to any Select Sector Index. The assignment of component stocks to a Select Sector Index is the sole responsibility of the Index Compilation Agent. If Standard & Poor's removes a stock from the S&P 500, Merrill Lynch will remove the same stock from whichever Select Sector Index it is in. When Standard & Poor's assign a replacement stock to the S&P 500, Merrill Lynch will assign the same stock to whichever Select Sector Index it deems appropriate.

Each Select Sector Index is weighted based on the market capitalization of each of the Component Stocks, subject to the following asset diversification requirements: (i) the market capitalization-based weighted value of any single Component Stock measured on the last day of a calendar quarter may not exceed 24.99% of the total value of its respective Select Sector Index; and (ii) with respect to 50% of the total value of the Select Sector Index, the market capitalization-based weighted value of the Component Stock must be diversified so that no single Component Stock measured on the last day of a calendar quarter represents more that 4.99% of the total value of its respective Select Sector Index, or in other words, the sum of the weight of all of the component stocks that each represent less than 5% of the Index must be equal to at least 50% of the Index weight.

Rebalancing the Select Sector Indices to meet the asset diversification requirements will be the responsibility of the AMEX ISG. If shortly prior to the last business day of any calendar quarter (a ''Quarterly Qualification Date''), a Component Stock(s) approaches the maximum allowable value limits set forth above (the ''Asset Diversification Limits''), the percentage that such Component Stock (or Component Stocks) represents in the Select Sector Index will be reduced and the market capitalization-based weighted value of such Component Stock (or Component Stocks) will be redistributed across the Component Stocks that do not closely approach the Asset Diversification Limits in accordance with the methodology set forth in the prospectus and Statement of Additional Information for the Select Sector SPDR Trust. The Select Sector Indices are calculated and disseminated by the AMEX ISG.

Periodically, the Index Compilation Agent will supply the AMEX ISG with sector designations for a number of stocks deemed likely candidates for replacement selection by the Standard & Poor's 500 Index Committee. If a replacement not on the current list is selected by the Standard & Poor's 500 Index Committee, the AMEX ISG will ask the Index Compilation Agent to assign the stock to one of the nine sectors promptly. AMEX will disseminate information on this assignment and on consequent changes in the Select Sector Index(es). The AMEX does not expect the timing of dissemination of such information to be materially affected by whether a replacement stock had been included among the candidates for replacement supplied by the Index Compilation Agent.

The Index Compilation Agent at any time may determine that a Component Stock which has been assigned to one Select Sector Index has undergone such a transformation in the composition of its business that is should be removed from that Select Sector Index and assigned to a different Select Sector Index. In the event that the Index Compilation Agency notifies the AMEX ISG that a Component Stocks Select Sector Index assignment should be changed the AMEX will disseminate notice of the change by using an information circular to their membership within one business day of receipt of such notice and will implement the change in the affected Select Sector Indices on a date no less than one week after the initial dissemination of information on the sector change to the maximum extent practicable.[13] It is not anticipated that Component Stocks will change sectors frequently.

Component Stocks removed from and added to the S&P 500 will be deleted from and added to the appropriate Select Sector Index consistent with the timing of the announcement and

Unlike the WEBS series, which do not hold all of the applicable index stocks but instead utilize a representative ''portfolio sampling'' technique, Select Sector SPDRs and the Technology 100 Index Fund generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus.

[9] The S&P 500 Index consists of 500 stocks chosen by Standard & Poor's for market size, liquidity, and industry group representation. It is a market-value weighted index (stock price times number of shares outstanding), with each stock's weight in the Index proportionate to its market value.

[10] The Select Sector Indices underlying the Select Sector SPDRs are not the same as S&P indices based on specific industry sectors, although the component stocks of the Select Sector Indices may be comparable to, and overlap with, the S&P sector indices to some degree.

[11] Each Select Sector SPDR Fund (as well as the Technology 100 Index Fund) intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M. To qualify for such treatment, a company must annually distribute at least 90% of its net investment company taxable income (which includes dividends, interest and net short-term capital gains) and meet several other requirements, including certain diversification tests.

[12] For example, Amex states that a common factor that could affect the prices for the Component Stocks in the Financial Select Sector Index or the Utilities Select Sector Index is interest rate variations. *See* Amendment No. 2, *supra* note 3.

[13] Telephone Conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 24, 1998.

effectiveness of additions and deletions from the S&P 500 insofar as practicable. The AMEX will announce a change to a Select Sector Index promptly following an announcement by Standard & Poor's of an addition to and deletion from the S&P 500.[14] Generally, changes in the applicable component stock for the relevant Select Sector SPDR Index will be made concurrently with Standard & Poor's change to the S&P 500.[15]

Standard & Poor's will advise the AMEX ISG regarding the handling of nonroutine corporate actions which may arise from time to time and which may have an impact on the calculation of the S&P 500, and, consequently, on the calculation of the Select Sector Indices. Corporate Actions such as a merger or acquisition, stock splits, and routine spin-offs, which require adjustments in the Select Sector Index calculation, will be handled by the AMEX staff. Index Divisor adjustments will be calculated, when necessary, in the same manner they are handled by Standard & Poor's in its maintenance of the S&P 500. In the event a merger or acquisition changes a company's fundamental business and source of revenues, the Select Sector Index assignment of the stock may change. In any event, a new Index Divisor for affected Select Sector Indices will be disseminated to the public promptly by the AMEX ISG.

Each Select Sector SPDR will normally invest at least 95% of its total assets in stocks that comprise the relevant Select Sector Index or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks.[16]

(b) Technology 100 Index Fund Shares

The Exchange also proposes to list and trade Technology 100 Index Fund shares issued by the Index Exchange Listed Security Trust, an open-ended investment company and a Massachusetts business trust. Such trust is an ''index fund'' presently consisting of a single investment portfolio, the Technology 100 Index Fund. Fund shares may be created and redeemed in a manner similar to that described above for Select Sector SPDRs.[17] The Fund Administrator (State Street Bank and Trust Company) makes available through NSCC, immediately prior to the opening of business on the AMEX, the list of names and the required number of shares of stocks to be included in the securities deposit required in connection with creation of Fund shares in Creation Unit size aggregations. Creation Units are separable upon issuance into identical shares which are listed and traded on the AMEX. Similarly, shares are also redeemable only in Creation Unit size aggregations and usually in exchange for Fund Securities and a specified cash payment. It is anticipated that one Creation Unit will consist of 50,000 Fund shares.

The Fund's investment objective is to provide investment results that correspond generally to the price and yield performance of publicly traded equity securities of technology companies as represented by an index (the ''Technology 100 Index'') compiled by Merrill Lynch. The Technology 100 Index, which is constructed in accordance with specified selection criteria, is intended to give investors an efficient, equal-dollar weighted way to track movements of certain technology stocks and American Depositary Receipts (''ADRs'') traded within the United States. According to the AMEX, the Technology 100 Index provides a diversified representation of technology stocks and ADRs traded in the United States. The majority of the Technology 100 Index components are involved in the following industries: computer software, data processing, computer services, semiconductors, and telecommunications equipment.

The Technology 100 Index is constructed by Merrill Lynch based on two criteria: market capitalization and trading volume. First, to assure that stocks in the Index are highly liquid, stocks with daily trading volume of less than $12.5 million (shares traded times trade price) are eliminated from the selection universe of all U.S. traded technology stocks and ADRs. The median 63 day trading volume calculation, using the most recent 63 trading days, is used for this screening; the data for the initial index construction is from January 30, 1998. Second, the top 100 stocks from the liquidity-screened universe of technology names are chosen by market capitalization. The price used to calculate market capitalization in connection with the initial index construction is the primary exchange closing price as of January 30, 1998.

The Technology 100 Index is calculated and maintained by the AMEX ISG in consultation with Merrill Lynch, which may suggest changes in the industry categories represented in the Index or changes in the number of component stocks in an industry category to properly reflect the changing conditions in the technology sector. The Technology 100 Index is calculated using an equal dollar weighting methodology designed to ensure that each security is represented in an approximately equal dollar amount. In addition, Merrill Lynch may advise the Exchange regarding the handling of unusual corporate actions. Routine corporate actions (e.g. stock splits) that require straightforward index divisor adjustments are handled by the Exchange staff without consulting Merrill Lynch.

Whenever possible, all stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spin-offs, or extraordinary dividends will be made by the Exchange in consultation with Merrill Lynch. In the case of replacements, the largest non-index constituent in terms of market capitalization from the list of U.S.-traded technology stocks and ADRs will be chosen.

In selecting replacement stocks, the market capitalization and trading volume is calculated using the primary exchange closing price one day prior to potential replacements being considered. There is no fixed period between the consideration and change dates, but in most instances the period between the consideration and the change dates will be no more than a month.[18] The chosen stock must have a median daily trading volume over the previous 63 days that is greater than that of the 75th percentile rank of the existing Index stocks. If the liquidity level is insufficient, the next largest stock will be considered. In the event that no stock meets the liquidity criteria,

[14] Standard & Poor's generally announces S&P 500 changes five business days before they take effect.

[15] Telephone Conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 20, 1998.

[16] As noted above, *supra* note 8, Select Sector SPDRs generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus.

[17] As noted above, *supra* note 8, the Technology 100 Index Fund generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus. The Fund reserves the right to offer a ''cash'' option for creations and redemptions of Fund shares, although it has no current intention of doing so. The Fund will normally invest at least 95% of its total assets in stocks that comprise the benchmark index or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks.

[18] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on December 3, 1998.

the largest stock in terms of market capitalization will be added.

Merrill Lynch will reconstitute the Index annually after the close of the third Friday of December. The reconstitution will take two steps: first, determination of Index constituents, and second, share calculations to ensure equal weighting. Index constituents will be replaced if; 1) a stock is no longer deemed a representative ''technology'' stock; or 2) the stock's market capitalization declines below that of the 125th market cut-off to reduce unnecessary turnover. The shares and volume figures are calculated using data as the second Friday of December.

(c) Dissemination of Information by the Exchange[19]

The value of the Select Sector Indices and the Technology 100 Index will be calculated continuously by AMEX and disseminated every 15 seconds on Network B of the Consolidated Tape Association (''CTA''). The major electronic financial data vendors, including Bloomberg, Quotron, Reuters, and Bridge Information Systems, are expected to publish information on the Select Sector and Technology 100 Indices for their subscribers.

In order to provide up to date pricing information for the Funds' shares, the Exchange will calculate and disseminate every 15 seconds through CTA Network B an amount representing on a per share basis the sum of the ''Dividend Equivalent Payment'' effective through and including the previous business day, plus the current value of the ''Deposit Securities'' (the sum of the Dividend Equivalent Payment plus the current value of the Deposit Securities is the ''Value''). The Dividend Equivalent Payment is an amount intended to enable a Fund to make a distribution of dividends on the next payment date as if all the portfolio securities of the Fund had been held for the entire dividend period. The ''Deposit Securities'' consist of a designated portfolio of securities constituting a substantial replication, or a representation, of the stocks included in the relevant Fund index.

(d) Other Characteristics of Select Sector SPDRs and Technology 100 Index Fund

For each of the nine series of Select Sector SPDRs and the Technology 100 Index Fund, it is anticipated that a minimum of three Creation Units will be outstanding at the commencement of trading on the Exchange.[20] Based on market prices as of November 12, 1998, it is anticipated that the initial trading price of a Select Sector SPDR will range from approximately $21 to $28, and that the initial trading price of a Technology 100 index Fund share will be approximately $25.[21]

The Funds will pass along dividends and interest, net of expenses, to fund shareholders as ''income dividend distributions.'' Net capital gains will be distributed to shareholders as ''capital gain distributions.''

The net asset value for the Funds is calculated by the Administrator, State Street Bank and Trust Company (''State Street''), which is also the Adviser and Custodian for the Funds. State Street will also act as the lending agent for the Select Sector SPDR.[22] The lending agent for the Technology 100 Index Fund will be determined.[23] ALPS Mutual Funds Services, Inc. serves as the principal underwriter and distributor for the Funds.

Select Sector SPDRs and Technology 100 Index Fund shares are registered in book-entry form through the Depository Trust Company. Trading in Select Sector SPDRs and Technology 100 Index Fund shares on the Exchange is effected until 400 p.m. each business day. The minimum trading increment under Rule 127 for Select Sector SPDRs and Technology 100 Index Fund shares will be 1⁄64 of $1.00.

(e) Stop and Stop Limit Orders

AMEX Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by AMEX Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including Select Sector SPDRs and shares of the Technology 100 Index Fund, as eligible for this treatment.[24]

(f) Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in AMEX Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including Select Sector SPDRs and Technology 100 Index Fund shares. These factors would include (1) the current calculation of the numerical index value derived from the current market prices of the underlying stocks in such stock index group is not available; (2) trading in one or more of the underlying stocks comprising such stock index group has been halted in the primary market(s) under circumstances which indicate that such stock or stocks will likely re-open at a price or prices significantly different than the price or prices at which such stocks or stocks last traded prior to the halt; (3) the extent to which trading is not occurring in stocks underlying the index; (4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[25]

(g) Disclosure

Member firms will be informed by an information circular, prior to the commencement of trading, that investors purchasing Select Sector SPDRs or Technology 100 Index Fund shares will be required to receive a fund prospectus prior to, or concurrently with, the confirmation of a transaction within. The information circular will address Exchange members' responsibilities under AMEX Rule 411 (''know your customer rule'') regarding transactions in such Fund Shares. AMEX Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[26] The circular also will address members' responsibility to deliver a prospectus to all investors as

[19] The Exchange will not disseminate the Indicative Per Share Portfolio Value described in the initial Rule 19b–4 filing, but will instead disseminate information as described herein. *See* Amendment No. 2, *supra* note 3.

[20] Based on the estimated initial trading prices for the Select Sector SPDRs and the Technology 100 Index Fund shares, the value of the one creation unit should be between $1 million and $1.5 million. Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 20, 1998.

[21] *See* Amendment No. 2, *supra* note 3.

[22] The lending agents for the Funds will cause the delivery of loaned securities from each Fund to borrowers, arrange for the return of loaned securities to the Fund at the termination of the loans, request deposit of collateral when required by the loan arrangements, and provide recordkeeping and accounting services. *See* Amendment No. 2, *supra* note 3.

[23] Merrill Lynch will not be the lending agent for the Technology 100 Index Fund as indicated in the original filing. Telephone Conversation Between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Marc McKayle, Attorney, Division, Commission, on November 23, 1998.

[24] *See* Securities Exchange Act Release No. 29063, n. 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) (order approving File No. SR–Amex–90–31 regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c)).

[25] In the event of market wide circuit breakers trading in the Select Sector SPDRs and the Technology 100 Index Fund would be suspended pursuant to Amex Rule 117. *See* Amendment No. 2, *supra* note 3.

[26] *See* Amex Rule 411.

well as highlight the characteristics of purchases in the Funds.

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 national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[27] The Commission believes that the Exchange's proposal to list and trade nine Select Sector SPDRs and one series of Technology 100 Index Fund Shares will provide investors with a convenient and efficient way of participating in the securities markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low cost security replicating the performance of a portfolio of stocks at negotiated prices throughout the business day.[28] The Commission also believes that Fund Shares in general, and Select Sector SPDRs and the Technology 100 Index Fund shares in particular, will benefit investors by allowing them to trade securities based on a portfolio of stocks in secondary market transactions.[29] Accordingly, as discussed below, the proposed rule change is consistent with Section 6(b)(5) of the Act[30] which requires Exchange rules to facilitate transactions in securities while continuing to further investor protection and the public interest.[31]

As the Commission noted in previous orders approving other products (SPDRs and MidCap SPDRs) for listing and trading on AMEX,[32] the Commission believes that the trading of a security like the Select Sector SPDRs and the Technology 100 Index Fund shares, which replicate the performance of a portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as Select Sector SPDRs and the Technology 100 Index Fund shares, trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[33] Accordingly, the Commission believes that trading shares of the Funds will provide retail investors with a cost efficient means to make investment decisions based on the direction of certain sectors the market, and may provide market participants several advantages over existing methods of effecting program or other trades involving stocks.

Based on market prices as of November 12, 1998, it is anticipated that the initial trading price of a Select Sector SPDR will range from approximately $21 to $28, and the initial trading price of the Technology 100 Index Fund share will be approximately $25. The estimated cost of an individual Select Sector SPDR or the Technology 100 Index Fund should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks representing a particular sector of the marketplace.[34] Accordingly, the Commission believes that trading of Select Sector SPDRs and the Technology 100 Index Fund shares will provide retail investors with a cost efficient means to make investment decisions based on the direction of various segments of the market and may provide market participants several advantages over existing methods of effecting program or other trades involving stocks.

Moreover, the Commission believes that Select Sector SPDRs and the Technology 100 Index Fund shares will provide investors with several advantages over standard open-end mutual fund shares specializing in such stocks. In particular, investors will be able to trade the Funds continuously throughout the business day in secondary market transactions at negotiated prices.[35] In contrast, Investment Company Rule 22c–1[36] limits holders and prospective holders of open-end investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the funds as designated by the board of directors. Accordingly, the Select Sector SPDRs and the Technology 100 Index Fund shares should allow investors to: (1) respond quickly to market changes; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although the Funds are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, the Funds are equity securities that are priced off a portfolio of stocks based on the nine Select Sector SPDR Indices and the Technology 100 Index. Accordingly, the level of risk involved in the purchase or sale of these Funds is similar to the risk involved in the

[27] 15 U.S.C. 78f(b)(5).

[28] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[29] The Commission notes, however, that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Select Sector SPDRs and the Technology 100 Index Fund can redeem them in Creation Unit size aggregations only. Nevertheless, Select Sector SPDRs and the Technology 100 Index Fund shares would have the added benefit of liquidity from the secondary market and fund holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[30] 15 U.S.C. 78f(b).

[31] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] *See* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (''SPDRs Order''), and 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) (''MidCAP SPDRs Order'').

[33] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a ''basket'' or group of fifteen or more stocks having a total market value of $1 million or more.

[34] For example, an investor wishing to hold securities tracking technology stocks could purchase in a single transaction the Technology Select Sector SPDR or the Technology 100 Index Fund.

[35] Because of potential arbitrage opportunities, the Commission believes that the Funds will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of the Funds comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trusts will track the underlying index more closely than an open-end index fund because the Trusts will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trusts will generally redeem only in kind, thereby enabling the Trusts to invest virtually all of its assets in securities comprising the underlying index.

[36] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted the Select Sector SPDRs and the Technology 100 Fund an exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. *See supra* note 6.

purchase or sale of traditional common stock, with the exception that the pricing mechanism for the Funds is based on a basket of stocks. Based on these factors, the Commission believes that it is appropriate to regulate the Funds in a manner similar to other equity securities. Nevertheless, the Commission believes that the nature of the Funds raise, certain product design, disclosure, trading, market impact and other issues that must be addressed adequately. As discussed in more detail below, the Commission believes AMEX has adequately addressed these concerns.

(a) The Funds Generally

The Commission believes that the proposed Funds are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and, in turn, the performance of: (1) public companies that are components of the S&P 500 and are involved in a specific Select Sector Index as designed by Merrill Lynch, and (2) publicly traded equity securities of technology companies as represented by an index compiled by Merrill Lynch. The components of the nine individual Select Sector SPDRs, collectively, comprise all of the components in the S&P 500, a broad-based, capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. Thus, although Merrill Lynch is primarily responsible for the assignment of stocks into Select Sector Indices, the nature of the S&P 500 provides a liquidity screen that should insure that the Select Sector Indices are comprised of highly liquid securities. Merrill Lynch also imposes specific criteria in its selection of the Technology 100 Index components. In selecting components for the Technology 100 Index, Merrill Lynch evaluates the market capitalization and trading volume of the components to assure that the stocks within the Index are liquid and highly capitalized.

The aim of these component selection processes is to make Fund Index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or that have a small capitalization are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of these Indices are well capitalized and actively traded.

Additionally, the Funds generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus. The Commission also notes that the Funds will normally invest at least 95% of their total assets in stocks that comprise the relevant Sector Index, the Technology 100 Index, or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks. The Commission believes that taken together, the foregoing are adequate to characterize the Funds as bona fide index funds. Furthermore, the Commission believes that the component selection and replacement procedures for the Funds should help to ensure that the component securities generally remain highly capitalized and actively traded, and that the components continue to reflect their corresponding indices.

(b) Disclosure

The Commission believes that the Exchange's proposal should ensure that investors are adequately apprised of the terms, characteristics, and risks of trading the Funds.[37] As noted above, all Fund Share investors will receive a prospectus regarding the product. Because the Funds will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors, and to all investors purchasing such securities in secondary market transactions on the AMEX. The prospectus will address the special characteristics of the Select Sector SPDRs or the Technology 100 Index Fund shares, including a statement regarding its redeemability and method of creation.

The Commission notes that the Exchange will issue an information circular to its members explaining the unique characteristics of this type of security prior to the commencement of trading in shares of the Funds. The Commission also notes the circular will address Exchange members' responsibilities under AMEX Rule 411 regarding transactions in such Fund Shares. AMEX Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[38] The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the charactistics of purchases in the Fund Shares.

(c) Trading of the Index Fund Shares

The Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares. The Fund shares will be deemed equity securities subject to all AMEX rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, market volatitly related trading halt provisions pursuant to Rule 117, and responsibilities of specialist. The Commission also notes that the AMEX may consider halting trading in any series of Index Funds Shares under certain other circumstances, including those set forth in AMEX Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

The Commission is satisfied with the AMEX's development of specific listing and delisting criteria for Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares. These criteria should help to ensure that a minimum level of liquidity will exist in the Funds and allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider the suspension of trading and the delisting of a Select Sector SPDR or the Technology 100 Index Fund, if an event were to occur that made further dealings in such securities inadvisable. Thus, the Exchange has flexibility to delist any of the Funds if circumstances warrant such action.[39] Accordingly, the Commission believes that the rules governing the trading of Index Fund Shares, including the Select Sector SPDRs and the Technology 100 Index Fund, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Under AMEX's proposal, there will be no special account opening or customer suitability rules applicable to the trading of the Fund shares.[40] Nevertheless, as noted above, AMEX Rule 411, which provides in pertinent part that ''[e]very member or member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted,'' will apply.

[37] The Amex will be required to file a proposed rule change if an exemption from the prospectus delivery requirement with respect to any of the Funds is sought in the future.

[38] *See* Amex Rule 411.

[39] The Commission believes that any restrictions that change the fund shares fundamental characteristics should raise concerns under the delisting criteria. In such a case, the Amex should determine whether continued listing as a fund share is appropriate.

[40] This reflects the fact that the Fund shares are equity products and not an options product, and, therefore, do not necessitate the imposition of options-like rules.

(d) Market Impact

The Commission believes AMEX has adequately addressed the potential market impact concerns raised by the proposal. First, AMEX's proposal permits listing and trading of specific Index Fund Share only after review by the Commission. Second, AMEX has developed policies regarding trading halts in Index Fund Shares. Specifically, the Exchange would halt Index Fund Share trading in the Funds if the circuit breaker parameters under AMEX Rule 117 were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in Index Fund Shares, in general, and the Select Sector SPDRs and the Technology 100 Index Fund Shares, in particular, AMEX represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. These rules would permit AMEX to halt or suspend trading, based on certain factors, whenever two floor governors and a senior executive officer of the Exchange deemed such action appropriate and in the interest of a fair and orderly market or to protect investors.[41]

The Commission believes that the trading of Index Fund Shares in general, and Select Sector SPDRs and the Technology 100 Index Fund, in particular, on AMEX should not adversely impact U.S. securities markets. As to the trading of the Fund Shares, the Commission notes that the corpus of the Trusts portfolios of stock are actively traded and liquid. In fact, as described above, the Commission believes the Funds may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[42] Accordingly, the Commission believes that the Select Sector SPDRs and the Technology 100 Index Fund shares do not contain features that will make them likely to impact adversely the U.S. securities markets.

(e) Dissemination of Portfolio Information

The Commission believes that the Values the Exchange proposes to disseminate for the Funds will provide investors with timely and useful information concerning the value of the Select Sector SPDRs and the Technology 100 Index Fund shares on a per Fund basis. The Exchange represents that the information will be disseminated through the facilities of the CTA and will reflect currently-available information concerning the value of the assets comprising the Deposit Securities. This information will be disseminated every 15 seconds during regular AMEX trading hours of 9:30 a.m. to 4:00 p.m., New York time. In addition, since it is expected that the Value will closely track the applicable Fund, the Commission believes that the Values will provide investors with adequate information to determine the intra-day value of the given Select Sector SPDR or the Technology 100 Index Fund.[43] The Commission expects that the AMEX will monitor the disseminated Value, and if the AMEX were to determine that the Value does not closely track the applicable Fund, it would arrange to disseminate an adequate alternative value.

(f) Surveillance

The Commission notes that the AMEX has submitted surveillance procedures for the trading of Select Sector SPDRs and the Technology 100 Index Fund shares. These procedures incorporate the Fund Shares into the existing AMEX surveillance procedures to address concerns associated with the listing and trading of such securities.

The Commission also notes that certain concerns are raised when a broker dealer, such as Merrill Lynch, is involved in the development and maintenance of a stock index, upon which a product such as the Fund shares is based. The Commission notes that Merrill Lynch has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a Select Sector Index or the Technology 100 Index to assuage such concerns. The Commission believes that the ''Fire Wall'' procedures put in place by Merrill Lynch to segregate and survey their trading desk and research department should help address concerns raised by Merrill Lynch's involvement in the management of the Select SPDR Indices and the Technology 100 Fund Index.

(g) Stop and Stop Limit Orders

As noted above, AMEX Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by AMEX Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including Select Sector SPDRs and shares of the Technology 100 Index Fund, as eligible for this treatment. The Commission believes that to allow stop and stop limit orders in Index Fund Shares to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, Index Fund Shares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.

(h) Accelerated Approval of Amendment No. 2

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 strengthens the proposed rule change by clarifying the duties and identity of the lending agents, the construction and maintenance standards for the Select Sector Indices and the Technology 100 Index, and trading halt procedures for the Funds. Amendment No. 2 also strengthens the proposal by providing for a method of disseminating information on the value of the Fund Shares that more closely tracks the actual value of Funds. Additionally, Amendment No. 2 concerns issues that have been raised in prior Exchange proposals that have been the subject of a full comment period pursuant to Section 19(b) of the Act.[44] Accordingly, the Commission believes that there is good cause, consistent with Section

[41] *See* Amex Rule 918C(b).

[42] Even though Index Fund Share transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create Index Fund Shares could conceivably have an impact on price levels in the cash market. In particular, if a Index Fund Share is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of Index Fund Shares likely will not exacerbate a price movement because Index Fund Shares will be subject to the equity margin requirements of 50% and Index Fund Shares are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes Index Fund Shares, including Select Sector SPDRs and the Technology 100 Index Fund shares, in particular, will serve as a vehicle to accommodate and ''bundle'' order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although Select Sector SPDRs and the Technology 100 Index Fund Shares, like any other Index Fund Share, could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[43] *Supra,* note 8.

[44] 15 U.S.C. 78s(b).

6(b)(5) and 19(b) of the Act,[45] to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–98–29 and should be submitted by January 4, 1999.

IV. Conclusion

It is therefore ordered, pusuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–AMEX–98–29), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32962 Filed 12–10–98; 8:45 am]

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[45] 15 U.S.C. 78f(b) and 78s(b).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 299.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40746; File No. SR–BSE–98–7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

December 3, 1998.

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 October 8, 1998, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on November 13, 1998.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 the depth measure calculations in its Specialist Performance Evaluation Program pilot program (''SPEP'') and to seek permanent approval of the program at the expiration of the pilot on December 31, 1998.[4] The text of the proposed rule change is as follows: new text is italicized and deleted text is bracketed.

Chapter XV

Specialists

Specialist Performance Evaluation Program

* * * * *

Sec. 17(c)(iii) Exceptions. Where Specialists have threshold scores in each measure at the following levels (subject to change pursuant to Commission approval), they will be deemed to have adequately performed:

Overall Evaluation Score—at or above weighted score of [5.00] *7.00*

Turnaround Time—below 21.0 seconds (5 points)(5%)

Holding Orders Without Action—below 21.0% (5 points)(5%)

Price Improvement in <8th Markets—at or above 2.0% (5 points)(20%)

Price Improvement in 8th Markets—at or above 15.0% (5 points)(15%)

Price Improvement in>8th Markets—at or above 25.0% (5 points)(15%)

Combined Depth (10 points) (40%)

(a) Depth—at or above 75.0% [(5 points)(20%)]

(b) Added Depth—at or above 1.0% [(5 points)(20%)]

* * * * *

[3] In Amendment No. 1, the Exchange seeks permanent approval of the Specialist Performance Evaluation Program and deletes its request for accelerated approval and retroactive implementation of the proposed rule change. *See* Rule 19b–4 filing, SR–BSE–98–07 (Am. 1), dated November 6, 1998 (''Amendment No. 1'').

[4] *Id.*

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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend its SPEP pilot by modifying the two depth measure calculations and the overall program score. All other aspects of the pilot program will remain the same. In addition, the Exchange is requesting permanent approval of the program, which has been in effect since 1992[5] with periodic modification over the years.[6] The Exchange believes that the SPEP is an effective tool for measuring specialist performance if continuously monitored and modified to meet the changing needs of the industry and the types of business sent to the Exchange, as well as changes in technology. The current pilot program will expire on December 31, 1998.

The Exchange has two depth measure calculations, which are Depth and Added Depth. The Depth measure (which measures the percentage of shares exceeding the displayed NBBO size that are executed at or better than the displayed NBBO price, for those orders that at the time of receipt exceed the displayed NBBO size) is currently weighted at 20% of the overall total score with a minimum threshold of 75%, *i.e.*, no points for any executions below 75% of the NBBO size.[7] The

[5] The Commission initially approved the SPEP in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (Feb. 19, 1993), 58 FR 11647 (Feb. 26, 1993), at which point the initial pilot program ceased to exist as a separate program.

[6] *See* Amendment No. 1, *supra* note 3.

[7] For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares. If the specialist executes 600 shares at the NBBO price, the specialist would receive credit for 600 shares out of 1200 shares, or 50%. *See* Securities Exchange Act Release No. 39730 (March 6, 1998); 63 FR 12847 (March 16,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Added Depth measure (which measures the relative percentage of overall BSE depth attributable to each specialist at the displayed NBBO price and in excess of the displayed NBBO size at the time the order is received) is currently weighted at 20% of the overall total score with a minimum threshold of 1%, *i.e.*, no points for contributions less than 1% to the added depth of all BSE specialists.[8]

After reviewing two quarters of performance statistics, the Exchange has determined that four firms on the floor cannot meet the 1% Added Depth threshold, even if they were to achieve a Depth measure of 100%, because their volume of business is de minimus in comparison to some of the larger firms. However, the Exchange believes that the combination of the Added Depth and Depth measures balances out the performance results: where small firms tend to score extremely high relative to the larger firms on the Depth measure, firms with a significant amount of business tend to score higher relative to the smaller firms on the Added Depth measure.

Rather than eliminate the Added Depth measure in its entirety, the Exchange is proposing to combine the range points of the two depth measures and weight the overall combined score at 40%, as opposed to the current calculation which separately weights the range points of each measure at 20% each. This will result in the inclusion of both measures in the performance program, but will eliminate the requirement that a specialist appear before the Market Performance Committee for failure of a single measure that is mathematically impossible for that specialist to attain a passing score on. Under the proposed change, a specialist who failed the Added Depth category, but performed at some level above the range covered by the minimum threshold of 75%–79.9% for the Depth measure would end up over the minimum threshold for the combined score.

The current range point scales and weighted scores for each of the depth measures are as follows:

Depth			Added Depth		
Percentage of orders	Points	Weighted score (20%)	Percentage of orders	Points	Weighted score (20%)
<75.0	0	0	<1.0	0	0
75.0–79.9	5	1	1.0–1.9	5	1
80.0–84.9	10	2	2.0–3.9	10	2
85.0–89.9	15	3	4.0–5.9	15	3
>=90.0	20	4	>=6.0	20	4

The proposed range point scales for each of the depth measures and the combined weighted score are as follows:

Depth		Added Depth		Combined depth	
Percentage of orders	Points	Percentage of orders	Points	Total points	Weighted score (40%)
<75.0	0	<1.0	0	0	0
75.0–79.9	5	1.0–1.9	5	5	2
80.0–84.9	10	2.0–3.9	10	10	4
85.0–89.9	15	4.0–5.9	15	15	6
>=90.0	20	>=6.0	20	20	8
				25	10
				30	12
				35	14
				40	16

The following results occur under the current and proposed depth measure calculations for (1) a specialist who scores 82% on the Depth measure and 0.7% on the Added Depth measure and (2) a specialist who scores 76% on the Depth measure and 4% on the Added Depth measure:

Specialist (1)	Specialist (2)
Current Calculation	
Depth 82% (10 pts) ... Added Depth 0.7% (0 pts).	Depth 76% (5 pts). Added Depth 4% (15 pts).

Specialist (1)	Specialist (2)
Weighted Scores total 2.	Weighted Scores total 4.
Proposed Calculation	
Depth 82% (10 pts) ...	Depth 76% (5 pts).

1998) (''March 1998 Order''). Points are allocated based on the specialist's raw score. In this example, the specialist would not receive any points for the Depth measure, because the specialist's Depth percentage is below 75%. The points for each measure are weighted to obtain an overall weighted score for all the measures.

[8] For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares, and that the specialist executes 600 shares at the displayed NBBO price. The number of shares over the NBBO size the specialist executed is calculated by subtracting 500 from 600. The specialist has 100 shares of ''added depth.'' Then calculate the added depth for each qualifying order for each specialist, add the added depth for each specialist for each qualifying order, and total the added depth for all specialists combined. Next compare each specialist's added depth to the overall added depth for the floor to arrive at the percentage for each specialist relative to the other specialists. For example, 100 added depth for Specialist A / 10,000 added depth for all specialists = 10% added depth for specialists A. *See* March 1998 Order, *supra* note 7. Points are allocated based on the specialist's raw score. In this example, the specialist would receive points for the Added Depth measure, because the specialist's Added Depth percentage is equal to or greater than 1%. After points have been assigned for each measure under the SPEP, the points for each measure are assigned a weight to obtain an overall weighted score for all the measures.

Specialist (1)	Specialist (2)	Weighted Score totals 4.	Weighted Score totals 8.
Added Depth 0.7% (0 pts).	Added Depth 4% (15 pts).		
Combined Depth (10 pts).	Combined Depth (20 pts).		

In addition, the minimum threshold level for the Overall Program weighted score, which is currently set at ''at or above 5.00'', is being changed to compensate for the change in the depth calculations and will be set at ''at or above 7.00.''

Under the pilot, assuming that a specialist performed at the minimum threshold level for each measure, the breakdown of weighted points would be as follows:

Measure	Weight percent	Points	Weighted points
Turnaround Time	5	5	0.25
Holding Orders Without Action	5	5	0.25
Price Improvement (<⅛)	20	5	1.00
Price Improvement (⅛)	15	5	0.75
Price Improvement (>⅛)	15	5	0.75
Depth	20	5	1.00
Added Depth	20	5	1.00
Overall Weighted Score			5.00

Under the proposed rule change, assuming that a specialist performed at the minimum threshold level for each measure, the breakdown of weighted points would be as follows:

Measure	Weight percent	Points	Weighted points
Turnaround Time	5	5	0.25
Holding Orders Without Action	5	5	0.25
Price Improvement (<⅛)	20	5	1.00
Price Improvement (⅛)	15	5	0.75
Price Improvement (>⅛)	15	5	0.75
Depth and Added Depth	40	10	4.00
Overall Weighted Score			7.00

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.[9] Specifically, the Exchange believes that the proposal is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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.

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C.Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–98–7 and should be submitted by January 4, 1999.

For the Commission, by the Division of Market Regulations, pursuant to delegated.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32963 Filed 12–10–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40752; File No. SR–DTC–98–23]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments 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 proposed rule change amends DTC's service fee schedule to establish a fee for transactions processed through DTC's two-way link with Deutsche Borse Clearing AG (''DBC'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which became effective for services provided on or after November 17, 1998, is to establish a new surcharge designed to recover DTC's costs to implement an enhanced two-way link with DBC from DTC participants whose transactions are processed through the link. DTC proposes to make the following revision to its service fee schedule:

Service	Present fee	Proposed fee
IX. Automated Deliver Orders: • A surcharge for each item delivered or received through the DTC/DBC link facility	None	$3.65

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because fees will more equitably be allocated among DTC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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 has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(e)(2)[6] thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–23 and should be submitted by January 4, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32959 Filed 12–10–98; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See Exchange Act Release No. 40660 (November 10, 1998), 63 FR 64135 (order approving DTC's proposal to establish a two-way link with DBC).

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40753; File No. SR–DTC–98–24]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PTS Pending Transaction Inquiry Function

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 19, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments 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 proposed rule change will modify DTC's PTS Pending Transaction Inquiry (''PEND'') function to allow DTC participants to temporarily and selectively ''hold'' (exclude from processing) and ''uphold'' (release) deliver orders and pledge transactions that are recycled for insufficient position.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of an basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide DTC participants with additional flexibility in their use of the PEND function. Under the proposal, DTC participants will be permitted to hold pending deliver orders and pledge transactions. Held transactions will not be processed by DTC until the hold is released by the holding participant. Only the initiator (*i.e.*, the deliverer or pledgor) of a transaction will be permitted to hold or release a pending transaction. Furthermore, only transactions that pend for insufficient position may be held. DTC will charge forty-five cents ($.45) for each hold and hold release transaction processed, which is the same fee that DTC currently charges for the cancellation of pending deliver orders.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder since the proposed rule change will give DTC participants greater flexibility in handling transactions that pend for insufficient position. According to DTC, the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of the PEND function, as modified by the proposed rule change, will be similar to the current operation of the function.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed through discussions with several DTC participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and pursuant to Rule 19b–4(e)(4)[6] thereunder because the proposal effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–24 and should be submitted by January 4, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32960 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] An Important Notice to DTC participants which provides a detailed description of the modification to the PEND function is attached as an exhibit to DTC's filing, which is available for inspection and copying at the Commission's public reference room and through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40751; File No. SR–DTC–98–22]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on

November 16, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission''), the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes the fees charged by DTC for various services provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for use of DTC's withhold and cancellation feature (known as ''hold and bust'') of the Direct-Mail-by-the-Depository service. The fees are designed to recover DTC's estimated service costs and will be established under the heading ''A. Registered Securities, II. Withdrawals-by-Transfer''.

DTC is adding the following to its service fee schedule:

Service	Present fee	Proposed fee
For each assignment initially withheld at request of participant and thereafter directly mailed.	NONE	$.53 per item withheld.
For each assignment canceled at request of participant where assignment was not withheld prior to direct mail.	NONE	$1.49 per item canceled.
For each assignment canceled at request of participant after being withheld at request of participant.	NONE	$1.82 per item canceled.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and pursuant to Rule 19b–4(e)(2)[4] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–22 and should be submitted by January 4, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32961 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(e)(2).

[5] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The Information Collection(s) Listed Below Require(s) Extension(s) of the Current OMB Approval(s) or are Proposed New Collection(s)

1. Disability Report—0960–0573. The information collected on Form SSA–3368–F6 is needed for the determination of disability by the State Disability Determination Services. The information will be used to develop medical evidence and to assess the alleged disability. The respondents are applicants for disability benefits.

Number of Respondents: 85,280.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 63,960 hours.

2. Vocational Report—0960–0572. The information collected on the SSA–3369–F6 is needed for the determination of disability by the State Disability Determination Services. The respondents are applicants for disability benefits. The information will be used

to document an individual's past work history.

Number of Respondents: 42,640.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 14,213 hours.

3. Medical History and Disability Report, Disabled Child—0960–0574. The information collected on Form SSA–3820–F4 is needed for the determination of disability by the State Disability Determination Services. The SSA–3820 will be used to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The respondents are applicants for disability benefits.

Number of Respondents: 18,720.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 6,240 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The Information Collection(s) Listed Below Have Been Submitted to OMB

1. Employer Report of Special Wage Payments—0960–0565. The Social Security Administration (SSA) gathers the information on Form SSA–131 to prevent earnings related overpayments to employees and to avoid erroneous withholding. The respondents are employers who provide special wage payment verification.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 20–22 minutes.

Estimated Annual Burden: 33,367 hours.

2. Railroad Employment Questionnaire—0960–0078. Form SSA–671 is used by SSA to secure sufficient information to coordinate Social Security claims processing with the Railroad Retirement Board. The form is completed whenever claimants indicate having been employed in the Railroad Industry. The respondents are retired employees of the Railroad Industry or their dependents.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 10,417 hours.

3. Concise Notice Survey—0960–NEW. SSA will conduct a survey of Supplemental Security Income (SSI) awardees to determine customer opinions and preferences on the format and clarity of existing and proposed SSI award notices. The information will be used to determine whether a new concise notice format would improve comprehension of the information thus improving service to SSI customers. The respondents will be a random sample of new SSI awardees.

Number of respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: December 3, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–32804 Filed 12–10–98; 8:45 am]

BILLING CODE 4190–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2948]

Countries Providing Sanctuary to Indicted War Criminals; Determinations: Serbia, et al.

Subject: Determination with respect to Countries Providing Sanctuary to Indicted War Criminals.

Pursuant to the authority vested in me by Section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, as enacted in Pub. L. 105–277, I hereby determine that Serbia and the Republika Srpska Entity of Bosnia and Herzegovina have failed to take necessary and significant steps to apprehend and transfer to the International Criminal Tribunal for the former Yugoslavia (the ''Tribunal'') all persons who have been publicly indicted by the Tribunal.

This determination shall be provided to the Congress and published in the **Federal Register.**

Dated: November 30, 1998.

Madeleine Albright,

Secretary of State.

[FR Doc. 98–32916 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice 2942]

International Joint Commission, Boundary Waters Treaty of 1909

The United States and Canadian federal governments have asked the International Joint Commission (IJC) to further examine the international watershed approach as a mechanism to anticipate and respond to the range of water-related and other environmental challenges that are expected to occur as we enter the 21st century.

In its report to Governments, The IJC and the 21st century, the IJC proposed the international watershed board concept to build on cooperative efforts and successes achieved in the Great Lakes by offering to provide similar opportunities to other major transboundary basins through the establishment of permanent IJC international watershed boards. These boards would provide a much improved mechanism for avoiding and resolving transboundary disputes by building a capacity at the watershed level to anticipate and respond to the full range of water-related and other environmental challenges that may be foreseen for the 21st century.

Specifically, governments have asked the IJC to:

- Define the general framework under which watershed boards would operate, which includes the definition of the scope of activities of the watershed boards and the definition of the operating principles of such boards;
- Recommend the location of the first watershed board;
- Recommend the structure, composition and terms of reference of the first international watershed board, including the priority issues that it would address;
- Develop cost projections and possible sources of funding, including innovative funding mechanisms, for the formation and operation of the first international watershed board and for special studies that would be projected for its first few years of operation;
- Consult provinces, states and both federal governments on the identification of locations and the development, planning and establishment of additional international watershed boards at appropriate times.

The International Joint Commission is a binational Canada-U.S. organization established by the Boundary Waters Treaty of 1909. It assists the governments in managing waters along the border for the benefit of both countries in a variety of ways including examining issues referred to it by the two federal governments.

The IJC will undertake broad consultations with all interested parties as part of its examination of the watershed approach. The IJC would invite all interested parties to notify the Commission of their interest in this matter at either one of the following addresses:

International Joint Commission, United States Section, 1250 23rd Street, NW, Suite 100, Washington, DC 20440, Telephone: (202) 736–9000, Fax: (202) 736–9015, Email: commission@washington.ijc.org

International Joint Commission, Canadian Section, 100 Metcalfe Street, 18th Floor, Ottawa, ON K1P 5M1, Telephone: (613) 995–2984, Fax: (613) 993–5583, commission@ottawa.ijc.org

Dated: November 30, 1998.

Gerald E. Galloway,

Secretary, United States Section.

[FR Doc. 98–32915 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

[Public Notice 2941]

International Joint Commission, Boundary Waters Treaty of 1909

An Invitation to Comment on the 1998 Progress Report of the Air Quality Committee under the Canada-United States Air Quality Agreement.

The International Joint Commission invites public comment on progress by the United States and Canada in reducing transboundary air pollution under the 1991 Agreement on Air Quality. The Commission will provide a synthesis of the comments to the two governments and the public as directed by the Agreement.

The Governments of the United States and Canada signed an Agreement on Air Quality on March 13, 1991. The purpose of the Agreement was to establish a practical and effective instrument to address shared concerns on transboundary air pollution. The 1998 Progress Report reviews acid rain control programs, monitoring, prevention of air quality deterioration and visibility protection, notification of significant transboundary air pollution, cooperation on ground-level ozone and particulate matter, and scientific and technical cooperation.

Under the terms of the Agreement, the Governments established a bilateral Air Quality Committee. This Committee is responsible for reviewing progress made in the implementation of the Agreement, preparing and submitting periodic progress reports to the Governments, referring each progress report to the International Joint Commission, and releasing those reports to the public. The 1998 Progress Report of the Committee is now available and may be obtained from:

Acid Rain Division, U.S. Environmental Protection Agency, Mail Code: 6204J, 401 M Street, SW, Washington, DC 20460, Acid Rain Hotline: (202) 564–9620.

Environment Canada, Inquiry Centre, 351 St. Joseph Blvd., Hull, Quebec, K1A 0H3, (819) 997–2800.

The full report is also available at the following sites on the World Wide Web:

http://www.epa.gov/acidrain/lawsregs/airus.pdf

http://www.ec.gc.ca/special/airqual.html

Under the Agreement, the Governments assigned the International Joint Commission the responsibility of inviting comments on each progress report of the Air Quality Committee. The International Joint Commission invites comment on any aspect of the 1998 Progress Report. Please send comments in writing by February 26, 1999, to either address below, or contact us if you have any questions about the comment process.

International Joint Commission, United States Section, 1250 23rd Street, NW, Suite 100, Washington, DC 20440, Telephone: (202) 736–9000, Fax: (202) 736–9015, Email: commission@washington.ijc.org

International Joint Commission, Canadian Section, 100 Metcalfe Street, 18th Floor, Ottawa, ON K1P 5M1, Telephone: (613) 995–2984, Fax: (613) 993–5583, Email: commission@ottawa.ijc.org

Dated: November 30, 1998.

Gerald E. Galloway,

Secretary, United States Section.

[FR Doc. 98–32914 Filed 12–10–98; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25–XX, Certification of Transport Airplane Mechanical Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25–XX and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides methods acceptable to the Administrator for showing compliance with the provisions of subparts D and F of 14 CFR part 25 regarding the type certification requirements for transport airplane mechanical systems. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before April 12, 1999.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Mahinder Wahi, Propulsion/Mechanical Systems/Crashworthiness/Noise Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Toni Jackson, Transport Standards Staff, at the address above, telephone (425) 227–2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25–XX, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

This AC contains guidance for the latest amendment of the regulations and applies to all transport category airplanes for which a new, amended, or supplemental type certificate is required. This guidance should be applied to any portion of the airplane mechanical systems that has been modified. In the past, advisory and guidance information applicable to transport airplane mechanical systems has been formally published as AC's. Advisory circulars have not been developed for all of the regulatory requirements applicable to transport airplane mechanical systems, however. In many instances, certification of new technology airplanes resulted in the need to interpret the existing regulations and to apply new regulations. Issue papers and special conditions were generated to document the compliance method agreed upon between the applicant and the FAA. In other instances, applicants, FAA Aircraft Certification Office (ACO) managers, and foreign regulatory authorities have requested interpretation of the intent of specific regulations. This guidance was documented in the form of policy memorandums that were distributed to all ACOs, letters to applicants and foreign airworthiness authorities, and issue papers. In many instances, this information was not organized in a manner that allowed easy access, and applicants were not aware of revised policy. This AC formalizes existing policy so that the public and FAA personnel have access to this information. The methods and procedures described in this AC have evolved after many years and represents current certification practice.

Issued in Renton, Washington, on November 30, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–32967 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 99–02–C–00–MCI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kansas City International Airport, Kansas City, MO.

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

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond D. Anderson, AAE, Director of Aviation, Kansas City International Airport, at the following address: 601 Brasilia Avenue, Kansas City, Missouri 64153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kansas City International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 27, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Kansas City International Airport, Kansas City, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 27, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January, 2002.

Proposed charge expiration date: November, 2006.

Total estimated use revenue: $48,047,139.

Total estimated impose revenue: $28,723,139.

Brief description of proposed project(s): Overlay Runway 9/27 and Taxiway C (between C1–C9); Expand General Aviation Apron; Construct Federal Inspection Service Facility; Taxiway B Rehabilitation; Terminal Improvement; Airfield Storm Drainage; Construction of Hold apron West of Terminal B; Automated Access Control System; Reconstruct Taxiway D; Passenger Facility Charge Development and Administration.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kansas City International Airport.

Issued in Kansas City, Missouri on November 27, 1998.

Michael J. Faltermeier,

Acting Manager, Airports Division Central Region.

[FR Doc. 98–32968 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dubuque County, IA/Jo Daviess County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway capacity improvement project in Dubuque County, Iowa and Jo Daviess County, Illinois.

FOR FURTHER INFORMATION CONTACT: Rebecca Hiatt, Environmental Coordinator, Federal Highway Administration, 105 Sixth Street, Ames, Iowa 50010–6337, Telephone (515) 233–7300. Roger Larsen, Project Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone (515) 239–1791.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve the capacity of U.S. Route 20 (U.S. 20) in Dubuque County, Iowa and Jo Daviess County, Illinois. The proposed improvement would involve upgrading or re-routing existing U.S. 20 between Iowa and Illinois for a distance up to seven miles.

Improvements to U.S. 20 are considered necessary to provide for the existing and projected traffic demand and safety considerations. This proposal will also include a connection of U.S. 20 across the Mississippi River. Alternatives under consideration include: (1) taking no action; (2) using alternative travel improvements; (3) widening the existing two-lane highway to four lanes; and (4) constructing a four-lane highway on a new location. Variations of facility type, grade, and alignment will be incorporated into and studied with various build alternatives.

An informal scoping process will be initiated as part of this project. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Dubuque and East Dubuque. In addition, a public hearing will be held upon completion of the draft EIS. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or Iowa DOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 24, 1998.

Bruce E. Mazke,

Assistant Division Administrator, Federal Highway Administration, Ames, Iowa.

[FR Doc. 98–32849 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Highway Administration

[FRA Docket No. FRA–1998–4759]

Financial Assistance To Eliminate Highway-Railroad Grade Crossing Hazards on Designated High-Speed Rail Corridors

AGENCIES: Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of designation of high-speed corridors; solicitation of applications for: (1) the designation of additional high-speed corridors, and (2) for Fiscal Year (FY) 1999 funding assistance.

SUMMARY: Section 1103(c) of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) modifies the program established in 23 U.S.C. 104(d)(2) to eliminate highway-railroad grade crossing hazards in designated high-speed rail corridors. The program funding out of the Highway Trust Fund would be increased from $5 million a year to $5.25 million a year for FYs 1998–2003; eligible corridors are increased from 5 to 11 with the addition of the Gulf Coast, Keystone and Empire State Corridors and the addition of up to 3 corridors to be selected by the Secretary of Transportation (Secretary); not less than $250,000 of available funding is for the Minneapolis/St. Paul-Chicago segment of the Midwest Corridor; and a general fund authorization of $15 million per year for FYs 1999–2003 is provided for the same purpose, namely elimination of highway-railroad grade crossing hazards in designated high-speed rail corridors. (Funding of the general fund authorization is subject to the appropriations process; no such appropriations have been made for FY 1999.)

In this notice, the FRA is soliciting applications from States for designation of up to three new corridors, and applications from States for FY 1999 funding under this program in all designated corridors. The FRA is actively coordinating with the FHWA, which is also substantively involved in this program and in all decisions pertaining to it.

DATES: Signed, written comments on this notice must be received by the FRA on or before February 9, 1999. Completed applications for additional corridor designations must be received by the FRA on or before March 11, 1999. Completed applications for FY 1999 funding assistance must be received by the FRA on or before March 11, 1999 or, for any additional designated corridors, within two months following publication of the designation in the **Federal Register**.

ADDRESSES: The public is invited to submit written comments on this notice. Written comments should refer to the docket number appearing at the top of this notice and be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address. Docket hours at the Nassif Building are Monday through Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

Applications for corridor designation and applications for FY 1999 funding assistance should be submitted to: The Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, ATTN: Section 104(d)(2) Program, RDV–11, Mail Stop 20, 1120 Vermont Avenue, NW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: *For FRA:* Mr. John F. Cikota, Senior Transportation Analyst, Program Development Division, Office of Railroad Development (telephone: 202–493–6364; E-mail address: John.Cikota@fra.dot.gov), or Gareth Rosenau, Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mailstop 10, Washington, DC 20590 (telephone 202–493–6054; E-mail address: Gareth.Rosenau@fra.dot.gov). For FHWA: Mr. Lee Chimini, Intermodal Transportation Engineer, Intermodal and Statewide Programs Division, Office of Environment and

Planning (telephone: 202–366–4068; E-mail address: Leroy.Chimini@fhwa.dot.gov) or Mr. Joseph Solomey, Attorney, Office of Chief Counsel, FHWA (telephone: 202–366-1374; E-mail address: Joseph.Solomey@fhwa.dot.gov), 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Purpose

The purpose of this notice is to provide general information about the 23 U.S.C. 104(d)(2) program to eliminate highway-railroad grade crossing hazards in designated high-speed rail corridors (Section 104(d)(2) Program), and the FRA's plans for implementing the program. The notice identifies the five corridors which have previously been designated by DOT and the three corridors designated in TEA–21, and invites any State, either singly or in conjunction with other States, to submit an application for the designation of one of up to three new corridors. In addition, the notice invites State governments housing a high-speed rail corridor identified in this notice, or a high-speed corridor designated subsequent to the issuance of this notice, to make applications for FY 1999 funding. The FRA and the FHWA will review the applications for corridor designation and funding, and will make joint decisions regarding such applications. The public is invited to submit comments on this notice.

Section 104(d)(2) Program

The section 104(d)(2) Program provides Federal funding to eliminate highway-railroad grade crossing hazards in designated high-speed rail corridors. Section 1103(c) of TEA–21 modifies the program by setting aside from the Highway Trust Fund $5.25 million per year for FYs 1998–2003; increasing the eligible corridors from 5 to 11 with the addition of the Gulf Coast, Keystone, and Empire State corridors and the addition of up to 3 new corridors to be selected by the Secretary; specifying that not less than $250,000 of available annual funding is for the Minneapolis/St Paul-Chicago segment of the Midwest Corridor; and providing a general fund authorization of $15 million per year for FYs 1999–2003. Funding of this general fund authorization is subject to the appropriations process; no such appropriations have been made for FY 1999.

Rules for Application Submissions

Applications for the designation of new high-speed rail corridors under the Section 104(d)(2) Program, and applications for FY 1999 funding under the program shall be submitted to the address cited in this notice, and electronically in either WordPerfect or MS Word format. Electronic versions are to be submitted either on 3½ inch floppy disks to the address above, or by electronic mail to John.Cikota@fra.dot.gov. Applications shall be submitted by the dates indicated in this notice, and shall comply with the requirements specified in this notice.

Amount of Funding

To fund the section 104(d)(2) Program, TEA–21 authorized for allocation $5.25 million annually from the Highway Trust Fund. This allocation is subject to a reduction by operation of Section 1102(f) of TEA–21. For FY 1998, the reduction amounted to 10.9 percent of the authorized funding; FY 1999 funding will be reduced by approximately 12 percent. Taking into account available carryover and the section 1102(f) reductions, which are being calculated as this notice goes to press, the FRA and the FHWA project that a total of approximately $6½ to $7 million will be made available for States' use during FY 1999. Of that amount, section 1103(c) of TEA–21 requires that at least $500,000 be allocated to the segment of the Chicago Hub Corridor linking Chicago, Milwaukee, and the Twin Cities ($250,000 in each of FYs 1998 and 1999).

The FRA anticipates that these funds will be allocated as early as possible, based on a review of applications submitted under this notice.

Designation of Eight of the Eleven High-Speed Rail Corridors

As previously noted, the Secretary is authorized to designate eleven high-speed rail corridors under the Section 104(d)(2) Program. To date the DOT has designated the following five corridors:

(1) California Corridor (San Francisco Bay Area to Los Angeles and San Diego);

(2) Pacific Northwest Corridor (Eugene, OR via Portland, OR and Seattle, WA to Vancouver, BC);

(3) Chicago Hub Corridor, extending from Chicago to St. Louis, Detroit, and Milwaukee;

(4) Florida Corridor (Miami—Orlando—Tampa); and

(5) Southeast Corridor (Washington, DC—Richmond, VA (with an extension to Newport News, VA)—Raleigh, NC—Greensboro, NC—Charlotte, NC).

By this notice, the FRA is recognizing the following additional corridor designations made in section 104(d)(2):

(6) Gulf Coast Corridor, designated as extending easterly and westerly from New Orleans, LA, on routes to be determined by the Secretary in consultation with the participating States;

(7) Keystone Corridor, between Philadelphia and Harrisburg, PA, via Paoli and Lancaster, PA, over the route of the former Pennsylvania Railroad; and

(8) Empire State Corridor, between New York City, Albany, and Buffalo, NY, over the route of the former New York Central Railroad.

In addition, the Chicago Hub Corridor (Corridor number (3) above) is expanded to include the Twin Cities of Minneapolis/St. Paul, MN, as set forth in section 104(d)(2).

Applications From States for Designation of Up To Three New Corridors

Any State, either singly or in conjunction with other States, may request the FRA to designate a corridor under section 104(d)(2). As previously noted, applications for designation must be received by the FRA by March 11, 1999.

Section 104(d)(2) requires that corridors selected include rail lines where railroad speeds of 90 miles or more per hour are occurring or can reasonably be expected to occur in the future, and that the Secretary consider the following:

(1) The projected ridership associated with the proposed corridor;

(2) The percentage of the corridor over which trains will be able to operate at maximum cruise speed, taking into account such factors as topography and other traffic on the line;

(3) The projected benefits to nonriders, such as congestion relief on other modes of transportation servicing the corridor (including congestion in heavily traveled air passenger corridors);

(4) The amount of State and local financial support that can reasonably be anticipated for the improvement of the line and related facilities; and

(5) The cooperation of the owner of the right-of-way that can reasonably be expected in the operation of the high-speed rail passenger service in the corridor.

Applications from States for designation of high-speed rail corridors shall include all information which is required for the Secretary to make a determination with reference to the statutory considerations for corridor selection. Applications shall also include information demonstrating compliance with the speed requirement set forth above.

Applications for FY 1999 Funding Under the Section 104(d)(2) Program

Eligible Applicants. Only State governments housing a designated high-speed rail corridor are eligible to file applications for FY 1999 funding. Applications must be received by the FRA by March 11, 1999 with respect to the eight designated corridors identified in this notice, or within two months following the date of publication of the designation in the **Federal Register**.

Eligible Crossings. All highway/rail grade crossings, whether public or private, on designated high-speed corridors are eligible for funding.

Eligible Improvements and Allowable Costs. Work eligible for funding includes any of the following to reduce the hazards of highway-rail grade crossings in the designated corridors: (1) Installation or improvement of warning devices; (2) improvement of track circuitry which activates warning devices; (3) other crossing improvements, such as improved crossing surfaces, improved sight distances, and crossing illumination; (4) closure of crossings with or without attendant highway relocations; (5) grade separation construction or reconstruction; (6) combining crossing warning systems with advanced train control and/or intelligent highway traffic control systems; (7) conducting analyses to identify specific rail routes, inventorying grade crossings, and developing crossing improvement plans; (8) project development and engineering; (9) evaluating the safety effects, benefits, and costs of activities funded under this program; and (10) any combination of the above.

Matching. The Federal share of the costs of improvements funded under section 104(d)(2) may be up to 100 percent of the costs of engineering and construction. However, in allocating funds, consideration will be given to the extent to which other funds are being committed to corridor improvements in conjunction with the section 104(d)(2) funds.

Contents of applications. Applications for FY 1999 funding shall contain all the following items:

(1) *Identifying Data.*

(a) The name of the corridor for which funding is sought.

(b) The name, address, responsible party, telephone, fax number, and e-mail address of the State agency submitting the application.

(c) The railroad route and relevant milepost locations on which the crossings to be improved or eliminated are located.

(2) *Work Description.* A description of the proposed work, and related information, in sufficient detail to provide the staff of the FRA, working with the FHWA, with a basis for approving an allocation of Section 104(d)(2) Program funding.

(**Authority:** 23 U.S.C. 315; 49 U.S.C. 20103; section 1103(c), Pub. L. 105–178, 112 Stat. 107, 122 (1998).)

Issued in Washington, DC on December 3, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

Anthony R. Kane,

Executive Director, Federal Highway Administration.

[FR Doc. 98–32881 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4861]

Decision That Certain Nonconforming Motor Vehicles are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This notice announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATE: These decisions are effective as of December 11, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry

the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 7, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided To be Eligible for Importation

1. Docket No. NHTSA–98–4073
   Nonconforming Vehicle: 1995–1996 Ford Bronco manufactured for sale in Venezuela
   Substantially similar U.S.-certified vehicle: 1995–1996 Ford Bronco
   Notice of Petition published at: 63 FR 38876 (July 20, 1998)
   Vehicle Eligibility Number: VSP–265
2. Docket No. NHTSA–98–4078
   Nonconforming Vehicles: 1996–1999 Magni Australia, Magni Sfida, and Moto Guzzi Daytona RS
   Substantially similar U.S.-certified vehicles: 1996–1999 Moto Guzzi Daytona RS
   Notice of Petition published at: 63 FR 39359 (July 22, 1998)
   Vehicle Eligibility Number: VSP–264
3. Docket No. NHTSA–98–4080
   Nonconforming Vehicles: 1976 Triumph Bonneville
   Substantially similar U.S.-certified vehicles: 1976 Triumph Bonneville
   Notice of Petition published at: 63 FR 41617 (August 4, 1998)
   Vehicle Eligibility Number: VSP–263
4. Docket No. NHTSA–98–4103
   Nonconforming Vehicles: 1994–1997 Mercedes-Benz S420
   Substantially similar U.S.-certified vehicles: 1994–1997 Mercedes-Benz S420
   Notice of Petition published at: 63 FR 42658 (August 10, 1998)
   Vehicle Eligibility Number: VSP–267
5. Docket No. NHTSA–98–4104
   Nonconforming Vehicles: 1992–1995 Hyundai Elantra
   Substantially similar U.S.-certified vehicles: 1992–1995 Hyundai Elantra
   Notice of Petition published at: 63 FR 42659 (August 10, 1998)
   Vehicle Eligibility Number: VSP–269
6. Docket No. NHTSA–98–4165
   Nonconforming Vehicles: 1991–1998 Ford Explorer manufactured for sale in Venezuela
   Substantially similar U.S.-certified vehicles: 1991–1998 Ford Explorer
   Notice of Petition published at: 63 FR 42096 (August 6, 1998)
   Vehicle Eligibility Number: VSP–268
7. Docket No. NHTSA–98–4166
   Nonconforming Vehicles: 1991–1996 Porsche 928
   Substantially similar U.S.-certified vehicles: 1991–1996 Porsche 928
   Notice of Petition published at: 63 FR 42097 (August 6, 1998)
   Vehicle Eligibility Number: VSP–266
8. Docket No. NHTSA–98–4335
   Nonconforming Vehicles: 1993 Chrysler Town and Country
   Substantially similar U.S.-certified vehicles: 1993 Chrysler Town and Country
   Notice of Petition published at: 63 FR 45107 (August 24, 1998)
   Vehicle Eligibility Number: VSP–273
9. Docket No. NHTSA–98–4336
   Nonconforming Vehicles: 1993–1998 Porsche 928
   Substantially similar U.S.-certified vehicles: 1993–1998 Porsche 928
   Notice of Petition published at: 63 FR 45281 (August 25, 1998)
   Vehicle Eligibility Number: VSP–272
10. Docket No. NHTSA–98–4381
    Nonconforming Vehicles: 1993–1998 Mercedes-Benz 600 SEL
    Substantially similar U.S.-certified vehicles: 1993–1998 Mercedes-Benz 600 SEL
    Notice of Petition published at: 63 FR 46825 (September 2, 1998)
    Vehicle Eligibility Number: VSP–271
11. Docket No. NHTSA–98–4546
    Nonconforming Vehicles: 1986–1998 Suzuki GSXR 750
    Substantially similar U.S.-certified vehicles: 1986–1998 Suzuki GSXR 750
    Notice of Petition published at: 63 FR 56063 (October 20, 1998)
    Vehicle Eligibility Number: VSP–275

[FR Doc. 98–32969 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4863]

Notice of Receipt of Petition for Decision that Nonconforming 1995–1998 Volvo 850 Turbo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1998 Volvo 850 Turbo passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1998 Volvo 850 Turbo passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 11, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or

importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995–1998 Volvo 850 Turbo passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1998 Volvo 850 Turbo Sedans that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1998 Volvo 850 Turbo passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1998 Volvo 850 Turbo passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1998 Volvo 850 Turbo passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1995–1998 Volvo 850 Turbo complies with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 7, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–32970 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT)

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Pontiac Grand Am, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. 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. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to GM dated [awaiting letter granting confidentiality], the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA , 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a petition dated August 27, 1998, General Motors Corporation (GM), requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Pontiac Grand Am car line. The petition is pursuant to 49 CFR Part 543, Exemption From Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line.

GM's submittal is considered a complete petition, as required by 49 CFR part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. GM will install its ''Passlock'' antitheft device as standard equipment on its MY 2000 Pontiac Grand Am car line. GM stated that the ''Passlock'' device provides the same kind of functionality as the ''VATS'', ''PASS-Key'' and ''PASS-Key II'devices but features an electronically-coded lock cylinder rather than an electrically-coded ignition key. Specifically, when the sensor detects proper lock rotation, it sends a code to the body function controller. If the correct code is received, fuel is enabled. If an incorrect code is received, fuel will be disabled for a ten-minute lockout period during which any attempts to start the vehicle will be unsuccessful.

In order to ensure the reliability and durability of the device, GM conducted tests, based on its own specified standards. GM provided a detailed list of the tests conducted. GM states its belief that the device is reliable and durable since it complied with its specified requirements for each test. GM also stated that the ''Passlock'' device is designed to provide protection against any attempts to defeat it by overriding its lock assembly with an external magnet, forcibly removing the ignition lock cylinder, forcibly rotating the lock, applying a torque to the lock cylinder or its keyway, bypassing the vehicle's lock assembly electronics, or by removing its battery power.

GM compared the ''Passlock'' device proposed for the Pontiac Grand Am line with its first generation ''PASS-Key'' device, which the agency has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM stated that its ''Passlock'' device is activated when the owner/operator turns off the ignition of the vehicle and removes the key. According to GM, no other intentional action is necessary to achieve protection of the vehicle other than removing the key from the ignition. The ''PASS-Key'' devices are activated in the same manner. GM believes that its ''Passlock'' antitheft device will be at least as effective as its ''PASS-Key'' and ''VATS'' devices.

The following GM car lines have the ''Passlock'' device as standard equipment and have been granted a full exemption from the parts-marking requirements: The Chevrolet Cavalier, beginning with MY 1997 (see 61 FR 12132, March 25, 1996), the Pontiac Sunfire, beginning with MY 1998 (see 62 FR 20240, April 25, 1997), and the Oldsmobile Alero, beginning with MY 1999 (see 63 FR 24587). GM stated that the theft rates, as reported by the National Crime Information Center, are lower for GM models equipped with ''PASS-Key'-like devices which have been granted exemptions from the parts-marking requirements than theft rates for similar, earlier models that have been parts-marked. Therefore, GM concludes that the ''PASS-Key'-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49 CFR Part 541. GM also concluded that based on the system performance of ''PASS-Key'-like devices on other GM models, and the similarity of design and functionality of the ''Passlock'' device on the Pontiac Grand Am to the ''PASS-Key'' device, it believes that the agency should determine that the proposed device will be at least as effective in deterring theft as the parts-marking requirements of 49 CFR part 541.

Based on comparison of the reduction in theft rates of Chevrolet Corvettes using a passive antitheft device and audible/visible alarm with the reduction in theft rates for the Chevrolet Camaro and Pontiac Firebird models equipped with a passive antitheft device without an alarm, GM believes that an alarm or similar attention attracting device is not necessary and does not compromise the antitheft performance of these systems.

The agency notes that the reason that the vehicle lines whose theft data GM cites in support of its petition received only a partial exemption from parts-marking was that the agency did not believe that the antitheft device on these vehicles (''PASS-Key'' and ''PASS-Key II'') by itself would be as effective as parts-marking in deterring theft because it lacked an alarm system. On that basis, it decided to require GM to mark the vehicle's most interchangeable parts (the engine and transmission), as a supplement to the antitheft device. Like those earlier antitheft devices GM used, the new ''Passlock'' device on which this petition is based also lacks an alarm system. Accordingly, it cannot perform one of the functions listed in 49 CFR part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle.

Since deciding those petitions, however, the agency became aware that theft data shows declining theft rates for GM vehicles equipped with either version of the ''PASS-Key'' system. Based on that data, it concluded that the lack of a visible or audible alarm had not prevented the antitheft device from being effective protection against theft and granted three GM petitions for full exemptions for car lines equipped with ''PASS-Key II''. See 60 FR 25939 (May 15, 1995) granting in full the petition for the Chevrolet Lumina and Buick Regal car lines equipped with ''PASS-Key II'; 58 FR 44874 (August 25, 1993), granting in full the petition for exemption of the Buick Riviera and Oldsmobile Aurora car lines equipped with ''PASS-Key II'; and 62 FR 20058 (April 24, 1997), granting in full the petition for exemption of the Cadillac Seville car line equipped with ''PASS-Key II''. In all three of those instances, the agency concluded that a full exemption was warranted because ''PASS-Key II'' had shown itself as likely as parts-marking to be effective protection against theft despite the absence of a visible or audible alarm.

The agency concludes that, given the similarities between the ''Passlock'' device and the ''PASS-Key'' and ''PASS-Key II'' systems, it is reasonable to assume that ''Passlock'', like those systems, will be as effective as parts-marking in deterring theft. The agency believes that the device will provide the

other types of performance listed in 49 CFR 543.6(a)(3): promoting activation; 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.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device. This confidential information included a description of reliability and functional tests conducted by GM for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the MY 2000 Pontiac Grand Am car line from the parts-marking requirements of 49 CFR Part 541.

If GM decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM 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. § 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 antitheft 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 which § 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: December 7, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–32964 Filed 12–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33679]

SierraPine—Lease and Operation Exemption—Sierra Pacific Industries

SierraPine, a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 12 miles of rail line known as the Amador Branch, which is owned by Sierra Pacific Industries (Sierra Pacific),[1] between milepost 0.0 at Ione and milepost 12.0 at Martell,[2] in Amador County, CA.

Although there was another planned and approved transaction involving the sale of this same rail line to Sierra Railroad Company (Sierra),[3] SierraPine indicates in its notice that Sierra Pacific and Sierra have mutually agreed not to complete this sale. Therefore, Sierra Pacific retains control and ownership of the above-described rail line.

The transaction was scheduled to be consummated on or shortly after November 25, 1998.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33679, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on James F. Flint, Grove, Jaskiewicz and Cobert, 1730 M Street, NW, Suite 400, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

[1] *See Sierra Pacific Industries—Acquisition and Operation Exemption—Amador Central Railroad Company*, STB Finance Docket No. 33378 (STB served Apr. 9, 1997).

[2] The Amador Branch includes a yard and repair shops at Martell as well as additional spur trackage at the Sierra Pacific mill and particle board plant located at milepost 11.6.

[3] *See Sierra Railroad Company—Acquisition and Operation Exemption—Sierra Pacific Industries*, STB Finance Docket No. 33525 (STB served Dec. 2, 1997).

Decided: December 4, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–32999 Filed 12–10–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

December 3, 1998.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Number: 1550–0096.

Form Number: OTS Form 1661.

Type of Review: Extension of an already approved collection.

Title: Minority Thrift Certification.

Description: This information is needed to help OTS remain a reliable source of information regarding the universe of minority-owned thrifts, in accordance with our responsibilities under Section 308 of FIRREA.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 34.

Estimated Burden Hours Per Respondents: .5 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 17 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Celia Winter,

Director, Dissemination Branch.

[FR Doc. 98–33002 Filed 12–10–98; 8:45 am]

BILLING CODE 6720–01–P

federal register

Friday
December 11, 1998

Part II

Environmental Protection Agency

40 CFR Part 94

Control of Emissions of Air Pollution From New CI Marine Engines at or Above 37 kW; Proposed Rule

PART II

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 94

[AMS–FRL–6196–3]

RIN 2060–AI17

Control of Emissions of Air Pollution From New CI Marine Engines at or Above 37 kW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this action, EPA is proposing an emission control program for new compression-ignition marine engines rated at or above 37 kilowatts. The affected engines are used for propulsion and auxiliary purposes in a wide variety of marine applications. The standards proposed for these engines would require substantial reductions in oxides of nitrogen and particulate matter emissions to correspond with the next round of emission standards for comparable land-based engines. The proposed standards are expected to provide a significant reduction in oxides of nitrogen and particulate matter emissions from this source. When combined with other mobile source emission control programs, the program described in this action will help provide long-term improvements in air quality in many port cities and other coastal areas. Overall, the proposed program would provide much-needed assistance to states facing ozone and particulate air quality problems, which can cause a range of adverse health effects for their citizens, especially in terms of respiratory impairment and related illnesses.

The persons potentially affected by this action are those who manufacture new compression-ignition marine engines or marine vessels or other equipment using such engines. Additional requirements apply to companies that rebuild or maintain these engines.

DATES: EPA will hold a hearing on the proposed rulemaking on January 19, 1999. EPA requests comments on the proposed rulemaking by February 26, 1999. More information about commenting on this action and on the public hearing and meeting may be found under Public Participation in **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: Materials relevant to this proposal, including the Draft Regulatory Impact Analysis, are contained in Public Docket A–97–50. Additional materials relevant to EPA's earlier proposal, which was published in 1994 and supplemented in 1996 but not finalized, can be found in Public Docket A–92–28 (Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines). Both of these dockets are located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

Comments on this proposal should be sent to Public Docket A–97–50 at the above address. EPA requests that a copy of comments also be sent to Jean Marie Revelt, U.S. EPA, Engine Programs and Compliance Division, 2000 Traverwood Dr., Ann Arbor, MI 48105.

The public hearing will be held at the National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Ann Arbor, Michigan. The public hearing will begin at 10 a.m. and will continue until all testimony has been presented. People who wish to testify will be requested to register on the day of the hearing. Time limits may be imposed for each speaker, depending on the number of people who request to testify. A transcript of the hearing will be placed in the docket. Arrangements for copies may also be made directly with the court reporter, on the day of the hearing. The court reporter may charge a fee for this service.

For further information on electronic availability of this proposal, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, Engine Programs and Compliance Division, (734) 214–4334; Borushko.Margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated entities

Persons or companies potentially regulated by this action are those that manufacture or introduce into commerce new compression-ignition marine engines and those that make vessels or other equipment using such engines. Further requirements apply to companies that rebuild or maintain marine engines. Regulated categories and entities include:

Category	Examples of regulated entities	NAICS code	SIC code
Industry	Manufacturers of new marine diesel engines	333618	3519
Industry	Manufacturers of marine vessels	3366	3731 3732
Industry	Engine repair and maintenance	811310	7699

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, the reader should carefully examine the proposed regulations, especially the applicability criteria in § 94.1. Questions regarding the applicability of this action to a particular entity may be directed to the person listed in **FOR FURTHER INFORMATION CONTACT.**

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language and Draft Regulatory Impact Analysis are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. The electronic version of this proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes Federal Register notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Introduction

Air pollution is a serious threat to the health and well-being of millions of Americans, and imposes a large burden on the U.S. economy. As discussed below, ground-level ozone and PM have been linked to potentially serious respiratory health problems and environmental degradation. Over the past two decades, emission control programs established at the state and federal levels have significantly reduced emissions from individual sources, and many of these sources now pollute at only a fraction of their precontrol rates. These programs have concentrated on reducing ground-level ozone levels, with a focus on its main precursors, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs).[1] In addition, steps have been taken to reduce airborne particulate matter (PM), which is also a major air quality concern in many regions.

However, continued industrial growth and expansion of motor vehicle usage threaten to reverse these past achievements. Today, many states are finding it increasingly difficult to meet the current ozone and particulate matter National Ambient Air Quality Standards (NAAQS) by the deadlines established in the Clean Air Act (the ''Act'').[2] In addition, even those states that are approaching or have reached attainment of the current ozone and PM NAAQS are likely to see these gains lost if current trends persist.

National mobile source emission control programs have been successful in reducing NO_X, HC, and PM emissions

[1] VOCs consist mostly of hydrocarbons (HC), including nonmethane hydrocarbons (NMHC).

[2] See 42 U.S.C. 7401, et seq.

from new regulated engines. These programs have resulted in reductions of more than 90 percent on a per-vehicle basis for new gasoline-fueled passenger cars. Emissions from light-duty trucks have also been reduced to very low levels. The more recent diesel engine programs, as supplemented by new, more stringent requirements for highway and nonroad diesel engines, will significantly reduce emissions from that category as well. As a result of these programs, emission reductions on a per-vehicle or per-engine basis have greatly offset emission increases due to the rising mobile source population and usage rates.

Until now, EPA's effort to control emissions from marine sources has been limited to outboard and personal watercraft engines and marine diesel engines rated under 37 kW. EPA's analysis of national NO_X and PM levels suggests that marine diesel engines are a considerable source of these pollutants. The inventory contribution of marine diesel engines is presented under Background (Section II.A.4.), and is described in greater detail in the Draft Regulatory Impact Analysis. Consequently, emission controls for these engines may yield important reductions in national NO_X and PM inventories. At the same time, designing an emission control program for marine diesel engines at or above 37 kW poses certain challenges. The tremendous range of engine sizes in this category, from small generators used on board fishing or recreational vessels to large propulsion engines used on board ocean-going vessels, suggests a need to set different requirements for different groups of engines. In addition, technological challenges inherent to nonroad diesel-cycle engine design must be addressed.[3] Traditional NO_X control approaches tend to increase PM emissions, and vice versa. However, methods to achieve simultaneous NO_X and PM control are being developed for land-based diesel engines, and EPA believes similar solutions can be applied to marine diesel engines due to similarities among the engines. A more complete discussion of technology issues is presented under Technological Feasibility (Section VII). Finally, the large number of ship and boat builders and their relative inexperience with emission control requirements suggest a need for a flexible implementation process. A more detailed discussion of the characteristics of this industry is included under Industry Characterization (Section II.C.).

In this document, EPA is proposing to extend the federal emission control program to the marine segment of the nonroad industry by proposing an emission control program for all new marine diesel engines rated over 37 kW.[4] The program described in this action follows EPA's Supplemental Advance Notice of Proposed Rulemaking (Supplemental ANPRM), published on May 22, 1998 (63 FR 28309), and the comments received on that notice and other new information provide the framework for its provisions.

II. Background

A. Air Quality Problems Addressed in the Proposed Rule

The emission standards proposed in this document will provide important reductions of ground-level ozone and particulate matter (PM) nationally, as well as carbon monoxide (CO) control. This section summarizes the air quality rationale for these new emission standards and their anticipated impact on marine diesel engines.

1. Ozone

Ground-level ozone is formed by complex photochemical reactions involving HC and NO_X in the presence of sunlight.[5] According to a growing body of research, ground-level ozone can have harmful physical effects on humans. It severely irritates the mucous membranes of the nose and throat, which can lead to coughing and even choking. It also impairs normal functioning of the lungs, and chronic exposure may cause permanent lung damage. The risk of suffering these effects is particularly high for children and for people with compromised respiratory systems. Ground-level ozone has also been shown to injure plants and building materials.

Diesel engines contribute to ground-level ozone levels primarily through their NO_X emissions, which are a much higher portion of total NO_X+HC emissions than for most gasoline engines. This is of significant concern not only because of ozone impacts but also because NO_X has important independent effects on human health and general environmental conditions. NO_X includes several gaseous compounds that are lung irritants and can increase susceptibility to respiratory illness and pulmonary infection. NO_X also contributes to the secondary formation of PM (nitrates), acid deposition, and the overgrowth of algae in coastal estuaries. Additional information on these environmental and health effects may be found in EPA staff papers and air quality criteria documents for ozone and nitrogen oxides.[6, 7, 8, 9]

Acceptable levels of ground-level ozone have been set by EPA pursuant to the Act. States are divided into areas for air quality planning purposes, and these areas are categorized as to whether they meet the current National Ambient Air Quality Standard for ozone by the deadlines established in the Act.[10] As of October, 1997 there are 59 areas designated as in ''nonattainment'' for ozone.

The state and local governmental organizations charged with designing and implementing emission control programs to bring these areas into attainment have mounted significant efforts in recent years to reduce ozone concentrations. Their state implementation plans, combined with federal mobile source emission control programs, have yielded encouraging signs of success. The main precursors of ozone, NO_X and VOCs (including HC), have been reduced in many areas, and average ozone levels are beginning to decrease. However, this progress is in jeopardy. EPA projects that emission increases that accompany economic expansion will eventually outpace per-

[3] References to diesel-cycle engines, also referred to as ''diesel engines'' in this document, are intended to cover a particular kind of engine technology, i.e., compression ignition combustion. Compression-ignition engines are typically operated on diesel fuel, although other fuels, such as compressed natural gas, may also be used. This contrasts with otto-cycle engines (also called spark-ignition or SI engines), which typically operate on gasoline. The requirements set out in this notice are intended to apply to all combustion-ignition engines.

[4] This proposal is based on metric units. To convert to English units, one kilowatt equals 1.341 horsepower.

[5] Ground-level ozone should not be confused with stratospheric ozone, a protective layer of the upper atmosphere that filters the sun's harmful ultraviolet rays.

[6] U.S. EPA, ''Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information,'' OAQPS Staff Paper, EPA–452/R–96–007, 1996 (Air docket A–95–58).

[7] U.S. EPA, ''Air Quality Criteria for Ozone and Related Photochemical Oxidants,'' EPA/600/P–93/004aF, 1996 (Air Docket A–95–58).

[8] U.S. EPA, ''Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information,'' OAQPS Staff Paper,'' EPA–452/R–95–005, 1995 (Air Docket A–93–06).

[9] U.S. EPA, ''Air Quality Criteria for Oxides of Nitrogen,'' EPA/600/8–91/049aF, 1993 (Air Docket A–93–06).

[10] See 42 U.S.C. 7401, *et seq.*

[11] U.S. EPA, ''Review of National Ambient Air Quality Standards for Particulate Matter, Assessment of Scientific and Technical Information,'' OAQPS Staff Paper, EPA–452/R–96–013, 196 (Air Docket A–95–54).

[12] U.S. EPA, ''Air Quality Criteria for Particulate Matter,'' EPA/60/P–95/001aF, 1996 (Air Docket A–95–54).

[13] The largest fraction of ambient PM is attributed

source reductions in ozone precursors. Increases in the number of sources, as well as increased use of existing sources, mean that even full implementation of current emission control programs will fall short of what will be needed to achieve and maintain ozone attainment. By the middle of the next decade, the Agency expects that, without additional controls, the downward trends in overall ground-level ozone will be reversed. Consequently, it is important to develop new strategies that improve, or at least maintain, the progress in ozone reductions that have been achieved to date.

2. Particulate Matter

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Particulate matter is a collection of small particles emitted by diesel engines. Many different organic pollutants are adsorbed on these particles. The size and chemical composition of particulate matter are the main reasons for concern about the effects of PM on human health. Their small size increases the likelihood that the particles will reach and lodge in the deepest and most sensitive areas of human lungs. This can lead to severe lung problems and increases susceptibility to respiratory infection, such as pneumonia, aggravation of acute and chronic bronchitis, and asthma. It can also lead to decreased lung function (particularly in children and individuals with asthma) and alterations in lung tissue and structure and in respiratory tract defense mechanisms. Additional information on these effects may be found in an EPA staff paper and an air quality criteria document for particulate matter.[11, 12]

Acceptable levels of PM have also been set by EPA. Currently, there are 80 PM–10 nonattainment areas across the U.S. (PM–10 refers to particles smaller than 10 microns in diameter.) As is the case with NO_X, levels of PM caused by stationary and mobile sources are expected to rise in the future, not only because of the increase in number of sources and activity levels of these sources, but also because elevated NO_X levels can lead to increased PM levels. This is because NO_X from diesel engines and other sources is transformed in the atmosphere into fine secondary nitrate particles. Secondary nitrate PM, consisting mostly of ammonium nitrate, accounts for a substantial fraction of the airborne particulate in some areas of the country. EPA believes that mobile sources contribute substantially to the fraction of ambient PM that is generally considered controllable.[13] Consequently, EPA has been developing new mobile source strategies to control PM emissions.

3. Carbon Monoxide

Along with NO_X, HC, and PM, carbon monoxide (CO) is another mobile source pollutant that is addressed by the program proposed in this document. CO has long been known to have substantial adverse effects on human health and welfare, including toxic effects on blood and tissues, and effects on organ functions. CO has been linked to fetal brain damage, reduced visual perception, cognitive functions and aerobic capacity, and increased risk of heart problems for people with heart disease. There are currently approximately 20 serious or moderate CO nonattainment areas in the United States.

4. Contribution of Marine Diesel Engines to NO_X, HC, PM and CO Levels

EPA's inventory analysis suggests that marine diesel engines are a significant source of NO_X and PM emissions. This inventory analysis, presented in more detail in the Draft Regulatory Impact Analysis prepared for this action, suggests that marine diesel engines currently contribute approximately one million tons of NO_X per year, representing 8.1 percent of mobile source NO_X and 4.8 percent of total NO_X emissions. Marine diesel engines also contribute approximately 42,000 tons of PM per year, representing 4.4 percent of the directly emitted PM from mobile sources and 1.0 percent of total directly emitted PM emissions.[14] In addition to directly emitted PM, EPA estimates that, as a national average, marine diesel engines contribute approximately 40,000 tons of PM in the form of secondary nitrate particles, based on the estimated one million tons of NO_X emitted by these engines. In addition, emissions from marine diesel engines tend to be concentrated in specific areas of the country (ports, coastal areas, and rivers), and so local levels of these pollutants can be much higher. Consequently an emission control program that addresses NO_X and PM emissions from marine diesel engines can be an important tool toward the goal of reducing the health and environmental hazards associated with these and other pollutants.

The contribution of marine diesel engines to national HC and CO levels is much less than for NO_X and PM. EPA estimates that marine diesel engines contribute less than two-tenths of one percent of the national levels of these pollutants. Nevertheless, the program being proposed in this rule includes limits for HC and CO emissions. These limits will provide a small, positive, air quality benefit.

B. Legislative and Regulatory History

1. Statutory Authority

Section 213(a)(1) of the Clean Air Act directed the Agency to study emissions from nonroad engines and vehicles to determine, among other things, whether these emissions ''cause, or significantly contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare.'' Section 213(a)(2) further required EPA to determine whether the emissions of CO, VOC, and NO_X found in the above study significantly contribute to ozone or CO emissions in more than one nonattainment area. With an affirmative determination of significance, section 213(a)(3) requires the Agency to establish emission standards regulating CO, VOC, and NO_X emissions from new nonroad engines and vehicles. EPA may also promulgate emission standards under section 213(a)(4) regulating any other emissions from nonroad engines that EPA finds contribute significantly to air pollution.

The Nonroad Engine and Vehicle Emission Study required by section 213(a)(1) was completed in November 1991.[15] On June 17, 1994, EPA made an affirmative determination under section 213(a)(2) that nonroad emissions are significant contributors to ozone or CO in more than one nonattainment area.[16] In the same document, EPA set a first phase of emission standards (''Tier 1 standards'') for land-based nonroad diesel engines rated at or above 37 kW.[17] These requirements were recently augmented by a new rulemaking that sets more stringent Tier 2 emission levels for new land-based nonroad diesel engines at or above 37 kW as well as Tier 1 standards for nonroad diesel engines less than 37 kW.[18] EPA has also initiated additional rulemakings to set

[11] U.S. EPA, ''Review of National Ambient Air Quality Standards for Particulate Matter, Assessment of Scientific and Technical Information,'' OAQPS Staff Paper, EPA–452/R–96–013, 196 (Air Docket A–95–54).

[12] U.S. EPA, ''Air Quality Criteria for Particulate Matter,'' EPA/60/P–95/001aF, 1996 (Air Docket A–95–54).

[13] The largest fraction of ambient PM is attributed to ''miscellaneous'' and ''natural'' sources, including wind erosion, wildfires, and fugitive dust, which are difficult or impossible to control.

[14] Excluding erosion or fugitive dust.

[15] This study is available in docket A–92–28.

[16] *See* 59 FR 31306, June 17, 1994.

[17] Ibid.

[18] *See* 63 FR 56967, October 23, 1998.

emission standards for other subgroups of nonroad engines, including spark-ignition (SI, typically gasoline) engines less than 19 kW,[19] spark-ignition (SI, typically gasoline) marine engines (outboards and personal watercraft),[20] and locomotives.[21] This action takes another step toward the comprehensive nonroad engine emission control strategy envisioned in the Act by proposing an emission control program for marine diesel engines at or above 37 kW.

2. Regulatory History

Numerical emission standards for marine diesel engines were originally proposed in 1994, as part of a proposed rule for control of emissions from both spark-ignition and compression-ignition marine engines.[22] At that time, EPA had a limited understanding of the marine diesel industry and, relying on the similarities between land-based nonroad and marine diesel engines, proposed to apply the same emission levels as those in the then just-finalized land-based nonroad rule. The nonroad Tier 1 standards are set out in Table 1. EPA proposed that these standards for marine diesel engines take effect January 1, 1999 for engines less than 560 kW, and January 1, 2000, for engines 560 KW and above. Although no upper limit on engine size was proposed for application of these standards to marine diesel engines, EPA requested comment on whether an upper limit should be established above which the emission control program being developed concurrently under the auspices of the International Maritime Organization (IMO) should apply. The IMO is the Secretariat for the International Convention on the Prevention of Pollution from Ships (that convention is also referred to as MARPOL 73/78). Annex VI to that Convention, adopted on September 27, 1997 (but not yet in force) contains, among other provisions, requirements to limit NO_X emissions from marine diesel engines, but sets no limits for other engine pollutants (i.e., HC, CO, PM).[23] A more detailed discussion of the MARPOL 73/78 Annex VI NO_X requirements is included in Section II.B.3. below. Table 1 also contains the Annex VI NO_X limits, which would apply to new engines greater than 130 kW installed on vessels constructed on or after January 1, 2000, or which undergo a major conversion after that date.

TABLE 1.—COMPARISON OF NUMERICAL EMISSION LIMITS: EPA'S NONROAD TIER 1 LEVELS AND MARPOL ANNEX VI LEVELS

Agency	Engine speed	HC (g/kW-hr)	CO (g/kW-hr)	NO_X (g/kW-hr)	PM (g/kW-hr)
EPA (Proposed)	All	1.3	11.4	9.2	0.54
MARPOL Annex VI (n =engine speed, rpm).	=130 rpm	None	None	17.0	None
	130 rpm≤n≥2000 rpm	None	None	$45*n^{(-0.2)}$	None
	n ≥ 2000	None	None	9.8	None

In response to the 1994 NPRM, several commenters requested that EPA harmonize domestic emission standards for marine diesel engines to the levels being then considered at the IMO, in effect, applying the draft Annex VI limits domestically. Because the draft Annex VI standards (which are the same as those finalized in 1997) were not as stringent as the proposed domestic standards, this was a significant issue. On February 7, 1996, EPA published a Supplemental NPRM to address this and other concerns in more detail.[24] Specifically, EPA identified and requested comment on three alternative harmonization approaches: (1) Adopt the draft Annex VI NO_X emission standard instead of the standard proposed in the NPRM; (2) retain the average NO_X emission standard of 9.2 g/kW-hr proposed by EPA and also adopt the MARPOL Annex VI NO_X limit as a cap that no engine could exceed; or (3) determine an appropriate engine speed or engine power output cutoff point such that engines of high horsepower and low and medium speeds would be subject to the draft Annex VI NO_X emission limits and engines of low horsepower and high speed would be subject to the 9.2 g/kW-hr average standard proposed by EPA with the 9.8 g/kW-hr Annex VI level as a cap that no engine could exceed. EPA also sought comment on harmonizing the numerical emission limits for other pollutants. Options considered were to drop, retain, or alter the proposed standards for HC, CO, PM, and smoke.

While the development of the national marine rule and the negotiations at the International Maritime Organization continued, EPA began a new action for land-based nonroad diesel engines as part of a new Agency initiative to reduce national NO_X and PM emissions from mobile sources. This action, subsequently finalized September 27, 1998, sets more stringent standards for land-based nonroad engines, known as Tier 2 standards (see Section V.A., below).[25] These Tier 2 standards will come into effect as early as 2001 for some engine categories. The rule also includes more stringent Tier 3 standards, which will go into effect subject to a review to be conducted in 2001. That review will be conducted through the normal public rulemaking process. Finally, marine diesel engines less than 37 kW were included with their land-based counterparts in this diesel land-based nonroad rule, with standards to come into effect as early as 1999 for Tier 1 and 2004 for Tier 2.

Also during this time, EPA finalized a rule setting emission standards for new locomotive engines.[26] The locomotive program consists of three separate sets of standards, with applicability of the standards dependent on the date a locomotive is first manufactured. The first set of standards (Tier 0) applies to locomotives and locomotive engines originally manufactured from 1973 through 2001.

[19] *See* 60 FR 34582 (July 3, 1995) for the final rule establishing Tier 1 standards and 62 FR 14740 (March 27, 1997) for the ANPRM discussing Tier 2 standards.

[20] *See* 61 FR 52087 (October 4, 1996) for the final rule. EPA did not set numerical emission standards for sterndrive and inboard gasoline marine engines in this rule.

[21] *See* 62 FR 6365 (February 11, 1997); the final rule was signed December 17, 1997 and is available electronically (see Section VI below).

[22] See 59 FR 55929 (November 9, 1994).

[23] Other provisions of Annex VI include requirements for ozone-depleting substances, sulfur content of fuel, incineration, VOCs from refueling, and fuel quality. The United States has signed Annex VI, but the Annex has not yet been forwarded to the Senate for its advice and consent.

[24] *See* 61 FR 4600 (February 7, 1996).

[25] *See* 62 FR 50152 (September 24, 1997).

[26] *See* 62 FR 6365 (February 11, 1997); the final rule was signed December 17, 1997 and is available electronically (see Section VI below).

The Tier 0 standards will be phased in over a two-year period beginning in 2000, and will apply at the time of each remanufacture (as well as at the time of original manufacture for locomotives originally manufactured in 2000 and 2001). The next set of standards (Tier 1) apply to locomotives and locomotive engines originally manufactured from 2002 through 2004. Such locomotives and locomotive engines will be required to meet the Tier 1 standards at the time of original manufacture and at each subsequent remanufacture. The final set of standards (Tier 2) apply to locomotives and locomotive engines originally manufactured in 2005 and later. Such locomotives and locomotive engines will be required to meet the Tier 2 locomotive standards at the time of original manufacture and at each subsequent remanufacture. The numerical standards are contained in Table 2.

TABLE 2.—LOCOMOTIVE STANDARDS

[Line-haul only]

Tier	HC (g/kW-hr)	CO (g/kW-hr)	NO_X (g/kW-hr)	PM (g/kW-hr)
Tier 0	1.3	6.7	12.7	0.80
Tier 1	0.7	2.9	9.9	0.6
Tier 2	0.4	2.0	7.4	0.27

The land-based nonroad diesel engine and locomotive rules led EPA to reconsider its approach to the control of emissions from marine diesel engines at or above 37 kW. Because of the similarities among land-based nonroad, locomotive, and marine diesel engines, EPA began to consider an alternative program for marine diesel engines based on the technologies that will be used to meet the land-based requirements. As a result, EPA did not take final action on marine diesel engines when it finalized the original marine rule.[27] Instead, EPA published an Advance Notice of Proposed Rulemaking advising interested parties of the change in approach for marine diesel engine emission controls and asking for comment on various aspects of the program under consideration. The program proposed in this action follows from the approach described in the ANPRM, the comments submitted by interested parties, and information gathered by EPA in the meantime.

3. MARPOL Annex VI

In response to growing international concern about air pollution and in recognition of the highly international nature of maritime transportation, the parties to the International Maritime Organization called upon the organization, in 1990, to develop a program to reduce emissions from marine vessels. The IMO's Marine Environmental Protection Committee (MEPC) was instructed to design a program, to become a new Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), that would achieve a 30 percent reduction in NO_X and a 50 percent reduction in SO_X emissions when fully phased in. Requirements for ozone-depleting substances, VOCs from cargo compartments on oil tankers, shipboard incinerators, and fuel oil quality rounded out the scope of the program. From the beginning, the engine-specific provisions of proposed Annex VI covered only NO_X emissions. No restrictions on PM, HC, or CO emissions were considered. Reductions in SO_X emissions were to be pursued through limiting the sulfur content of fuel.

After several years of negotiation, a final version of Annex VI was adopted by the Member States of the IMO at a diplomatic conference on September 26, 1997. However, pursuant to Article 6 of the Annex, it will not go into force until fifteen States, the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant shipping, have ratified it. The Annex in its entirety will acquire the force of law in the United States only after the Senate (by a vote of two-thirds) concurs in the treaty and the United States deposits its instrument of ratification. Nevertheless, it is expected that ship owners will begin installing compliant engines on relevant ships to comply with the dates set forth in the Annex. Specifically, the NO_X provisions contained in Regulation 13 provide that each diesel engine with a power output of more than 130 kW installed on a ship constructed on or after January 1, 2000, or that undergoes a major conversion on or after January 1, 2000, must meet the NO_X emission limits described in Table 1, above. This specification of an effective date in Regulation 13 means that, once the Annex goes into effect, Member States will be able to require compliance by any ship constructed on or after January 1, 2000 or by any engine that undergoes a major conversion on or after that date. In other words, once the Annex goes into effect, it will be enforceable back to the dates specified in Regulation 13.

Two other features of Annex VI NO_X requirements are noteworthy. First, while the requirements set out in Regulation 13 are expected to extend to all vessels used in the marine environment, a special provision has been included in paragraph 1(b)(ii) to allow Member States to set different standards for engines installed on ships used domestically. EPA intends in this action to take advantage of this provision by setting more stringent national requirements. Second, Regulation 13 is augmented with a separate document, called the NO_X Technical Code, which sets out some compliance requirements and test procedures. Through reference in the Annex, the provisions of this Code are made mandatory on Parties to the Annex. A more detailed discussion of the NO_X curve and the NO_X Technical Code are included in the Draft Regulatory Impact Analysis.

4. State Activities

Section 209 of the Act allows EPA to authorize California to regulate emissions from new motor vehicles and new motor vehicle engines, as well as nonroad engines with the exception of new engines used in locomotives and new engines used in farm and construction equipment rated under 130 kW.[28] So far, the California Air Resources Board (California ARB) has adopted requirements for three groups of nonroad engines: (1) Diesel-and otto-cycle small off-road engines rated under 19 kW; (2) new land-based nonroad diesel engines rated over 130 kW; and (3) land-based nonroad recreational engines, including all-terrain vehicles, snowmobiles, off-road motorcycles, go-carts, and other similar vehicles. New

[27] *See* 61 FR 52087 (October 4, 1996).

[28] The Clean Air Act limits the role states may play in regulating emissions from new motor vehicles and nonroad engines. California is permitted to establish emission standards for new motor vehicles and most nonroad engines; other states may adopt California's programs (sections 209 and 177 of the Act).

requirements that apply to new nonroad SI engines rated over 19 kW were completed by CARB in October 1998. California ARB has also approved a voluntary registration and control program for existing portable equipment, and is currently considering an emission program for recreational gasoline marine engines that may be more stringent than the program finalized by EPA in 1996.

EPA has been in consultation with California state officials and various interest groups to pursue operational measures that would reduce marine engine emissions without setting emission standards. Under investigation are defined traffic lanes, restrictions on engine operation while in port, and other measures that could be tailored to the situation at each port.

5. European Commission Action

The European Commission has proposed emission limits for recreational marine engines, including diesel engines. These requirements would apply to all new engines sold in member countries. The numerical emission limits, shown in Table 3, consist of the Annex VI NO_X limit for small marine diesel engines and the rough equivalent of Tier 1 nonroad emission levels for HC and CO. The PM limits, however, are more stringent than Tier 1 nonroad levels, reflecting Europe's greater concern for the visual impacts of diesel emissions. Emission testing is to be conducted using the ISO D2 duty cycle for constant-speed engines and the ISO E5 duty cycle for all other engines. At the current time, the EU has not initiated a separate action for commercial marine diesel engines.

TABLE 3.—PROPOSED EUROPEAN EMISSION LIMITS FOR RECREATIONAL MARINE DIESEL ENGINES

Pollutant	Emission limit (g/kW-hr)
NO_X	9.8
PM	0.14
HC	*1.5
CO	5.0

*Increases slightly with increasing engine power rating.

C. Industry Characterization

The two groups of companies most likely to be affected by the proposed emission control program are engine manufacturers and vessel manufacturers. This section contains a brief discussion of these entities. A more complete discussion is included in the Draft Regulatory Impact Assessment, which can be found in its entirety in EPA Air Docket A–97–50.

1. Marine Diesel Engine Manufacturers

As discussed in Section IV, the proposed emission control program applies to three categories of marine diesel engines. This discussion reflects those categories.

Category 1 and Category 2 marine diesel engines are often derived from land-based engines. Their production is often referred to as marinization, meaning the land-based engine is modified for use in the marine environment. Marinization can be a very complex process or may be relatively simple. Depending on the degree of change to the base engine, marinization can significantly affect the emission characteristics of an engine. Some of the more complex changes associated with marinization are performed by large engine manufacturers. For these companies, marinization may involve a significant redesign of their land-based product. A less intensive type of marinization is performed by post-manufacturer marinizers. These companies purchase a complete or semi-complete land-based engine from an engine manufacturer and finish or modify it using specially designed parts. The most basic type of marinization is performed by companies that purchase a completed engine from an engine manufacturer and modify it to make it compatible for installation on a marine vessel, without changing the underlying design characteristics or engine calibration. These companies are referred to in this rulemaking as engine dressers. In contrast to the other marinization processes, these changes do not typically affect the emission characteristics of the engine.

Category 3 engines have no land-based mobile source equivalents. These engines are typically designed exclusively for marine purposes. They are often designed for unique applications or unique vessels.

(a) Category 1 Engine Manufacturers. Total annual production of Category 1 marine diesel engines in the U.S. is about 15,000 units per year. Of these, commercial propulsion and auxiliary marine engines make up about 30 percent and 10 percent, respectively, of the total production. The remaining engines are used for propulsion in recreational vessels. While the recreational engines are produced in greater quantities, commercial propulsion and auxiliary engines contribute more to air pollution on account of their much greater use.

Commercial applications for these engines are widely varied. Most of these boats are relatively small and operate near the home port. Primary examples of such vessels include fishing boats, crew boats, tour boats, and small tugboats and ferries. Recreational vessels are usually either yachts or are used for recreational fishing. These recreational vessels may in some cases be used for commercial purposes.

Engine manufacturers produce the large majority of marine diesel engines, with the remaining engines being produced by post-manufacture marinizers. About a dozen engine manufacturers offer Category 1 engines, though Caterpillar, Cummins, and Detroit Diesel together sell about 80 percent of all marine diesel engines. Fifteen or more companies are either post-manufacture marinizers or engine dressers. Most of these are small businesses with very low sales volumes.

Due to the wide range of companies and their operations, engine maintenance and rebuild practices are far from uniform. Some are serviced regularly by authorized distributors, others are maintained by local for-hire mechanics. Some companies that operate vessels choose to reduce expenses by keeping a staff of mechanics to conduct preventive and routine engine maintenance and, in some cases, complete engine rebuilds. Depending on the size of an operator's fleet, which may run from one to several dozen vessels, and on the strength of the company, there may or may not be an adequate ongoing investment in maintaining engines to maximize long-term engine performance.

(b) Category 2 Engine Manufacturers. Large tugboats and fishing boats are the principal applications for Category 2 marine engines. These high-powered engines are used for carrying greater loads, a greater degree of off-shore use and, in many cases, more intensive operations. It is common for companies to own and operate small fleets of these vessels. In addition, multiple Category 2 engines are commonly used for auxiliary power on an ocean-going vessel.

Category 2 engines are derived from or use the same technology as locomotive engines. Not surprisingly, Category 2 engines are produced by the same companies that make locomotive engines, and the segment is characterized by a very small number of manufacturers. General Motors Electromotive Division (EMD) sells the greatest number of Category 2 engines, with additional sales from Caterpillar and a few other companies (mostly from foreign manufacturers).

Post-manufacture marinizers play a role in producing Category 2 marine engines. For example, three authorized EMD distributors take on the responsibility of marinizing engines, overseeing sales distribution, and managing installation and service as needed. Unlike post-manufacture marinizers for Category 1 engines, these companies have sufficient volumes and diversified operations to the point that they are not small businesses.

With prices approaching $1 million for a new engine, there is a strong motivation to maintain and remanufacture engines in the field. Preventive maintenance programs are common, often including extensive ongoing diagnostics for oil quality, fuel consumption, and other engine performance parameters. Engines are often completely remanufactured every five years. Procedures have improved to the point that engine durability on remanufactured engines is no different than on new engines. Since engine remanufacturing costs only 20 to 30 percent as much as buying a new engine, even twenty- or thirty-year-old engines are frequently overhauled to provide dependable power.

(c) Category 3 Engine Manufacturers. Category 3 marine diesel engines are the largest mobile source engines addressed by EPA. They are similar in size to land-based power plant generators, and are used primarily for propulsion of ocean-going vessels. There are currently no U.S. manufacturers of Category 3 marine engines. The Agency, however, has identified 22 foreign manufacturers of these engines, a large fraction of which are located in Germany and Japan. In addition, of the Category 3 engine manufacturers identified, only 12 produce engines of their own design. The remainder of the manufacturers produce engines under licensing agreements with other companies that control engine design.

2. Commercial Vessel Builders

The industry characterization for the commercial marine vessel industry was developed by ICF, Incorporated under contract with EPA. A summary of their findings can be found in the Chapter 2 of the Draft RIA. The full report is available from EPA Air Docket A–97–50. The report makes a distinction between two broad groups of commercial vessels, ''ships'' and ''boats,'' based on a vessel's basic dimensions, mission, and area of operation.

(a) Commercial Ships. This category is comprised of large merchant vessels, usually exceeding 120 meters (400 feet) in length, that engage in waterborne trade or passenger transport. These ships tend to operate in Great Lakes, coastwise, inter-coastal, noncontiguous, or transoceanic routes. Principal commercial ship types are dry cargo ships, tankers, bulk carriers and passenger ships. Passenger ships include cruise ships and larger ferries. The large majority of commercial ships are foreign-built. There are currently 18 major shipbuilding facilities in the United States, most of which focus on military construction.

(b) Commercial Boats. This category is comprised of smaller service and industrial vessels that provide service to commercial ships, industrial vessels, or barges or that perform specialized marine functions. Commercial boats are found mainly in inland or coastal waters. Principal commercial boat types are tugboats, towboats, offshore supply boats, fishing and fisheries vessels, passenger boats, and industrial boats. Passenger boats include crewboats, excursion boats, and smaller ferries. The vast majority of boats used in the United States are also built in the United States. In contrast to the highly concentrated shipbuilding industry, there are several hundred yards that build many different types of boats.

3. Recreational Vessel Builders

While not as numerous as commercial boat builders, there is still a considerable number of recreational boat builders. EPA identified approximately 75 boat builders, not including those that build sailboats. Most of these companies also produce vessels that use gasoline engines. In fact, diesel engines represent a small portion of the overall product offerings for these companies. A small number of recreational boat builders concentrate on diesel engine products. Most companies, however, sell as few as one per month or even one per year. The analysis shows that recreational boat building is concentrated in coastal states with the largest presence in the state of Florida.

Recreational boat building relies more on serial production than does commercial boat building. Users have little, if any, choice in the mechanical features of the vessel and the engine specifically. This is in part due to the way in which these boats are built. Recreational boats are typically made of fiberglass to minimize vessel weight and to facilitate planing. Fiberglass construction has the disadvantage of not offering much flexibility for installing a different engine than that which the vessel was designed to take. Also, planing requires a precise match between the engine and its location in the vessel. Engines are usually purchased from factory authorized distribution centers. The boat builder provides the specifications to the distributor, which helps match an engine for a particular application.

III. Engines Covered

A. General Scope of Application

The scope of application of the proposed emission control program is broadly set by § 213(a)(3) of the CAA, which instructs EPA to promulgate regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles that are found to cause or contribute to ozone or carbon monoxide concentrations in more than one nonattainment area. Generally speaking, then, the proposed rule is intended to cover all new marine diesel engines and new marine vessels that use those engines.

For the purpose of interpreting this scope of application for both engines and vessels, EPA is proposing to generally extend the definition of ''new'' contained in 40 CFR 89.2 to marine diesel engines at or above 37 kW. Under that definition, an engine is considered new until its legal or equitable title has been transferred and the engine has been placed into service. Because the definition of new in 40 CFR 89.2 applies to both engines and equipment, its extension to the marine sector would extend as well to vessels which, starting with the implementation dates of the proposed emission limits, would be considered new until their equitable or legal title has been transferred to an ultimate purchaser.

EPA seeks comment on whether to augment this definition of ''new'' by following the approach used in the recently finalized locomotive rule. That rule expands the definition of ''new'' to also include ''a locomotives or locomotive engine which has been remanufactured, but has not been placed back into service.'' [29] This approach was designed to respond to the very long useful lives of locomotives. Because locomotive engines remain in service for as long as 40 or 50 years, with periodic rebuilds, it was deemed advisable to require remanufactured locomotives to meet a special set of emission standards, depending on the date of their original manufacture. Because marine diesel engines are also kept in service for very long periods of time, such an approach would also lead to additional emission

[29] *See* 40 CFR 92.2.

benefits through the application of emission standards on engines that have been put into service but that have subsequently been remanufactured. In fact, this approach may be technologically easier to apply to marine diesel engines than locomotives because of their greater cooling potential. In addition, while not identical, the MARPOL Annex VI provisions contain a similar requirement, which requires engines to meet the NO_X emission limits when the engine undergoes a major conversion after January 1, 2000.

At the same time, important obstacles may prevent application of this approach to marine diesel engines. Setting emission limits for remanufactured existing engines may be very disruptive to a large number of small businesses. Also, unlike the railroad industry, companies operating Category 2 marine diesel engines do not rely on a small number of engine remanufacturers to work on their engines. In fact, many of these operators employ their own mechanics to do all maintenance and remanufacturing work. There is accordingly little uniformity in remanufacturing practices across the industry. EPA would need to conduct a major outreach effort to educate the industry about the implications of such a requirement on their business. EPA seeks comment on the feasibility and potential costs and benefits of remanufacturing provisions for existing marine diesel engines. EPA also seeks comment on its authority to establish such programs for each marine engine category, including comment regarding whether marine engines are ever remanufactured to ''as new'' condition, like locomotive engines.

For the purpose of further clarifying the definition of ''new,'' 40 CFR 89.2 specifies that a nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purposes. For the purpose of applying this criteria to marine diesel engine and new vessels, EPA is proposing that a marine diesel engine is used for its functional purpose when it is installed on a marine vessel. This clarification is needed because some marine diesel engines are made by modifying a highway or nonroad engine that has already been installed on a vehicle or other equipment. In other words, the engine has been transferred to an ultimate purchaser after it is used for its functional purpose as a land-based nonroad engine (for example, on a truck or a backhoe) and is therefore no longer new, but it is later removed for marinization and installation on a marine vessel. While the 40 CFR part 89 requirements for land-based nonroad diesel engines do not contain such a requirement, EPA believes it is reasonable to treat these engines as new marine engines when they are installed on a vessel. While the practice of marinizing used highway or nonroad engines may be infrequent, it could become more common if these engines are not subject to the standards in this proposal.

New marine engines are either made in the United States or imported here. It should be noted that not all engines produced in the United States will be subject to the proposed emission limits. Consistent with other mobile source emission control programs, engines intended for sale abroad would be exempt from the requirements.

Engines imported for use in the United States would be covered by the proposed program whether they are imported as loose engines or already installed on a vessel constructed elsewhere. All imported engines would be required to have a certificate of conformity issued by EPA before they could be entered into commerce in the United States, subject to limited exemptions. In addition, EPA proposes to apply the approach contained in its other on-highway and nonroad engine programs, according to which any engine or vessel that is imported into the United States that does not have a currently valid, unexpired certificate of conformity and that was built after the effective date of the applicable standards, would be considered to be new at the time it is imported into the United States and would have to comply with the relevant emission limits in effect at that time. Thus, for example, a marine vessel manufactured in a foreign country in 2004 that is imported into the United States in 2007 would be considered to be new, and its engine would have to comply with the proposed emission limits that would be in effect for MY2007. This provision is important to prevent manufacturers from avoiding the emission requirements by building vessels abroad, transferring their title, and then importing them as used vessels.

Finally, while engines that are intended for export will not be subject to the requirements of the proposed emission control program, marine engines that are exported but that are subsequently re-imported into the United States are intended to be covered. This would be the case when a foreign company purchases marine engines manufactured in the United States for installation on a vessel that will be subsequently exported to the United States. It would also be the case when a foreign company purchases marine engines manufactured in the United States for dressing and subsequent re-exportation to the United States. Engines that are intended for export but that will be re-imported into the United States are intended to be subject to the proposed rule at the time of manufacture, unless the vessel manufacturer, engine dresser, or marinizer intends to re-certify the engines as complying with the proposed emission limits before they enter the United States. Consequently, foreign purchasers who do not wish to recertify the engines will need to make sure they purchase complying engines for those marine vessels or engines they intend to subsequently offer for sale in the United States. Engines intended for export and sale in a foreign country should be easily distinguishable from complying engines because complying engines are required to be labeled as such. Any person who introduces into commerce in the United States a noncomplying engine that is intended for export and use in a foreign country would be subject to civil penalties.

To determine when an engine or vessel will be considered ''imported'' for the purposes of determining compliance with the proposed emission control program, EPA proposes to follow the approach contained in the Harmonized Tariff Schedule of the United States (HTSUS). According to HTSUS, vessels used in international trade or commerce or vessels brought into the territory of the United States by nonresidents for their own use in pleasure cruising are admitted without formal customs consumption entry or payment of duty.[30] This approach is consistent with the Treasury Department's ruling, which concluded that vessels coming into the United States temporarily as carriers of passengers or merchandise are not subject to customs entry or duty, but if brought into the United States permanently they are to be considered and treated as imported merchandise.

Practically, the above discussion means that engines installed on vessels flagged in another country that come into the United States temporarily will not be subject to the proposed emission limits. This approach is consistent with typical international practices, whereby countries do not generally impose restrictions on the flag vessels of other countries. In recognition of this practice, the numerous Member States of the IMO

[30] HTSUS (1994), Additional U.S. Note 1. In particular, cruise ships, ferry boats, cargo ships, barges and ''similar vessels for the transportation of persons or goods'' are duty free. HTSUS (1994) 8901.

recently concluded an international agreement stipulating limits for the emission of nitrogen oxides applicable to ships engaged in international voyages. The above discussion also means that engines installed on vessels that are brought into the United States permanently would be subject to the proposed emission control program. EPA seeks comment on this implication and seeks information concerning the frequency with which this situation would occur.

B. Propulsion and Auxiliary Engines

The proposed scope of application is intended to cover all new marine diesel engines at or above 37 kW. This universe of engines includes both propulsion and auxiliary marine diesel engines. Consistent with the definitions in 40 CFR 89, a propulsion engine is intended to be one that moves a vessel through the water or assists in guiding the direction of the vessel (for example, bow thrusters). Auxiliary engines are intended to be all other marine engines.

In the final land-based nonroad rule, EPA determined that a portable auxiliary engine that is used onboard a marine vessel would not be considered to be a marine engine.[31] Instead, a portable auxiliary engine is considered to be a land-based auxiliary engine and is subject to the requirements of 40 CFR 89. To distinguish a marine auxiliary engine installed on a marine vessel from a land-based portable auxiliary engine used on a marine vessel, EPA specified in that rulemaking that an auxiliary engine is installed on a marine vessel if its fuel, cooling, or exhaust system are an integral part of the vessel or require special mounting hardware. All other auxiliary engines are considered to be portable and therefore land-based.

It has become clearer that the differences between marine auxiliary engines and their land-based counterparts may be so small as to suggest that these engines should not be treated differently at all. An alternative approach is to consider all auxiliary engines to be the same and subject them to the land-based nonroad diesel emission requirements and implementation dates (40 CFR Part 89). These two groups of engines are often technologically similar, if not identical, and are dressed for their applications in the same way. The main advantage of this alternative approach is that engine manufacturers would not have to certify these engines twice, once for land-based applications and once for marine applications. A consequence of treating these auxiliary engines as land-based nonroad diesel engines is that there would be some adjustments in emission limits, implementation date, and other provisions. EPA seeks comment on whether the land-based and marine distinctions are necessary for auxiliary engines and on whether EPA should adopt the alternative approach described above.

C. Exemptions

1. Recreational Engines

Marine diesel engines used in recreational and commercial applications are different in several respects. Commercial vessels are designed primarily to efficiently move cargo, either in their own hold or by pushing or pulling other vessels. Consequently, they are typically displacement vessels, which means the vessel is pushed through the water. Optimal operations are more a function of hull characteristics, which are designed to reduce drag, than engine size, and these vessels can be powered by engines with power ratings analogous to land-based applications. Commercial vessels are also often heavily used, and their engines are designed to operate for as many as 2,000 to 5,000 hours a year at the higher engine loads needed to push the vessel and its cargo through the water. In addition, these vessels are often designed for specific purposes, and many characteristics, including the choice of engine, are set by the purchaser.

Recreational vessels, in contrast, are designed primarily for speed. To reach high speeds, it is necessary to reduce the surface contact between the vessel and the water, and consequently these vessels typically operate in a planing mode. Planing, in turn, imposes two requirements on vessel design. First, the vessel needs to have a very high power, but lightweight engine to achieve the speeds necessary to push the vessel onto the surface of the water. Consequently, recreational engine manufacturers have focused on achieving higher power output with lighter engines (this is also referred to as high power density). The tradeoff is less durability, and recreational engines are warranted for fewer hours of operation than commercial marine engines. The shorter warranty period is not a great concern, however, since recreational vessels, and therefore their engines, are typically used for fewer hours per year than commercial engines, and spend much less time operating at higher engine loads.

Second, the vessel needs to be as light as possible, with vertical and horizontal centers of gravity precisely located to allow the hull of the vessel to be lifted onto the surface of the water. Consequently, recreational vessel manufacturers have focused on designing very lightweight hulls. They are typically made out of fiberglass, using precisely designed molds. The tradeoff is a reduced ability to accommodate any changes to the standard design. In other words, purchasers are not given much choice as to the design of the vessel and, more particularly, the engine that will be used to power it. Recreational vessels are typically designed around a specific engine or group of engines, and engines that are heavier or that are physically larger cannot be used without jeopardizing the vessel's planing abilities.

EPA has learned that many recreational engines already use the types of technologies that will be necessary to reach the proposed standards. These technologies are typically used to increase the power density of recreational engines. EPA is concerned that redirecting the impact of these technologies toward emission reduction may reduce engine power density. This, in turn, means that recreational vessel builders may have to resort to larger, heavier engines to achieve the same engine power. They may also have to redesign their hulls, and fiberglass molds, to accommodate larger, heavier engines. This can be a costly requirement, since most vessel manufacturers destroy their master hulls once the fiberglass molds are produced.

To allow more time to evaluate the potential impact of the proposed emission limits on the recreational vessel industry, EPA is not proposing to include recreational propulsion marine diesel engines in the proposed emission control program. Instead, EPA intends to consider requirements for those engines in a separate rulemaking. The Notice of Proposed Rulemaking for that recreational marine diesel rule is expected to be signed by November 23, 1999, and the Final Rule is expected to be signed in October, 2000.

EPA considered various methods to distinguish commercial and recreational marine diesel engines for the purpose of this exemption, including relying on physical differences between recreational and commercial engines or their warranty periods. These methods were found to be unsatisfactory. Relying on physical differences between recreational and commercial engines would be difficult, especially since these engines are likely to become more similar as Tier 2 technologies are applied to commercial engines. Relying

[31] *See* 63 FR 56967, October 23, 1998.

on warranty periods would be difficult because not all engine manufacturers have the same product ratings with the same warranty periods. Imposing such requirements would unnecessarily impose a degree of uniformity across the industry that may hinder engine design or marketing strategies.

Consequently, EPA is proposing to take a more flexible approach and is proposing to define a recreational marine engine as a marine propulsion engine intended by the engine manufacturer to be installed on a recreational vessel. In other words, a recreational engine would be defined by the engine manufacturer. EPA is also proposing that installation of a new recreational engine on a new nonrecreational vessel would be prohibited, and that all recreational engines be clearly labeled with language that specifies the engine is intended for use only on recreational vessels. Specifically, EPA is proposing the following label language:

THIS RECREATIONAL ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS FOR NONRECREATIONAL VESSELS. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

Thus, EPA intends that recreational engines can be used only in recreational vessels. It should be noted that the converse of this provision is not true, and that EPA does not intend to prohibit the use of a certified engine on a recreational vessel. In fact, EPA encourages recreational vessel manufacturers to use certified engines due to the beneficial impact it would have on the environment. It should also be noted that this prohibition does not prevent someone from installing an old marine engine in an old vessel.

EPA seeks comment on using a labeling requirement to distinguish recreational engines from commercial engines for the purpose of the exemption, and on whether this approach will be sufficient for preventing the installation of noncertified recreational engines on commercial vessels. EPA also seeks comment on whether a power or displacement cutoff should be also specified, above which engines could no longer be designated as recreational. For example, a power cutoff of 560 kW may be appropriate because larger engines are installed on custom-built recreational vessels that are not subject to the same design constraints as smaller serially-built fiberglass vessels.

For the purpose of the exemption, EPA is proposing to adopt the definition of recreational vessel as that term is defined in 46 U.S.C. 2101. According to that definition, a recreational vessel is a vessel (A) being manufactured or operated primarily for pleasure; or (B) leased, rented or chartered to another for the latter's pleasure. EPA further proposes that, for the purposes of part (B) of this definition, the vessel cannot be leased, rented, or chartered for more than six passengers. EPA is proposing that vessels for hire that can carry more than six passengers, whether or not they ever actually do, be deemed nonrecreational vessels. This is consistent with the definition of recreational vessel for certain Coast Guard safety requirements (See 33 CFR 183.3, 33 CFR 175.3). At the same time, EPA is concerned that including vessels used for hire in the definition of recreational vessel may be inappropriate, since vessels used for hire may be used far more extensively than recreational vessels owned by individuals solely for their own pleasure. Therefore, EPA seeks comment on whether the definition of recreational engine should be extended to vessels for hire.

In addition, to avoid any ambiguities inherent in the term ''pleasure,'' vessels used solely for competition or used at any time in any other way to generate income or revenue in any way not associated with the hiring out of the vessel to other people for their pleasure will not be considered recreational. In other words, if a boat is used for both recreational and commercial purposes, it will be considered a commercial vessel. Thus, for example, a vessel that is used for several weeks a year for lobster fishing and at other times of the year used for recreational purposes will not be considered to be a recreational vessel for the purpose of the proposed program.

2. Modified New Land-Based Engines

A small segment of the marine diesel engine market consists of companies that take a new, land-based engine and modify it for installation on a marine vessel. However, unlike post-manufacture marinizers (described in Section V.L.1., below), some of the companies that modify an engine for installation on a marine vessel do not change it in ways that may affect emissions. Instead, the modifications may consist of adding mounting hardware and a generator or propeller gears. It can also involve installing a new marine cooling system that meets original manufacturer specifications and duplicates the cooling characteristics of the land-based engine, but with a different cooling medium (i.e., water). In many ways, these manufacturers are similar to nonroad equipment manufacturers that purchase certified nonroad engines to make auxiliary engines. This simplified approach of producing an engine can more accurately be described as dressing an engine for a particular application. Because the modified land-based engines are subsequently used on a marine vessel, however, these modified engines would be considered marine diesel engines, which would then fall under the requirements proposed in this document.

To clarify the responsibilities of engine dressers under this rule, EPA is proposing to exempt them from the requirement to certify engines to the proposed standards, provided the following conditions are met.

(i) The engine being dressed, (the ''base'' engine) must be a highway, land-based nonroad, or locomotive engine, certified pursuant to 40 CFR 86, 40 CFR 89, or 40 CFR 92, respectively, or a marine diesel engine certified pursuant to this part.

(ii) The base engine's emissions, for all pollutants, must be at least as good as the otherwise applicable marine diesel emission limits. In other words, starting in 2004, a dressed nonroad Tier 1 engine will not qualify for this exemption, since the more stringent standards for marine diesel engines go into effect at that time.

(iii) The dressing process must not involve any modifications that can change engine emissions.

(iv) All components added to the engine, including cooling systems, must follow base engine manufacturer specifications.

(v) The original emissions-related label must remain clearly visible on the engine.

(vi) The engine dresser must notify purchasers that the marine engine is a dressed highway, nonroad, or locomotive engine and is exempt from the requirements of 40 CFR 94.

(vii) The engine dresser must report annually to EPA the models that are exempt pursuant to this provision and such other information as EPA deems necessary to ensure appropriate use of the exemption.

EPA is proposing to consider any engine dresser that does not meet these conditions to be an engine manufacturer, and the engine to be a new marine diesel engine, and require their engines to be certified to comply with the provisions of this proposed rule.

It should be noted that an engine dresser that violates the above criteria could be liable under anti-tampering

provisions for any change made to the land-based engine that affects emissions. The dresser could also be subject to a compliance action, for selling new marine engines that are not certified to the required emission standards. In addition, the base engine manufacturer could be subject to a compliance action if the engine is found to be out of compliance.

EPA seeks comments on three aspects of this proposed exemption. First, EPA seeks comment on whether highway engines should be included in the set of base engines that can be modified by an engine dresser for marine application without needing further certification. EPA made a previous decision not to allow certified highway engines to be used in nonroad applications without recertifying. This decision was in response to claims that highway engines may not be able to meet applicable emission requirements on the steady-state test cycles applicable to nonroad engines. EPA is nevertheless proposing to allow engine dressers to modify certified highway engines without recertifying them as marine engines, because EPA believes that engine dressers would be unfairly penalized by the constraint that was originally intended for manufacturers selling two versions of their own engines. EPA requests comment on whether it is appropriate to include highway base engines in this exemption.

Second, EPA seeks comment on how to ensure that exempted dressed engines comply with the not-to-exceed requirements described in Section V.F. of this proposal. The base engines certified under 40 CFR 86, 40 CFR 89, or 40 CFR 92 are not subject to these provisions at the present time. Engines that are not subject to the off-cycle emission program may not have test data demonstrating compliance with this requirement.

Finally, EPA seeks comment on whether land-based engines that are credit users (those which have an FEL higher than the standard) should be allowed to benefit from the exemption. According to the above proposed criteria, the base engine's emissions must be at least as good as the otherwise applicable marine diesel emission limits. However, it may be the case that the base engine is a credit user, and that in fact its emissions are not as good as the otherwise applicable marine diesel emission limits, even though it is certified to the same or more stringent emission limits. This is of concern because engine dressers often prepare engines for marine vessels that are used in a particular area of the country. This means that high-emitting dressed engines may be concentrated in just a few port areas. In addition, it is unlikely that enough credit generators will be dressed for marine purposes that will offset the higher emitting credit users. The obvious solution to this problem is to specify that land-based nonroad or locomotive engines whose certification relied on the use of credits cannot benefit from this exemption. However, it is not clear that engine dressers will be able to identify these engines, or to modify their production practices if they happen to rely heavily on them for their own production. EPA seeks comment on this, as well as on any other solutions that will ensure that engines dressed for marine applications do not exceed the marine diesel emission limits.

3. Other Exemptions

EPA is proposing to extend other basic nonroad exemptions to marine diesel engines. These include the testing exemption, the manufacturer-owned exemption, the precertification exemption, the display exemption, the national security exemption, and the export exemption described in 40 CFR 89 Subpart J. In addition, EPA seeks comment on an additional exemption for racing and on the scope of the national security exemption. It should be remembered that these exemptions are not necessarily automatic, and that the engine or vessel manufacturer, or ultimate engine owner, may need to apply for them. As part of its approval, EPA may require exempted engines to be labeled.

With regard to the national security exemption, EPA is proposing to apply the approach used in the Agency's existing land-based nonroad and gasoline marine programs (40 CFR 89.908 and 40 CFR 91.1008). According to this exemption, only marine engines used in vessels that exhibit substantial features ordinarily associated with military combat, such as armor and/or permanently affixed weaponry, and which will be owned and/or used by an agency of the federal government with responsibility for national defense, will be considered exempt from the proposed emission control program. No request for an exemption would be necessary for these engines. Thus, according to this approach, engines used on vessels such as aircraft carriers, destroyers, and submarines would automatically be exempt from the proposed program. EPA believes extending the nonroad national security exemption to diesel marine engines is appropriate because the vessels on which these engines are used are designed for specific national security missions, and the exemption will ensure that emission controls do not compromise the ability of these vessels to achieve their military missions. However, it is EPA's understanding that the Department of Defense, and the Navy in particular, adopt emission control technology to the extent it is practical and feasible.

It is EPA's understanding that other public vessels, such as some vessels operated by the Coast Guard or Maritime Administration or vessels used for general cargo purposes by the Navy or other armed service branches, may not have features ordinarily associated with military combat. Such vessels would not qualify for the automatic exemption under the proposed national security exemption. EPA seeks comment on the nature and uses of vessels in such fleets and on the appropriate delineation of the national security exemption. EPA does not believe that application of the emission control technology that will be used to achieve the diesel marine Tier 2 emission limits will hinder the design and use of these vessels. Nevertheless, there may be situations in which an exemption from the emission controls may be necessary. To address this possibility, manufacturers can request a special national security exemption. A manufacturer requesting such an exemption would be required to explain why the exemption is required, and the request would need to be endorsed by an agency of the federal government charged with responsibilities for national defense. EPA requests comment on applying the land-based nonroad and gasoline marine military exemption approach to diesel marine engines or whether these engines are sufficiently different in application from land-based military equipment as to require a different approach. If another approach is more appropriate, EPA requests comment on what that approach should be.

With regard to racing engines, EPA is proposing to allow an exemption for marine diesel engines that are installed on vessels used solely in competition. To limit the application of this requirement to professional racing, EPA is also proposing that the racing exemption may not be given to any vessel that is used for recreational purposes. In other words, high-powered recreational vessels that are not used solely in competition will not be eligible for the racing exemption. The proposed approach is different from the approach used by EPA for SI marine engines (40 CFR Part 91) and land-based nonroad diesel engines (40 CFR Part 89). In those regulations, EPA defined ''used solely

for competition'' based on physical features of the vessel. However, EPA does not believe that marine diesel vessels used solely for competition will necessarily have physical features that are not found on other high performance marine vessels. Thus, in this rulemaking, EPA is proposing to interpret ''used solely for competition'' literally, such that the exemption would apply only to engines that are, in fact, used solely for competition. The Agency requests comment regarding whether it should also use this literal approach for SI marine engines or land-based nonroad engines.

IV. Engine Categories

The engines that are the subject of this action are very diverse in terms of physical size, emission technology, control hardware, and costs associated with reducing emissions. These differences make it difficult to design one set of emission requirements for all marine diesel engines. For example, numerical emission limits that may be reasonable and feasible for a 37 kW engine used on an 5.5-meter (18-foot) boat may not be reasonable or feasible for a 1,500 kW engine installed on a tug or a 20,000 kW engine installed on an ocean-going container ship. Similarly, numerical emission limits appropriate for very large engines may be not be appropriately stringent for smaller engines, requiring little or no emission reduction.

Consequently, it is necessary to divide marine diesel engines into categories for the purposes of applying emission limits and duty cycles. In developing these categories, EPA had two criteria. First, the categories should allow EPA to take advantage of existing control programs that apply to the base engines from which marine engines are derived. Second, the categories should minimize category straddlers. In choosing how to distinguish between groups of marine diesel engines, EPA considered using rated power, rated speed, total displacement, and several other factors. However, after reviewing the engine parameters of the range of diesel engine models currently being produced, EPA concluded that per-cylinder displacement was the best way to distinguish engine groupings. Per-cylinder displacement is an engine characteristic that is not easily changed and is constant for a given engine model or series of engine models. More specifically, EPA is considering the following categorization scheme, which is summarized in Table 4. EPA requests comment on this categorization scheme.

TABLE 4.—ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder	Basic engine type
1	Disp. < 5 liters (and power ≥ 37 kW)	Land-based Nonroad Diesel.
2	5 ≤ disp. < 20 liters	Locomotive.
3	Disp. ≥ 20 liters	Unique, ''Cathedral.''

EPA proposes to define Category 1 engines as those marine diesel engines that are rated above 37 kW, but have a per-cylinder displacement of less than 5 liters. This definition is intended to break out the class of marine engines that are serially produced and generally derived from land-based nonroad configurations or use the same emission control technologies. These engines are typically used as propulsion engines on recreational vessels as well as small commercial vessels (fishing vessels, tugboats, towboats, dredgers, etc.) They are also used as auxiliary engines on vessels of all sizes and applications.

EPA proposes to define Category 2 engines as those marine diesel engines with per-cylinder displacement at or above 5 liters and up to 20 liters. This category is intended to include engines that are of similar size and configurations as locomotive engines and use the same or similar emission control technologies. These engines are widely used as propulsion engines in harbor and coastal vessels, and can be used as auxiliary engines on ocean-going vessels and larger tugs.

EPA proposes to define Category 3 engines as those marine diesel engines with a displacement at or above 20 liters per cylinder. These are very large high-power engines that are used almost exclusively for propulsion on vessels engaged in Great Lakes or trans-oceanic trade.

EPA is further proposing to divide Category 1 engines into several subgroups. These subgroups are similar to the land-based nonroad diesel engine subgroups, with one significant change: EPA is proposing to base the marine subgroups on engine displacement rather than engine power. EPA believes this is a more appropriate scheme for two reasons. First, manufacturers sometimes offer different engine models that are the same except for the number of cylinders. These engines may fall into different power groupings by virtue of the added power from adding cylinders. Second, marine engines are often available in a wider range of power than their land-based counterparts. While it may be possible to define wider power bands for marine diesel engine subgroups, it may not be possible to do so without creating phase-in disadvantages for particular companies, especially in comparison to their land-based phase-in schedule. A displacement scheme should minimize these inequities. Consequently, EPA is proposing a displacement approach to defining engine groups, as described in Table 5.

TABLE 5.—CATEGORY 1 ENGINE GROUPS

Displacement (liters/cylinder)	Approximate corresponding power band from land-based nonroad rulemaking	
	kW	hp
Displ.<0.9	37≤kW<75	50≤hp<100
0.9≤displ.<1.2	75≤kW<130	100≤hp<175
1.2≤displ.<1.5	130≤kW<225	175≤hp<300
1.5≤displ.<2	225≤kW<450	300≤hp<600
2.0≤displ.<2.5	450≤kW<560	600≤hp<750

TABLE 5.—CATEGORY 1 ENGINE GROUPS—Continued

Displacement (liters/cylinder)	Approximate corresponding power band from land-based nonroad rulemaking	
	kW	hp
2.5≤displ.<5.0	kW≤560	hp≤750

In selecting the displacement values corresponding with the nonroad power ranges, EPA examined the engine displacement and power characteristics of a wide range of existing engines. The listed displacement values were selected to provide the greatest degree of consistency with the established land-based nonroad engine power groups. The wide range in power ratings for engines with a given per-cylinder displacement, however, led to a high degree of overlap in the attempted correlation between displacement and power rating. As a result, some nonroad engine models that were spread across different power groupings are brought together under a single displacement grouping. This has the potential to move an engine model into a group with somewhat more or less stringent requirements, but in almost all cases there was sufficient overlap to avoid moving a family of engines into an entirely new grouping. The observed overlap highlights the benefit of relying on displacement for a simplified approach. This should give manufacturers opportunity to more sensibly plan an R&D effort to a family of engines that must meet a single set of requirements with a common implementation date.

The most important aspect of defining sub-groups relates to which engines are treated like nonroad diesel engines rated above 560 kW. Emission limits and implementation dates for smaller marine engines are relatively uniform; however, the biggest group of Category 1 engines are subject to less stringent emission limits (for Tier 3) and have more lead time, which makes it especially important to properly separate engines. Investigation of engine models led to three key observations. First, of the engines lines with per-cylinder displacement between 2.5 and 5.0 liter, all had configurations with available power ratings above 560 kW; several of these were much greater than 560 kW. Second, except for one instance, all engines with displacements less than 2.5 liter had configurations with available power ratings below 560 kW; this means that the manufacturers of these engines would have to meet the more aggressive requirements for some of those engines. The only exception is the DDC 149 series engines, which is being replaced with a new engine model. Third, the common practice of bolting two marine engines together would often place the combined engine artificially into the less stringent regime. For example, with respect to emissions and performance, two six-cylinder 300 kW engines bolted together would operate the same as each individual engine. Yet, by doubling the power at the crankshaft, the engine would be subject to less challenging requirements.

The net effect of changing to a displacement-based grouping is hard to quantify. Somewhat greater emission reductions would likely result for the reasons described above, though it is difficult to identify the relative sales volumes of engines that would fall above and below the threshold under both scenarios. The effect on costs is expected to be small. As described above, no engines would be subject to the more stringent standards that would not have a subset of the engine line already subject to those same standards under a power-based grouping arrangement. As a result, there should be no increase in R&D expenses. Variable costs would be incurred for a greater number of engines, but the costs analysis in the Draft RIA makes clear that variable costs play a relatively small role in the overall cost impact of emission requirements. The Draft RIA lists various engine models with their displacement groups. EPA requests comment on this approach to defining Category 1 engine groups. Also, EPA requests comment on whether it would be appropriate to pursue redefinition of the nonroad diesel emission standards into these displacement-based groupings as part of a separate, future rulemaking.

V. Description of Proposed Standards and Related Provisions

In developing this proposal, EPA has developed a comprehensive program to reduce emissions from marine diesel engines. This section describes the proposed emission limits for Category 1 and Category 2 engines. It also sets out provisions that will ensure that engines comply with the emission limits across all engine speed and load combinations, as well as throughout their useful life. Proposed requirements related to test procedures and fuel specifications are also discussed, as well as several certification and compliance provisions. Standards and related provisions for Category 3 engines are described in Section VI, below.

A. Standards and Dates

1. Marine Tier 2 Emission Limits

The Agency's general goal in designing emission control requirements for Category 1 and Category 2 marine diesel engines is to develop a long-term program that will achieve significant emission reductions. In developing such a program, the Agency is guided by § 213(a)(3) of the CAA, which instructs EPA to set standards for nonroad engines that ''achieve the greatest degree of emission reduction achievable through application of technology the Administrator deems will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.'' The Act also instructs EPA to first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under § 202, taking into consideration technological feasibility, costs, and other factors.

The relevant engines regulated under § 202 are on-highway truck engines, both light-duty and heavy-duty. The most recent NO_X emission limits set by EPA for these engines range from approximately 2.5 g/kW-hr for heavy-duty trucks to less than 2.0 g/kW-hr for light-duty trucks. After consideration, EPA determined that it is not appropriate to extend the on-highway limits to diesel marine engines for three reasons. First, these emission limits reflect a history of emission control that is not shared by marine diesel engines, which are currently uncontrolled, and it is not clear that marine diesel engines can achieve such stringent emission

limits. In comparison, EPA estimates the baseline emission rates of marine diesel engines to be approximately 10.5 g/kW-hr for the smaller marine diesel engines. Second, the duty cycle demands for marine engines are considerably different than those for on-highway trucks, which must be reflected in any choice of emission limits for marine engines. Finally, engines used in marine applications cover a much broader power range. As described elsewhere in this preamble, the marine engines covered by this rule vary in size from 37 kW to in excess of 90,000 kW—much larger than any on-highway engines, which vary from approximately 50 kW to 500 kW. It may not be possible for the larger marine diesel engines to achieve the limits that were set for a smaller universe of on-highway engines.

Instead of basing the proposed emission limits on on-highway engines, EPA believes it is more appropriate to consider the standards for land-based nonroad diesel engines already promulgated pursuant to § 213. This approach is favorable because the vast majority of marine diesel engines are derived from or use the same technologies as land-based engines. As described in the Draft Regulatory Impact Assessment, manufacturers of marine diesel engines typically start with a partially- or fully-completed land-based nonroad diesel engine or, in some cases, a highway diesel engine, and adapt it for use in the marine environment (this process is typically called ''marinization'').

EPA initially considered extending the land-based nonroad diesel Tier 1 emission limits, as described in the NPRM for new gasoline spark-ignition and diesel compression-ignition engines.[32] These limits are contained in Table 1, above. However, after further consideration, EPA has concluded that those emission limits do not meet the § 213 criteria. Available data suggests that marine diesel engines already perform at or near the NO_X emission limits (9.2 g/kW–hr). This is not surprising, given that the Tier 1 levels required the application of very simple emission control technology, primarily timing retard and better cooling. In addition, engine manufacturers have been exploring better engine cooling for quite some time in an effort to boost engine power.

Tier 2 nonroad technologies have been applied to marine diesel engines with good results. As described in the Draft Regulatory Impact Analysis, engine manufacturers participating in several California demonstration programs experimented with applying Tier 2 technologies, including electronic controls, better turbocharging, and raw-water aftercooling, to various commercially used engines. These programs have shown that NO_X emissions can be reduced by 40 to 60 percent. These results suggest that application of the land-based nonroad Tier 1 emission limits will not achieve the greatest degree of emission reduction achievable, taking into account technological feasibility, costs and other factors, as required by the Clean Air Act. Therefore, EPA is not proposing to extend the land-based nonroad Tier 1 emission limits to marine diesel engines.

At the same time, EPA is concerned about directly applying the land-based nonroad Tier 2 emission limits to marine diesel engines, for at least three reasons. First, the results obtained in the demonstration projects may be better than could be expected over a more general application of these Tier 2 technologies. Specifically, the demonstration projects were carefully controlled programs, and the engines were specially adapted for the participating vessels. These engines may have seen better maintenance or fewer extremes in use than typical marine diesel engines.

Second, manufacturers have indicated that there may be some hardware problems that would have to be worked out before land-based nonroad Tier 2 technologies can be applied to marine diesel engines. For example, achieving Tier 2 emission limits will require a higher use of raw-water aftercooling, which may present some problems for commercial marine engines. As currently designed, these systems can require more frequent maintenance, and may pose some reliability problems. In addition, it is not clear whether split-housing turbochargers can be used extensively with raw-water aftercooling, since the temperature differences between the interior and exterior of the turbocharger can cause material failure.

Finally, and perhaps most importantly, the demonstration projects gathered emissions data primarily for NO_X. It is not clear what effect application of these technologies had on PM emissions. This is an important concern because of the NO_X/PM tradeoff (as NO_X emissions are decreased, PM emissions tend to rise due to the change in combustion temperatures).

To address these concerns while still encouraging the use of land-based nonroad technologies on marine diesel engines, EPA is proposing a two-step approach for Category 1 and 2 marine diesel emission limits. Reflecting the above-described concerns, this approach assumes less than optimal transfer of land-based nonroad technologies to marine engines in the short run. In the long run, however, this approach assumes engine manufacturers will develop ways to fully optimize the transfer of land-based nonroad Tier 2 and Tier 3 emission control technologies to marine diesel engines. This two step approach will also give engine manufacturers more time to resolve mechanical barriers that prevent marine engines from more completely exploiting the water cooling potential of the environment in which they operate (water). Specifically, as described in the technological feasibility section below and the Draft Regulatory Impact Assessment, greater use of raw water and separate system aftercooling will permit marine engines to greatly reduce NO_X emissions. Taken as a whole, the proposed emission limits are expected to yield the greatest degree of emission reduction achievable through the application of technology that is expected to be readily available during the time frame covered by the proposal taking into account technological feasibility, costs and other factors, as required by the Clean Air Act.

Table 6 contains the proposed emission limits for marine diesel Category 1 and Category 2 engines. In the first step, which EPA is calling Tier 2 due to the similarity to land-based Tier 2 emission limits, EPA proposes a 7.2 g/kW-hr NO_X+HC limit, to apply to both categories of engines. Again, this limit is intended to result in short-term NO_X reductions while not requiring manufacturers to completely resolve the transfer of land-based Tier 2 technologies to marine engines. These marine Tier 2 emission limits are proposed to apply beginning in 2004 for engines up to 5 liters per cylinder and 2006 for engines up to 20 liters per cylinder. The staggered dates reflect the added complexities of applying these limits to larger engines. The MARPOL Annex VI NO_X limits are also provided in this table for comparison.

[32] *See*, 59 FR 55929, November 9, 1994.

TABLE 6.—PROPOSED TIER 2 MARINE DIESEL EMISSION LIMITS AND IMPLEMENTATION DATES

Subcategory	HC+NO_X g/kW–hr	PM g/kW–hr	CO g/kW–hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	7.2	0.40	5.0	2004
0.9 ≤ disp < 1.2	7.2	0.30	5.0	2004
1.2 ≤ disp < 1.5	7.2	0.20	3.5	2004
1.5 ≤ disp < 2.0	7.2	0.20	3.5	2004
2.0 ≤ disp < 2.5	7.2	0.20	3.5	2004
2.5 ≤ disp < 5.0	7.2	0.20	3.5	2006
5.0 ≤ disp < 20.0	7.2	0.27	2.0	2006
MARPOL Annex VI, for comparison purposes (NO_X only)				
n ≥ 2000 rpm	9.8	None	None	1/1/2000
130 rpm≤n<2000 rpm	$45*n^{(-0.2)}$	None		1/1/2000
n <130 rpm	17.0	None	None	1/1/2000

It is expected that marine diesel engines can achieve this emission limit through the application of electronic controls and better cooling, perhaps supplemented by some degree of timing retard. EPA is also proposing emission controls for PM and CO, that are equal to the land-based nonroad and locomotive limits for these pollutants, depending on the size of the engine. EPA does not believe it is necessary to relax these limits relative to the land-based programs. Due to the NO_X/PM tradeoff, the higher NO_X emission limit should ensure the feasibility of achieving the PM limits as well. Diesel engines inherently have low CO emissions, and the proposed limits are intended to serve as a cap.

EPA is proposing new requirements designed to ensure that the standards are met during real world operation as well as under laboratory tests (see Section V.F. ''Not-to-Exceed Requirements''). According to these requirements, marine engines may not exceed the applicable emission limits by more than 25 percent while the engine is operated in any load/speed combination contained in a specified not-to-exceed (NTE) zone. EPA believes that the technology listed above that will be used to meet the proposed standards will be sufficient to meet the combined emission limits and NTE requirements. While the NTE transient operation requirements have an effect on PM emissions, this is not expected to pose any design difficulties. Marine operations typically have only limited transience and the NTE requirements are designed so that a short transience can be averaged into a minimum operating period.

EPA believes the proposed marine diesel emission limits set out in Table 6 strike the appropriate balance, taking into consideration the recently finalized Tier 2 emission limits that apply to the land-based nonroad engines from which many if not most diesel marine engines are derived and the special characteristics of marine diesel engines that may make achievement of those limits difficult. EPA requests comments on these proposed marine diesel Tier 2 limits. Specifically, it may be the case that the barriers to applying land-based technologies to marine diesel engines, including recreational engines, are smaller than expected, and that the land-based nonroad emission control program is, in fact, technologically feasible. In that case, extension of the land-based programs would be the appropriate approach according to the criteria set out in the Clean Air Act. The land-based Tier 2 emission limits are contained in Table 7. EPA also seeks comment on whether the superior cooling potential of marine diesel engines would permit even lower emission standards for NO_X and PM at an acceptable cost.

TABLE 7.—LAND-BASED NONROAD TIER 2 EMISSION LIMITS AND IMPLEMENTATION DATES

Subcategory	HC+NO_X g/kW–hr	PM g/kW–hr	CO g/kW–hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	7.5	0.4	5.0	2004
0.9 ≤ disp < 1.2	6.6	0.3	5.0	2003
1.2 ≤ disp < 1.5	6.6	0.2	3.5	2003
1.5 ≤ disp < 2.0	6.4	0.2	3.5	2001
2.0 ≤ disp < 2.5	6.4	0.2	3.5	2002
2.5 ≤ disp < 5.0	6.4	0.2	3.5	2006
5.0 ≤ disp < 20.0	0.4, 7.4	0.27	2.0	2005

2. Marine Tier 3 Emission Limits

In the long run, it is anticipated that greater experience with emission controls and the transfer of land-based technologies to marine engines will make more stringent emission limits feasible. For this second step, which EPA is calling Tier 3 due to the similarity to land-based Tier 3 emission limits, EPA proposes a 3.0 g/kW–hr NO_X+HC limit, to apply to marine diesel engines up to 2.5 l/cyl beginning in 2008. EPA believes this emission limit should be achievable within the time available through more aggressive engine cooling and use of electronic engine controls. At the same time, and similar to the Tier 2 limits, there are uncertainties regarding the transferability of land-based Tier 3 technologies to these marine diesel engines. Because more complete information on the technologies that will be used to achieve these limits for land-based engines will not be available for several years, EPA intends to reconsider these marine Tier 3 limits as part of a feasibility review, to take place in 2003. At that time, EPA will examine the extent to which the proposed Tier 3 standards are technologically feasible and otherwise appropriate under the

Clean Air Act. The marine diesel Tier 3 NO_X+HC limits are set out in Table 8.

TABLE 8.—PROPOSED TIER 3 MARINE DIESEL HC+NO_X Emission Limits and Implementation Dates*

Subcategory	HC+NO_X g/kW–hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	4.0	2008
0.9 ≤ disp < 1.2	4.0	2008
1.2 ≤ disp < 1.5	4.0	2008
1.5 ≤ disp < 2.0	4.0	2008
2.0 ≤ disp < 2.5	4.0	2008
2.5 ≤ disp < 5.0	5.0	2010
5.0 ≤ disp < 20.0	5.0	2010

*Note: These limits are subject to a 2003 Feasibility Review.

EPA also seeks comment on whether the marine diesel Tier 3 limits should follow the land-based nonroad limits, set out in Table 9. As discussed under the Tier 2 limits, above, it could be the case that transferring land-based nonroad Tier 3 technologies will be easier than anticipated. This, in combination with the superior cooling potential of marine engines, may make achievement of the land-based Tier 3 standards feasible. If adopted, these land-based limits would be subject to review in the 2003 feasibility study.

TABLE 9.—LAND-BASED NONROAD TIER 3 EMISSION LIMITS AND IMPLEMENTATION DATES*

Subcategory	HC+NO_X g/kW-hr	Implementation date
Power ≥ 37 kW 0.5 ≤ disp < 0.9	4.7	2008
0.9 ≤ disp < 1.2	4.0	2007
1.2 ≤ disp < 1.5	4.0	2006
1.5 ≤ disp < 2.0	4.0	2006
2.0 ≤ disp < 2.5	4.0	2006

*Note: These limits are subject to a 2003 Feasibility Review.

As noted in Table 8, EPA is also proposing Tier 3 emission limits for Category 1 marine diesel engines at or above 2.5 l/cyl. and Category 2 marine diesel engines. Tier 3 emission controls are necessary for these engines because of the importance of their emissions to local ozone inventories. Marine diesel engines at or above 2.5 l/cyl are an important part of the emission inventory of many cities with commercial ports.[33] While the population of engines in these areas may be smaller than land-based nonroad equipment or locomotives, it is also the case that their use is much more concentrated, being limited to port areas. In addition, many cities with commercial ports are in nonattainment areas, and the second phase emission limits will be an important tool to help them reduce local ozone levels.

EPA did not set Tier 3 emission limits for land-based nonroad engines at or above 560 kW or for locomotives, due to the limited cooling potential of those engines. These engines are typically installed in relatively restrictive spaces, and are unable to take full advantage of air-to-air cooling systems. However, EPA believes that marine diesel engines at or above 2.5 l/cyl should be able to meet more stringent Tier 3 emission limits because they can take advantage of the medium in which they operate, water, to achieve better engine cooling and additional NO_X reductions. At the same time, the ability of these larger engines to take full advantage of raw water aftercooling or separate system aftercooling is complicated by the same constraints that must be overcome for the smaller engines. To accommodate concerns about overcoming this constraint, as well as uncertainty over the transferability of more efficient cooling technology from the smaller to the larger marine diesel engines, EPA intends to review the Tier 3 emission limits for engines at or above 2.5 liters per cylinder as part of the 2003 Feasibility Review. EPA seeks comment on the proposed Tier 3 limits for these engines, concerning both their stringency and implementation dates.

Finally, EPA will also examine the need to set more stringent PM limits as part of the 2003 Feasibility Review. Consideration of more stringent PM standards will be a function of, but not depend exclusively on, the ease with which engines are expected to reach the NO_X+HC limits, the extent to which the higher sulfur content of marine diesel fuel can be accommodated, whether the land-based nonroad diesel engine PM limits are revised as part of that category's 2001 feasibility review, and the cost of such limits.

Before making a final decision in the 2003 review, EPA intends to issue a proposal and offer an opportunity for public comment on whether the Tier 3 standards continue to be consistent with the requirements of the Act and continue to be technologically feasible for implementation according to the proposed schedule. Any Tier 3 PM standards would also be proposed in such a notice. Following the close of the comment period, EPA intends to issue a final Agency decision.

If by 2003 EPA finds the emission standards are not feasible according to the proposed schedule, or are otherwise not appropriate under the Act, EPA will propose changes to the program, possibly including adjustments to the levels of the standards. The adjusted standards may be more or less stringent than those already established, including the possibility of a new emission standard for particulate matter. The standards finalized in the rulemaking initiated by this proposal would stay in effect unless revised by the subsequent rulemaking procedure.

3. Interim Emission Limits

As noted above, EPA considered but rejected proposing land-based nonroad Tier 1 emission limits to marine diesel engines. Such emission limits would not be cost-effective because marine diesel engines often already meet the Tier 1 emission limits, and a Tier 1 program would simply impose a certification burden for minimal emission benefits.

At the same time, however, EPA is concerned about leaving these engines uncontrolled until the implementation dates of the marine Tier 2 standards (2004 for engines up to 2.5 l/cyl and 2006 for engines between 2.5 and 20 l/cyl). As noted above, these engines can be a considerable source of NO_X and PM emissions in port and coastal areas, many of which are in nonattainment zones.

This problem may be alleviated, however, by the MARPOL Annex VI emission control program. Regulation 13 of Annex VI to the International Convention on the Prevention of Pollution from Ships calls for engines installed on ships constructed on or after January 1, 2000, to meet emission limits similar in stringency to the land-based nonroad Tier 1 limits. Although the Annex VI emission limits are not enforceable until the Annex goes into effect (12 months after it is ratified by 15 countries representing at least 50 percent of the gross tonnage of the world's merchant shipping), it is expected that ship owners will begin to comply with these emission limits in 2000 to avoid future enforcement actions. According to Regulation 13(1)(b)(ii), the Annex requirements will apply even to ships operated in domestic waters unless a country takes action to the contrary. It is expected that the MARPOL Annex VI program will act as a cap on NO_X emissions, since engine manufacturers will have to make

[33] Category 1 and 2 marine diesel engines make up approximately 6 percent of the NO_X emission inventory for San Diego, 5 percent for San Francisco and 2 percent for Los Angeles-South Coast, Baltimore, and Chicago. *See* Commercial Marine Vessel Contributions to Emission Inventories, Final Report, Submitted by Booz-Allen & Hamilton, Inc., October 7, 1991.

compliant engines available for installation on ships beginning January 1, 2000. At the same time, however, there is some concern about compliance with these limits because they will not be enforceable until the Annex goes into effect. In addition, the international inspection program, when it goes into effect, will cover only engines installed on ships at or above 400 gross tons.[34]

EPA seeks comment on whether it is appropriate to rely on the MARPOL Annex VI program as an interim cap on NO_X emissions, with no formal emission limits or certification program set by EPA. Also, EPA seeks comment on how to verify that engine manufacturers are, in fact, complying with the MARPOL Annex VI program prior to the implementation date of Annex VI.

4. Total Hydrocarbons

EPA proposes to use total hydrocarbons (HC) rather than nonmethane hydrocarbons in its emission standards for marine diesel engines. This is consistent with locomotive standards but inconsistent with land-based nonroad standards. Methane was considered to be removed from the regulated pollutants since it is significantly less reactive than other hydrocarbons in the formation of ozone. However, for diesel engines, methane only makes up about two percent of the total hydrocarbons. In addition, HC generally makes up less than five percent of the combined $HC+NO_X$ from a marine diesel engine. The combination of these two factors renders the methane fraction of the exhaust insignificant when compared to the significant digits in the proposed $HC+NO_X$ standard.

The advantage of using total hydrocarbons rather than nonmethane hydrocarbons in the proposed standard is that it simplifies the emission measurement. To determine NMHC, both HC and methane must be measured. Methane is generally measured by speciating total hydrocarbons using a gas chromatograph, which can be time consuming and costly. In addition, by using total hydrocarbons for the standard for all marine diesel engines, the standards are consistent for Category 1 and Category 2.

B. Crankcase Emissions

EPA is proposing to require that all marine diesel engines either have closed crankcases (where blowby gases are routed into the engine intake air stream), or route all blowby gases into the engine exhaust stream for inclusion in all exhaust emission measurements. Manufacturers would be allowed flexibility for routed blowby gases in in-use configurations, provided that the blowby gases could be readily routed into the exhaust for any in-use test. This approach is similar to the approach used by EPA for locomotives. The purpose of this proposed requirement is to provide manufacturers the incentive to reduce crankcase emissions to the maximum extent possible, or to eliminate them all together.

C. Smoke Requirements

EPA is not proposing smoke requirements for marine diesel engines. Marine diesel engine manufacturers have stated that many marine diesel engines, even though currently unregulated, are manufactured with smoke limiting controls at the request of the engine purchasers. Users seek low smoke emissions both because they dislike the residue smoke emissions leave on decks and because they can be subject to penalties in ports that have smoke emission requirements. In many cases, marine engine exhaust gases are mixed with water prior to being released. This practice reduces the significance of smoke emissions since smoke becomes significantly less visible. Moreover, the Agency believes that the PM standards being proposed here will have the effect of limiting smoke emissions as well. EPA requests comment on these views and, specifically, on whether there is a need at this time for additional control of smoke emissions from Category 1 marine engines, and if so, what the appropriate limits should be.

If a smoke limit is desirable, EPA also requests comment on what the test procedure should be. There is currently no test procedure that can be used to measure compliance with a smoke limit. Most propulsion marine engines operate over a torque curve governed by the propellor. Consequently, a vessel with an engine operating at a given speed will have a narrow range of torque levels. Some large propulsion marine engines have variable-pitch propellers, in which case the engine operates much like constant-speed engines. It should be noted, however, that ISO is working on a proposal for marine diesel engine smoke test procedures. A copy of a recent draft is being placed in the docket for this rulemaking. As this procedure is finalized by ISO, and emission data become available, EPA may review the issue of smoke requirements for all marine diesel engines. EPA requests comment on this overall approach to smoke emissions from marine diesel engines, as well as comment on the draft ISO procedures.

D. Alternative Fuels

EPA has determined that the proposed standards should apply to marine diesel engines, without regard to the type of fuel that they use. This is consistent with nonroad diesel engine regulations of 40 CFR part 89. It is also generally consistent with the locomotive regulations; however, the locomotive regulations apply even more broadly because they also include spark-ignited engines. EPA recognizes that few, if any, alternative-fueled marine engines are currently being manufactured, but believes that it is appropriate to make clear to manufacturers what standards will apply to such engines should they be produced.

The broad applicability of the proposed standards raises two potential issues. The first issue is related to the form of the HC standards. In its regulation of highway vehicles and engines (59 FR 48472, September 21, 1994), the Agency determined that it is not appropriate to apply total hydrocarbon standards to engines fueled with natural gas (which is comprised primarily of methane), but rather that nonmethane hydrocarbon (NMHC) standards should be used. Thus, EPA is setting $NMHC+NO_X$ standards for compression-ignition natural gas-fueled marine engines. These $NMHC+NO_X$ standards are numerically equivalent to the $HC+NO_X$ standards proposed for diesel engines. Similarly, EPA has determined that alcohol-fueled engines should be subject to HC-equivalent (HCE) standards instead of HC standards (54 FR 14426, April 11, 1989). HC-equivalent emissions are calculated from the oxygenated organic components and non-oxygenated organic components of the exhaust, summed together based on the amount of organic carbon present in the exhaust. (The reader is referred to the April 11, 1989 final rule for more information regarding the determination of HC-equivalence.) EPA is proposing these approaches because it has previously determined that these approaches will result in the most equivalent stringency for all fuel types.

The second issue raised by the regulation is related to the need for slightly different test procedures for alternative-fueled engines. This issue is being resolved in this rulemaking by referencing the test procedures found in 40 CFR Parts 89 and 92, both of which include flexibility for testing alternative-fueled engines. EPA requests comment

[34] *See* Regulation 5, Surveys and Inspections, of the Annex.

on whether more specific regulation is needed for marine engines.

E. Test Procedures

For this marine regulation, EPA is proposing to use previously established test procedures for diesel nonroad engines. Specifically, EPA is proposing that Category 1 marine engines be tested using the land-based nonroad test procedures of 40 CFR Part 89, and that Category 2 marine engines be tested using the locomotive test procedures of 40 CFR Part 92. There are two reasons for using this approach. First, most manufacturers of marine compression-ignition engines also manufacture land-based engines and will be equipped to test engines using these test procedures. Second, marine compression-ignition engines are fundamentally similar to their land-based counterparts, and it is therefore appropriate to measure their emissions in the same way. At the same time, some changes are necessary, EPA is proposing the modifications to these test procedures described below.

1. Duty cycles

The duty cycle used to measure emissions is intended to simulate operation in the field. Testing an engine for emissions consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emissions performance of engines designed to those standards.

To address operational differences between engines, EPA is proposing different duty cycles for different types of compression-ignition marine propulsion engines. EPA is proposing that propulsion engines that operate on a fixed-pitch propeller curve be certified using the International Standards Organization (ISO) E3 duty cycle. This is a four-mode steady-state cycle developed to represent in-use operation of marine diesel engines on vessels 24 meters in length and larger. The four modes lie on an average propeller curve based on the vessels surveyed in the development of this duty cycle. Another duty cycle, ISO E5, was developed to represent in-use operation of smaller marine diesel engines; this cycle is similar to the E3 except that an idle mode is added and the cycle is more heavily weighted towards lower power modes. The E3 is designed for engines used to propel vessels greater than 24 meters in length while the E5 is designed for engines used to propel vessels less than 24 meters in length. The attractiveness of the E3 duty cycle is that, according to EPA's inventory analysis, the majority of $HC+NO_X$ emissions from marine diesel engines are generated by engines on vessels more than 24 meters in length. By choosing a single cycle to represent all propeller-curve marine diesel engines, EPA hopes to reduce certification burdens for marine engines that are used in vessels both over and under 24 meters in length.

EPA is proposing that fixed-speed marine propulsion engines with variable-pitch propellers be certified on the ISO E2 duty cycle. This duty cycle is also a four-mode steady-state cycle. It uses the same power and weighting factors as the E3 cycle, but the engine is operated in each mode at rated speed.

EPA is also proposing that variable-speed marine propulsion engines with variable-pitch propellers be certified on the ISO E2 duty cycle. These engines are designed to operate near their power curve to maximize fuel efficiency. In general, these engines will operate at a constant speed except when maneuvering in port. Because of the expense of the system, variable-speed engines are rarely used with variable-pitch propellers. ISO does not have a test duty cycle specifically designed for these engines. However, because most of their operation is at constant speed, EPA is proposing that these engines certify using the E2 duty cycle. EPA proposes that the speed setting for testing should coincide with the speed setting at which the engine would spend most of its time in use.

For auxiliary engines, EPA is proposing that constant-speed auxiliary engines be certified to the ISO D2 duty cycle and that variable-speed auxiliary engines be certified to the ISO C1 duty cycle. These duty cycles are consistent with the requirements for land-based nonroad diesel engines. More detail on the proposed duty cycles is contained in the Draft Regulatory Impact Analysis (Draft RIA) associated with this proposal. EPA requests comment on the appropriateness of the proposed duty cycles.

Under the provisions of the land-based nonroad rule, engine manufacturers have the option to petition for their marine engines to be included in land-based engine families. EPA is not proposing this flexibility for propulsion marine engines because the ''not-to-exceed'' provisions described below require the use of the marine duty cycles.

For larger marine engines, conventional emission testing on a dynamometer becomes more difficult because of the size of the engine. Often engine mock ups are used for the development of these engines where a single block is used for many years and only the power assembly is changed out. EPA proposes that for Category 2 engines, certification tests may be performed on these engine mock ups provided that their configuration is the same as that of the production engines. In addition, for larger Category 2 marine engines, EPA requests comment on whether or not single-cylinder tests should be allowed for certification testing. Assuming that each cylinder in an engine is equivalent, a single-cylinder test should give the same brake-specific emission results as a full engine test.

2. In-Use Testing

As with its other federal mobile source programs, EPA retains the authority to perform in-use testing on marine engines to ensure compliance in use. This testing may include taking in use marine diesel engines out of the vessel and testing them in a laboratory, as well as field testing of in use engines in the vessel, in a marine environment. EPA's proposal specifies the equipment and related procedures for use in laboratory based testing. EPA is not at this time, however, specifying similar provisions for field testing. EPA expects that the capabilities of field testing equipment will increase over time, and it is better to allow this to occur without attempting to pick testing technologies at this time, or interfere with this development process.

Field testing data will be used by EPA in two ways. First, it may be used as a screening tool, with follow up laboratory testing where appropriate. Second, it may be used directly as a basis for compliance determinations, when the field testing itself provides reliable information from which conclusions can be drawn regarding what laboratory based emissions levels would be. The probative value of field test data is expected to increase over time, as the capabilities of field testing equipment are developed. The flexibility in testing that these approaches provide will allow EPA to most efficiently conduct in use testing, and will also address those situations where it is physically or otherwise impossible to remove an engine from a marine vessel for testing in a laboratory.

For compression-ignition marine engines that expel exhaust gases under water or mix their exhaust with water, EPA proposes to require that the engines be equipped with an exhaust sample port where a probe can be inserted for in-use exhaust emission testing. It is important that the location of this port

allow a well mixed and representative sample of the exhaust. The purpose of this proposed provision is to simplify in-use testing. EPA requests comment on the proposed in-use testing provisions.

3. Test Fuel

Section 206(h) of the Clean Air Act requires EPA to ensure that the test procedure, including the test fuel, adequately represent in-use operation. To facilitate the testing process, EPA specifies a test fuel that is intended to be representative of in-use fuels. Engines would have to meet the standard on any fuel that meets the proposed test fuel specifications, with one modification as described later. This section describes the test fuel EPA is proposing for Category 1 and Category 2 engines. This test fuel is to be used for all testing associated with the regulations proposed in this document, to include certification, production line and in-use testing, as well as any NTE testing.

EPA is proposing that the recently finalized test fuel specifications for nonroad diesel engines be applied, with a modification to the sulfur specification as described later, to both Category 1 and 2 marine diesel engines. EPA believes that largely adopting the nonroad fuel will simplify development and certification burdens for marine engines that are developed from land-based counterparts. The proposed test fuel for marine diesel engine testing has a sulfur specification range of 0.03 to 0.80 weight-percent (wt%), which covers the range of sulfur levels observed for most in-use fuels. Manufacturers are generally responsible for ensuring compliance with the emission standards using any fuel within this range. Thus, they will be able to harmonize their marine test fuel with U.S. highway (<0.05 wt%), nonroad (0.03 to 0.40 wt%), locomotive (0.2 to 0.4 wt%) and European testing (0.1 to 0.2 wt%). The full range of proposed test fuel specifications are presented in Chapter 3 of the Draft RIA.

EPA is proposing a higher upper limit for the marine diesel engine sulfur specification (0.8 wt%) than was recently finalized for land-based nonroad engines (0.4 wt%) because there is some information available that suggests that marine fuels may have higher sulfur contents than land-based diesel fuels.[35] Using ASTM specification D 2069 as a guide, EPA considered choosing an upper limit of 1.5 wt% sulfur. Although 1.5 wt% may be appropriate based on the ASTM specification, EPA is proposing that this upper limit on sulfur content be 0.8 wt% because PM can not accurately be measured using the proposed testing procedures using fuels with a sulfur content higher than 0.8 wt%.[36] EPA requests comment on whether it is appropriate to limit the test fuel specification in this way due to this testing constraint.

The proposed PM standards were largely determined to be feasible based on the feasibility of the corresponding standards for land-based nonroad and locomotive applications, which have a 0.4 wt% sulfur upper limit for the test fuel. Since PM emissions are somewhat fuel sulfur-dependent, EPA does not believe that it is appropriate to require compliance with the PM standards using fuel with a sulfur content above 0.4 wt%. It is for this reason that EPA is proposing to allow a correction of PM emissions for tests that are run using fuel with a sulfur content greater than 0.4 wt%. Thus, the measured PM emissions for any test performed using fuel with a sulfur content of greater than 0.4 wt% would be corrected to the level that would have been measured if the fuel had a sulfur content of 0.4 wt%. The proposed correction method is that used for land-based nonroad engine testing. EPA requests comment on whether this correction method is accurate and appropriate for this application.

It is EPA's intent that engines be designed for the whole range of in-use fuels and that any testing conducted by EPA would use test fuels typical of in-use fuels. Unfortunately, the test procedure currently limits the Agency from reaching this objective for marine diesel engines if in-use fuels do in fact have sulfur levels as high as the current ASTM specifications allow. EPA requests comment on whether currently available marine fuel has a sulfur content significantly higher than land-based nonroad fuel. EPA will be investigating marine fuel further and is requesting information on the specifications that are used in use. It is EPA's intent to develop test procedures that will allow for the accurate measurement of PM emission over the entire range of in-use fuel characteristics. If successful, the Agency would intend to broaden the range of certification fuel to reflect the full range of in-use fuels. Any efforts to do so would consider the impacts on the appropriateness and feasibility of the PM standards and would likely be undertaken in the planned 2003 technology review for the Tier 3 standards.

EPA requests comment on all aspects of its proposed test fuel provisions. EPA is also interested in obtaining more information on the specifications of marine fuel used in Category 2 marine engines. Essentially, this proposal assumes that Category 2 marine engines are operating on a distillate fuel. The Agency requests comments on this approach and on how often residual fuels or residual fuel blends are burned in Category 2 engines.

4. Adjustable Parameters

Marine diesel engines are often designed with adjustable components, to allow the engine to be adjusted for maximum efficiency when used in a particular application. This practice simplifies marine diesel engine production, since the same basic engine can be used in many applications. While EPA recognizes the need for this practice, EPA is also concerned that the engine meet the proposed emission limits throughout the range of adjustment. Therefore, and consistent with the locomotive rule, the Agency is proposing that manufacturers specify in their applications for certification the range of adjustment for these components across which the engine is certified to comply with the applicable emission standards, and demonstrate compliance across that range.

Practically, this requirement means that a manufacturer would specify a range of fuel injection timing, for example, over which the engine would comply with the emission standards. This range could be designed to account for differences in fuel quality. Operators would then be prohibited by the anti-tampering provisions from adjusting engines outside of this range.

Ideally, to ensure that engines are always operated within the specified range of adjustment, marine diesel engine manufacturers should be required to design their engines to prevent adjustments outside the specified range. However, EPA recognizes that it may be necessary to adjust injection timing or other adjustable parameters outside the originally specified control range during engine remanufacture to accommodate engine wear. There are at least two alternative solutions to this problem. First, engine manufacturers could be

[35] "Final Report: 1996 American Petroleum Institute/National Petroleum Refiners Association Survey of Refining Operations and Product Quality" suggests that actual marine diesel fuels may have sulfur contents somewhat higher than general nonroad diesel fuels. ASTM specification D 2069 includes a specification for general purpose marine distillate fuel with a maximum sulfur content of 1.5 wt%.

[36] "Exhaust Gas Emission Measurements: A Contribution to a Realistic Approach," D. Bastenhof, dieselMAC, May, 1995.

required to set a range of adjustments that would accommodate changes necessary at the time the engine will be remanufactured. Alternatively, compliance with the range of adjustments could be ensured through anti-tampering provisions, with the requirement that the new range of adjustments be specified at the time of remanufacture. EPA seeks comments on these and other approaches to ensure that engines with adjustable parameters meet the proposed emission requirements.

5. Definition of Rated Speed

The definition of rated speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm) is an important aspect of the test cycles and ''not-to-exceed'' (NTE) zones proposed in this document. In the past, EPA has expected engine manufacturers to declare reasonable rated speeds for their engines; however, EPA is concerned that some manufacturers may have declared rated speeds that are not really representative of the operating characteristics of a particular engine in order to influence the parameters under which their engines could be certified. Under EPA's highway transient duty cycle, manufacturers would likely receive a NO_X emission benefit if they declared a rated speed that was higher than the actual rated speed of the engine. Under EPA's nonroad and proposed marine steady-state duty cycles, manufacturers would likely receive a NO_X emission benefit if they declared a lower rated speed. In addition, a low declared rated speed would shrink a marine engine's NTE zone.

Currently, U.S. highway and nonroad diesel engine regulations specify two slightly different ways to determine rated speed. EPA's highway heavy-duty diesel regulation defines rated speed as the manufacturer's specified rated speed, as defined at 40 CFR 86.082–2, or calculated speed, whichever yields the higher speed. The calculated speed in the highway rule is determined by averaging the minimum and maximum speeds at which 98% of maximum power is generated. This calculation can yield unreasonable speeds in some high-torque-rise engines. EPA's nonroad rule defines rated speed as the maximum full-load governed speed for governed engines and the speed of maximum horsepower for ungoverned engines. The International Standards Organization (ISO–8178) defines a diesel engine's rated speed as the speed at which, according to the statement of the engine manufacturer, rated power is delivered. This is similar to the International Maritime Organization's definition; the crankshaft revolutions per minute at which the rated power occurs as specified on the nameplate and in the Technical File of the marine diesel engine.

To determine a single rated speed definition that encompasses the complete range of engine operation, EPA analyzed the maximum-power versus speed curves from eleven highway and nonroad engines. These engines were all similar to marine engines and they may be used in marine applications. EPA observed that most mechanically governed engines had distinct governor droops at speeds slightly higher than the speed at maximum power. High-torque-rise engines, however, had gradual decreases in power beyond the maximum-power speed, followed by a steep rate of governor droop. Furthermore, some electronically governed engines had multiple rates of power decrease between the maximum-power speed and the onset of governor droop. See Figure 1 for an illustration of four different maximum-power versus speed curves.

Based on this analysis, EPA proposes that the rated speed of any engine shall be defined at the single point on an engine's maximum-power versus speed curve that lies farthest away from the zero-power, zero-speed point on a normalized maximum-power versus speed plot. In other words, consider straight lines drawn between the origin (speed = 0, load = 0) and each point on an engine's maximum-power versus speed curve (see Figure 1). Note that the maximum-power versus speed curve is normalized so that 100% power and 100% speed are set at the maximum power and maximum-power speed point. Under this proposal, rated speed would be defined at that point where the magnitude (length) of this line reaches its maximum value. The magnitude of this line, called $\text{Rated__Speed}_{\text{factor}}$ in this rule, is calculated by using the following equation:

$$\text{Rated_Speed}_{\text{factor}} = \sqrt{(\text{\% Maximum_Power_Speed})^2 + (\text{\% Maximum Power})^2}$$

Rated speed shall be the speed value of the data point that returns the maximum value of $\text{Rated__Speed}_{\text{factor}}$.

EPA proposes the following procedure to determine rated speed:

1. Generate maximum-power versus speed data points by using the appropriate method defined in 40 CFR 86.1332–90. EPA recognizes that 40 CFR 86.1332–90 does not address the issue of electronic engines that vary injection timing, rate shaping, exhaust gas recirculation, and variable-nozzle turbocharging with respect to their operating conditions. These engines' maximum-power versus speed curves can vary as a function of the method in which the curves are determined (i.e., transient curve generation versus steady-state curve generation). EPA proposes that the engine operation generating the maximum $\text{Rated__Speed}_{\text{factor}}$ shall be the operation under which rated speed is determined. EPA seeks comment on this proposal.

2. Compare power values to determine the point where power is a maximum.

3. Normalize power values with respect to maximum power.

4. Normalize speed with respect to the speed at which maximum power is generated.

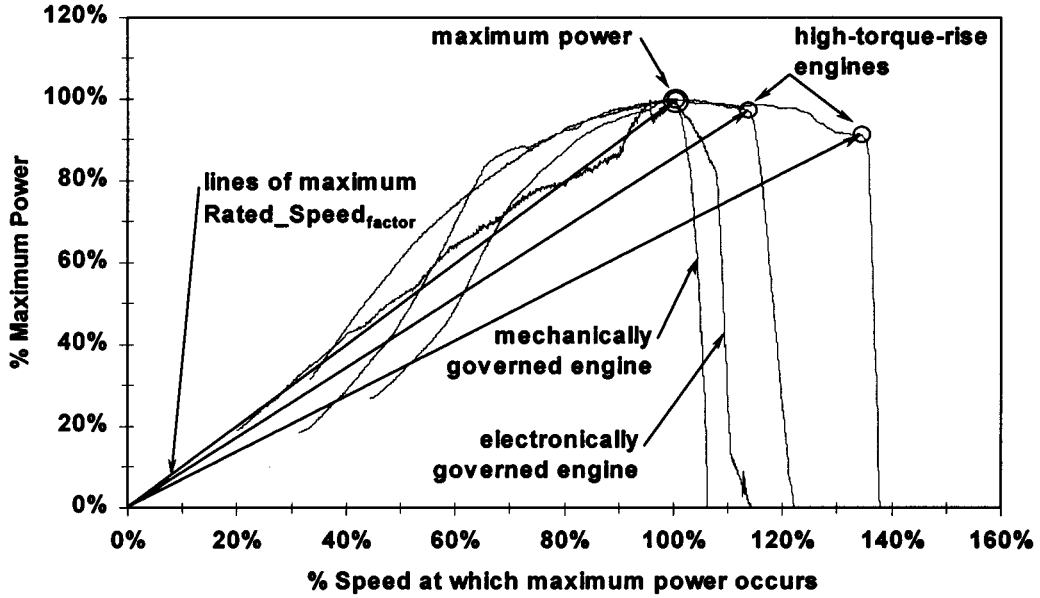
5. Calculate the $\text{Rated__Speed}_{\text{factor}}$ for each normalized data point.

6. Compare all $\text{Rated__Speed}_{\text{factor}}$ values to determine the maximum value of $\text{Rated—Speed}_{\text{factor}}$.

7. The speed at which maximum $\text{Rated__Speed}_{\text{factor}}$ occurs shall be the rated speed for certification and NTE zone testing.

Examples of results from this calculation are illustrated by circles superimposed on four maximum-power versus speed curves in Figure 1. EPA seeks comment on this proposal.

Figure 1: Maximum-power versus speed curves (normalized). Rated speed points are circled.



F. Not-to-Exceed Requirements

EPA's goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur on a vessel so that real-world emission control is achieved, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. Historically, EPA's approach has been to set a numerical standard on a specified test procedure and rely on the prohibition of defeat devices to ensure in-use control over a broad range of operation not included in the test procedure.

No single test procedure can cover all real world applications, operations, or conditions. Yet to ensure that emission standards are providing the intended benefits in use, the Agency must have a reasonable expectation that emissions under real world conditions reflect those measured on the test procedure. The defeat device prohibition is designed to ensure that emissions controls are employed during real world operation and not just under laboratory or test procedure conditions. However, the defeat device prohibition is not a quantified standard and does not have an associated test procedure, so it does not have the clear objectivity and ready enforceability of a numerical standard and test procedure. As a result, the current focus on a standardized test procedure makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell.

Because the E3 duty cycle uses only four modes on an average propeller curve to characterize marine diesel engine operation, EPA is concerned that an engine designed to the duty cycle would not necessarily perform the same way over the range of speed and load combinations seen on a vessel. The E3 duty cycle is based on an average propeller curve, but a propulsion marine engine may never be fitted with an ''average propeller.'' For instance, a light vessel with a planing hull may operate at lower torques than average while the same engine operated on a heavy vessel with a deep displacement hull may operate at higher torques than average. This can largely be a function of how well the propeller is matched to the engine and vessel. A planing hull vessel can operate at high torques at low speed prior to planning. In addition, the E3 duty cycle only includes steady-state operation while some transience is seen in use.

To ensure that propulsion emissions are controlled from marine diesel engines over the full range of speed and load combinations seen on vessels, EPA proposes to establish a zone under the engine's power curve where the engine may not exceed a specified emissions limit, for any of the regulated pollutants, under any operation that could reasonably be expected to be seen in the real world. In addition, EPA proposes that the whole range of real ambient conditions be included in this ''not-to-exceed'' (NTE) zone testing. The NTE zone, limit, and ambient conditions are described below.

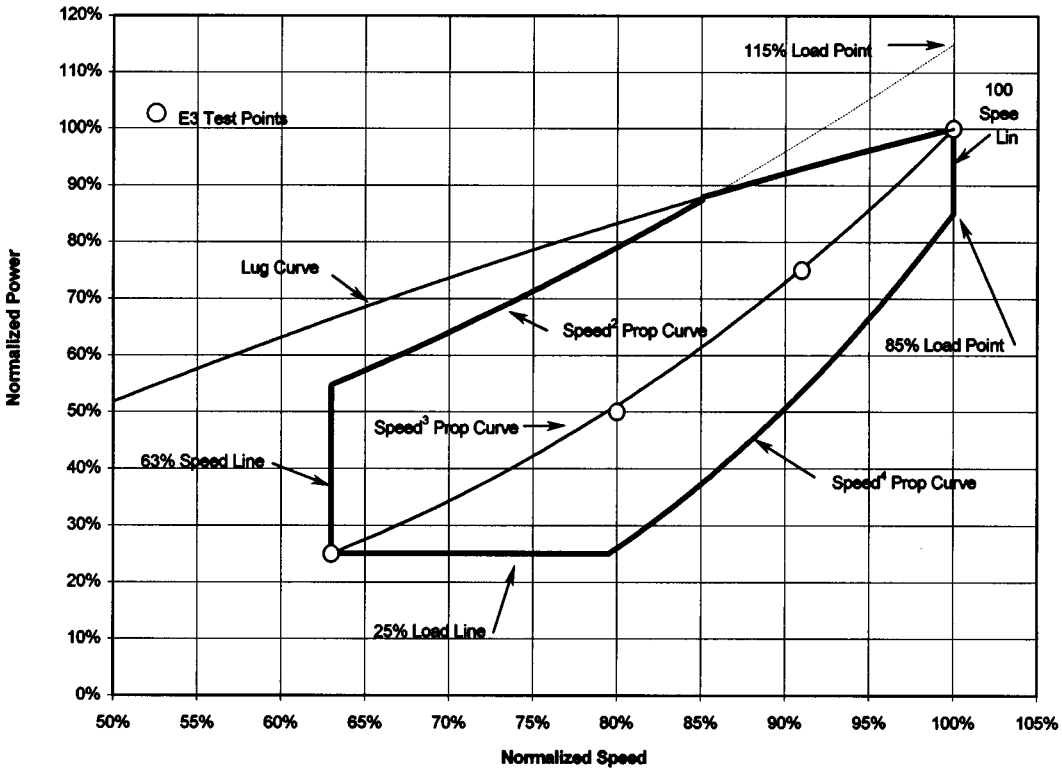
EPA believes that there are significant advantages to taking this sort of approach. The test procedure is very flexible so it can represent any and all in-use conditions (ambient and operation). Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, laboratory testing makes it harder to perform in-use testing since either the engines would have to be removed from the vessel or care would have to be taken that laboratory-type conditions can be achieved on the vessel. With the NTE approach, in-use testing and compliance become much easier since emissions may be sampled during normal vessel use. Because this approach is objective, it makes enforcement easier and provides more certainty to the industry of what is expected in use versus over a fixed laboratory test procedure.

Even with the NTE requirements, EPA believes that it is still important to retain standards based on the steady-state duty cycles. This is the standard that EPA expects the certified marine diesel engines to meet on average in use. The NTE testing is more focused on maximum emissions for segments of operation and should not require additional technology beyond what is used to meet the proposed standards. EPA believes that basing the emissions standards on a distinct cycle and using the NTE zone to ensure in-use control creates a comprehensive program. In addition, the steady-state duty cycles

give a basis for calculating credits for use in the averaging, banking, and trading program.

The proposed NTE zone for marine diesel engines that would certify using the E3 duty cycle is illustrated in Figure 1 and is defined by the power curve of the engine up to rated speed. This zone is based on the range of conditions that a marine diesel propulsion engine could typically see in use. EPA is proposing a similar approach for engines certified using the constant-speed E2 duty cycle. In this case, the ''not-to-exceed'' zone is at the speed for which the engine is designed to operate for loads ranging from 25 to 100 percent of maximum load at that speed. More detail on the development of the boundaries and conditions associated with the proposed NTE zones may be found in Chapter 3 of the Draft RIA. EPA requests comment on the NTE zones.

Figure 2: Illustration of "Not to Exceed" Zone



EPA proposes the limit on emissions within the NTE zones to be 1.25 times the standard (or FEL if ABT is used) for all of the regulated pollutants (HC, NO_X, CO, PM). The standard itself is intended to represent the average emissions under steady-state conditions. Since it is an average, some points can be higher, some lower, and the manufacturer will design to maximize performance and still meet the engine standard. The NTE limit is on top of this. It is designed to make sure that no part of the engine operation and that no application goes too far from the average level of control. Data presented in Chapter 3 of the Draft RIA shows that the proposed limit of 1.25 times the standard is feasible for marine diesel engines, yet challenging because of variations in emissions at high versus low speeds and loads for some engines. The proposed limit is consistent with the enforcement policy currently in place for the highway heavy-duty diesel program.[37] However, the proposed marine NTE zones are much smaller than for highway heavy-duty diesel engines due to the smaller range of operation typically seen in use.

Although transient operation would be included in the NTE testing, only operation that would reasonably be expected to be seen in use would be included. Therefore, engine testing may include transient speed and load operation. Examples of this type of transience would be bringing a vessel to plane or changing speeds. Because the majority of marine operation is fairly steady, EPA believes that the NTE testing should allow for short emissions spikes under transience. Engine testing may not include transient operation that cannot be replicated by similar engines as installed on actual vessels in use, since those are operations that the engine is not designed for and is not expected to see in-use. Therefore, there would be no in-use emission impact from such operations. To ensure that a short transience does not unfairly give high results, EPA proposes that the emissions sampling must be at least over a 30 second time period. This 30 second sampling period should be long enough to allow an emissions spike to be averaged out while still retaining a short enough period to look at a specific type of operation. EPA proposes that an acceleration associated with bringing a vessel to plane be eligible for inclusion in any NTE type testing regardless of whether it falls within the NTE zone shown in Figure 1.

The NTE standards are proposed to apply under any ambient air conditions. Within the following air temperature and humidity ranges, no corrections will be allowed to account for the effects

[37] ''Heavy-duty Diesel Engines Controlled by Onboard Computers: Guidance on Reporting and Evaluating Auxiliary Emission Control Devices and the Defeat Device Prohibition of the Clean Air Act,'' U.S. EPA, October 15, 1998.

of temperature or humidity on emissions: 13–35°C for ambient air temperature and 7.1–10.7 grams water per kilogram of dry air for humidity. Ambient water temperature must be in the range of 5–32°C during NTE testing. In addition, the engines must comply with the standards for the full range of test fuel specifications.

The defeat device provisions established for highway and nonroad engines are proposed to apply to marine diesel engines in addition to the NTE requirements. A design in which an engine met the standard at the steady-state test points but was intentionally designed to approach the NTE limit everywhere else would be considered to be defeating the standard. Electronic controls that recognize when the engine is being tested for emissions and adjust the emissions from the engine would be another example of a defeat device, regardless of the emissions performance of the engine.

EPA is aware that marine diesel engines may not be able to meet the emissions limit under all conditions. Specifically, there are times when emissions control must be compromised for startability or safety. EPA is not proposing that engine starting be included in the NTE testing. In addition, EPA manufacturers would have the option of petitioning the Administrator to allow emissions to increase under engine protection strategies such as when an engine overheats.

EPA proposes to allow manufacturers to petition to adjust the size and shape of the NTE zone for certain engines if they can certify to the Agency that the engine will not see operation outside of the revised NTE zone in use. This way, manufacturers could avoid having to test their engines under operation that they would never see in use. However, manufacturers would still be responsible for all operation of an engine on a vessel that would reasonably be expected to be seen in-use and would be responsible for ensuring that their specified operation is indicative of real-world operation. In addition, if a manufacturer designs an engine for operation at speeds and loads outside of the proposed NTE zone (i.e., variable-speed engines used with variable-pitch propellers), the manufacturer would be responsible for notifying EPA so that their NTE zone can be modified appropriately to include this operation.

EPA is interested in refining the NTE concept for marine diesel engines prior to the final rule where appropriate. One concern may exist for mechanically controlled engines that are only capable of a fixed injection timing. It may be difficult for these engines to achieve a flat emissions profile, especially at low speeds and loads where brake-specific emissions are often higher. One potential option for addressing this problem would be to split the NTE zone into two subzones with a relaxed cap at lower speeds and loads. EPA requests comment on this option and on any other technical options and improvements to the off-cycle provisions as proposed.

The Engine Manufacturers Association has presented an off-cycle concept to EPA in response to concerns and concepts raised by the Agency. This concept is in a briefing format and may be found in the docket.[38] In the EMA concept, the NTE zone emissions limit is based on the emissions at individual steady-state test modes with limits on the interpolated values between the modes rather than a flat cap. In the highway policy, EPA uses a concept similar to this but it is in addition to a flat emissions limit. The NTE zone described by EMA is smaller than the proposed zone, and the emissions limit is higher on average. EPA requests comment on this approach and on whether or not it is needed in addition to the proposed approach as in the on-highway program.

EPA is not proposing an NTE limit, at this time, for engines certified using the D2 or C1 test duty cycles. EPA does not yet have enough data on the operating characteristics of auxiliary engines to determine NTE zones and associated limits for these engines. However, EPA is gathering data and intents to evaluate the NTE concept for auxiliary engines. This effort will likely be combined with the efforts begun to evaluate off-cycle emission for land-based nonroad engines. EPA requests comment on appropriate NTE zones and limits for auxiliary engines.

G. Voluntary Low-Emitting Engine Program

Officials representing certain cities, states, or regions in the U.S. have expressed interest in developing incentive programs to encourage the use of engine technologies that go beyond federal emission standards. Some of these technologies have already undergone significant development. In the final rule for land-based nonroad diesel engines, EPA included a program of voluntary standards for low-emitting engines, referring to these as ''Blue Sky Series'' engines (63 FR 56967, October 23, 1998). EPA is proposing similar voluntary standards as part of this rulemaking. The program, if successful, will lead to the introduction and more widespread use of these low-emission technologies.

Ongoing research has led to much improved prospects for a variety of low-emitting diesel engine technologies. Technology developments to meet upcoming emission requirements for highway diesel engines are expected to substantially reduce emissions without relying on exhaust aftertreatment. Much of this technology development forms the basis for setting the emission limits described in this proposal, but EPA believes that manufacturers may be prepared to more aggressively transfer some of these advanced technologies to marine engines. The motivation to exceed emission requirements could either be to gain early experience with certain technologies as a strategy to ensure long-term control of quality, or as a response to external incentives.

In addition, alternative fuels and exhaust aftertreatment options continue to expand as companies further develop technologies for reaching very low emission levels. For example, some particulate traps are now designed for regeneration without an active control system, sometimes using fuel-based catalyst materials to reduce regeneration temperature requirements. Selective catalytic reduction, long used very effectively in stationary source applications, is now in several demonstration marine vessels. Plasma and thermoelectric techniques are also under consideration for large particulate and NO_X reductions. EPA is very interested in seeing a demonstration of the emission-control potential for these engines in marine applications, especially related to the capability of maintaining low emission levels over extended in-use operation.

As with the land-based rule, EPA proposes that Tier 3 emission levels, where applicable, are the appropriate level for defining Blue Sky Series engines. For PM emissions, a calculated level corresponding to a 40 percent reduction beyond Tier 2 levels is proposed as a qualifying level for Blue Sky Series engines (see Table 10). While the Blue Sky Series emission limits are voluntary, a manufacturer choosing to certify an engine under this program would be required to meet all the provisions established to demonstrate compliance with these limits, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions.

[38] Engine Manufacturers Association, ''EMA Alternative Proposal for Controlling 'Off-Cycle' Emissions from Marine Engines,'' September 25, 1998.

TABLE 10.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated Brake Power (kW)	$HC+NO_X$	PM
power ≥ 37 kW		
displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5.0	5.0	0.12
5.0≤displ.<20	5.0	0.16

The Blue Sky Series program would begin immediately upon promulgation and would continue through the 2007 model year. EPA would evaluate the program to determine if it should be continued for 2008 and later engines, and if so, whether any changes are needed. This evaluation will be considered as part of the 2003 Feasibility Review.

Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure adequate in-use performance, will be a major step forward in advancing innovative emission control technologies, because EPA certification will provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives for the production of these engines must be created as well.

The Agency is concerned that such incentive programs not lead to a net detriment to the environment through the double-counting of benefits. EPA has therefore concluded that manufacturers choosing to sell an engine with the Blue Sky Series designation should not generate averaging, banking, and trading credits for demonstrating compliance with EPA programs. Other groups would then be free to design credit programs without concern for any double-counting or other unintended effect of overlapping programs. EPA solicits comment on the Blue Sky Series approach for marine diesel engines generally and on its interaction with the ABT program.

In addition to credit-based programs, the Agency sees substantial potential for users and state and local governments to establish incentive programs. For example, state or local governments or individual ports may be able to add incentives for introducing low-emitting engine technologies in harbor and other coastal vessels. The Agency solicits ideas that could encourage the creation of these incentive programs by users and state and local governments. EPA also solicits comment on additional measures that could be taken at a federal level to encourage development and introduction of these engines.

H. Durability

To achieve the full benefit of the emissions standards, manufacturers must design and build engines with durable emission controls. This means that manufacturers are responsible for the emission results for the engines they produce throughout their useful life.[39] It is also necessary to encourage the proper maintenance and repair of engines throughout their lifetime. The goal is for engines to maintain good emission performance throughout their in-use operation. Therefore, EPA believes it is necessary to adopt measures to address concerns about possible in-use emission performance degradation. The proposed durability provisions, described below, are intended to help ensure that engines are still meeting applicable standards in use. The specific areas of the durability program focused on here are useful life, warranty periods, deterioration factors, allowable maintenance intervals, and rebuilding requirements. Most of these provisions are carried over from the land-based or locomotive programs. EPA seeks comments on all aspects of this durability program.

1. Useful Life

Useful life is the period during which the marine engine is required to meet the emission standards. For Category 1 engines, EPA is proposing a useful life of 10 years or 10,000 hours of operation. This proposal is slightly different from the 10 years or 8,000 hours of operation finalized for land-based nonroad engines, to reflect the different usage pattern for marine engines. Specifically, the 10,000-hour requirement is based on an expected five-year period until the first time the engine is rebuilt, and an expected usage rate of 2,000 hours per year. EPA requests comment on this proposed useful life for Category 1 engines.

For Category 2 engines, EPA is proposing a useful life of 10 years or 20,000 hours of operation. This proposal differs from the 10 years or 7.5 MW-hours per horsepower useful life recently finalized for locomotive engines to reflect the hours of operation instead of MW-per-horsepower requirement for locomotive engines. This is because marine engine operation is typically monitored using hour meters rather than MW-hour meters. In this case, the 20,000-hour requirement for marine engines is calculated based on an operating rate of 4,000 hours of use per year, with five years between rebuilds. This hour value is less than would be obtained from 7.5 MW-hrs per horsepower and an average duty cycle for a locomotive. Using these values would result in a useful life value of about 30,000 hours. This is nevertheless appropriate, since locomotives typically receive significantly more maintenance in use, and are operated for longer periods between rebuilds. EPA requests comment on the proposed useful life for Category 2 engines.

TABLE 11.—PROPOSED USEFUL LIFE AND WARRANTY PERIODS

Category	Useful life		Warranty period	
	Hours	Years	Hours	Years
Category 1	10,000	10	5,000	5
Category 2	20,000	10	10,000	5

The above approach of basing useful life on time to first rebuild was chosen because it is difficult to justify holding the engine manufacturer responsible for an engine's emissions after the engine is rebuilt. The original engine manufacturer has little, if any, control over the rebuild process, and the rebuilding process often includes changes to the engine that may have an effect on emissions. At the same time, however, these engines are often kept in service much longer than the proposed useful life. Median values for service lives are 15 years for Category 1

[39] This is different from the approach used in MARPOL Annex VI, according to which manufacturers must ensure their engines meet the emission limits at the time of certification but ship owners become responsible for their continued compliance with the limits. Under that program, compliance is verified during flag-state and port-state inspections.

propulsion engines and 23 years for Category 2 engines. These longer service lives mean that the engine may be exempt from in-use testing for more than half its service life. EPA therefore believes it is important to be able to conduct recall testing on these engines throughout the established useful life period. Also, EPA requests comment on whether useful life should be based on the average time to first rebuild, or whether EPA should attempt to regulate emissions beyond the anticipated point of first rebuild, either through an extended useful life specification or some other means.

2. Warranty Periods

Tied to the useful life is the minimum warranty period imposed under the Clean Air Act. The proposed warranty periods for marine diesel engines are based on the ratio of useful life and warranty periods established for land-based nonroad engines. Specifically, EPA is proposing a warranty period of 5,000 hours or 5 years for Category 1 engines, and 10,000 hours or 5 years for Category 2 engines. EPA requests comment on this approach, or whether the locomotive approach based on one-third of the engine's useful life should be used.

EPA is also proposing defect reporting requirements. Consistent with the provisions that apply to highway and land-based nonroad engines, these provisions require Category 1 engine manufacturers to report to EPA whenever a manufacturer identifies a specific emission-related defect in 25 or more engines. However, EPA is proposing to specify a lower threshold of 10 engines for Category 2 marine engines, which is the same limit as applies to locomotives.

3. Deterioration Factors

To further ensure that the proposed emission limits are met in use, EPA proposes to require the application of a deterioration factor (DF) to Category 1 and Category 2 marine diesel engines in evaluating emission control performance during the certification and production-line testing process. The emissions from new engines are adjusted using the DF to account for potential deterioration in emissions over the life of the engine due to aging of emission control technologies or devices. The resulting emission level is intended to represent the expected emissions at the end of the useful life period. Specifically, EPA believes that the ability of new emission control technologies, such as aftertreatment, sophisticated fuel delivery controls, and some cooling systems, to reduce emissions declines as these systems age. The DF is applied to the certification emission test data to represent emissions at the end of the useful life of the engine. Currently, DFs are required for highway heavy-duty engines, nonroad land-based engines, and locomotive engines. EPA is proposing to extend this approach to marine diesel engines as well. EPA requests comment on all aspects of the proposed DF provisions, described below.

EPA is proposing that marine diesel engine DFs be determined by the engine manufacturers in accordance with good engineering practices. Consistent with the land-based nonroad and locomotive programs, EPA is not proposing a specified procedure. The DFs, however, would be subject to EPA approval, and must be consistent with in-use test data. Additionally, the DF should be calculated for the worst-case engine calibration offered within the engine family.[40]

It is not EPA's intent to require a great deal of data gathering on engines that use established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. However, EPA is proposing to apply the DF requirement to all engines so that EPA can be sure that reasonable methods are being used to ascertain the capability of engines to meet standards throughout their useful lives.

Consistent with the land-based engine programs, EPA proposes to allow marine diesel engine manufacturers the flexibility of using carryover and carryacross of durability emission data from a single engine that has been certified to the same or more stringent standard for which all of the data applicable for certification has been submitted. In addition, EPA seeks comment on whether this flexibility should be extended to allow deterioration data from highway or nonroad engines to be used for similar marine diesel engines. EPA is concerned that DFs calculated for land-based engines may not be the same as for marine engines, due to their different operating environments and duty cycles.

Finally, EPA is proposing that DFs be calculated as an additive value (i.e., the arithmetic difference between emission level at full useful life and the emission level at the test point) for engines without exhaust aftertreatment devices. In contrast, DFs should be calculated as a multiplicative value (i.e., the ratio of the emission level at full useful life to the emission level at the test point) for engines using exhaust aftertreatment devices. This is consistent with the DF requirements applicable to other diesel engines, based on observed patterns of emission deterioration.

4. Allowable Maintenance Intervals

In the highway, land-based, and locomotive rules, EPA requires manufacturers to furnish the ultimate purchaser of each new nonroad engine with written instructions for the maintenance needed to ensure proper functioning of the emission control system. Generally, manufacturers require the owners to perform this maintenance as a condition of their emission warranties. If such required maintenance is more than the engine owner is likely to perform due to cost or inconvenience, then in-use emissions deterioration can result. Consequently, in both the nonroad and highway rules, EPA imposes limits on the frequency of maintenance that can be required of the engine owners for emission-related components; these limits also apply to the engine manufacturer during engine certification and durability testing. Further, the performance of maintenance would be considered during any in-use recall testing conducted by the Agency.

Consistent with the land-based nonroad rule, EPA is proposing minimum allowable maintenance intervals for Category 1 and Category 2 marine diesel engines, to ensure that their emission control technologies are practical in use. The proposed minimum intervals are very similar to those required for nonroad and highway diesel engines (40 CFR 89.109; 40 CFR 86.094–25). Alternatively, EPA could adopt the locomotive approach of not precisely defining minimum intervals for adjustment, cleaning, repair, or replacement of various components but, instead, merely requiring engine manufacturers to specify these minimum maintenance intervals at the time of certification, subject to EPA approval. EPA is not, however, proposing the locomotive approach in which locomotive owners who fail to properly maintain a locomotive will be subject to civil penalties for tampering. EPA requests comment on these approaches for allowable maintenance intervals and the appropriateness of extending the land-based intervals to marine diesel engines.

[40] The worst case would be the engine calibration expected to generate the highest level of emmission deterioration over the useful life, using good engineering judgment.

5. Rebuilt Engines

It is common for marine diesel engines to be rebuilt several times during the course of their lifetimes. Similar to land-based nonroad engines, EPA has two concerns regarding the rebuilding of marine diesel engines. First, EPA is concerned that during engine rebuilding, there may not be an incentive to check and repair emission controls that do not affect engine performance. Second, EPA is concerned that there may be an incentive to rebuild engines to an older configuration due to real or perceived performance penalties associated with technologies that would be used to meet the standards proposed in this notice. Such practices would likely result in increased emissions.

To address these concerns, EPA is proposing to extend the land-based nonroad rebuild requirements to marine diesel engines. Specifically, EPA proposes that the parties involved in the process of rebuilding or remanufacturing engines must follow specific provisions to avoid tampering with the engine and emission controls. Like the nonroad requirements, the applicability of these provisions is based on the build date of the engine. The rebuild requirements would apply to any engine built on or after the date that new standards apply to that engine's specific category or group, regardless of the emission levels that the individual engine is designed to achieve. The proposed provisions for rebuilding are as follows:

(1) EPA proposes that, during engine rebuilding, parties involved must have a reasonable technical basis for knowing that the rebuilt engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, and specifications).

(2) When an engine is being rebuilt and remains installed or is reinstalled in the same vessel, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a configuration of the same or later model year as the original engine.

(3) At the time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes. Diagnostic systems must be free of all such codes when the rebuilt engines are returned to service. Further, such signals may not be rendered inoperative during the rebuilding process.

(4) When conducting an in-frame rebuild or the installation of a rebuilt engine, all emission-related components not otherwise addressed by the above provisions must be checked and cleaned, repaired, or replaced where necessary, following manufacturer recommended practices.

Under this proposal, any person or entity engaged in the process, in whole or part, of rebuilding engines who fails to comply with the above provisions may be liable for tampering. Parties would be responsible for the activities over which they have control, so there may be more than one responsible party for a single engine in cases where different parties perform different tasks during the engine rebuilding process (e.g., engine rebuild, full engine assembly, installation). EPA is not proposing any certification or in-use emissions requirements for the rebuilder or engine owner. EPA requests comment on the appropriateness of applying this rebuild program to marine diesel engines.

EPA is proposing to adopt modest record keeping requirements that EPA believes are in line with customary business practices. The records would be kept by persons involved in the process of marine diesel engine rebuilding or remanufacturing and would include the hours of use accumulated on the engine at time of rebuild and a list of the work performed on the engine and related emission control systems, including a list of replacement parts used, engine parameter adjustments, design element changes, and work performed as described in item (4) of the rebuild provisions above. EPA proposes that such records be kept for two years after the engine is rebuilt.

Under this proposal, parties would be required to keep the information for two years but would be allowed to use whatever format or system they choose, provided that the information can be readily understood by an EPA enforcement officer. EPA proposes that parties would not be required to keep information that they do not have access to as part of normal business practice. In cases where it is customary practice to keep records for engine families rather than specific engines, where the engines within that family are being rebuilt or remanufactured to an identical configuration, such record keeping practices are proposed to be satisfactory. Rebuilders would be able to use records such as build lists, parts lists, and engineering parameters that they keep of the engine families being rebuilt rather than on individual engines, provided that each engine is rebuilt in the same way to those specifications. EPA requests comments on the appropriateness of the proposed record keeping requirements, including whether the records should be kept for a longer period of time, such as for five years.

6. Replacement Engines

As noted elsewhere in this discussion, an important constraint on the ability to replace a marine diesel engine concerns the ability to remove the engine from the vessel. In many cases, the vessel is built around the engine and removal is difficult if not impossible. Nevertheless, there may be situations in which a marine diesel can or must be removed from a vessel, to be replaced with a different engine. Under these requirements, whenever a compliant engine is removed from a vessel, the replacement engine must meet the emission requirements that were in effect at the time the vessel was built. For example, any engine installed on a vessel built in 2008 must comply with the requirements proposed in this action, regardless of whether it is installed in 2008 or any year thereafter. The intent of this requirement is to ensure that vessel owners cannot evade the proposed emission requirements by installing a noncomplying engine on their vessel after the vessel is placed into service. These provisions also allow, in some cases, engine manufacturers to produce new replacement engines of an older model that do not comply with the otherwise applicable standards, provided that the new engines meet the emission standards that applied to the engines being replaced. However, manufacturers would only be allowed to produce such engines in cases where it was necessary for reasons such as space constraints. Consistent with replacement engine provisions in other programs, some additional constraints ensure that companies do not circumvent the regulations (see 40 CFR 89, Subpart J). EPA seeks comment on the necessity of such a provision.

I. Certification

As discussed previously, EPA expects technology to be shared between land-based engines and marine engines. EPA expects some engine manufacturers to produce engines of the same basic design for sale in both areas. Specifically, Category 1 marine engines are expected to share the technology developed for land-based nonroad engines, and Category 2 engines are expected to share technology developed for locomotive engines. To account for this product overlap, EPA is proposing

to base certification data and administration requirements for Category 1 on the existing program for land-based nonroad engines, and for Category 2 marine engines on the existing program for locomotive engines.[41], [42] Specific certification provisions are discussed more fully in the following sections.

1. Engine Family Definition

EPA is proposing that engine grouping for the purpose of certification be accomplished through the application of an ''engine family'' definition. Engines expected to have similar emission characteristics throughout the useful life are proposed to be classified in the same engine family. Separate engine family classification is also required for each marine engine category (i.e., Categories 1, 2, and 3 will be in separate engine families).

EPA is proposing specific parameters to define engine family for each category of marine engine. To provide for administrative flexibility in the proposal, the Administrator will have the authority to separate engines normally grouped together or to combine engines normally grouped separately based upon a manufacturer's request substantiated with an evaluation of emission characteristics over the engine's useful life.

For Category 1, EPA is proposing to use the engine family definition for land-based nonroad engines with the addition of the fuel system type and fuel injection control used (mechanical versus electrical).[43] For Category 2, EPA is proposing to use the engine family definition for locomotive engines.[44]

These definitions are proposed to provide consistency between land-based and marine engines of the same basic type. The fuel system type and control type were added to the land-based nonroad engine family definition to reduce the variability of emissions within an engine family. This change will aid manufacturers in selecting the ''worst-case'' engine for emission testing. It will lessen the chance of noncompliance in use by ensuring that the highest emitting engine is tested during certification.

The engine family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. As proposed, manufacturers would be required to estimate the rate of deterioration for each engine family (see the discussion of deterioration factors in Section V.G.3. for further details). Compliance with the emission standard will also be demonstrated for each engine family based upon required testing and the application of the deterioration factor. Separate certificates of conformity would be required for each engine family.

2. Emission Data Engine Selection

EPA is proposing that manufacturers select the highest emitting engine (i.e., ''worst-case'' engine) in a family for certification testing. In making that determination, the manufacturer shall use good engineering judgement (considering, for example, all engine configurations and power ratings within the engine family and the range of installation options allowed). By requiring the worst-case engine to be tested, EPA is assured that all engines within the engine family are complying with emission standards for the least cost in test engines run. If manufacturers feel that the engine family is grouped too broadly or that the worst-case emission data engine would underestimate the emission credits available under the ABT provisions, they may request the separation of the dissimilar calibrations (based on an evaluation of emission characteristics over the engine's useful life) into separate engine families.

J. SEA, Production Line Testing

One of the challenges of serial engine production is ensuring that each engine produced has the same emission characteristics as the original certification engine. The more traditional approach used for ensuring that the engines are produced as designed is called Selective Enforcement Auditing (SEA). In the SEA program, EPA audits the emissions of new production engines by requiring manufacturers to test engines pulled off the production line on short notice. This spot checking approach relies largely on a deterrence strategy. Manufacturers prefer to design their engines and production processes and take other steps necessary to make sure their engines are produced as designed in order to avoid the penalties associated with failing SEA tests.

However, EPA does not believe that an SEA-type approach is practical for the marine diesel engine industry, primarily because of the low production volumes. The small production volumes mean that on any given day that EPA would choose to do an SEA there may be no marine engines being produced, or there may not be enough to provide a representative sample of production.

Therefore, to ensure compliance of production engines, EPA is proposing an alternative approach, called Production Line Testing (PLT). The general object of a PLT program is the same as an SEA-based program, which is to enable manufacturers and EPA to determine, with reasonable certainty, whether certification designs have been translated into production engines that meet applicable standards (or FELs) at the time of production, before excess emissions are generated in use. The main difference between the two approaches is that PLT is performed on a regular basis during the year by the engine manufacturer according to criteria set by the Agency, while SEA is performed through periodic unannounced spot checks by EPA.

Under the proposed marine diesel engine PLT, a manufacturer would select engines from its production line for confirmatory testing. In general, one percent of a manufacturer's total projected annual U.S. marine diesel engine sales (propulsion and auxiliary) for each category would be required to be tested each year. EPA believes that a one percent sampling rate is appropriate for the marine diesel engine industry because of its low production volumes, and that a higher sampling rate would be unduly burdensome for this industry. EPA is not proposing a minimum number of tests for Category 1 engines and is proposing that if a manufacturer sells fewer than 100 units in the United States in a given year, it would not be required to do any PLT testing for its Category 1 engines that year. EPA requests comment on whether it would be more appropriate, in light of its proposed one percent sampling rate, to adopt a production trigger for Category 1 PLT testing of 50 engines per year, rather than 100 engines per year as proposed. EPA also requests comment on an approach whereby a manufacturer's cumulative production over time would be used to determine when PLT testing would be required for these Category 1 manufacturers. Under such an approach a test would be required under the PLT program when a manufacturer's cumulative Category 1 production over more than one model year reached 100 units. For Category 2 engines, EPA is proposing a minimum of one PLT test per year. Thus, for manufacturers with sales of less than

[41] See 40 CFR 89 Supart B for the provison of the land-based nonroad engine program.

[42] See 40 CFR 92 Supart C for the provison of the locomotive program.

[43] See 40 CFR 89.116 for the engine family definition used for land-based nonroad engines.

[44] See 40 CFR 92.204 for the engine family definition for locomotives.

[41] See 40 CFR 89 Supart B for the provison of the land-based nonroad engine program.

100 Category 2 engines a year, one test would be required. For purposes of calculating the number of tests required, EPA is proposing that Category 1 and Category 2 annual engine sales be considered separately.

EPA proposes that the choice of the engines to be tested pursuant to this program will be left to the manufacturer, but should be a random sample that is representative of annual production. EPA reserves the right to reject any engines selected by the manufacturers if it determines that such engines are not representative of actual production. Engines selected should cover the broadest range of production possible, and from year to year should be varied to cover all engine families if possible. Tests should also be distributed evenly throughout the model year, to the extent possible.

EPA proposes that emission testing of the PLT engines be conducted in accordance with the applicable federal testing procedures, and compliance with the proposed NTE provisions must be demonstrated as part of PLT testing. The results would be reported to EPA in periodic reports that would summarize emissions results, test procedures, and events such as the date, time, and location of each test. These reports will allow EPA to monitor continually the PLT data. If no testing is performed during the period, no report would be required. EPA is proposing that reports be submitted each quarter. EPA requests comment on whether quarterly reporting is too frequent, given the low production volumes of these engines, and whether a semester or trimester approach is more appropriate.

Under this testing scheme, if an engine fails a production line test, the manufacturer would test two additional engines out of either the next two days' production or the next fifteen engines produced in that engine family in accordance with the applicable federal testing procedures. EPA is proposing the dual approach to testing additional engines to account for variations in production volumes. If production volumes are high, then EPA believes that the two-day provision will allow for the orderly selection of additional test engines. Likewise, if production volumes are low, then the provision allowing the engines to be selected from the next fifteen produced will allow for orderly selection. When the average of the three test results, for any pollutant, are greater than the applicable standard or FEL for any pollutant, the manufacturer fails the PLT for that engine family. Such failures must be reported to EPA within two working days of the determination of a failure. It should be noted that, as proposed, compliance with the standards would be required of every covered engine. Thus, every engine that failed a PLT test would be considered in noncompliance with the standards and must be brought into compliance. EPA's proposal to use the average of three tests to determine compliance with the PLT program is intended only as a tool to decide when it is appropriate to suspend or revoke the certificate of conformity for that engine family, and is not meant to imply that not all engines have to comply with the standards.

In the proposed PLT program, the Administrator could suspend or revoke the manufacturer's certificate of conformity in whole or in part fifteen days after an EPA noncompliance determination for an engine family that fails the PLT, or if the engine manufacturer's submittal reveals that the PLT tests were not performed in accordance with the applicable testing procedure. During the fifteen day period following a determination of noncompliance, EPA would coordinate with the manufacturer to facilitate the approval of the required production line remedy in order to eliminate the need to halt production, to the greatest extent possible. The manufacturer must then address (i.e., bring into compliance, remove from service, etc.) the engines produced prior to the suspension or revocation of the certificate of conformity. EPA could reinstate the certificate of conformity subsequent to a suspension, or reissue one subsequent to a revocation, after the manufacturer demonstrates (through its PLT program) that improvements, modifications, or replacement have brought the engine family into compliance. The proposed regulations include hearing provisions that provide a mechanism to resolve disputes between EPA and manufacturers regarding a suspension or revocation decision based on noncompliance with the PLT. It is important to point out that the Agency would retain the legal authority to inspect and test engines should problems arise in the PLT program. It is also important to note that the definition of ''failure'' of the PLT is limited to the PLT program, and does not define failure or noncompliance for other purposes. It is based in part on the severity of the result of a failure (suspension or revocation of a certificate) and is not meant to limit in any way the overall obligation of the manufacturer to produce engines that meet the standard.

EPA recognizes the need to develop a PLT scheme that does not impose an unreasonable burden on the manufacturers. Therefore, consistent with the requirement that testing be required on one percent of total marine diesel engine production for each category, EPA is proposing that no PLT be required for manufacturers whose Category 1 marine diesel engines sales are less than 100 per year. This is because companies with such low sales are unlikely to have in-house testing facilities, and requiring such companies to send an engine to an independent test facility for PLT purposes may be too burdensome. EPA seeks comment on whether to extend this exemption to companies with fewer than 500 employees across all operations. It should be noted that companies that are exempt from the PLT program are not exempt from the other certification and compliance provisions described in this proposal. Engines exempt from the PLT program will still be required to meet the emission limits as produced and in use, and EPA reserves the right to conduct an SEA on any diesel engine manufacturer. In addition, EPA is not proposing to extend this flexibility provision to the Category 2 marine diesel engine PLT program, since those engines are typically produced in very small volumes.

Finally, while EPA believes that it has developed a PLT program that takes into account the circumstances of this industry, it also understands that alternative plans may be developed that better account for the individual needs of a manufacturer. Thus, provisions are proposed to allow a manufacturer to submit an alternative plan for a PLT program, subject to approval of the Administrator. A manufacturer's petition to use an alternative plan should address the need for the alternative, and should include justifications for the number and representativeness of engines tested, as well as having specific provisions regarding what constitutes a PLT failure for an engine family.

The Agency requests comment on all aspects of this proposed PLT program. Specifically, EPA requests comment on whether it should select the individual engines to be tested, or whether this should be done by the manufacturer, subject to EPA approval.

K. Miscellaneous Compliance Issues

EPA is proposing to extend the general compliance provisions for land-based nonroad engines to Category 1 and Category 2 marine diesel engines. These include the tampering, defeat device, imported engines and vessels, and general prohibition provisions. EPA seeks comment on extending these provisions to marine diesel engines, and

on any modifications that should be made to these provisions to accommodate special features of these engines.

L. Averaging, Banking, and Trading Program

Along with the proposed standards, EPA is proposing a marine averaging, banking, and trading (ABT) program. An ABT program allows the Agency to propose and finalize a more stringent set of marine diesel engine emission standards than might otherwise be appropriate under section 213 of the Clean Air Act. ABT reduces the cost and improves the technological feasibility of achieving the standards, helping to ensure the attainment of the proposed standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. ABT also creates an incentive for the early introduction of new technology, which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology before manufacturers need apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies. EPA views the effect of the ABT program itself as environmentally neutral because the use of credits by some engines is offset by the generation of credits by other engines. However, when coupled with the new standards, the ABT program would be environmentally beneficial because it would allow the new standards to be implemented earlier than would otherwise be appropriate under that Act. In addition, to the extent that any credits are not used, then there is an additional environmental benefit.

The voluntary ABT program allows the certification of one or more engine families within a given manufacturer's product line at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more families certified below the emission standards. The average of all emissions for a particular manufacturer's production (weighted by sales-weighted average power, production volume and useful life) must be at or below the level of the applicable emission standards. In addition to the averaging program just described, the proposed ABT program contains a banking and trading provision, which allows a manufacturer to generate emission credits and bank them for future use in its own averaging program or sell them to another entity. Compliance is determined on a total mass emissions basis to account for differences in production volume, power and useful life among engine families.

The ABT program EPA is proposing for marine diesel engines over 37 kW is based on the corresponding ABT programs recently adopted for land-based nonroad engines (63 FR 56967, October 23, 1998) and locomotives (63 FR 18978, April 16, 1998), which roughly correspond to the proposed Categories 1 and 2, respectively. When a manufacturer chooses to participate in the ABT program, it would be required to certify each participating engine family to a family emission limit (FEL) determined by the manufacturer during certification testing. A separate FEL would need to be determined for each pollutant the manufacturer is including in the ABT program. EPA is proposing that the ABT program be limited to $HC+NO_X$ and PM emissions. Thus, only two different FELs could be generated for a given engine family.

Consistent with the recently finalized land-based nonroad engine program, marine engine credits are proposed to be calculated based on the difference between the applicable standard(s) and FEL(s). However, credit calculation for marine engines is somewhat different than that for land-based nonroad engines, in that a load factor is inserted in the equation. This term is necessary because, contrary to land-based nonroad case, not all marine engines are expected to operate at the same load. EPA seeks comment on the credit calculation equation, which is as follows:

$$\text{Emission credits} = (\text{Std} - \text{FEL}) \times (\text{UL}) \times (\text{Production}) \times (\text{AvgPR}) \times (10^{-6}) \times (\text{LF})$$

Where:

- Std = the applicable cycle-weighted marine engine $THC+NO_X$ and/or PM emission standard in grams per kilowatt-hour.
- (ii) FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)
- UL = the useful life in hours.
- Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.
- AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.
- LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

A. 0.69 for propulsion engines
B. 0.51 for auxiliary engines.

Consistent with EPA's recently finalized land-based nonroad diesel engine rule, and because of the inherent trade-off between NO_X and PM emissions in diesel engines, EPA is proposing to adopt for marine diesel engines the provision in the land-based nonroad ABT program prohibiting the generation of credits for one pollutant and the simultaneous use of credits for the other pollutant within the same engine family. In other words, a manufacturer would not be allowed to simultaneously generate $HC+NO_X$ credits and use PM credits on the same engine family, and vice versa. EPA requests comment on whether an engine should be allowed to generate credits on one pollutant while using credits on another, and whether allowing such an additional flexibility would necessitate a reconsideration of the stringency of the emission limits.

EPA is proposing FEL upper limits in the same manner as those in the comparable land-based ABT programs to ensure that the emissions from any given family certified under this ABT program not be significantly higher than the applicable emission standards. In general, these FEL upper limits correspond to the existing previous tier of standards for the various classes. In other words, the FEL upper limits are generally the Tier 1 standards for engines certifying according to the ABT provisions relative to the Tier 2 standards, and the Tier 2 standards for engines certifying according to the ABT provisions relative to the Tier 3 standards. Since EPA is not including any Tier 1 standards for marine engines in this proposal, it is proposing to use the land-based Tier 1 standards as FEL upper limits for the proposed Tier 2 marine engine standards. When the ABT provisions for land-based nonroad engines were recently revised there were no Tier 1 standards in place for some land-based categories and pollutants. These cases correspond to some Category 1 marine engines. In

those cases EPA chose FEL upper limits based on typical in-use emission levels of precontrol engines, or existing California Air Resources Board emission standards. For a more complete discussion of the rationale for the Tier 2 FEL upper limits for Category 1 engines the reader is directed to the recent final rule concerning land-based nonroad engine emission standards. As an alternative to using the Tier 1 land-based emission standards as FEL upper limits under the proposed Tier 2 standards, EPA is requesting comment on whether it should consider using the MARPOL Annex VI NO_X standard as the appropriate NO_X FEL upper limit. Under this approach EPA would continue to use the land-based Tier 1 PM standard as the Tier 2 FEL upper limit. As part of this approach EPA would have to accommodate the fact that the MARPOL Annex VI standard is for NO_X only and the proposed Tier 2 standards are $HC+NO_X$. EPA requests comment under this approach as to how best to deal with this inconsistency.

Consistent with the land-based ABT programs from which this proposed program is derived, EPA is proposing that ABT credits generated under this program have an infinite life, with no discounting applied. Also consistent with the recently finalized land-based nonroad diesel rule, EPA is proposing that credits generated on land-based engines not be allowed to be used for demonstrating compliance for marine diesel engines. EPA is concerned that manufacturers who produce engines used in both marine and land-based applications could effectively trade out of the marine portion of the program, thereby potentially obtaining a competitive advantage over small marinizers who sell only marine engines. For similar reasons, EPA is proposing that credit exchanges not be permitted between Categories 1 and 2 engines. EPA seeks comment on the need for these restrictions and on the degree to which imposing them may create barriers to low-cost emission reductions.

EPA is also proposing that credits generated relative to the Tier 2 standards not be allowed to be used toward Tier 3 compliance for either Category 1 or Category 2 engines based on concerns about the possibility of using such credits to ''trade out'' of compliance with the Tier 3 standards.

EPA is proposing that the ABT program begin with the implementation of the Tier 2 standards, with no option for the early generation of credits. While the Agency believes that, on a total sales average basis, the Tier 2 standards as proposed will result in significant emission reductions from uncontrolled levels, it is aware of some engine configurations whose emissions are currently at or near the levels of the Tier 2 standards. EPA is concerned that the emissions from such engine families could be reduced below the proposed Tier 2 standards without much effort and that easy credits could be generated if early banking were allowed. Such credits could then be used to significantly delay implementation of the Tier 2 standards for other engine families. EPA requests comment on whether it should consider an early credit banking option and what types of restrictions it should place on such early credits in order to address this concern. Commenters are requested to consider, among other options, restrictions such as early credits being calculated relative to levels more stringent than the Tier 2 standards, discounting of early credits (possibly only if above a set threshold level), and limited credit life for early credits.

In the recent rule cited above which set emission standards for land-based nonroad diesel engines, EPA also set emission standards for marine diesel engines below 37 kW. These engines were also included in the land-based ABT program in that rule, with some restrictions. EPA is not proposing any changes to the way under 37 kW marine diesel engines are treated in this ABT program. EPA is not proposing to integrate the ABT program in that rule for under 37 kW marine engines with this proposed program. Thus, EPA is proposing that no trading be allowed for engines above and below 37 kW. EPA requests comment on whether it should allow trading between engine families above and below 37 kW. Comments in favor of removing this proposed restriction should address that fact that the stringency of the standards for marine diesel engines below 37 kW was determined in the absence of this ABT flexibility. Comments should address whether allowing trading between engine families above and below 37 kW would appropriately require EPA to reexamine the stringency of the standards for engines under 37 kW.

EPA is proposing not to allow the exchange of credits between Category 1 marine engine families and land-based nonroad engine families. This restriction is proposed for the same reason that EPA is proposing to restrict credit exchanges between engine families above and below 37 kW (i.e., that the stringency of the land-based standards was determined in the absence of the availability of credit exchange between marine and land-based engines). In addition, there are differences in the way that marine and land-based credits are calculated that are implicit in the calculation and that make the credits somewhat incompatible. The first is that the difference in test duty cycles means there is an implicit difference in load factor between the two. The second is that there are provisions in this proposal for varying useful lives, which are not included in the land-based nonroad regulations. In addition, as discussed above, the actual credit calculation equations for the two programs are different. EPA requests comment on whether it should allow credit exchanges between marine and land-based nonroad engine families and, if so, whether credits traded from one program would need to be adjusted to account for the different credit calculation equations. EPA also seeks comment on whether it would be necessary to reconsider the stringency of the land-based nonroad emission limits were such cross-program trading allowed.[45]

EPA is also proposing to prohibit all trading between Category 2 engines and locomotive engines because locomotive credits are calculated based on expected remaining service life (which could be many useful life periods, due to the inclusion of the remanufacturing provisions for locomotives), whereas Category 2 marine engine credits are only calculated on a single useful life basis.

As discussed in the section on the recreational engine exemption earlier in this preamble, EPA is proposing to allow the use of certified engines in recreational applications. This allowance raises an issue with respect to credit generation in the ABT program. Engines used in recreational applications tend to have significantly lower usage rates than engines used in commercial applications. EPA is concerned that if an engine is certified as a credit generating configuration then it could, if used in a recreational application, generate credits on paper that will not have corresponding actual emission reductions in use. EPA requests comment on the likely frequency of certified engines being used in recreational applications. EPA also requests comment on whether it should take steps to prevent such

[45] It may be necessary to reconsider the stringency of the land-based nonroad engine emission standards because those limits were set based on an ABT program that is confined to land-based engines. Extending the universe of credits to include those generated by marine engines could increase the credits available to the land-based program, thus reducing the overall stringency of that program.

''false'' credits from being generated, such as by not allowing certified engines used in recreational applications from participating in the ABT program, or by prorating ABT credits according to expected usage rates.

Participation in the proposed marine diesel ABT program would be voluntary. For those manufacturers that choose to utilize the program, compliance for participating engine families would be evaluated in two ways. First, compliance of individual engine families with their FELs would be determined and enforced in the same manner as compliance with the emission standards in the absence of an averaging, banking and trading program. Each engine family must certify to the FEL (or FELs, as applicable), and the FEL would be treated as the emission limit for certification, production-line and in-use testing (as well as for any other testing done for other enforcement purposes) for each engine in the family. Second, the final number of credits available to the manufacturer at the end of a model year after considering the manufacturer's use of credits from averaging, banking and trading must be greater than or equal to zero.

When credits are generated and traded in the same model year, EPA proposes to make both buyers and sellers of credits potentially liable for any credit shortfalls, except in cases where fraud is involved. This provision is consistent with other mobile source ABT programs. The marine diesel engine certificates of both parties involved in the violating trading transaction could be voided ab initio (i.e. back to date of issue) if the engine family or families exceed emission standards as a result of a credit shortfall. Where cases involve a manufacturer being defrauded into purchasing non-existent credits, that manufacturer would only be expected to make up the credit shortfall that resulted from the lack of real credits.

The integrity of the proposed marine diesel averaging, banking and trading program depends on accurate recordkeeping and reporting by manufacturers, and effective tracking and auditing by EPA. Failure of a manufacturer to maintain the required records would result in the certificates for the affected engine family or families being voided retroactively. Violations of reporting requirements could result in a manufacturer being subject to civil penalties as authorized by sections 213 and 205 of the Clean Air Act. EPA proposes to allow positive reporting errors (i.e., those errors that result in an underestimation of the manufacturer's positive credit balance) to be corrected provided that the errors are identified within 180 days of EPA's receipt of the manufacturer's annual report.

EPA requests comment on all aspects of the proposed ABT program. Specifically, the Agency requests comment on the various restrictions (averaging sets, etc.) proposed for the program and the lack of an early credit banking program, and the time limit for correcting reporting errors.

M. Special Provisions

In general, EPA sets engine emission standards that take full effect at a set point in time, concurrently precluding the installation of engines not certified to the new standards in vehicles or equipment. The rigidity of this approach is lessened to some extent through averaging, banking, and trading programs, which allow engine manufacturers to produce engines that exceed the emission limits as long as the added emissions can be offset by engines that emit below the required levels. While this approach generally works well, additional flexibility provisions to help relieve compliance burdens may be needed in special cases. Consequently, EPA is proposing the following set of flexibility provisions. EPA seeks comment on all aspects of these flexibility provisions.

1. Post Manufacturer Marinizers Provisions

Category 1 and Category 2 marine diesel engines are produced using one of three basic manufacturing methods. In the first, least common, method, marine engines are designed and built exclusively for marine applications. This is typically the case for very large Category 3 engines as well as some smaller engines that are produced for special niche markets. In the second, more common, method, an engine manufacturer produces a marine diesel engine using a land-based nonroad or highway engine that was built by that same manufacturer. In the third method, an unrelated company, referred to as a ''post-manufacture marinizer'' produces a marine diesel engine by purchasing a completed or partially completed land-based nonroad or highway engine from an engine manufacturer and modifying it for use in the marine environment according to that manufacturer's own processes. Post-manufacturer marinizers (PMM) tend to be small companies, and their output is often designed for niche markets. PMMs often have only limited resources for engine certification, and several have indicated to EPA that burdensome certification requirements would put them out of business.

To address the concerns of these companies, EPA is proposing several provisions that are intended to streamline the certification process for PMMs.

(a) Application of Flexibility Provisions. The following flexibility provisions will be available only to PMMs. EPA has previously defined the term ''post-manufacture marinizer'' in 40 CFR 89.2 as ''a person who produces a marine diesel engine by substantially modifying a certified or uncertified complete or partially complete engine; and is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine.'' That definition goes on to clarify that ''substantially modify means changing an engine in a way that could change engine emission characteristics.''

EPA has become aware that the above definition may be too narrow. It implies that only those persons who substantially modify an engine will be considered PMM; those who do not modify the engine in ways that would change the engine's emission characteristics (i.e, the modifications are not ''substantial'') would not trigger the PMM designation. This was not meant to be the case. EPA intended that a person who modifies in any way an engine certified to a previous tier or who modifies in any way an uncertified engine would be considered a PMM and would have to recertify the engine to the marine emission limits in place at the time the engine is marinized. Therefore, EPA is proposing to revise the definition of PMM, to clarify that a PMM is a person who substantially modifies a land-based engine previously certified to the same or more stringent emission limits as the currently applicable marine emission limits, or a person who modifies in any way an uncertified engine or an engine certified to a previous tier of emission limits.

This modification of the PMM definition will not affect the engine dresser exemption described in Section III.B.2 above, since one of those criteria is a requirement that the dressed engine be certified to emission limits at least as stringent as those applicable to marine diesel engines a the time the engine is dressed.

Finally, EPA intends that a vessel manufacturer that substantially modifies a certified engine or that modifies an uncertified engine or an engine certified to a previous tier of emission limits would be considered a PMM and would have to comply with the certification and compliance provisions proposed in this document. This clarification is necessary because it is not uncommon

for vessel manufacturers to modify marine engines. This is often done to increase the power of an engine, to respond to the needs of a particular user. By considering such vessel manufacturers as PMM, EPA will ensure that the engine modifications do not also increase the emissions of an otherwise certified engine.

(b) Broader Engine Families. EPA is proposing to allow PMMs to use a broader engine family definition. Under this provision a PMM may include any engines that have similar emission deterioration characteristics in one engine family. Thus, a PMM could conceivably group all marine engines into one marine engine family. The only restriction is that the engines are all in the same category. Separate engine families will be required for each category of marine engines.

Note that all other provisions of the proposal shall apply to this broad engine family including, but not limited to, selection and testing of an emission data engine, application of a deterioration factor (DF), and compliance with the standards.

(c) Carryover Provisions. This proposal makes provision for carryover of engine data, which allows engine manufacturers to use data generated in a previous model year's certification to certify for the current year. This provision will also apply to the broader PMM engine families, with the constraint that new data will need to be generated if any model in the broad family is modified in any way that will make it the highest emitter in the family.

(d) *Streamlined Certification for Subsequent Years.* EPA is proposing a streamlined certification process for PMMs. This process would be applicable beginning with the year after the relevant implementation dates and continuing until engine design changes cause a different engine model to be the highest emitter in the broad PMM family. Recertification would be required at that point. Under this streamlined certification process, the manufacturer would submit its annual certification application stating that there have been no changes in the design or production of the engine models that make up the engine family. If there have been changes, the PMM could still avoid a complete certification submission with test data by demonstrating that there is no change in the identity of the highest emitter or its emissions. EPA requests comment on such a streamlined certification program for PMM.

(e) *NTE Flexibility.* As noted above, EPA is including an off-cycle emission requirement whereby engine manufacturers would be required to demonstrate that marine diesel engine emissions do not exceed a specified cap at any point in a specified zone of operation (see Section V.E.2., above). EPA expects that demonstrating compliance with the NTE will call for additional R&D and testing to measure and control emissions under any speed and load combination that can occur on a vessel. These costs are included in EPA's analysis of economic impacts, but EPA believes that the costs would be disproportionately difficult for a PMM to bear. EPA therefore requests comment on alternative approaches to address in-use emissions for these small manufacturers to ensure in-use performance while minimizing the testing burden for PMMs.

(f) *Additional Compliance Time.* Because of the nature of their business, marinizing partially or fully completed engines manufactured by another company, the ability of PMM to certify their engines as complying with the proposed emission limits may be affected by circumstances that are beyond their control. Consequently, there may be situations in which, despite its best efforts, a PMM cannot meet the implementation dates, even with the flexibility provisions described above. Such a situation may occur if an engine supplier without a major business interest in a PMM were to change or drop an engine model very late in the implementation process, or was not able to supply the PMM with an engine in sufficient time for the PMM to recertify the engine. Based on this concern, EPA is proposing to allow a one-year delay in the implementation dates for PMMs. EPA requests comment on the necessity of such a provision, whether its application should be limited only to small companies, and on whether the one-year delay should be automatic or subject to approval by EPA.

(g) *Special Hardship Provision.* As a relief mechanism of last resort, EPA is also proposing to extend to PMM the hardship relief provisions contained in the recently finalized land-based nonroad rule (40 CFR 89.102(f)). Under this provision, PMM can petition EPA for additional time to demonstrate compliance with the emission limits. Under this hardship relief provision, appeals must be made in writing, be submitted before the earliest date of noncompliance, be limited to firms that fit the small business criteria established by the Small Business Administration (fewer than 500 employees), include evidence that failure to comply was not the fault of the PMM (such as a supply contract broken by the engine supplier, and include evidence that the inability to sell the subject engines will have a major impact on the company's solvency. The Agency would work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted before granting additional relief, and would limit the period of relief to no more than one year. Furthermore, the Agency proposes that applications for hardship relief only be accepted during the first year after the effective date of an applicable new emission standard. To avoid the creation of a self-fulfilling prophesy, by which the very existence of this provision prompts engine manufacturers to delay engine developments, EPA expects that this provision will be used only rarely. Each granting of relief would be treated as a separate agreement, with no prior guarantee of success, and with the inclusion of measures, agreed to in writing by the PMM, for recovering the lost environmental benefit. Comment is requested on all aspects of this proposal.

2. Vessel Builder Flexibilities

As part of the land-based nonroad rule, EPA proposed a set of flexibility provisions for equipment manufacturers. These provisions were intended to give equipment manufacturers more time to comply with the requirement that they use only certified engines beginning with the implementation dates the engine standards. The additional time was necessary because the engine compartment on land-based nonroad equipment is relatively restricted, and changes to the physical characteristics of a nonroad engine could require extensive equipment redesign. However, equipment manufacturers may be unable to obtain a certified Tier 2 or Tier 3 engine before the implementation dates for those engines. The flexibility provisions were designed to give extra time for product redesign to equipment manufacturers that need it without postponing the emission benefits of the entire program.

While recognizing the importance of such a transition program for land-based nonroad equipment manufacturers, EPA is not proposing a similar proposal for marine vessels. There are three reasons for this. First, EPA has learned that the commercial vessel production process is actually a very flexible process. Commercial marine vessels are generally designed for a specific purchaser, to meet specific operational requirements. This means that a vessel purchaser will typically tell a

manufacturer what kind of load the vessel is intended to carry, and what kind of engine to use. The vessel manufacturer then designs the vessel, or adapts an existing design, based on these requirements. EPA believes that this kind of design process can easily accommodate any changes to an engine that may occur as a result of the proposed program, regarding its physical dimensions or weight. Second, commercial marine vessels are not serially produced in the same way as land-based nonroad equipment. Sales volume by manufacturer is much smaller in the commercial marine industry. Therefore, marine vessel manufacturers do not need extra time to accommodate engine changes across a wide range of equipment offerings. Third, it typically takes a significant amount of time to design and build a commercial marine vessel. EPA believes that any design changes required as a result of engine changes can be accommodated in the normal vessel construction period. Nevertheless, there may be special situations in which vessel manufacturers may have difficulties producing vessels that use compliant engines. EPA seeks comment on any such circumstances, and the types of flexibility provisions that would be needed to address those concerns.

N. Application of Provisions to Marine Diesel Engines Less Than 37 kW

Marine diesel engines less than 37 kW were included in the rulemaking for nonroad diesel engines and are subject to the emission control program contained in 40 CFR Part 89. That program has two tiers of emission limits, phased in from 1999 to 2000 for Tier 1 and 2004 to 2005 for Tier 2. In general, marine diesel engines less than 37 kW are subject to the same certification and compliance program as land-based nonroad diesel engines. Exceptions to this general approach include the duty cycle (E3, but with a C1 option), ABT program restrictions (land-based credits cannot be used to offset marine diesel emissions), and implementation flexibility provisions that would allow post-manufacture marinizers to phase in compliance with Tier 1 emission limits according to the schedule extended to nonroad equipment manufacturers.

EPA is aware that some companies manufacture marine diesel engines above and below the 37 kW threshold. Most of these companies are small businesses with limited ability to devote staff to managing compliance with emission control requirements. One possible administrative change that may lessen this burden would be to move the provisions for marine diesel engines rated below 37 kW currently contained in 40 CFR Part 89 to 40 CFR Part 94. Transferring the provisions for marine diesel engines rated below 37 kW in this way would ensure that engine manufacturers, vessel manufacturers, and the general public need consult only one area of the Code of Federal Regulations to identify the emission control programs applicable to all marine diesel engines.

An important goal of any such change should be to avoid changing the level of stringency of the requirements for marine diesel engines less than 37 kW. EPA therefore does not intend to change the level or timing of emission limits or other provisions that may affect the emissions from these engines.

EPA is, however, seeking comment on the extent to which the administrative portions of the certification and compliance requirements for marine diesel engines less than 37 kW should be harmonized with those proposed in this document. Commenters are encouraged to specify which provisions should be harmonized for these engines and to explain why this would be helpful. EPA believes that such harmonization would be appropriate for several reasons. First, harmonization of these provisions will ensure that engine manufacturers have only one set of administrative requirements to follow instead of two, thus simplifying the certification and approval process for both the manufacturers and EPA. Second, harmonization would formally extend the special compliance flexibility provisions of this proposal to post-manufacture marinizers that modify smaller diesel engines, including the more relaxed definition of engine family and streamlined certification renewals. Third, this would clarify the requirements for engine dressers.

VI. Category 3 Engine Provisions

A. Emission Limits

Category 3 engines are very large marine diesel engines, typically used for propulsion purposes on ocean-going vessels. Although these engines can achieve power ratings in excess of 75,000 kW, they are diesel engines and, with certain limitations, can benefit from the emission control technologies that are used on other diesel engines. Perhaps the most important of these limitations is the fuel on which they are operated, called residual fuel. This fuel is the by-product of distilling crude oil to produce lighter petroleum products such as gasoline, DM-grade diesel fuel (used in on-highway, land-based nonroad and smaller diesel marine engines), and kerosene. It possesses a high viscosity and density, which affects ignition quality, and it typically has high ash, sulfur and nitrogen content in comparison to marine distillate fuels. Furthermore, residual fuel parameters are highly variable because its content is not regulated. It is this high variability that makes it difficult to apply timing retard as a control strategy. Ship engineers will generally optimize engine timing to achieve peak pressures for each fuel blend and would not likely have the expertise or incentive to optimize for emissions. Residual fuel can increase engine NO_X emissions from 20–50% and PM from 750% to 1250% when compared to distillate fuel.[46]

In determining the appropriate emission limits for Category 3 engines, EPA considered the application of existing diesel emission technologies. These engines are, for the most part, already employing Tier 1 and Tier 2 technologies, including turbocharging, injection improvements, electronics, and more efficient cooling. Application of these technologies has already been extremely optimized, with engines being supercharged as well as turbocharged, and with two-stage seawater aftercooling to reduce engine temperatures. The application of these technologies results in very high fuel efficiency and optimal engine operation.

Because of the extensive use of Tier 2 technologies on Category 3 engines, the opportunities for emission reductions are not as extensive as they are for smaller engines. The most likely set of next-generation technologies that could potentially be applied to these engines include EGR, SCR, and water injection. However, as discussed in the Draft Regulatory Impact Assessment, these technologies are still under development for marine diesel engines of this size and thus the Agency does not believe it is appropriate to set emission limits that would require their use at this time. In addition, their application to Category 3 engines is complicated by the quality of the fuel used in these engines.

EPA believes it is appropriate to consider an emission limit that would rely largely on the use of injection rate shaping, with some retarded timing. By optimizing a variable fuel injection rate, a small amount of fuel can be delivered early to initiate combustion. Once combustion begins, the rest of the fuel

[46] D. Bastenhof. Exhaust Gas Emission Measurements: A Contribution to a Realistic Approach, 1995 (Air Docket A–97–50).

can be injected. Through this strategy, the peak temperature in the cylinder can be reduced by reducing the amount of fuel that is mixed with air prior to the start of combustion. This premixed fuel results in a large thermal spike when it burns when compared to diffusion burning. By reducing the peak temperatures, it is more difficult for NO_X to form.

EPA analysis indicates that the appropriate emission limits for Category 3 engines, that would require injection rate shaping but not extensive timing retard, are the limits that were recently adopted in MARPOL Annex VI. These NO_X limits also take into account the special fuel used by these engines. Those limits are contained in Table 1, above. EPA also believes that these emission limits would be the appropriate standards under the Clean Air Act, under the current circumstances. With respect to emission reductions, while MARPOL Annex VI targeted a 30% NO_X emission decrease, EPA analysis indicated that a 17% NO_X decrease could be expected. However, implementation of these NO_X limits will prevent further increases in NO_X resulting from further developments in Category 3 engine design. Because of Category 3 engines' characteristic design and operation for minimum BSFC (see the Draft RIA), further improvements in materials and engine design will only increase specific NO_X emissions in the absence of these limits.

Because the MARPOL Annex VI NO_X limits would likely be implemented independently of any Clean Air Act requirement, assuming ratification by the United States of Annex VI, EPA believes it would be unnecessary and redundant to adopt the same program under the Clean Air Act. Therefore, EPA is not proposing to adopt emission limits for Category 3 engines as part of this rule. Instead, EPA expects U.S. vessel owners to begin installing engines certified to the MARPOL Annex VI limits beginning with the effective date set in Annex VI (January 1, 2000), following the procedures otherwise applicable to that Annex. EPA requests comment on this approach, as well as the rationale behind its adoption. EPA seeks comment on how to ensure that U.S. vessel owners begin installing Category 3 engines beginning with ships constructed on or after January 1, 2000. EPA also seeks comment as to whether EPA should be required to examine implementation of the Annex domestically as part of the 2003 Feasibility Review, described in Section V.A.3., above.

EPA seeks comment on the proposed approach to Category 3 engines. EPA also seeks comment on whether EPA should consider a longer terms strategy as well and, if so, what those long-term NO_X emission limits should be. Finally EPA seeks comment on the need to adopt a PM limit for these engines. MARPOL Annex VI does not set a PM limit, presumably because of the fuel variability issue and the lack of an appropriate PM test method for residual fuels (see the Draft RIA). EPA seeks comment on the desirability to go beyond the Annex VI requirement by setting a PM standard for Category 3 engines and, if so, what that PM limit should be and how it shall be tested.

Category 3 engines can switch between fuels, and, as stated above, residual fuel can increase NO_X emissions by 20%–50% and PM emissions by 1000% (±250%) compared to marine distillate fuel. Foreign vessels with Category 3 engines currently account for 45% of the NO_X emissions from Category 3 engines (see the Draft Regulatory Impact Assessment). One mechanism to reduce NO_X emissions from these engines would be restricting the use of residual fuel in or near port regions, perhaps utilizing remote CO_2, SO_X, and PM sensing technologies to non-intrusively discriminate the fuel burned by a ship. If such a technology can be demonstrated, enforcement could become as straightforward as determining automobile speed on a highway. EPA seeks comment on whether ports and states could effectively employ such a strategy, for example as a condition on use of ports. Comments provided on this question will assist EPA in assessing the extent to which such a locally-imposed emission control strategy would be practical. These comments, in turn, will also help EPA determine whether it would be useful to issue guidance on how to establish such programs, both for California's South Coast ports and ports located in other areas of the country.

B. Category 1 and 2 Engines Aboard Vessels Engaged in Foreign Trade

EPA proposes an additional provision for Category 1 and 2 engines that are installed on U.S.-flagged vessels engaged in foreign trade that meet the criteria described below. This provision will allow these engines to be certified to the MARPOL Annex VI NO_X curve instead of the EPA proposed limits provided certain conditions are met. This provision would go into effect at the same time as the implementation of the proposed domestic emission requirements for these engines. In other words, waivers would not be needed until 2004 for engines with a per cylinder displacement below 2.5 liters and until 2006 for engines with a per cylinder displacement at or above 2.5 liters but below 20 liters. Prior to these dates, it is assumed that engines installed on these vessels will be compliant with the MARPOL NO_X limits.

This special provision is intended to address the different circumstances in which these engines will be used, rather than any differences in their operation. Specifically, Category 1 and Category 2 engines installed on foreign trade vessels are typically used for auxiliary purposes. These engines are often essential for the smooth functioning of the vessel, since they are used to generate electricity for navigational equipment (radar, gyrocompass, and telecommunications), maneuvering equipment (steering gear, bow thrusters), and crew services (lighting in the engine room, cooking in the galley). If these engines were to fail, a ship would be stranded and would most likely require a tow into port. Repairing engines to EPA requirements may be difficult in a foreign port because of availability of replacement parts. This may cause a ship owner to incur significant downtime costs to have the replacement part or a new engine delivered to a foreign port. Alternatively the ship owner may have to buy a noncomplying engine while overseas, only to replace it when the vessel returns to the United States. Allowing Category 1 and Category 2 engines to meet the MARPOL Annex VI limits instead of the EPA's requirements will reduce if not eliminate any difficulties associated with the maintenance and repair of these engines while at sea, since vessels worldwide are expected to comply with those limits beginning in 2000.

EPA believes that this special provision for Category 1 and Category 2 engines will have minimal impact on U.S. air quality if it is limited to those vessels that engage in foreign trade. EPA proposes to define a U.S.-flagged vessel engaged in foreign trade as one that has solely a registry endorsement pursuant to Coast Guard regulations at 46 CFR 67.17. Vessels with multiple endorsements (e.g., foreign and coastwise) will need to demonstrate to the Administrator's satisfaction that the vessel will spend less than 25% of its operating time within 320 nautical kilometers (200 nautical miles) of U.S. territory. This determination would need to be made during the ship's construction, based on the business plans of the ship owner. EPA does not believe application for this determination will be burdensome

because the vessel owner will have built the ship with a specific trade in mind.

To ensure that only the appropriate vessels use this provision, EPA proposes that Category 1 and 2 engines be labeled to indicate that they have been certified only to the MARPOL Annex VI NOC_X curve limits, and that they are not intended for use on domestic vessels. In addition, EPA proposes that any vessel owner who seeks this exemption obtain a waiver from EPA. Such a waiver would be issued upon satisfactory demonstration that the vessel will be used for foreign trade. EPA proposes that a vessel will be considered to be used for foreign trade if it spends less than 25 percent of its operating time within 200 nautical miles of the United States, and it does not operate solely between the United States, Canada, Mexico, Bermuda, or the Bahamas. Without this additional limit, EPA is concerned that ships whose engines do, in fact, have a significant impact on U.S. air quality would be exempt from the proposed domestic program. Also, because they operate in closer proximity to the United States these vessels are unlikely to experience problems with maintaining engines certified to EPA standards.

EPA seeks comment on whether this special provision for Category 1 and Category 2 engines installed on U.S.-flagged foreign trade vessels is necessary. EPA also requests comment on how best to define the group of vessels that should benefit from the provision while ensuring that those vessels operating in the United States meet the emission requirements proposed in this document. EPA requests comment on whether ships that operate solely between the United States, Mexico, the Bahamas, and Canada should be able to benefit from this provision.

VI. Technological Feasibility

The emissions standards proposed in this action would apply to a large variety of marine diesel engine sizes and applications. Section 213(a)(3) of the Clean Air Act calls for EPA to establish standards that provide for the ''greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.''

This section describes EPA's understanding of the range of technologies that will be available to manufacturers to comply with the proposed standards for Category 1 and 2 marine diesel engines and the technological approach anticipated for Category 3 marine engines. EPA believes that the technology discussed below will be sufficient for both the proposed standards and the NTE requirements. The costs associated with these technologies will be discussed in Section VII. EPA has concluded, as described in the Draft RIA, that the proposed standards will have no significant negative effect on noise, energy, or safety. The technological feasibility of the proposed standards is discussed below for each category.

A. Category 1 Engines

EPA believes that the emission reduction strategies that are expected to be used on land-based nonroad diesel engines to meet the nonroad Tier 2 and Tier 3 standards can also be applied to Category 1 marine diesel engines. This is because marine diesel engines are generally derivatives of land-based nonroad and highway engines. Marine engine manufacturers and marinizers make modifications to the engine to make it ready for use in a vessel. These modifications can range from basic engine mounting and cooling changes to a restructuring of the power assembly and fuel management system. The Draft RIA discusses this process in more detail.

1. Development of Implementation Schedule

For Category 1 engines with specific displacements below 2.5 liters per cylinder, the proposed implementation dates for Tier 2 essentially represent a four year lead time beyond the scheduled implementation date of the MARPOL Annex VI NO_X standard. Another four years of lead time is proposed for Tier 3. Having a single implementation date for several subcategories has an advantage for marine engines because it removes concerns associated with engine families that fall into several subcategories. This is important since marine engines may not fall into the same categories as their land-based nonroad counterparts. In some cases, using the same staggered approach for marine as for land-based nonroad engines could require the marine version to be certified before the land-based version of an engine. However, it is EPA's intent that marine engine designs have the benefit of being able to make use of the emission controls developed for land-based nonroad engines.

The proposed implementation schedule allows up to a three-year delay in standards for Category 1 marine engines relative to the implementation dates of the land-based nonroad standards. This should make this proposed regulatory scheme more cost-effective by allowing time for the carryover of technology from land-based nonroad to marine engines.

For engines with specific displacements greater than or equal to 2.5 liters per cylinder, EPA proposes an additional two years of lead time. This additional lead time would make the implementation date for the proposed marine Tier 2 standards consistent with the land-based nonroad Tier 2 implementation date for these engines. Therefore, the marine engines would be able to use technology developed for land-based applications. In addition, there are currently no Tier 3 standards for land-based nonroad engines of this size; therefore, the extra lead time may be necessary for the larger Category 1 marine engines to achieve Tier 3 levels. EPA requests comment on the proposed implementation dates.

2. Development of Numerical Standards

Marine diesel engines are typically derived from or use the same technology as land-based nonroad diesel engines and should therefore be able to effectively use the same emission control strategies. In fact, marine engines can make use of the water they operate in as a cooling medium, which can help them reduce charge air intake temperatures more easily than land-based nonroad engines. By cooling the intake charge, formation of NO_X emissions can be reduced. Also, as discussed in Chapter 3 of the Draft RIA, data on five marine engines show that emissions measured on the proposed ISO E3 marine duty cycle are roughly equivalent to those measured on the land-based nonroad ISO C1 duty cycle. Finally, several demonstration marine diesel engines have been in service for a couple years in California with emission levels that are very close to meeting the standards proposed in this document. These demonstration engines are all using established technology that EPA anticipates will be used to comply with this proposed rule. The Draft RIA provides more detail on the emissions levels achieved and the technology applied to these engines.

Because of the lead time needed to transfer land-based technology to the marine environment, EPA believes that it is reasonable to propose near-term standards that are somewhat less stringent compared to land-based nonroad in the Tier 2 time frame. EPA

believes that more stringent Tier 3 standards are feasible in the long term especially given the technology being developed for land-based nonroad engines and the long lead time. Proposing a slightly less stringent numerical NO_X emissions limit for Tier 2 marine than for Tier 2 land-based nonroad engines should allow marine engine manufacturers the flexibility to focus on Tier 3 technology and still reduce emissions in the interim without spending excessive resources on Tier 2.

3. Technological Approaches

EPA anticipates that the proposed standards for marine engines will be met primarily with technology that will be applied to land-based nonroad engines to meet the proposed Tier 2 and Tier 3 emission standards. Much of this technology already has been established in highway applications and is already being used in limited land-based nonroad and marine applications. EPA's analysis of this technology is described in detail in Chapter 3 of the Draft RIA for this proposed rule and is summarized below.

By proposing multiple levels of standards that extend well into the next decade, EPA is providing engine manufacturers with substantial lead time for developing, testing, and implementing emission control technologies. This lead time and the coordination of standards with those for land-based nonroad engines allows time for a comprehensive program to integrate the most effective emission control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption.

Engine manufacturers have already shown some initiative in producing limited numbers of low NO_X marine diesel engines. More than 80 of these engines have been placed into service in California through demonstration programs. The Draft RIA discusses, in detail, these engines and their emission results. Through the demonstration programs, EPA has been able to gain some insight into what technologies can be used to meet the proposed emission standards.

Highway engines have been the leaders in developing new emission control technology for diesel engines. Because of the similar engine designs in land-based nonroad and marine diesel engines, it is clear that much of the technological development that has led to lower emitting highway engines can be transferred or adapted for use on land-based nonroad and marine engines. Much of the improvement in emissions from these engines comes from ''internal'' engine changes such as variation in fuel injection variables (injection timing, injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Other technological developments that are expected to be used on nonroad engines will require a greater degree of development before they can be applied to marine diesel engines. Turbocharging is widely used now in marine applications, especially in larger engines, because it improves power and efficiency by compressing the intake air. Turbocharging may also be used to decrease particulate emissions in the exhaust. Today, marine engine manufacturers generally have to rematch the turbocharger to the engine characteristics of the marine version of a nonroad engine and often will add water jacketing around the turbo housing to keep surface temperatures low. Once the Tier 2 nonroad engines are available to the marine industry, matching the turbochargers for the engines will be an important step in achieving low emissions.

Aftercooling is a well established technology that can be used to reduce NO_X by reducing the temperature of the charge air after it has been heated during compression. Reducing the charge air temperature directly reduces the peak cylinder temperature during combustion, which is the primary cause of NO_X formation. Air-to-water and water-to-water aftercoolers are well established for land-based applications. For engines in marine vessels, there are two different types of aftercooling used: jacket-water and raw-water aftercooling. With jacket-water aftercooling, the coolant to the aftercooler is cooled through a heat exchanger by ambient water. This cooling circuit may be either the same circuit used to cool the engine or a separate circuit. By moving to a separate circuit, marine engine manufacturers would be able to achieve further reductions in the intake charge temperature. This separate circuit could result in even lower temperatures by using raw water as the coolant. This means that ambient water is pumped directly to the aftercooler. Raw-water aftercooling is currently being used widely in recreational applications. Because of the access that marine engines have to a large ambient water cooling medium, EPA anticipates that marine engine manufacturers will largely achieve the reductions in NO_X emissions for this proposal through the use of aftercooling.

To meet the proposed standards, Category 1 marine diesel engine manufacturers are expected to use many of the strategies discussed above. Electronic controls offer great potential for improved control of engine parameters for better performance and lower emissions. Unit pumps or injectors would allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Marine engine manufacturers should be able to take advantage of modifications to the routing of the intake air and the shape of the combustion chamber of nonroad engines for improved mixing of the fuel-air charge. Separate circuit jacket- and raw-water aftercooling will likely gain widespread use in turbocharged engines to increase performance and lower NO_X.

To meet the proposed Tier 3 standards, EPA believes that two technologies would be especially useful. Common rail injection systems provide greater overall control of the fuel injection strategy by maintaining a constant supply of high-pressure fuel at the injectors. Also, exhaust gas recirculation is anticipated to be applied to land-based nonroad diesel engines, which will provide valuable experience in applying this control strategy to marine engines. These technologies are not anticipated to be developed for land-based nonroad engines with specific displacements greater than or equal to 2.5 liters per cylinder. However, EPA believes that the concepts can be adapted from smaller land-based nonroad and highway engines. To account for difficulties of adapting common rail fuel injection and EGR to these larger engines, EPA is proposing a higher marine Tier 3 $HC+NO_X$ standard than for engines with specific displacements less than 2.5 liters per cylinder. A more detailed treatment of the feasibility of these engines meeting the proposed standards is included in the Draft RIA.

4. Conclusions Regarding Technological Feasibility

The standards in this proposal are the most challenging that can be set in this time frame. Category 1 marine diesel engine manufacturers will need to use the available lead time to develop the necessary emission control strategies, including transfer of technology from land-based nonroad diesel engines. This development effort will require not only achieving the targeted emission levels, but also ensuring that each engine will meet all performance and emission

requirements over its useful life. The proposed standards clearly represent significant reductions compared with baseline emission levels.

Emission control technology for diesel engines is in a period of rapid development in response to the range of emission standards in place and anticipated for highway and land-based nonroad engines in the years ahead. This development effort will automatically transfer to some extent to marine engines, since marine engines are often derivatives of highway and land-based nonroad engines. Regardless, this development effort will need to expand to marine diesel engines as a result of this proposal. Because the technology development for highway and land-based nonroad engines will to a large extent constitute basic research of diesel engine combustion, the results should be applicable to marine engines.

Based on information currently available, EPA believes that it is feasible for Category 1 marine diesel engine manufacturers to meet the proposed standards using combinations of technological approaches discussed above and in the Draft RIA. To the extent that the technologies described above may not yield the full degree of emission reduction anticipated, manufacturers could still rely on a modest degree of fuel injection timing retard as a strategy for complying with the proposed emission standards. As described under Economic Impacts below, injection timing retard may be associated with some decrease in fuel efficiency.

In addition, EPA believes that the flexibilities incorporated into this proposal will permit marinizers and vessel builders to respond to engine changes in an orderly way. For these industries, EPA expects that meeting these requirements will pose a significant challenge, but one that is feasible taking into consideration the availability and cost of technology, time, noise, energy, and safety.

B. Category 2 Engines

EPA believes that the emission reduction strategies that are expected to be used on locomotive diesel engines to meet the recently finalized standards can also be applied to Category 2 marine diesel engines. This is because the majority of Category 2 marine diesel engines are derivatives of locomotive engines. Similar to Category 1, marine engine manufacturers and marinizers then make modifications to the engine to make it ready for use in a vessel.

1. Development of Implementation Schedule

EPA is proposing a similar approach as proposed for Category 1 engines. Because of the marinization process, marine engine manufacturers will likely need some time to respond to changes in locomotive engine designs associated with their standards. This is why EPA is proposing that there be a one year delay between the implementation of the locomotive Tier 2 and the marine Tier 2 standards. EPA believes that a four year additional lead time is sufficient for Category 2 marine engine manufacturers to achieve the additional reductions associated with the proposed Tier 3 standards. In any case, the Tier 3 standards are proposed to be subject to a feasibility review in 2003.

2. Development of Numerical Standards

EPA proposes the marine Tier 2 emissions standards for Category 2 marine diesel engines to be the same level as the locomotive line-haul Tier 2 emissions standards. The Draft RIA compares baseline marine emissions on the E2 and E3 cycles to baseline locomotive emissions on the line-haul cycle and shows that the baseline emissions for marine are about the same or slightly lower than for locomotives. Thus, EPA believes that no change in the standards is required due to the duty cycle. Although locomotives are required to meet standards for a line-haul and a switch duty cycle, the line-haul standard was chosen for this comparison because it is more similar to the proposed marine duty cycles than the switch cycle.

EPA believes that further reductions are possible from Category 2 marine engines than are required for locomotive engines. This is why EPA is proposing Tier 3 standards for Category 2 marine engines. Technologically, marine engines do not have nearly the cooling constraints that locomotive engines have and they do not need to be designed for operation at high altitudes. In addition, under the lead time associated with the proposed Tier 3 standards, EPA believes that further emission control technology can be applied to these engines.

3. Technical Approach

Most of the emission control strategies anticipated to be used on locomotive engine to meet the locomotive Tier 2 standards are similar to those expected to be used on nonroad engines to meet the land-based nonroad Tier 2 standards. These technologies include combustion chamber modifications, better oil control, improvements in fuel injector design (i.e., rate shaping, higher pressures, nozzle geometry), electronic engine management controls, and separate circuit aftercooling. In addition, the older two-stroke engine designs are already being replaced by four-stroke engine designs. EPA believes that these technological improvements can be directly applied to Category 2 marine diesel engines. Most likely, the marine engine manufacturers will need to rematch the turbochargers and cooling circuits to respond to the new locomotive engine designs.

EPA believes that marine engines have two advantages over locomotive engines for reducing NO_X. Marine engines have access to ambient water, which gives them the ability to achieve very low charge air temperatures with an aftercooler. Locomotives, on the other hand, have extreme packaging constraints, which minimize their ability to cool the charge air. Locomotive engines must also be designed to meet their standards at high altitudes while Category 2 marine diesel engine operate at or near sea level. Because marine engines do not operate at high altitude, they have less of a concern for design tradeoffs between maintaining low NO_X and low smoke levels.

Similar to Category 1, EPA believes that the key technologies needed for Category 2 marine engines to meet the proposed marine Tier 3 emissions standards are common rail fuel injection and exhaust gas recirculation. These technologies are not anticipated to be developed for locomotive engines for Tier 2. However, EPA believes that the concepts can be adapted from land-based nonroad and highway engines. As an alternative strategy, manufacturers may choose to rely on injection timing retard as a way of trimming NO_X emissions. However, this may be associated with a fuel efficiency penalty. To account for difficulties of adapting common rail fuel injection and EGR to these larger engines, EPA is proposing the same marine Tier 3 $HC+NO_X$ standard proposed for Category 1 engines with specific displacements greater than 2.5 liters per cylinder. This proposed standard is somewhat relaxed compared to the land-based nonroad Tier 3 standards.

4. Conclusions Regarding Technological Feasibility

Based on information currently available, EPA believes that it is feasible for Category 2 marine diesel engine manufacturers to meet the proposed standards using combinations of technological approaches discussed above and in the Draft RIA. In addition,

EPA believes that the implementation schedule and the flexibilities incorporated into this proposal will permit marinizers and vessel builders to respond to engine changes in an orderly way. For these industries, EPA expects that meeting these requirements will pose a significant challenge, but one that is feasible taking into consideration technology, time, noise, energy, and safety.

C. Category 3 Engines

EPA is not proposing national standards for Category 3 marine engines. However, emissions reductions are expected to be gained through the international NO_X requirements adopted in MARPOL Annex VI.

1. Rationale for Relying on MARPOL Annex VI Requirements

Because of the competitive nature of international maritime transport, ship owners and ship builders have been working for years on techniques to improve diesel engine fuel efficiency. These research efforts have been very successful, and the thermal efficiencies of new Category 3 marine diesel engines are very high, approaching 45 to 50 percent. System efficiencies (i.e., the thermal efficiency for the ship as a whole) can be as high as 85 percent, for example, because of the use of engine heat to generate steam power. The competitive nature of the shipping industry continues to provide incentives for gaining further reductions in fuel consumption since fuel is the largest variable cost associated with shipping.

Category 3 engines have two characteristics that require discussion. First, the same strategies that have been used over time to achieve these high thermal efficiencies have generally resulted in an increase in NO_X emissions. Reducing NO_X with the technology used today basically means calibrating the engines with a focus on emissions as well as fuel consumption. For instance, timing could be retarded to reduce NO_X by reducing peak cylinder temperatures associated with the burning of fuel that is premixed with air prior to the start of combustion. Any resulting adverse impact on fuel consumption could be minimized through fuel injection strategies and charge air charging and cooling strategies. Consequently, EPA does not expect any significant increase in fuel consumption rates. Added emission control could be achieved using EGR, water in fuel emulsion, or SCR. The benefits and drawbacks of these technologies are discussed below.

Second, Category 3 engines operate on bunker fuel. This fuel is also called residual fuel because it is the fuel left in a refinery after the lighter ends have been distilled. Although some distillate may be blended into this residual fuel, the resulting bunker fuel is considerably different than the fuel burned by any other diesel engines. For instance, the viscosity is so high, that the fuel must be melted before it can flow to the engine. The warmed fuel also needs to be passed through centrifuges to remove water, sludge, and other contaminants. Sulfur levels in this fuel may be as high as 5 percent by weight. Specifications even exist for the amount of cat bottoms (worn metal and catalyst from a hydro-cracker) in the fuel. The special characteristics and handling needs of bunker fuel make the application of new emission control technologies challenging.

Because of the special fuels used by these engines and their international use, EPA is not proposing to set national emission limits for Category 3 engines beyond the MARPOL Annex VI requirements based on the types of technologies that are already used for fuel efficiency reasons on these engines today. EPA believes that this approach is reasonable given the Clean Air Act requirements that direct EPA to promulgate regulations that achieve the greatest degree of emission reduction achievable through the application of available technology giving appropriate consideration to cost, lead time, noise, energy, and safety concerns. Applicable technology for Category 3 engines is discussed below. EPA believes that the proposed limits will not only prevent future increases in NO_X associated with historical design improvements, but actually reduce NO_X from new engines by about 17 percent as discussed in the Draft RIA.

EPA's main focus across all of its diesel engine emission control programs is to reduce NO_X and PM emissions. HC and CO limits are of less importance because the contribution of diesel engines to the inventory of these pollutants is relatively low. With regard to Category 3 engines, high PM emissions are largely a result of the fuel used in these engines, as opposed to the technical characteristics of these engines. As discussed in the Draft RIA, the use of residual fuel or residual fuel blends in these engines can lead to PM emissions that are an order of magnitude higher than when distillate fuel is used. In addition, current established PM test methods show unacceptable variability when sulfur levels exceed 0.8 weight percent sulfur, and no PM test has been developed for these engines that corrects that variability. For these reasons, EPA is not proposing a PM standard for Category 3 engines. Similarly, EPA is not proposing HC or CO standards for these engines, but requests comment on whether adding such additional standards on top of the MARPOL Annex VI NO_X standard is necessary, and if so at what levels.

2. Technological Approaches

A number of technical designs and engine modifications are capable of reducing NO_X emissions from compression-ignition engines and have the potential to be technologically feasible for Category 3 marine engines. These technologies include retarded injection timing, engine fine tuning, exhaust gas recirculation, water emulsified fuel, and selective catalytic reduction. Benefits and challenges associated with these technologies are discussed below and were derived from CARB Mail-Out #91–42 and information gathered by the NO_X working group of the Bulk Chemical Handling Subcommittee of the IMO.

A feasible and simple means of reducing NO_X from diesel engines is by retarding injection timing. This method lowers the peak combustion temperature and pressure in the cylinder, resulting in 10–30 percent lower NO_X. However, the disadvantages include higher specific fuel consumption, lower power, harder startability, and higher levels of HC, CO, PM, and smoke. In addition, injection timing generally has to be tailored to fuel quality for Category 3 engines operating on residual fuel. To recover the lost fuel economy and performance or to reduce the amount of injection timing retard, additional technologies that improve fuel atomization have been employed on other mobile source engines. Fuel atomization can be improved by increasing fuel pump pressure and advance strategies, and through nozzle geometry. Another fuel injection technique for reducing NO_X is rate shaping. By injecting a small amount of fuel to begin combustion before injecting the majority of the fuel, high temperatures associated with the burning of premixed fuel can be reduced.

Engine fine tuning includes modification of essential engine components and could result in a 20–40 percent reduction in NO_X emissions. More specifically, engine fine tuning could include modifications in the injection system, charge air system, and combustion chamber design. Such changes on new highway engines have already achieved more than 50 percent NO_X reductions.

Exhaust gas recirculation (EGR) involves recirculating some of the

exhaust gas back into the intake manifold. This lowers the combustion temperature and therefore can lower NO_X emissions by as much as 20–50 percent. For marine engines, the applicability of EGR is complicated by the quality of the fuel. Sulfur and soot from combustion gases can cause increased wear of piston rings, valves, and other components. Therefore, EGR is more likely to be useful for engines running on cleaner distillate fuels.

Water emulsification of the fuel is another technique that lowers maximum combustion temperature, reducing NO_X 20–50 percent without an increase in fuel consumption. There are at least two ways to accomplish the emulsification during combustion: in the combustion chamber or in the fuel tank. Combining water and fuel for the first time in the chamber requires significant changes to the cylinder head to add an injector. Combining water with fuel in the tank may introduce combustion problems due to unstable emulsion. Also, this technique requires a significantly redesigned fuel handling system to overcome the potential risk of corrosion and to maintain power output. In any event, extra liquid storage availability is necessary to retain similar range.

Selective catalytic reduction (SCR) is one of the most effective, but also most complex and expensive, means of reducing NO_X from large diesel engines. Emission reductions in excess of 90 percent can be achieved using SCR. In SCR systems, a reducing agent, such as ammonia, is injected into the exhaust and both are channeled through a catalyst where NO_X emissions are reduced. These systems are being successfully used for large stationary source applications, which operate under constant, high-load conditions.

A number of disadvantages are apparent for the use of current technology SCR systems on ships. The SCR system is effective only over a narrow range of exhaust temperatures. The effectiveness of the system is decreased at reduced temperatures exhibited during engine operation at partial loads. Most of the engine operation near port cities is likely to be at these partial loads. This sort of a system would require an additional tank to store ammonium (or urea to form ammonia). Also, excess ammonia in the exhaust can occur during transient operation, where control of optimum ammonia injection is difficult. However, Category 3 marine engines generally operate under steady-state conditions.

3. Conclusions Regarding Technological Feasibility

Given the available emissions control technology for Category 3 engines and the fuel quality issues, EPA believes that the MARPOL Annex VI standards for NO_X are appropriate and sufficient for Category 3 marine diesel engines. EPA's main concern is that the range of adjustable parameters be set so that the engine will meet the proposed standards in this range. EPA proposes to use, and seeks comment on, the MARPOL Annex VI provisions designed to prevent tampering with the engine settings in such a way as will increase emissions. EPA believes that it may be appropriate to investigate PM standards and more stringent NO_X standards for Category 3 engines in the context of the MARPOL Convention in the future.

VIII. Projected Impacts

A. Environmental Impacts

In Chapter 5 of the Draft Regulatory Impact Analysis, EPA provides a detailed explanation of the methodology used to determine the environmental benefits from marine diesel engines associated with this proposal. EPA requests comment on all aspects of the emissions inventory analysis. The following discussion gives a general overview of the methodology and the results.

1. Category 1 Engines

For the purposes of the inventory analysis, Category 1 was divided into recreational, commercial, and auxiliary marine diesel engines. Although no standards are proposed in this document for recreational engines, uncontrolled emissions from these engines are included in the inventory analysis. Annual emissions were then calculated using engine populations, load factors, annual hours of use, rated power, emission factors, turnover, and growth rates. The sources for and the values of these factors are provided in the Draft RIA. It should be noted that EPA has received some indication that the annual use for recreational engines may be lower than assumed in the inventory analysis and calculations (Table 5–2 of the Draft Regulatory Impact Analysis). EPA seeks comment on annual usage rates for recreational, as well as commercial and auxiliary, engines.

Table 12 presents the projected emissions inventory from Category 1 marine engines with and without the proposed standards. Table 12 also presents the anticipated effects of the MARPOL Annex VI standards on the Category 1 NO_X inventory. The proposed CO standard is intended as a cap, so no benefits are claimed here.

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TABLE 12.—CATEGORY 1 EMISSIONS INVENTORY

[Thousand short tons]

Year	HC		NO_X			PM		CO
	Base	Control	Base	MARPOL Annex VI	Control	Base	Control	Base
2000	12.1	12.1	465	464	464	14.9	14.9	73
2005	12.8	12.5	492	484	470	15.8	15.2	78
2010	13.6	12.1	521	507	420	16.8	14.1	82
2020	15.3	12.0	586	565	303	18.9	13.0	92
2030	17.3	13.4	663	640	310	21.4	13.0	105

2. Category 2 Engines

Baseline emissions inventories for Category 2 marine engines were developed for the EPA under contract with Carnegie Mellon University.[47] For the purposes of this analysis, emissions are included from all Category 2 engines

[47] Corbett, J., Fischbeck, P., ''Commercial Marine Emissions Inventory and Analysis for United States Continental and Inland Waterways,'' Carnegie Mellon University, Order No. 8A–0516–NATX, September 1998.

operated in the Great Lakes, inland waterways, and coastal waters up to 320 kilometers (200 miles) offshore. Emissions from U.S. flagged vessels were determined using ship registry data, fuel consumption, rated power, operation assumptions, and fuel specific emission factors. Emissions from foreign flagged vessels were developed based on cargo movements and waterways data, vessel speeds, average dead weight tonnage per ship, and assumed cargo capacity factors.

To model the benefits of the proposed standards, EPA applied an engine replacement schedule and new engine standards to the baseline inventory. In this case, no emission reductions are expected beyond the already low levels of HC. Table 13 shows the projected emissions for Category 2 vessels with and without the proposed standards. The anticipated NO_X impacts for the application of MARPOL Annex VI standards to U.S. flagged vessels are also included.

TABLE 13.—CATEGORY 2 EMISSIONS INVENTORY

[Thousand short tons]

Year	HC	NO_X			PM		CO	
	Base	Base	MARPOL Annex VI	Control	Base	Control	Base	Control
2000	11.1	267	265	265	6.1	6.1	34.1	34.1
2010	12.3	295	275	255	6.8	6.6	37.7	36.3
2020	13.6	325	387	206	7.5	6.9	41.7	37.0
2030	15.0	360	309	167	8.3	7.3	46.0	38.3
2040	16.5	397	339	162	9.1	7.9	50.8	41.5

3. Category 3 Engines

The emissions inventory for Category 3 was calculated using the same methodology as for Category 2. EPA believes that some NO_X benefits may be achieved by adopting the MARPOL Annex VI NO_X standard for engines used in U.S. flagged vessels. Table 14 presents projected emissions from Category 3 engines operated in U.S. waters. Note that the reductions here present both the impacts, in the U.S., of U.S. flagged vessels meeting the MARPOL Annex VI NO_X standard and the potential impacts if foreign flagged vessels were to meet the MARPOL Annex VI standard.

TABLE 14.—CATEGORY 3 BASELINE AND PROJECTED EMISSIONS INVENTORY UNDER VARYING IMPLEMENTATION OF MARPOL ANNEX VI CONTROLS

[Thousand short tons]

Year	NO_X			HC	PM	CO
	base	Annex VI applied to U.S.-flag vessels only	Annex VI applied to all vessels	base	base	base
2000	273	272	271	8.1	21.2	25.0
2010	301	290	279	9.0	23.4	27.6
2020	333	310	289	9.9	25.8	30.5
2030	368	338	309	10.9	28.6	33.7
2040	406	372	338	12.1	31.5	37.2

4. Total Impacts

Table 15 contains the baseline annual emissions from marine diesel engines as a whole as well as projections of the annual emissions with the MARPOL Annex VI requirements and proposed standards in place. According to this analysis, the proposed emission limits would result in reductions, beyond the MARPOL Annex VI limits, of 10 percent HC, 28 percent NO_X, 12 percent PM, and 3 percent CO from marine diesel engines in 2020. Nationally, these reductions represents reductions of 1.3 percent NO_X and 0.1 percent PM. Obviously, the percent reduction would be much higher for port areas. This is especially true for San Diego, Beaumont-Port Arthur, San Francisco and similar ports where marine diesel engines account for a large fraction of the NO_X emissions.[48]

[48] Marine diesel engines make up about approximately 17% of the NO_X on a summer day for San Diego, 15% for Beaumont-Port Arthur, and 12% for San Francisco. *See*, Commercial Marine Vessel Contributions to Emission Inventories, Final Report, Submitted by Booz-Allen & Hamilton, Inc., October 7, 1991.

TABLE 15.—EMISSION INVENTORY IMPACTS OF THE PROPOSED RULE

		2000	2010	2020	2030
HC 10^3 short tons	Baseline	31.3	34.8	38.7	43.2
	Controlled	31.3	33.3	35.4	39.3
	Reduction	0%	4%	9%	9%
NO_X 10^3 short tons	Baseline	1,005	1,117	1,244	1,390
	IMO	1,001	1,072	1,162	1,287
	Controlled	1,001	965	819	815
	Reduction	0%	10%	28%	34%
PM 10^3 short tons	Baseline	42.3	46.9	52.2	58.2
	Controlled	42.3	44.1	45.7	50.2
	Reduction	0%	6%	12%	14%
CO 10^3 short tons	Baseline	133	147	165	184
	Controlled	133	146	160	177
	Reduction	0%	1%	3%	4%

In addition to the effect of the proposed standards on direct PM emissions noted above, the proposed standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. As described in Chapter 5 of the Draft RIA, each 100 tons of NO_X reduction results in about a 4-ton reduction in secondary PM. This conversion rate varies from region to region, and is greatest in the West. EPA estimates that the 425,000 tons per year total NO_X reduction projected for marine engines in 2020 would result in about a 17,000 tons per year reduction in secondary PM. This secondary PM reduction is more than double the direct PM reductions for 2020 projected for this proposed rule.

EPA also believes the proposed regulations will tend to reduce noise. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of fuel and air ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO_X formation. Fuel injection changes and other NO_X control strategies therefore typically reduce engine noise, sometimes dramatically.

EPA does not anticipate any negative impacts on energy or safety as a result of this proposed rule. The impact of the proposed standards on energy is measured by the effect on fuel consumption from complying engines. Although it is not expected to be a primary compliance strategy, marine engine manufacturers could retard engine timing to comply with emission limits. This could lead to an increase in fuel consumption in the absence of other changes to the engines. Most of the technology changes anticipated in response to the proposed standards, however, have the potential to reduce fuel consumption as well as emissions. Therefore, on balance, no increase in energy consumption is expected. As far as safety is concerned, EPA believes that marine engine manufacturers will use only proven technology that is currently used in other engines such as nonroad land-based diesel applications, locomotives, and diesel trucks.

B. Economic Impacts

EPA expects that in almost all cases, manufacturers will produce a complying marine engine by adapting an engine that has been designed and certified to meet highway or nonroad emission standards. This analysis considers the cost of these upgrades to the base engines as part of the impact of new marine emission standards; variable costs are applied directly, with an additional fixed cost added to apply the technologies to marine engines. The analysis arrives at the full cost impact by considering changes to turbocharging and aftercooling applicable to marine engines. Full details of EPA's cost analysis can be found in Chapter 4 of the Draft RIA.

1. Methodology

In assessing the economic impact of setting emission standards, EPA has made a best estimate of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. In some cases, however, it is difficult to make a distinction between technologies needed to reduce emissions for compliance with emission standards and those technologies that offer other benefits for improved fuel economy, power density, and other aspects of engine performance. EPA believes that without new emission standards, manufacturers would continue research on and eventually deploy many technological upgrades to improve engine performance or more cost-effectively control emissions. Modifications to fuel injection systems and the introduction of electronic controls are expected to continue, regardless of any change in emission standards, to improve engine performance. This is especially true for marine engines, which generally benefit from the transfer of highway and land-based engine technology improvements. Some further development with a focus on NO_X, HC, and PM emissions will nevertheless play an important role in achieving emission reduction targets.

Because several technology upgrades have benefits that go beyond reducing emissions, a difficulty in assessing the impact of new emission standards is establishing the appropriate technology baseline from which to make projections. Ideally, the analysis would establish the mix of technologies that manufacturers would have introduced absent the changes in emission standards, then make a projection for any additional changes in hardware or calibration required to comply with those standards. This is especially important for marine engines, since technology improvements are often carried over from counterpart land-based engines. The costs of those projected technology and calibration changes would then most accurately quantify the impact of setting new emission standards. While it is difficult to take into account the effect of ongoing technology development, EPA is concerned that assessing the full cost of the anticipated technologies as an impact of the new emission standards would inappropriately exclude from consideration the observed benefits for engine performance, fuel consumption,

and durability.[49] Short of having sufficient data to predict the future with a reasonable degree of confidence, EPA faces the need to devise an alternate approach to quantifying the true impact of the new emission standards. EPA requests comment on the most appropriate way of accounting for these non-emission benefits.

A variety of technological improvements are projected for complying with the new emission standards. Selecting these technology packages requires extensive engineering analysis and judgment. The fact that manufacturers will be applying extensive effort to improve diesel engine technologies across programs ensures that these technologies will develop significantly before reaching production. This ongoing research and development will lead to reduced costs in three ways. First, research will lead to enhanced effectiveness for individual technologies, allowing manufacturers to use simpler packages of emission control technologies than would otherwise be predicted given the current state of development. Similarly, the continuing effort to improve the emission control technologies will include innovations that allow lower-cost production. Finally, manufacturers will focus research efforts on any potential drawbacks, such as increased fuel consumption or maintenance costs, attempting to minimize or overcome any negative effects.

Estimated cost increases are presented as incremental changes in purchase price. The incremental change in purchase price for new engines and equipment is comprised of variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). Total operating costs, including maintenance and fuel consumption, are considered as well. Cost estimates based on these projected technology packages represent an expected incremental cost of engines as they begin to comply with new emission standards. Costs in subsequent years are projected to decrease due to several factors, as described below. Separate projected costs were derived for engines used in five different ranges of rated power; costs were developed for engines near the middle of the listed ranges. All costs are presented in 1998 dollars.

While the following analysis projects a relatively uniform emission control strategy for designing the different categories of engines, this should not suggest that EPA expects a single combination of technologies will be used by all manufacturers. In fact, depending on basic engine emission characteristics, EPA expects that control technology packages will gradually be fine-tuned to different applications. Furthermore, EPA expects manufacturers to use averaging, banking, and trading programs as a means to deploy varying degrees of emission control technologies on different engines. EPA nevertheless believes that the projections presented here provide a cost estimate representative of the different approaches manufacturers may ultimately take.

2. Engine Technologies

The land-based engines that serve as the base engines for marine diesel applications will be changing as a result of new emission standards adopted for nonroad and locomotive engines. Most new land-based nonroad and locomotive engines rated over 37 kW will be subject to two new tiers of standards spanning the next ten years. These engines will be designed, manufactured, and certified to have reduced emissions. The technological challenge for developing compliant marine engines is therefore to make the necessary engine modifications for marine applications without substantially increasing emission levels, while ensuring that these emission levels are maintained over the range of potential marine operation.

Manufacturers of Category 1 engines are expected to comply with the proposed Tier 2 emission limits by conducting basic engine modifications, upgrading fuel systems, adding some degree of electronic controls, or improving aftercooling systems. Manufacturers of Category 2 engines are expected to redesign combustion chambers, improve high-pressure electronic fuel injection systems, and upgrade or add turbocharging and aftercooling. For Tier 3 emission limits, all manufacturers are expected to rely on some form of electronically controlled common rail fuel system with separate-circuit aftercooling and exhaust gas recirculation.

Except for the aftercooling changes, hardware improvements for nonroad and locomotive engines should be transferrable to marine engines, in many cases with some degree of adaptation. The analysis includes a substantial amount of development time to make adjustments for turbocharger matching, reprogramming electronic control software, optimizing for emission performance over the not-to-exceed zone, and other changes that may be needed to prepare an engine for marine applications. Also, because manufacturers will in many cases be producing a new engine design outside of the normal product development cycle, extensive development costs are included to design a marine version of a base engine, taking into account not only direct expenses for controlling emissions, but also considering some need for re-optimizing performance. Finally, since marine engines rely on seawater, not the ambient air, for rejecting heat from the engine and aftercooler, the cost of adding these systems are considered separately.

3. Estimated Costs

The projected costs of these new technologies for meeting the new emission limits are itemized in the Draft RIA and summarized in Table 16. Anticipated incremental cost impacts of the Tier 2 emission limits for the first years of production range from $2,600 to $54,000 per engine, in general with proportionally higher projected costs for larger engines. Estimated costs for Tier 3 emission limits, which are calculated incremental to the Tier 2 projections, are similar, with first-year costs ranging from $5,300 to $45,000. Long-term impacts on engine costs are expected to be much lower, dropping to levels between $1,100 and $11,000 for Tier 3 engines. Most of this cost reduction is accounted for by the fact that development time and other fixed costs dominate the cost analysis, but disappear after the projected five-year amortization period.

The cost analysis also includes an estimated burden resulting from the need to do additional maintenance work during periodic rebuilds. Complying engines will be equipped with technologies that will require replacement of hardware that is either more expensive than from earlier models, or that is only used because of emission standards. Using typical rebuild schedules, the analysis projects incremental costs for multiple rebuilds, resulting in net-present-value costs that range from $700 to $12,000. In addition to rebuild cost impacts, Table 16 includes an estimated cost burden for conducting production line testing of 1 percent of total industry-wide production.

Ship and boat builders are not expected to face any increase in costs as a result of the new emission standards. Commercial vessels are built to accommodate a wide range of engines. Customers are therefore able to order a vessel by choosing from a broad selection of engine models. Because

[49] While EPA does not anticipate widespread, marked improvements in fuel consumption, small improvements on some engines may occur.

there is a degree of customizing in the construction of commercial vessels, EPA does not expect that future production will be sensitive to the anticipated changes in engine design resulting from the new emission standards. EPA requests comment on the extent to which commercial vessel construction may be affected by new emission standards.

TABLE 16.—PROJECTED INCREMENTAL COSTS BY POWER RATING (KW)

Power rating (kW)	Tier	Incremental engine cost*	Incremental operating cost per engine (npv)
37–225	Tier 2	$2,577	$737
	Tier 3 (years 1–5)	5,303	829
	Tier 3 (year 6 and later)	1,112	829
225–560	Tier 2	4,249	1,128
	Tier 3 (years 1–5)	6,210	1,119
	Tier 3 (year 6 and later)	1,829	1,119
560–1000	Tier 2	25,319	207
	Tier 3 (years 1–5)	25,507	2,647
	Tier 3 (year 6 and later)	5,601	2,647
1000–2000	Tier 2	22,725	635
	Tier 3 (years 1–5)	26,537	4,519
	Tier 3 (year 6 and later)	10,659	4,519
2000–5000	Tier 2	54,103	12,430
	Tier 3 (years 1–5)	44,583	2,874
	Tier 3 (year 6 and later)	3,169	2,874

*Tier 3 costs are calculated incremental to Tier 2 estimates.

Characterizing these estimated costs in the context of their fraction of the total purchase price and life-cycle operating costs is helpful in gauging the economic impact of the new standards. Although the incremental cost projections in Table 16 increase dramatically with increasing power rating, they in fact represent a comparable price change relative to the total price of the engine. The estimated first-year cost increases are all at most 3 percent of estimated vessel prices, with even lower long-term effects, as described above.

Since vessel owners also decide between replacing and rebuilding existing engines, the cost impact relative to engine price is also relevant. EPA estimates that Tier 3 cost impacts will approach 10 or 15 percent of total engine prices. Once fixed costs are amortized, the cost impact drops to a range between 1 and 5 percent of total engine prices. EPA requests comment on the likelihood that these costs will affect normal rates of turnover to new engines.

4. Aggregate Costs to Society

The above analysis presents unit cost estimates for each power category. These costs represent the total set of costs borne by engine manufacturers to comply with emission standards. With current data for engine and vessel sales for each category and projections for the future, these costs can be translated into projected direct costs to the nation for the new emission standards in any year. Aggregate costs are estimated at about $19 million in the first year the new standards apply, increasing to a peak of about $57 million in 2008 as increasing numbers of engines become subject to the new standards. The following years show a drop in aggregate costs as the per-unit cost of compliance decreases, resulting in aggregate costs of about $14 million in 2015, followed by slowly growing costs due to increasing sales over time.

5. Sensitivity Analysis

There has been some concern expressed that the technologies used to meet emission requirements for land-based engines will be less effective at controlling emissions from marine engines. Some of the reasons suggested for needing a more aggressive approach include the change in duty cycle, the effects of ''marinizing'' an engine, and the need to comply with emission limits across not-to-exceed zones. Manufacturers could rely on injection timing retard as a technology option for achieving an additional measure of NO_X control. Also, manufacturers may choose, for example, to avoid the high R&D costs of implementing a new technology for an engine family with low sales volume by relying on timing retard as a lower-cost alternative. In addition, manufacturers using EGR may need to add exhaust gases during medium-and high-load operation to the point that there would be an increase in fuel consumption that cannot be offset by improvements such as better control of fuel injection. EPA therefore conducted a sensitivity analysis to show the costs associated with a fuel penalty resulting from relying on retarded timing or EGR.

Because the requirement to control emissions throughout an engine's operating range poses the greatest challenge at low speeds and loads, EPA calculated the costs of increasing fuel consumption by one percent at modes 2 and 3 and by three percent at mode 4 (lightest load operation). Using the weightings for the composite duty cycle, increased life-cycle fuel consumption from this net 1.0 percent fuel penalty can be calculated and then discounted to the present at a 7 percent rate. The resulting estimated net-present-value cost increase ranges from $400 for a 100 kW engine to $19,000 for a 3000 kW engine. Considering the established effectiveness of timing retard as a strategy to control NO_X emissions, this may be considered a viable approach, either as a substitute or a supplemental technology.

C. Cost-effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed marine standards for the same nominal power ratings of marine engines and vessels highlighted earlier in this section. This analysis has been performed only for Category 1 and Category 2 marine engines, since the proposed regulation would not apply to Category 3 engines. Chapter 6 of the Draft RIA contains a more detailed discussion of the cost-effectiveness analysis.

As described in the Draft RIA, neither costs nor emission benefits were attributed to the not-to-exceed provisions included in this proposal. The calculated cost-effectiveness of the proposed emission limits presented here therefore includes all the anticipated effects on costs and emission reductions.

1. Tier 2

For determining the cost-effectiveness of the Tier 2 portion of this proposal, only benefits beyond those achieved by the MARPOL Annex VI standard are considered. EPA believes this is a conservative estimate because EPA attributed all of the costs of the technology associated with the Tier 2 levels to this action and did not attribute any of these costs to the MARPOL Annex VI standard. For the sake of this analysis, EPA assumed that all of the increased costs were incurred to achieve HC+NO_X benefits. NO_X reductions represent approximately 98 percent of the total HC+NO_X emission reductions expected from the proposed standards. Table 17 presents the cost-effectiveness of the Tier 2 standards.

TABLE 17.—COST-EFFECTIVENESS OF THE PROPOSED MARINE TIER 2 STANDARDS FOR HC AND NO_X

Nominal power (kW)	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefits
100	$1,938	4.3	$449	$738
400	3,016	26	116	201
750	22,713	80	283	317
1500	20,386	267	76	86
3000	47,754	829	58	76

Weighting the projected cost and emission benefit numbers presented above by the populations of the individual power categories, EPA calculated the cost-effectiveness of the proposed HC+NO_X standards for Category 1 and 2 both separately and combined. Table 18 contains the resulting aggregate cost-effectiveness results for the proposed Tier 2 standards.

TABLE 18.—AGGREGATE COST-EFFECTIVENESS FOR THE PROPOSED MARINE TIER 2 STANDARDS FOR HC AND NO_X

	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness
Category 1	$3,669	24	$156
Category 2	47,754	829	58
Combined	4,617	41	113

While the cost estimates described under the Economic Impacts do not take into account the observed value of performance improvements in the field, these non-emission benefits should be taken into account in the calculation of cost-effectiveness. EPA believes that an equal weighting of emission and non-emission benefits is justified for those technologies which clearly have substantial non-emission benefits, namely electronic controls, fuel injection changes, turbocharging, and engine modifications. For some or all of these technologies, a greater value for the non-emission benefits could likely be justified. This has the effect of halving the cost for those technologies in the cost-effectiveness calculation. The cost-effectiveness values in this document are based on this calculation methodology. Cost-effectiveness values are shown without adjustment for non-emission benefits in Tables 17 and 19 for comparison purposes. EPA requests comment on this approach.

2. Tier 3

As described above in the preceding section, the projected costs of complying with the proposed standards will vary by the rated power and model year (i.e., year 1 versus year 6). Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted costs, emission reductions, and cost-effectiveness of the marine Tier 3 HC+NO_X standards are shown in Table 19 for the same model years discussed in the preceding section. The cost-effectiveness of the proposed Tier 3 standards has been calculated incrementally to the costs and benefits associated with the proposed Tier 2 standards. This analysis was performed similarly to the Tier 2 analysis. According to this analysis, the cost-effectiveness of the proposed Tier 3 program is roughly equivalent to that of the proposed Tier 2 program. Table 19 presents the cost-effectiveness results for the five nominal power ratings.

TABLE 19.—COST-EFFECTIVENESS OF THE PROPOSED MARINE TIER 3 STANDARDS FOR HC AND NO_X

Nominal power (kW)	Model year grouping	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefits
100	1 to 5	$4,831	4.2	$1,155	$1,407
	6+	1,166		279	451
400	1 to 5	5,804	30	196	236
	6+	1,726		58	99
750	1 to 5	23,834	77	308	351
	6+	4,831		62	103
1500	1 to 5	24,279	136	178	216
	6+	8,402		62	112

TABLE 19.—COST-EFFECTIVENESS OF THE PROPOSED MARINE TIER 3 STANDARDS FOR HC AND NO_X—Continued

Nominal power (kW)	Model year grouping	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefits
3000	1 to 5	36,652	290	127	163
	6+	4,553		16	20

As with Tier 2, EPA calculated the cost-effectiveness of the proposed Tier 3 HC+NO_X standards for Category 1 and 2 both separately and combined by weighting the projected cost and emission benefits by the populations of the individual power categories. Table 20 contains the resulting aggregate cost-effectiveness results for the proposed Tier 3 standards.

TABLE 20.—AGGREGATE COST-EFFECTIVENESS FOR THE PROPOSED MARINE TIER 3 STANDARDS FOR HC AND NO_X

	Model year grouping	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness
Category 1	1 to 5	$6,503	20	$327
	6+	1,709		87
Category 2	1 to 5	36,652	290	127
	6+	4,553		16
Combined	1 to 5	7,151	26	278
	6+	1,799		70

3. Comparison to Other Programs

In an effort to evaluate the cost-effectiveness of the HC+NO_X controls for marine engines, EPA has summarized the cost-effectiveness results for five other recent EPA mobile source rulemakings that required reductions in NO_X (or NMHC+NO_X) emissions. The heavy-duty vehicle portion of the Clean Fuel Fleet Vehicle Program yielded a cost-effectiveness of approximately $1,500 per ton of NO_X. The most recent NMHC+NO_X standards for highway heavy-duty diesel engines yielded a cost-effectiveness of $100–$600 per ton of NMHC+NO_X. The newly adopted standards for locomotive engines yielded a cost-effectiveness of $160–$250 per ton of NO_X. Finally, the recent standards for nonroad engines reported a cost-effectiveness of $410–$600 per ton. The cost-effectiveness of the new HC+NO_X standards for marine diesel engines presented above is more favorable than the cost-effectiveness than any of the other recent programs.

EPA has also summarized the cost-effectiveness results for three other recent EPA mobile source rulemakings that required reductions in PM emissions. The cost-effectiveness of the most recent urban bus engine PM standard was estimated to be $10,000–$16,000 per ton, and the cost-effectiveness of the urban bus retrofit/rebuild program was estimated to be approximately $25,000 per ton. The nonroad FRM reported a cost-effectiveness for PM, using the same conservative method used here for marine, of $2,300 per ton. The PM cost-effectiveness of the new emission standards presented above is more favorable than that of either of the urban bus programs and is comparable to the nonroad rule.

For comparison to other PM control strategies, EPA has also analyzed the PM cost-effectiveness of the new standards if any of the costs were attributed to PM. EPA conservatively made these calculations as if half of the increased costs were attributable to PM control. This approach effectively double-counts these costs, since the full cost of the program is assessed in the calculation of cost-effectiveness for NO_X+HC. This aggregate discounted lifetime cost-effectiveness represents the highest figure that could be expected for cost-effectiveness of the new standards and was calculated to provide an indication of the upper bound of PM cost-effectiveness values. The resulting fleet-wide discounted lifetime cost-effectiveness of the proposed PM standards is approximately $600–$2,600 per ton. This cost-effectiveness is much better than for the urban bus PM standard and the urban bus retrofit/rebuild program and is comparable to the nonroad Tier 2 standards.

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new standards are expected to have beneficial impacts with respect to crop damage, secondary particulate formation, acid deposition, eutrophication, visibility, and forests, as described earlier. Because of the difficulty of quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits. However, based on an analysis of existing studies that have estimated the value of such benefits in the past, the Agency believes that the actual monetary value of the multiple environmental and public health benefits produced by large NO_X reductions similar to those projected under this final rule will likely be greater than the estimated compliance costs.

IX. Public Participation

A. Comments and the Public Docket

Publication of this document opens a formal comment period for this proposal. EPA will accept comments for the period indicated under **DATES** above. The Agency encourages all parties that have an interest in the program described in this document to offer comment on all aspects of this rulemaking. Throughout this proposal are requests for specific comment on various topics.

EPA attempted to incorporate all the comments received in response to the ANPRM, though not all comments are addressed directly in this document. Anyone who has submitted comments on the ANPRM, or any of EPA's previous publications related to marine

diesel engines, and feels that those comments have not been adequately addressed is encouraged to resubmit comments as appropriate.

The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. The Agency also encourages commenters that disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–97–50 before the date specified above.

Commenters wishing to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

The Agency will hold a public hearing as noted under **DATES** above. Any person desiring to present testimony at the public hearing is asked to notify the contact person listed above at least five business days prior to the date of the hearing. This notification should include an estimate of the time required for the presentation of the testimony and any need for audio/visual equipment. EPA suggests that sufficient copies of the statement or material to be presented be available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material prior to the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearing for scheduling the order of testimony. A written transcript of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing to allow submittal of supplementary information.

X. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposal is a ''significant regulatory action.'' If implemented as proposed, EPA's estimates show total societal costs for most years between $15 million and $20 million, with peak costs reaching about $57 million in 2008. This action was submitted to the Office of Management and Budget for review and a Draft RIA has been prepared and is available in the docket associated with this rulemaking. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this proposal.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For the reasons set out below, this proposed rule would not have a significant impact on a substantial number of small entities.

EPA has identified five types of entities that may be affected by the proposed rule: engine manufacturers, engine dressers, post-manufacture marinizers, commercial vessel builders, and commercial boat builders. A sixth group of entities, recreational vessel builders, is not considered in this analysis because, as described in Section III.B.1, above, EPA is proposing to exempt these engines from the proposed emission control program.

Using the Small Business Administration definition of small for this industry sector (fewer than 500 employees), one group of entities, marine engine manufacturers, presents no small business impacts concerns because all of the manufacturers are large.

There are numerous entities with fewer than 500 employees that manufacture commercial vessels and commercial boats.[50] However, the proposed emission control program is expected to impose very little additional cost on these entities. This is because, according to discussions with several of these vessel and boat builders as well as with one of their trade associations, the production of commercial vessels is flexible enough to accommodate physical changes to the engine without vessel redesign.

As described in Section III.C.2 above, engine dressers are companies that adapt a land-based diesel engine for use in the marine environment by adding mounting hardware, a marine cooling system, a generator, or propeller gears, but without changing the engine in ways that may affect emissions (see Section III.B.2, above). These companies are typically small, regional companies, with few employees and relatively small annual sales in terms of both dollars and units. Because these companies are proposed to be exempt from the certification and compliance programs set out in today's action, EPA believes that they will incur very minor costs as a result of the proposed program. Their only compliance burden consists of an annual report that must be submitted to

[50] Commercial vessels are larger merchant vessels, typically exceeding 400 feet in length and generally used in waterborne trade and/or passenger transport. Commercial boats are smaller service, industrial, and fishing vessels generally used in inland and coastal waters. A more in-depth description of these industry sectors in contained in ''Industry Characterization: Commercial Marine Vessel Manufacturers'' prepared by ICF Incorporated for US Environmental Protection Agency, Contract No. 68–C5–0010, Work Assignment 211, September 1998 (Docket No. A–97–50).

EPA to demonstrate that they meet the criteria for the engine dresser exemption described in Section III.B.2. This reporting requirement is expected to impose very little additional cost on these companies.

The group of small entities likely to be affected by the proposed rule are post-manufacture marinizers (PMM). Unlike engine dressers, PMM modify a land-based engine for use in the marine environment by changing it in ways that may affect emissions. This includes, but is not limited to, changes to the fuel or cooling systems. The following discussion of the impacts on small post-manufacture marinizers is derived from an impact assessment prepared for this rulemaking by ICF Incorporated and discussions with small PMM.[51]

Through conversations with engine manufacturers and vessel builders, EPA initially identified twelve small post-manufacture marinizers. Four of these were subsequently eliminated from the Agency's PMM impact analysis (two were eliminated because there were subsidiary companies of other companies on the list; two others were eliminated because they do not produce Category 1 marine engines). The eight remaining companies were used to develop a model small company, for purposes of exploring the impact of this rulemaking. Using this model small company as a guide, it was estimated that average compliance costs would range from 1.3 percent to 3.9 percent, depending on the compliance cost scenario used.[52] EPA thus concludes that, provided the compliance burdens of these companies can be reduced, an impact of approximately 1.3 percent can be anticipated. As discussed above, this proposal contains many flexibility provisions for small post-manufacture marinizers, including an expanded definition of engine family, which is expected to reduce the number of certification tests these companies will be required to do; a streamlined certification process, beginning the year after the implementation of the emissions limits provided the emissions of their highest emitting engine has not changed; an extra year for compliance; and special hardship provisions.

Because the number of companies examined is so small, EPA also performed an analysis using company-specific data instead of the model company. According to this data, in the least costly compliance scenario, four small PMM may be affected by more than 3 percent of sales, 2 companies by 1–3 percent of sales, and 2 companies less than 1 percent of sales,. Of the four companies originally projected to be affected by more than 3 percent of sales, two were eliminated because they are, in fact, engine dressers; hence, the original estimate of 3 percent is an overstatement of costs for these companies. As discussed above, engine dressers would only be subject to a reporting requirement, which is expected to impose very little additional cost. Consequently, it is expected that two small companies may be affected by more than 3 percent of annual sales. However, it may be possible for these companies to reduce the impacts of this rule further. For example, these companies could marinize a cleaner engine, thus reducing the design and development costs associated with bringing a previous tier engine to the proposed emission limits. Alternatively, they may be able to work more closely with the base engine manufacturer to reduce the need for extensive redesign of their marinization process.

Subsequent to completion of the ICF impact assessment, EPA identified several other small PMM (see the Draft Regulatory Assessment for a complete list of small PMM). However, analysis of their financial data does not change the above conclusion that most small PMM could avoid high compliance costs by applying the proposed small PMM flexibility provisions. Therefore, EPA believes it is appropriate to certify this rulemaking as not having a significant economic impact on a substantial number of small companies.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts. The Agency is continuing its efforts to notify other small business engine and equipment manufacturers of this rule and inform them of their opportunities for providing feedback to the Agency.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request has been prepared by EPA, and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

The information being collected is to be used by EPA to ensure that new marine diesel engines comply with applicable emissions standards through certification requirements and various subsequent compliance provisions.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 589 hours per response, with collection required annually. The estimated number of respondents is 32. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 11, 1998, a comment to OMB is best ensured of having its full effect if OMB

[51] Characterization and Small Business Impact Assessment for Small and Large Marine Compression Ignition Engine Manufacturers/Marinizers, prepared by ICF Incorporated for U.S. Environmental Protection Agency, Contract Number 68–C5–0010, Work Assignment Number 211, September 1998 (Air Docket A–97–50).

[52] Three cost scenarios were explored: $100,000, $200,000, and $300,000 per engine family.

receives it by January 11, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L.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 of 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The rule does not impose any enforceable duties on State, local, or tribal governments, i.e., they manufacture no engines and are therefore not required to comply with the requirements of this rule. For the same reason, EPA has determined that this rule also contains no regulatory requirements that might significantly or uniquely affect small governments. EPA projects that annual economic effects will be far less than $100 million. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. 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 doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. 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 involves technical standards. As described in Section V.E. above, ISO standards are a potentially applicable voluntary consensus standard. The Agency has decided, however, not to propose ISO procedures in this rulemaking. The Agency has determined that these procedures would be impractical because they rely too heavily on reference testing conditions. Because the test procedures in these regulations need to represent in-use operation typical of operation in the field, they must be based on a range of ambient conditions. EPA has determined that the ISO procedures are not broadly usable in their current form, and therefore cannot be adopted by reference. EPA has instead chosen to rely on the procedures outlined in 40 CFR Part 89, Subparts D and E. EPA is hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could then be adopted by reference. EPA also expects that any development of revised test procedures will be done in accordance with ISO procedures and in a balanced manner and thus include the opportunity for involvement of a range of interested parties (potentially including parties such as industry, EPA, state governments, and environmental groups) so that the resulting procedures can represent these different interests.

F. Protection of Children

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to a rule that is determined to be ''economically significant,'' as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, 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 Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. Moreover, this rule is determined not to be economically significant under Executive Order 12866.

G. Enhancing the Intergovernmental Partnership under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This rule would not create a mandate on State, local or tribal governments. The rule would not impose any enforceable duties on these entities, because they do not manufacture any engines that are subject to this rule. This rule would be implemented at the federal level and impose compliance obligations only on private industry. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule would not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule would be implemented at the federal level and impose compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. Statutory Authority

In accordance with section 213(a) of the Clean Air Act, 42 U.S.C. 7547(a), EPA conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991. Based on the results of that study, EPA determined that emissions of NO_X, VOCs (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires EPA to promulgate (and from time to time revise) emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in EPA's judgment cause or contribute to such air pollution. EPA has determined that marine diesel engines rated over 37 kW ''cause or contribute'' to such air pollution. (See the June 1994 final rule and Section II.A. above).

Where EPA determines that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that EPA determines cause or contribute to such air pollution. In the June 1994 final rule, EPA made this determination for emissions of PM and smoke from nonroad engines in general and for diesel nonroad engines rated over 37 kW. With this document, EPA is making the same findings for marine diesel engines. (See Section II.A. above).

List of Subjects in 40 CFR Part 94

Environmental protection, Administrative practice and procedure, Confidential business information, Diesel fuel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: November 24, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended by adding part 94 as set forth below.

PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION-IGNITION ENGINES

Subpart A—General Provisions for Emission Regulations for Marine Compression-Ignition Engines

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94.3 Abbreviations.
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Subpart D—Certification Averaging, Banking, and Trading Provisions

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Subpart F—Production Line Testing

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94.510 Compliance with criteria for production line testing.
94.511 [Reserved]
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94.513 Request for public hearing.
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Subpart L—General Enforcement Provisions and Prohibited Acts

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Appendix I to Part 94—Emission-Related Engine Parameters and Specifications

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—General Provisions for Emission Regulations for Compression-ignition Marine Engines

§ 94.1 Applicability.

(a) Except as noted in paragraphs (b) and (c) of this section, the provisions of this part apply to manufacturers, rebuilders, owners and operators of:

(1) Marine compression-ignition propulsion engines manufactured on or after January 1, 2004;

(2) Marine compression-ignition auxiliary engines manufactured on or after January 1, 2004; and

(3) Marine vessels manufactured on or after January 1, 2004 and which include a compression ignition engine.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply with respect to the engines identified in paragraphs (a)(1) through (3) of this section where such engines are:

(1) Category 3 marine engines;

(2) Engines rated below 37 kW; or

(3) Engines on foreign vessels.

(c) The provisions of subpart L of this part apply to all persons with respect to the engines identified in paragraphs (a)(1) through (3) of this section.

(d) The provisions of this part do not apply to any persons with respect to the engines not identified in paragraphs (a)(1) through (3) of this section.

(e) The prohibition specified in § 94.1103(a)(6) applies to all persons with respect to recreational marine engines. Notwithstanding the provision of paragraph (c) of this section, requirements or prohibitions other than the prohibition specified in § 94.1103(a)(6) of this part do not apply with respect to recreational marine engines.

§ 94.2 Definitions.

(a) The definitions of this section apply to this subpart. They also apply to all subparts of this part, except where noted otherwise.

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

Act means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Adjustable Parameter means any device, system, or element of design which is physically or electronically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing.

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Aftertreatment system or *aftertreatment component* or *aftertreatment technology* means any system or component or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Applicable standard means a standard to which an engine is subject; or, where an engine is certified to another standard or FEL, applicable standard means the other standard or FEL to which the engine is certified, as allowed by § 94.8. This definition does not apply to subpart D of this part.

Auxiliary means relating to a marine engine that is not a propulsion engine.

Auxiliary emission control device (AECD) means any element of design which senses temperature, vessel speed, engine RPM, atmospheric pressure, manifold pressure or vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system (including, but not limited to injection timing); or any other feature that causes in-use emissions to be higher than those measured under test conditions.

Averaging means the exchange of emission credits among engine families within a given manufacturer's product line.

Banking means the retention of emission credits by a credit holder for use in future calendar year averaging or trading as permitted by the regulations in this part.

Base engine means a land-based engine to be marinized, as configured prior to marinization.

Blue Sky Series engine means an engine meeting the requirements of § 94.7(e).

Calibration means the set of specifications, including tolerances, specific to a particular design, version, or application of a component, or components, or assembly capable of functionally describing its operation over its working range. This definition does apply to subpart B of this part.

Category 1 means relating to a marine engine with a rated power greater than or equal to 37 kilowatts and a specific engine displacement less than 5.0 liters per cylinder.

Category 2 means relating to a marine engine with a specific engine displacement greater than or equal to 5.0 liters per cylinder but less than 20 liters per cylinder.

Category 3 means relating to a marine engine with a specific engine displacement greater than or equal to 20 liters per cylinder.

Commercial marine engine means a marine engine that is not a recreational marine engine.

Compression-ignition means relating to a type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle to regulate intake air flow for controlling power during normal operation is indicative of a compression-ignition engine.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine

calibration, and other parameters as designated by the Administrator.

Constant-speed engine means an engine that is governed to operate only at a single rated speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or engine lubrication system.

Defeat device means an AECD or other control feature that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal engine operation and use, unless the AECD or other control feature has been identified by the manufacturer in the application for certification, and:

(1) Such conditions are substantially represented by the portion of the applicable test cycle of § 94.105 during which the applicable emission rates are measured;

(2) The need for the AECD or other control feature is justified in terms of protecting the engine or vessel against damage or accident; or

(3) The AECD or other control feature does not go beyond the requirements of engine starting.

Deterioration factor means the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point expressed as either: the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low mileage test point (for multiplicative deterioration factors); or the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point (for additive deterioration factors).

Diesel fuel means any fuel suitable for use in diesel engines which is commonly or commercially known or sold as diesel fuel.

Dress means to modify a land-based engine for use in a marine vessel, where such modification would not reasonably be expected to potentially affect emissions. This definition does not apply for engines that are not certified to Tier 2 or later standards.

Dresser means any entity that dresses an engine.

Emission control system means those devices, systems or elements of design which control or reduce the emission of substances from an engine. This includes, but is not limited to, mechanical and electronic components and controls, and computer software.

Emission credits means the amount of emission reduction or exceedance, by an engine family, below or above the emission standard, respectively, as calculated under subpart D of this part. Emission reductions below the standard are considered as ''positive credits,'' while emission exceedances above the standard are considered as ''negative credits.'' In addition, ''projected credits'' refer to emission credits based on the projected applicable production/sales volume of the engine family. ''Reserved credits'' are emission credits generated within a calendar year waiting to be reported to EPA at the end of the calendar year. ''Actual credits'' refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA.

Emission-data engine means an engine which is tested for purposes of emission certification or production line testing.

Emission-related defect means a defect in design, materials, or workmanship in a device, system, or assembly which affects any parameter or specification enumerated in Appendix I of this part.

Emission-related maintenance means that maintenance which substantially affects emissions or which is likely to affect the deterioration of the engine or vessel with respect to emissions.

Engine family means a group of engine configurations that are expected to have similar emission characteristics throughout the useful lives of the engines (see § 94.204), and that are (or were) covered (or requested to be covered) by a specific certificate of conformity.

Engineering analysis means a summary of scientific and/or engineering principles and facts that support a conclusion made by a manufacturer, with respect to compliance with the provisions of this part.

EPA Enforcement Officer means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator or his/her designee.

Exhaust emissions means substances (i.e., gases and particles) emitted to the atmosphere from any opening downstream from the exhaust port or exhaust valve of an engine.

Exhaust gas recirculation means an emission control technology that reduces emissions by routing gases that had been exhausted from the combustion chamber(s) back into the engine to be mixed with incoming air prior to or during combustion. The use of valve timing to increase the amount of residual exhaust gas in the combustion chamber(s) that is mixed with incoming air prior to or during combustion is not considered to be exhaust gas recirculation for the purposes of this part.

Family Emission Limit (FEL) means an emission level declared by the certifying manufacturer to serve in lieu of an otherwise applicable emission standard for certification and compliance purposes in the averaging, banking and trading program. FELs are expressed to the same number of decimal places as the applicable emission standard.

Foreign trade vessel means a vessel that spends less than 25 percent of its operating time within 320 nautical kilometers of U.S. territory, and which does not operate solely between the United States, Canada, Mexico, Bermuda, or the Bahamas.

Foreign vessel means a vessel of foreign registry or a vessel operated under the authority of a country other than the United States.

Fuel system means the combination of fuel tank(s), fuel pump(s), fuel lines and filters, pressure regulator(s), and fuel injection components, fuel system vents, and any other component involved in the delivery of fuel to the engine.

Green Engine Factor means a factor that is applied to emission measurements from an engine that has had little or no service accumulation. The Green Engine Factor adjusts emission measurements to be equivalent to emission measurements from an engine that has had approximately 300 hours of use.

Identification number means a specification (for example, model number/serial number combination) which allows a particular engine to be distinguished from other similar engines.

IMO NO_X Technical Code means the ''Technical Code on Control of Emission of Nitrogen Oxides From Marine Diesel Engines'', as adopted on September 26, 1997 by the International Maritime Organization in conference Resolution 2, Conference of the Parties to the International Convention for the Prevention of Pollution from Ship, 1973 as modified by the protocol of 1978 relating thereto (reported in MP/Conf. 3/35, 22 October 1997). The IMO NO_X Technical Code has been incorporated by reference at § 94.5 of this part.

Importer means an entity or person who imports engines from a foreign country into the United States (including its territories).

Intermediate Speed means peak torque speed if peak torque speed occurs from 60 to 75 percent of rated speed. If peak torque speed is less than 60 percent of rated speed, intermediate speed means 60 percent of rated speed.

If peak torque speed is greater than 75 percent of rated speed, intermediate speed means 75 percent of rated speed.

Low hour engine means an engine during the interval between the time that normal assembly operations and adjustments are completed and the time that 300 additional operating hours have been accumulated (including hours accumulated during emission testing, if performed).

Malfunction means a condition in which the operation of a component in an engine occurs in a manner other than that specified by the certifying manufacturer (e.g., as specified in the application for certification); or the operation of engine in that condition.

Manufacturer means any person engaged in the manufacturing or assembling of new engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines. The term manufacturer includes post-manufacturer marinizers, but does not include any dealer with respect to new engines received by such person in commerce.

Marine means relating to a vessel or an engine that is installed or intended to be installed on a vessel.

Marine engine means a diesel engine that is installed or intended to be installed on a vessel. This definition does not include portable auxiliary engines for which the fueling, cooling and exhaust systems are not integral parts of the vessel.

Marine vessel has the meaning specified in the General Provisions of the United States Code, 1 U.S.C. 3.

Maximum rated power means the maximum brake power output of an engine.

Method of aspiration means the method whereby air for fuel combustion enters the engine (e.g., naturally aspirated or turbocharged).

Model year means the manufacturer's annual new model production period which includes January 1 of the calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. Where a manufacturer has no annual new model production period, model year means calendar year.

New marine engine means:

(1)(i) An engine, the equitable or legal title to which has never been transferred to an ultimate purchaser;

(ii) An engine placed in a vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(iii) An engine that has not been placed into service on a vessel.

(2) Where the equitable or legal title to an engine or vessel is not transferred to an ultimate purchaser prior to its being placed into service, the engine ceases to be new after it is placed into service.

(3) With respect to imported engines, the term ''new marine engine'' means a engine that is not covered by a certificate of conformity under this part at the time of importation, and that was manufactured after the compliance date of the emission standards in this part which is applicable to such engine (or which would be applicable to such engine had it been manufactured for importation into the United States).

New vessel means a vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, the vessel ceases to be new when it is placed into service.

Nonconforming marine engine means a marine engine which is not covered by a certificate of conformity prior to importation or being offered for importation (or for which such coverage has not been adequately demonstrated to EPA); or a marine engine which was originally covered by a certificate of conformity, but which is not in a certified configuration, or otherwise does not comply with the conditions of that certificate of conformity. (Note: Domestic marine engines which are not covered by a certificate of conformity prior to their introduction into U.S. commerce are considered to be noncomplying marine engines.)

Oxides of nitrogen means nitric oxide and nitrogen dioxide. Oxides of nitrogen are expressed quantitatively as if the nitric oxide were in the form of nitrogen dioxide (oxides of nitrogen are assumed to have a molecular weight equivalent to nitrogen dioxide).

Post-manufacture marinizer means a person who produces a marine engine by substantially modifying an engine, whether certified or uncertified, complete or partially complete, and is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine. For the purpose of this definition, ''substantially modify'' means changing a Tier 2 or later engine in a way that could reasonably be expected to potentially change engine emission characteristics, or changing an uncertified or Tier 1 in any way. Vessel manufacturers that substantially modify engines are post-manufacturer marinizers.

Power assembly means the components of an engine in which combustion of fuel occurs, and consists of the cylinder, piston and piston rings, valves and ports for admission of charge air and discharge of exhaust gases, fuel injection components and controls, cylinder head and associated components.

Presentation of credentials means the display of the document designating a person as an EPA enforcement officer.

Primary fuel means that type of fuel (e.g., petroleum distillate diesel fuel) that is expected to be consumed in the greatest quantity (volume basis) when the engine is operated in use.

Propulsion means relating to an engine that moves a vessel through the water or directs the movement of a vessel.

Rated power means the maximum brakepower output of an engine.

Rated speed is the maximum test speed defined in § 94.107.

Rebuilder means any person that rebuilds or remanufactures an engine.

Recreational marine engine means a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel, and which is permanently labeled as follows:

''THIS RECREATIONAL ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS FOR NONRECREATIONAL VESSELS. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''

Recreational vessel means a vessel being manufactured or operated primarily for pleasure, or being leased, rented or chartered to another for the latter's pleasure (except where the vessel is leased, rented, or chartered for more than six passengers). Vessels for hire which can carry more than six passengers, whether or not they ever actually do, are not recreational vessels. For this definition the term ''operated primarily for pleasure,'' does not include vessels used solely for competition or used at any time in any other way to generate income or revenue in any way not associated with the hiring out of the vessel to other people for their pleasure.

Service life means the total life of an engine. Service life begins when the engine is originally manufactured and continues until the engine is permanently removed from service.

Small manufacturer means a manufacturer that is classified as a small business by the Small Business Administration.

Specific emissions means emissions expressed on the basis of observed brake

power, using units of g/kW-hr. Observed brake power measurement includes accessories on the engine if these accessories are required for running an emission test (except for the cooling fan). When it is not possible to test the engine in the gross conditions, for example if the engine and transmission form a single integral unit, the engine may be tested in the net condition. Power corrections from net to gross conditions will be allowed with prior approval of the Administrator.

Specified by a certificate of conformity or *specified in a certificate of conformity* means stated or otherwise specified in a certificate of conformity or an approved application for certification.

Test engine means an engine in a test sample.

Test sample means the collection of engines or vessels selected from the population of an engine family for emission testing.

Tier 2 means relating to an engine subject to the Tier 2 emission standards listed in § 94.8.

Tier 3 means relating to an engine subject to the Tier 3 emission standards listed in § 94.8.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Trading means the exchange of engine emission credits between credit holders.

Ultimate purchaser means, with respect to any new engine or vessel, the first person who in good faith purchases such new engine or vessel for purposes other than resale.

United States. United States includes the customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

U.S.-directed production volume means the number of marine engine units, subject to this part, produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

Useful life means the period during which an engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as hours of use and years. It is the period during which a new engine is required to comply with all applicable emission standards. (Note: § 94.9(a) specifies minimum requirements for useful life values.)

Voluntary emission recall means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer to remedy any emission-related defect for which notification of engine or vessel owners has been provided.

§ 94.3 Abbreviations.

The abbreviations of this section apply to all subparts of this part and have the following meanings:

AECD—Auxiliary emission control device
API—American Petroleum Institute
ASTM—American Society for Testing and Materials
°C—Degrees celsius
CI—Compression ignition
CO—Carbon monoxide
CO_2—Carbon dioxide
disp.—volumetric displacement of an engine cylinder
EGR—Exhaust gas recirculation
EP—End point
EPA—Environmental Protection Agency
FEL—Family emission limit
ft—foot or feet
FTP—Federal Test Procedure
g—gram(s)
g/kW-hr—Grams per kilowatt hour
gal—U.S. gallon
h—hour(s)
HC—hydrocarbon
Hg—Mercury
hp—horsepower
ICI—Independent Commercial Importer
in—inch(es)
K—Kelvin
kg—kilogram(s)
km—kilometer(s)
kPa—kilopascal(s)
kW—kilowatt
m—meter(s)
max—maximum
mg—milligram(s)
min—minute
ml—milliliter(s)
mm—millimeter
NIST—National Institute for Standards and Testing
NMHC-Non-methane hydrocarbons
NTIS—National Technical Information Service
NO—nitric oxide
NO_2—nitrogen dioxide
NO_X—oxides of nitrogen
No.—number
O_2—oxygen
pct—percent
PM—particulate matter
PMM—post-manufacturer marinizer
ppm—parts per million by volume
ppmC—parts per million, carbon
rpm—revolutions per minute
s—second(s)
SAE—Society of Automotive Engineers
SEA—Selective Enforcement Auditing
SI—International system of units (i.e., metric)
THC—Total hydrocarbon
THCE—Total hydrocarbon equivalent
U.S.—United States
U.S.C.—United States Code
vs—versus
W—watt(s)
wt—weight

§ 94.4 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR part 2, subpart B.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

§ 94.5 Reference materials.

(a) The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has

been incorporated by reference in this part:

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. The table follows:

Document number and name	40 CFR part 94 reference
ASTM D86–97:	
''Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure''	§ 94.108
ASTM D93–97:	
''Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester''	§ 94.108
ASTM D129–95:	
''Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)''	§ 94.108
ASTM D287–92:	
''Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products'' (Hydrometer Method)	§ 94.108
ASTM D445–97:	
''Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)''	§ 94.108
ASTM D613–95:	
''Standard Test Method for Cetane Number of Diesel Fuel Oil''	§ 94.108
ASTM D1319–98:	
''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption''	§ 94.108
ASTM D2622–98:	
''Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry''	§ 94.108
ASTM D5186–96: ''Standard Test Method for ''Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Tubine Fuels By Supercritical Fluid Chromatography''.	§ 94.108
ASTM E29–93a:	
''Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications''	§§ 94.9, 94.305, 94.509

(2) *IMO material.* The following table sets forth material from the International Maritime Organization that has been incorporated by reference. The first column lists the name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR,U.K. The table follows:

Document number and name	40 CFR part 94 reference
Technical Code on Control of Emission of Nitrogen Oxides From Marine Diesel Engines, as adopted on September 26, 1997 by the International Maritime Organization in conference Resolution 2, Conference of the Parties to the International Convention for the Prevention of Pollution from Ship, 1973 as modified by the protocol of 1978 relating thereto (reported in MP/Conf. 3/35, 22 October 1997).	§ 94.105

§ 94.6 Regulatory structure.

This section provides an overview of the regulatory structure of this part.

(a) The regulations of this part 94 are intended to control emissions from in-use marine engines.

(b) The engines for which the regulations of this part (i.e., 40 CFR part 94) apply are specified by § 94.1, and by the definitions of § 94.2. The point at which an engine or vessel becomes subject to the regulations of this part is determined by the definitions of new marine engine and new marine vessel in § 94.2. Subpart J of this part contains provisions exempting certain engines and vessels from the emission standards in this part under special circumstances.

(c) To comply with the requirements of this part, a manufacturer must demonstrate to EPA that the engine meets the applicable standards of §§ 94.7 and 94.8, and all other requirements of this part. The requirements of this certification process are described in subparts C and D of this part.

(d) Subpart B of this part specifies procedures and equipment to be used for conducting emission tests for the purpose of the regulations of this part.

(e) Subparts E, F, and H of this part specify requirements for manufacturers after certification; that is during production and use of the engines.

(f) Subpart I of this part contains requirements applicable to the importation of marine engines covered by the provisions of this part.

(g) Subpart L of this part describes prohibited acts and contains other enforcement provisions relating to marine engines and vessels covered by the provisions of this part.

(h) Unless specified otherwise, the provisions of this part apply to all marine engines and vessels subject to the emission standards of this part.

§ 94.7 General standards and requirements.

(a) Marine engines and vessels may not be equipped with a defeat device.

(b) An engine may not be equipped with an emission control system for the purpose of complying with emission standards if such a system will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(c) An engine with an emission control system may not emit any noxious or toxic substance which would not be emitted in the operation of the engine in the absence of such a system, except as specifically permitted by regulation.

(d) All engines subject to the emission standards of this part shall be equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use.

(e) All engines subject to the emission standards of this part shall broadcast on engine's controller area networks actual engine percent torque and actual engine speed.

§ 94.8 Exhaust emission standards.

(a) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY EXHAUST EMISSION STANDARDS (G/KW-HR)

Subcategory liters/cylinder	Tier	Model year*	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
Power ≥ 37 kW and disp. <0.9	Tier 2	2004	7.2	5.0	0.40
	Tier 3	2008	4.0	5.0	.....
0.9 ≤ disp. <1.2	Tier 2	2004	7.2	5.0	0.30
	Tier 3	2008	4.0	5.0	.....
1.2 ≤ disp. <1.5	Tier 2	2004	7.2	3.5	0.20
	Tier 3	2008	4.0	3.5	.....
1.5 ≤ disp. <2.0	Tier 2	2004	7.2	3.5	0.20
	Tier 3	2008	4.0	3.5	.....
2.0 ≤ disp. <2.5	Tier 2	2004	7.2	3.5	0.20
	Tier 3	2008	4.0	3.5	.....
2.5 ≤ disp. <5.0	Tier 2	2006	7.2	3.5	0.20
	Tier 3	2010	5.0	3.5	.....
5.0 ≤ disp. <20	Tier 2	2006	7.2	2.0	0.27
	Tier 3	2010	5.0	2.0	.....

* The model years listed indicate the model years for which the specified tier of standards take effect.

(b) Exhaust emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter (and smoke, as applicable) shall be measured using the procedures set forth in subpart B of this part.

(c) In lieu of the NO_X standards, THC+NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer shall then set a family emission limit (FEL) which will serve as the standard for that engine family.

(d)(1) Naturally aspirated engines to which this subpart is applicable shall not discharge crankcase emissions into the ambient atmosphere, unless such crankcase emissions are permanently routed into the exhaust and included in all exhaust emission measurements.

(2) For engines using turbochargers, pumps, blowers, or superchargers for air induction, if the engine discharges crankcase emissions into the ambient atmosphere in use, these crankcase emissions shall be included in all exhaust emission measurements.

(e) Exhaust emissions from engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed 1.25 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106.

(f) The following paragraphs define the requirements for low-emitting Blue Sky Series engines.

(1) *Voluntary standards.* Engines may be designated ''Blue Sky Series'' engines through the 2007 model year by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing.

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated brake power (kW)	THC+NO_X	PM
power ≥ 37 kW disp. <0.9	4.0	0.24
0.9 ≤ disp. <1.2	4.0	0.18
1.2 ≤ disp. <2.5	4.0	0.12
2.5 ≤ disp. <5.0	5.0	0.12
5.0 ≤ disp. <20	5.0	0.16

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part.

(3) *Test procedures.* Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator.

(g) *Standards for alternative fuels.* The standards described in this section apply to compression-ignition engines, irrespective of fuel, with the following two exceptions:

(1) Engines fueled with natural gas shall comply with NMHC+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section; and

(2) Engines fueled with alcohol fuel shall comply with THCE+NO_X standards that are numerically equivalent to the THC+NO_X described in paragraph (a) of this section.

§ 94.9 Compliance with emission standards.

(a) The general standards and requirements in § 94.7 and the emission standards in § 94.8 apply to each new engine throughout its useful life period. The useful life is specified as hours and years, and ends when either of the values (hours or years) is exceeded.

(1) The minimum useful life in terms of hours is equal to 10,000 hours for Category 1 and 20,000 hours for Category 2. The minimum useful life in terms of years is 10 years.

(2) The manufacturer shall specify a longer useful life if the engine is designed to remain in service longer than the applicable minimum useful life. A manufacturer's recommended time to remanufacture/rebuild which is longer than the minimum useful life is one indicator of a longer design life.

(b) Certification is the process by which manufacturers apply for and obtain certificates of conformity from EPA, which allows the manufacturer to introduce into commerce new marine engines for sale or use in the U.S.

(1) Compliance with the applicable emission standards by an engine family shall be demonstrated by the certifying manufacturer before a certificate of conformity may be issued under § 94.208. Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in subpart B of this part, from a low hour engine. A development engine that is equivalent in design to the marine engines being certified may be used for Category 2 certification.

(2) The emission values to compare with the standards shall be the emission values of a low hour engine, or a development engine, adjusted by the deterioration factors developed in accordance with the provisions of § 94.219. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the same number of significant figures as contained in the applicable standard.

(c) Upon request by the manufacturer, the Administrator may limit the applicability of exhaust emission requirements of § 94.8(e) as necessary for safety or to otherwise protect the engine.

§ 94.10 Warranty period.

Warranties imposed by § 94.1107 shall apply for a period of hours equal to 50 percent of the useful life in hours or a period of years equal to 50 percent of the useful life in years, whichever comes first.

§ 94.11 Requirements for rebuilding certified engines.

(a) The provisions of this section apply with respect to engines subject to the standards prescribed in § 94.8 and are applicable to the process of engine rebuilding (or rebuilding a portion of an engine or engine system). The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and may also include the removal of the engine from the vessel and other acts associated with rebuilding an engine.

(b) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications), and the model year(s) of the resulting engine configuration must be identified. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emission control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(c) When an engine is being rebuilt and remains installed or is reinstalled in the same vessel, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a certified configuration that is equivalent, from an emissions standpoint, to the engine being replaced.

(d) At time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy requirements in § 94.211 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(e) When conducting a rebuild without removing the engine from the vessel, or during the installation of a rebuilt engine, all critical emission-related components listed in Appendix I of this part not otherwise addressed by paragraphs (b) through (d) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(f) Records shall be kept by parties conducting activities included in paragraphs (b) through (e) of this section. The records shall include at minimum the hours of operation at the time of rebuild, a listing of work performed on the engine, and emission-related control components including a listing of parts and components used, engine parameter adjustments, emission-related codes or signals responded to and reset, and work performed under paragraph (e) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

Subpart B—Test Procedures

§ 94.101 Applicability.

Provisions of this subpart apply for testing performed by the Administrator and for testing performed by manufacturers.

§ 94.102 General provisions.

(a) The test procedures specified in this subpart for marine engine testing are intended to produce emission measurements that are equivalent to emission measurements that would result from emission tests performed during in-use operation using the same engine configuration installed in a vessel.

(b) Test procedures otherwise allowed by the provisions of this subpart shall not be used where such procedures are not consistent with good engineering practice and the regulatory goal specified in paragraph (a) of this section.

(c) Alternate test procedures may be used if shown to yield equivalent results, and if approved in advance by the Administrator.

§ 94.103 Test procedures for Category 1 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 89, except as otherwise specified in this subpart.

(b) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.104 Test procedures for Category 2 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 92, except as otherwise specified in this subpart.

(b)(1) The requirements of 40 CFR part 92 related to charge air temperatures, engine speed and load, and engine air inlet restriction pressures do not apply for marine engines.

(2) For marine engine testing, charge air temperatures, engine speed and load, and engine air inlet restriction pressures shall be representative of typical in-use marine engine conditions.

(c) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.105 Test cycles.

(a) For the purpose of determining compliance with the emission standards of § 94.8 (a), (c), (f), and (g), propulsion engines that are used with (or intended to be used with) fixed-pitch propellers shall be tested using the test cycle described in Table B–1, which follows:

TABLE B–1.—DUTY CYCLE FOR PROPULSION ENGINES: FIXED-PITCH PROPELLER

Mode No.	Engine speed (1) (percent of rated speed)	Observed power (2) (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	91	75	5.0	0.50
3	80	50	5.0	0.15
4	63	25	5.0	0.15

(1) Engine speed: ± 2 percent of point.
(2) Power: Observed power with maximum fueling rate for operation at 100 percent point. Other points: ±2 percent of engine maximum value.

(b) For the purpose of determining compliance with the emission standards of § 94.8 (a), (c), (f), and (g), constant-speed propulsion engines that are used with (or intended to be used with) variable-pitch propellers shall be tested using the test cycle described in Table B–2, which follows:

TABLE B–2.—DUTY CYCLE FOR PROPULSION ENGINES: VARIABLE-PITCH PROPELLER

Mode No.	Engine speed (1) (percent of rated speed)	Observed power (2) (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	100	75	5.0	0.50
3	100	50	5.0	0.15
4	100	25	5.0	0.15

(1) Engine speed: ±2 percent of point.
(2) Power: Observed power with maximum fueling rate for operation at 100 percent point. Other points: ±2 percent of engine maximum value.

(c) For the purpose of determining compliance with the emission standards of § 94.8 (a), (c), (f), and (g), auxiliary engines shall be tested using the applicable test cycle described in 40 CFR part 89.

§ 94.106 Supplemental test procedures.

This section describes the test procedures for supplemental testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e). In general, the supplemental test procedures are the same as those otherwise specified by this subpart, except that they cover any speeds, loads, ambient conditions, and operating parameters that may be experienced in use. The test procedures specified by other sections in this subpart also apply to these tests, except as specified in this section.

(a) Notwithstanding other provisions of this subpart, testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted:

(1) At any speed and load (or combination of speeds and loads) within the applicable Not To Exceed Zone specified in paragraph (b) of this section;

(2) Without correction, at any ambient:

(i) Air temperature between 13°C and 35°C;

(ii) Water temperature (or equivalent) between 5°C and 32°C;

(iii) Humidity between 7.1 and 10.7 grams of moisture per kilogram of dry air; and

(3) With any continuous sampling period not less than 30 seconds in duration.

(b) The Not to Exceed Zone for marine propulsion engines that are used with (or intended to be used with):

(1) Fixed-pitch propellers as defined in Figure B–1;

(2) Variable-pitch propellers defined as any load greater than or equal to 25 percent of rated power, and any speed at which the engine operates in use.

(c)(1) Upon request by the manufacturer, the Administrator may specify a narrower Not to Exceed Zone for an engine family at the time of

certification, provided that the narrower Not to Exceed Zone includes all speeds and loads at which the engines are expected to normally operate in use.

(2) The Administrator may specify, at the time of certification, a broader Not to Exceed Zone for an engine family containing engines used in planing vessels, provided that the broader Not to Exceed Zone includes only speeds and loads at which the engines are expected to normally operate in use.

(3) The Administrator may specify, at the time of certification, a broader Not to Exceed Zone for an engine family containing engines used in vessels with variable-pitch propellers, provided that the broader Not to Exceed Zone includes only speeds and loads at which the engines are expected to normally operate in use.

(d) Testing of engines over a transient test cycle shall be conducted using the dilute emission sampling and analytical procedures specified for diesel engines in 40 CFR Part 86, Subpart N.

(e) Notwithstanding other provisions of this subpart, testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted at any ambient air temperature or humidity outside the ranges specified in § 94.106(a)(2), provided that emission measurements are corrected to be equivalent to measurements within the ranges specified in § 94.106(a)(2). Correction of emission measurements made in accordance with paragraph (a)(3) of this section shall be made in accordance with good engineering practice. The measurements shall be corrected to be within the range using the minimum possible correction.

(f) Testing conducted under this section may include transient speed and load operation. Engine testing may not include transient operation that cannot be replicated by similar engines as installed on actual vessels in use.

(g) Testing conducted under this section may not include engine starting.

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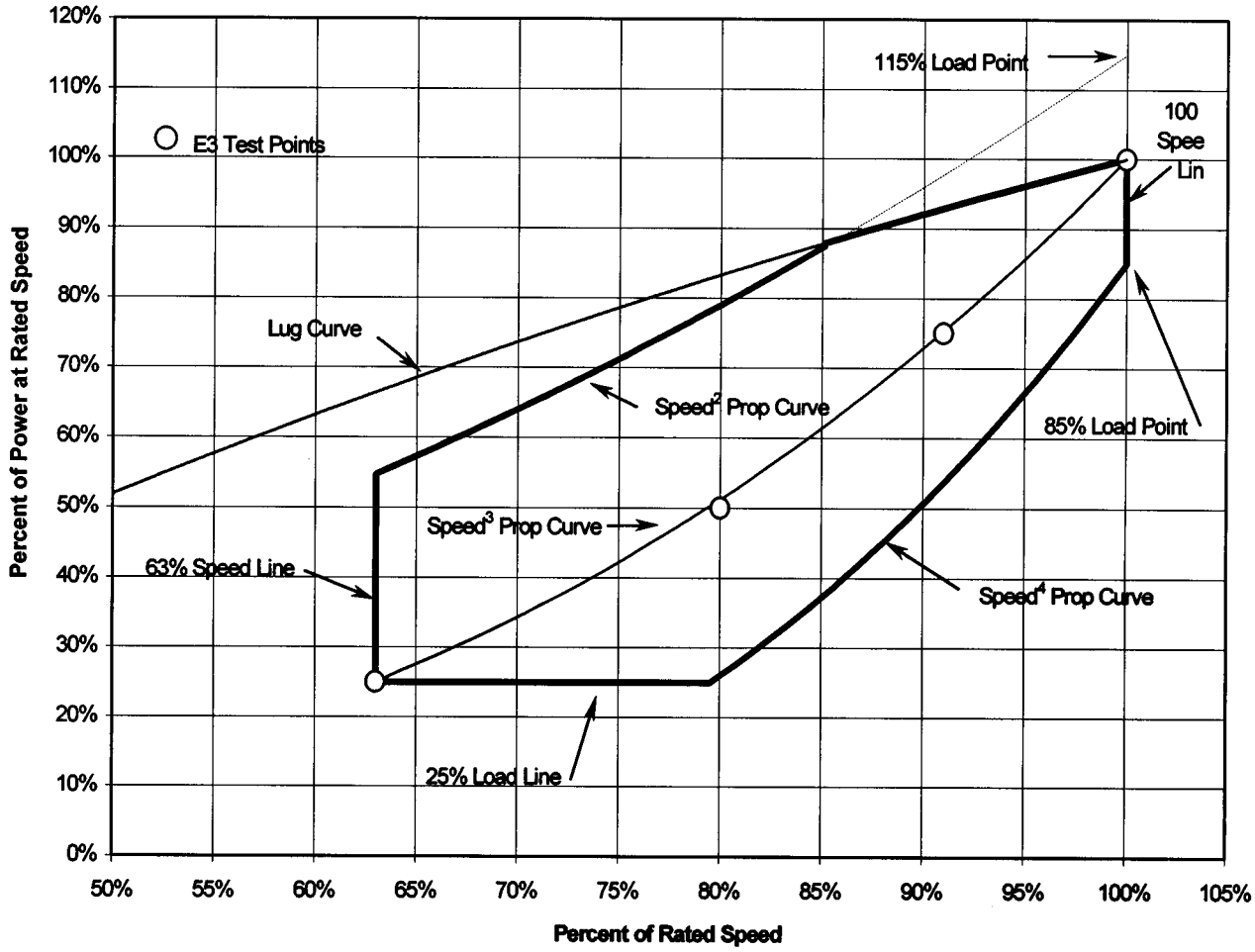
Figure B-1



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§ 94.107 Determination of rated speed.

This section specifies how to determine rated speed from a lug curve. This rated speed is the maximum test speed used in §§ 94.105 and 94.106.

(a) *Generation of lug curve.* Prior to beginning emission testing, generate maximum measured brakepower versus engine speed data points using the applicable method specified in 40 CFR 86.1332. These data points form the lug curve.

(b) *Normalization of lug curve.* (1) Identify the point (power and speed) on the lug curve at which maximum power occurs.

(2) Normalize the power values of the lug curve by dividing them by the maximum power value identified in

paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(3) Normalize the engine speed values of the lug curve by dividing them by the speed at which maximum power occurs, which is identified in paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(4) Maximum engine power is located on the normalized lug curve at 100 percent power and 100 percent speed.

(c) *Determination of rated speed.* Calculate the rated speed from the speedfactor analysis described in this paragraph (c).

(1) For a given combination of engine power and speed (i.e., a given power/speed point), the speedfactor is the normalized distance to the power/speed point from the zero power, zero speed point. The value of the speedfactor is defined as:

(2) Calculate speedfactors for the power/speed data points on the lug curve, and determine the maximum value.

(3) Rated speed is the speed at which the maximum value for the speedfactor occurs.

§ 94.108 Test fuels.

(a) *Petroleum diesel test fuel.* (1) The diesel fuels for testing marine engines designed to operate on petroleum diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 94.5) in Table B–3 of this section, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B–3.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM) [1]	Value (type 2–D)
Cetane	D613–95	40–48
Distillation Range:		
IBP, °C	D86–97	171–204
10% point, °C	D86–97	204–238
50% point, °C	D86–97	243–282
90% point, °C	D86–97	293–332
EP, °C	D86–97	321–366
Gravity, API	D287–92	32–37
Total Sulfur, %mass	D129–95 or D2622–98	0.03—0.80
Hydrocarbon composition:		
Aromatics, %vol.	D1319–98 or D5186–96	10 ([2])
Paraffins, Naphthenes, Olefins	D1319–98	([3])
Flashpoint, °C (minimum)	D93–97	54
Viscosity @ 38 °C, Centistokes	D445–97	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 94.6.
[2] Minimum.
[3] Remainder.

(2) Other diesel fuels may be used for testing provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in service; and

(iii) Use of a fuel listed under paragraph (a)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(3) The specification of the fuel to be used under paragraphs (a)(1) and (a)(2) of this section shall be reported in the application for certification.

(b) *Other fuel types.* (1) For engines which are designed to be capable of using a type of fuel (or mixed fuel) other than petroleum diesel fuel (e.g., natural gas or methanol), and which are expected to use that type of fuel (or mixed fuel) in service, a commercially available fuel of that type shall be used for exhaust emission testing. The Administrator shall determine the specifications of the fuel to be used for testing, based on the engine design, the specifications of commercially available fuels, and the recommendation of the manufacturer.

(2) The specification of the fuel to be used under paragraph (b)(1) of this section shall be reported in the application for certification.

(c)(1) Particulate emission measurements from engines without exhaust aftertreatment obtained using a diesel fuel containing more than 0.40 weight percent sulfur may be adjusted to a sulfur content of 0.40 weight percent.

(2) Adjustments to the particulate measurement shall be made using the following equation:

$$PMadj=PM-[BSFC*0.0917*(FSF-0.0040)]$$

Where:

PMadj=adjusted measured PM level [g/Kw-hr]

PM=measured weighted PM level [g/Kw-hr]

BSFC=measured brake specific fuel consumption [G/Kw-hr]

FSF=fuel sulfur weight fraction

Subpart C—Certification Provisions

§ 94.201 Applicability.

The requirements of this subpart are applicable to manufacturers of engines subject to the standards of subpart A of this part.

§ 94.202 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.203 Application for certification.

(a) For each engine family that complies with all applicable standards and requirements, the manufacturer shall submit to the Administrator a completed application for a certificate of conformity.

(b) The application shall be approved and signed by the authorized representative of the manufacturer.

(c) The application shall be updated and corrected by amendment, where necessary, as provided for in § 94.210 to accurately reflect the manufacturer's production.

(d) Each application shall include the following information:

(1)(i) A description of the basic engine design, including but not limited to, the engine family specifications, the provisions of which are contained in § 94.208;

(ii) A list of distinguishable configurations to be included in the engine family;

(2) An explanation of how the emission control system operates, including detailed descriptions of:

(i) All emission control system components;

(ii) The injection timing map or maps (i.e., degrees before or after top-dead-center), and any functional dependence of such timing on other operational parameters (e.g., engine coolant temperature or engine speed);

(iii) Each auxiliary emission control device (AECD); and

(iv) All fuel system components to be installed on any production or test engine(s);

(3) A description of the test engine;

(4) Special or alternate test procedures, if applicable;

(5) A description of the operating cycle and the period of operation necessary to accumulate service hours on the test engine and stabilize emission levels;

(6) A description of all adjustable operating parameters (e.g., injection timing and fuel rate), including the following:

(i) The nominal or recommended setting and the associated production tolerances;

(ii) The intended adjustable range and the physically adjustable range;

(iii) The limits or stops used to limit adjustable ranges;

(iv) Production tolerances of the limits or stops used to establish each physically adjustable range; and

(v) Information relating to the reason that the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are the most effective means possible of preventing adjustment of parameters to settings outside the manufacturer's specified adjustable ranges on in-use engines;

(7) For families participating in the averaging, banking, and trading program, the information specified in subpart D of this part;

(8) Projected U.S. directed production volume information for each configuration;

(9) A description of the test equipment and fuel proposed to be used;

(10) All test data obtained by the manufacturer on each test engine;

(11) The intended useful life period for the engine family, in accordance with § 94.9(a);

(12) The intended deterioration factors for the engine family, in accordance with § 94.218; and

(13) All information—including but not limited to message or parameter identification, scaling, limit, offset, and transfer function—required for EPA to interpret all messages and parameters broadcast on an engine's controller area network. (The manufacturer may reference publicly released controller area network standards where applicable. The format of this information shall be provided in a format similar to publicly released documents pertaining to controller area network standards.)

(14) An unconditional statement certifying that all engines included in the engine family comply with all requirements of this part and the Clean Air Act.

(15) A statement indicating whether the engine will be used in planing vessels or vessels with variable-pitch propellers.

(e) At the Administrator's request, the manufacturer shall supply such additional information as may be required to evaluate the application.

(f) (1) If the manufacturer submits some or all of the information specified in paragraph (d) of this section in advance of its full application for certification, the Administrator shall review the information and make the determinations required in § 94.208 (d) within 90 days of the manufacturer's submittal.

(2) The 90-day decision period is exclusive of any elapsed time during which EPA is waiting for additional information requested from a manufacturer regarding an adjustable parameter (the 90-day period resumes upon receipt of the manufacturer's response). For example, if EPA requests additional information 30 days after the manufacturer submits information under paragraph (f)(1) of this section, then the Administrator would make a determination within 60 days of the receipt of the requested information from the manufacturer.

(g)(1) The Administrator may modify the information submission requirements of paragraph (d) of this section, provided that all of the information specified therein is maintained by the manufacturer as required by § 94.215, and amended, updated, or corrected as necessary.

(2) For the purposes of this paragraph (g), § 94.215 includes all information specified in paragraph (d) of this section, whether or not such information is actually submitted to the Administrator for any particular model year.

(3) The Administrator may review a manufacturer's records at any time. At the Administrator's discretion, this review may take place either at the manufacturer's facility or at another facility designated by the Administrator.

§ 94.204 Designation of engine families.

This section specifies the procedure and requirements for grouping of engines into engine families.

(a) Manufacturers shall divide their engines into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group shall be defined as a separate engine family.

(b) For Category 1 marine engines, the following characteristics distinguish engine families:

(1) Fuel;

(2) Cooling method (including cooling medium);

(3) Method of air aspiration;

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap);

(5) Combustion chamber design;

(6) Bore;

(7) Stroke;

(8) Number of cylinders, (engines with aftertreatment devices only);

(9) Cylinder arrangement (engines with aftertreatment devices only); and

(10) Fuel system configuration

(c) For Category 2 marine engines, the following characteristics distinguish engine families:

(1) The combustion cycle (e.g., diesel cycle);

(2) The type of engine cooling employed (air-cooled or water-cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.);

(3) The bore and stroke dimensions;

(4) The approximate intake and exhaust event timing and duration (valve or port);

(5) The location of the intake and exhaust valves (or ports);

(6) The size of the intake and exhaust valves (or ports);

(7) The overall injection, or as appropriate ignition, timing characteristics (i.e., the deviation of the timing curves from the optimal fuel economy timing curve must be similar in degree);

(8) The combustion chamber configuration and the surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions;

(9) The location of the piston rings on the piston;

(10) The method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown);

(11) The turbocharger or supercharger general performance characteristics (e.g., approximate boost pressure, approximate response time, approximate size relative to engine displacement);

(12) The type of air inlet cooler (air-to-air, air-to-liquid, approximate degree to which inlet air is cooled);

(13) The intake manifold induction port size and configuration;

(14) The type of fuel and fuel system configuration;

(15) The configuration of the fuel injectors and approximate injection pressure;

(16) The type of fuel injection system controls (i.e., mechanical or electronic);

(17) The type of smoke control system;

(18) The exhaust manifold port size and configuration; and

(19) The type of exhaust aftertreatment system (oxidation catalyst, particulate trap), and characteristics of the aftertreatment system (catalyst loading, converter size vs engine size).

(d) Upon request by the manufacturer, engines that are eligible to be included in the same engine family based on the criteria in paragraph (b) or (c) of this section may be divided into different engine families. This request must be accompanied by information the manufacturer believes supports the use of these different engine families.

(e) Upon request by the manufacturer, the Administrator may allow engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer demonstrates that the engines will have similar emission characteristics. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

§ 94.205 Prohibited controls, adjustable parameters.

(a) Any system installed on, or incorporated in, a new engine to enable such engine to conform to the standards contained in this part:

(1) Shall not in its operation or function cause significant (as determined by the Administrator) emission into the ambient air of any noxious or toxic substance that would not be emitted in the operation of such engine without such system, except as specifically permitted by regulation;

(2) Shall not in its operation, function or malfunction result in any unsafe condition endangering the engine, the ship, its operators, riders or property on a ship, or persons or property in close proximity to the engine; and

(3) Shall function during all in-use operation, except as otherwise allowed by this part.

(b) In specifying the adjustable range of each adjustable parameter on a new engine, the manufacturer, shall:

(1) Ensure that safe engine operating characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act, taking into consideration the production tolerances; and

(2) To the maximum extent practicable, limit the physical range of adjustability to that which is necessary for proper operation of the engine.

§ 94.206 Required information.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the information required by this section: *Provided*, that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of engines for which the required emission data are otherwise available.

(b) The manufacturer shall submit exhaust emission deterioration factors, with supporting data. The determination of the deterioration factors shall be conducted in accordance with good engineering practice to ensure that the engines covered by a certificate issued under § 94.208 will meet all of the emission standards in § 94.8 in use for the useful life of the engine.

(c) The manufacturer shall submit emission data on such engines tested in accordance with the applicable test procedures of subpart B of this part. These data shall include zero hour data, if generated. In lieu of providing the emission data required by paragraph (a) of this section, the Administrator may, upon request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other testing information) that the engine will conform with the applicable emission standards of § 94.8.

(d) The manufacturer shall submit a statement that the engines for which certification is requested conform to the requirements in § 94.7 and that the descriptions of tests performed to ascertain compliance with the general standards in § 94.7, and the data derived from such tests, are available to the Administrator upon request.

(e) The manufacturer shall submit a statement that the emission data engine used to demonstrate compliance with the applicable standards of this part is in all material respects as described in the manufacturer's application for certification; that it has been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification; and that on the basis of such tests, the engine family conforms to the requirements of this part. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test engine was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the engine does not meet the applicable standards. If the Administrator makes such a determination, he/she may withhold, suspend, or revoke the certificate of conformity under § 94.208 (c)(3)(i).

§ 94.207 Special test procedures.

(a) *Establishment of special test procedures by EPA.* The Administrator may, on the basis of written application by a manufacturer, establish special test procedures other than those set forth in this part, for any engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in subpart B of this part.

(b) *Use of alternate test procedures by a manufacturer.* (1) A manufacturer may elect to use an alternate test procedure, provided that it is equivalent to the specified procedures with respect to the demonstration of compliance, its use is approved in advance by the Administrator, and the basis for the equivalence with the specified test procedures is fully described in the manufacturer's application.

(2) The Administrator may reject data generated under alternate test procedures if the data do not correlate with data generated under the specified procedures.

§ 94.208 Certification.

(a) If, after a review of the application for certification, test reports and data acquired from an engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the application is complete and that the engine family meets the requirements of the Act and this part, he/she will issue a certificate of conformity with respect to such engine family, except as

provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year for which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to ensure that the production engines covered by the certificate will meet the requirements of the Act and of this part.

(b) [Reserved]

(c) (1) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificates were issued were satisfied or excused.

(2) The Administrator will determine whether the test data included in the application represents all engines of the engine family.

(3) Notwithstanding the fact that any engine(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of any certificate of conformity, or suspend or revoke any such certificate(s) which has (have) been issued with respect to any such engine(s) if:

(i) The manufacturer submits false or incomplete information in its application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which it submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such engine;

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 94.215 to any facility or portion thereof which contains any of the following:

(A) An engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing; or

(B) Any components used or considered for use in the construction, modification or buildup of any engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing for purposes of emissions certification; or

(C) Any production engine which is or will be claimed by the manufacturer to be covered by the certificate; or

(D) Any step in the construction of the engine; or

(E) Any records, documents, reports or histories required by this part to be kept concerning any of the items listed in paragraphs (c)(3)(iii)(A) through (D) of this section; or

(iv) Any EPA Enforcement Officer is denied ''reasonable assistance'' (as defined in § 94.215).

(4) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(5) In any case in which certification of an engine is to be withheld, denied, revoked or suspended under paragraph (c)(3) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 94.215 in fact occurred, the manufacturer, if it wishes to contend that, even though the violation occurred, the engine in question was not involved in the violation to a degree that would warrant withholding, denial, revocation or suspension of certification under paragraph (c)(3) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any revocation, suspension, or voiding of certification under paragraph (c)(3) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216; and

(ii) Extend no further than to forbid the introduction into commerce of engines previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct that makes the certification invalid *ab initio*.

(7) The manufacturer may request, within 30 days of receiving notification, that any determination made by the Administrator under paragraph (c)(3) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 94.216. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he/she will grant the request with respect to such issue.

(d) In approving an application for certification, the Administrator may specify:

(1) A broader range of adjustability than recommended by the manufacturer for those engine parameters which are subject to adjustment, if the Administrator determines that it will not be practical to keep the parameter adjusted within the recommended range in use;

(2) A longer useful life period, if the Administrator determines that the useful life of the engines in the engine family, as defined in § 94.2, is longer than the period specified by the manufacturer; and/or

(3) Larger deterioration factors, if the Administrator determines that the deterioration factors specified by the manufacturer do not meet the requirements of § 94.218.

(e) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, the manufacturer shall be provided with a hearing in accordance with § 94.216 with respect to such issue.

§ 94.209 Special provisions for post-manufacturer marinizers.

(a) *Eligibility requirements.* To be eligible to use the provisions of paragraph (b) of this section, the manufacturer shall demonstrate that it has met all the following requirements:

(1) The manufacturer must be a post-manufacturer marinizer as defined in § 94.2;

(2) The base engine used for modification shall have a Certificate of Conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86; and (3) The certified emission levels (after application of deterioration factors) of the base engine shall be below the numerical levels of the otherwise applicable standards of this part for all pollutants.

(b) *Broader engine families.* (1) In lieu of the requirements of § 94.204, the manufacturer may group its engines into engine families that consist of engines that are within a single category of engines and have similar emission deterioration characteristics.

(2) All other provisions of this subpart shall apply to these engines using the engine family defined in (b)(1) of this section.

(c) *Hardship relief.* Post-manufacture marinizers may take any of the otherwise prohibited actions identified

in § 94.1103(a)(1) if approved in advance by the Administrator, and subject to the following requirements:

(1) Application for relief must be submitted to the Engine Programs and Compliance Division of the EPA in writing prior to the earliest date in which the applying manufacturer would be in violation of § 94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) [Reserved]

(3) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(4) The conditions causing the impending violation must be such that the applying manufacturer will experience serious economic hardship if relief is not granted.

(5) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.

(6) Any relief granted must begin within one year after the implementation date of the standard applying to the engines for which relief is requested, and may not exceed one year in duration.

(7) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(d) *Compliance date of standards.* Post-manufacture marinizers may elect to delay the compliance date of the standards in § 94.8 by one year, instead of using the provisions of paragraph (c) of this section. Post-manufacture marinizers wishing to take advantage of this provision must inform the Director of the Engine Programs and Compliance Division of their intent to do so in writing before the date that compliance with the standards would otherwise be mandatory.

§ 94.210 Amending the application and certificate of conformity.

(a) The manufacturer shall notify the Administrator when changes to information required to be described in the application for certification are to be made to a product line covered by a certificate of conformity. This notification shall include a request to amend the application or the existing certificate of conformity. Except as provided in paragraph (e) of this section, no manufacturer shall make said changes or produce said engines prior to receiving approval from EPA.

(b) A manufacturer's request to amend the application or the existing certificate of conformity shall include the following information:

(1) A full description of the change to be made in production, or of the engines to be added;

(2) Engineering evaluations or data showing that the engines as modified or added will comply with all applicable emission standards; and

(3) A determination whether the manufacturer's original test fleet selection is still appropriate, and if the original test fleet selection is determined not to be appropriate, test fleet selection(s) representing the engines changed or added which would have been required if the engines had been included in the original application for certification.

(c) The Administrator may require the manufacturer to perform tests on the engine representing the engine to be added or changed.

(d)(1) Based on the description of the amendment and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the change or addition would still be covered by the certificate of conformity then in effect.

(2) If the Administrator determines that the change or new engine(s) meets the requirements of this part and the Act, the appropriate certificate of conformity shall be amended.

(3) If the Administrator determines that the changed engine(s) does not meet the requirements of this part and the Act, the certificate of conformity will not be amended. The Administrator shall provide a written explanation to the manufacturer of the decision not to amend the certificate. The manufacturer may request a hearing on a denial.

(e) A manufacturer may make changes in or additions to production engines concurrently with the notification to the Administrator, as required by paragraph (a) of this section, if the manufacturer complies with the following requirements:

(1) In addition to the information required in paragraph (b) of this section, the manufacturer shall supply supporting documentation, test data, and engineering evaluations as appropriate to demonstrate that all affected engines will still meet applicable emission standards.

(2) If, after a review, the Administrator determines additional testing is required, the manufacturer shall provide the required test data within 30 days or cease production of the affected engines.

(3) If the Administrator determines that the affected engines do not meet applicable requirements, the Administrator will notify the manufacturer to cease production of the affected engines and to recall and correct at no expense to the owner all affected engines previously produced.

(4) Election to produce engines under this paragraph will be deemed to be a consent to recall all engines that the Administrator determines do not meet applicable standards and to cause such nonconformity to be remedied at no expense to the owner.

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) The manufacturer shall furnish or cause to be furnished to the ultimate purchaser of each new engine, subject to the standards prescribed in § 94.8, written instructions for the proper maintenance and use of the engine as are reasonable and necessary to assure the proper functioning of the emissions control system, consistent with the applicable provisions of paragraph (b) of this section.

(1) The maintenance and use instructions required by this section shall be clear and easily understandable.

(2) The maintenance instructions required by this section shall contain a general description of the documentation that would demonstrate that the ultimate purchaser or any subsequent owner had complied with the instructions.

(b)(1) The manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any engine repair establishment or individual.

(2) The instructions under paragraph (b)(1) of this section will not include any condition on the ultimate purchaser's or owner's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also will not directly or indirectly distinguish between service performed by any other service establishments with which such manufacturer has a commercial relationship and service performed by independent vessel or engine repair facilities with which such manufacturer has no commercial relationship.

(3) The prohibition of paragraph (b)(2) of this section may be waived by the Administrator if:

(i) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine, and

(ii) The Administrator finds that such a waiver is in the public interest.

(c) The manufacturer shall provide to the Administrator, no later than the time of the submission required by § 94.203, a copy of the emission-related maintenance instructions that the manufacturer proposes to supply to the ultimate purchaser or owner in accordance with this section. The Administrator will review such instructions to determine whether they are reasonable and necessary to ensure the proper functioning of the engine's emission control systems. If the Administrator determines that such instructions are not reasonable and necessary to ensure the proper functioning of the emission control systems, he/she may disapprove the application for certification or may require that the manufacturer modify the instructions.

(d) Any revision to the maintenance instructions which will affect emissions shall be supplied to the Administrator at least 30 days before being supplied to the ultimate purchaser or owner unless the Administrator consents to a lesser period of time, and is subject to the provisions of § 94.210.

(e) This paragraph (e) specifies emission-related scheduled maintenance for purposes of obtaining durability data for marine engines. The maintenance intervals specified in this paragraph are minimum intervals.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same or longer hours of use intervals as those specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the engine under paragraph (a) of this section. This maintenance schedule may be updated as necessary throughout the testing of the engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test equipment or engine.

(2) Any emission-related maintenance which is performed on equipment, engines, subsystems, or components must be technologically necessary to ensure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to the purchasers under paragraph (a) of this section.

(i) The Administrator may require longer maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where the listed intervals are not technologically necessary.

(ii) The Administrator may allow manufacturers to specify shorter maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where technologically necessary for Category 2 engines.

(3) The adjustment, cleaning, repair, or replacement of items listed in paragraphs (e)(3)(i) through (e)(3)(iii) of this section shall occur at 1,500 hours of use and at 1,500-hour intervals thereafter.

(i) Exhaust gas recirculation system-related filters and coolers.

(ii) Positive crankcase ventilation valve.

(iii) Fuel injector tips (cleaning only).

(4) The adjustment, cleaning and repair of items in paragraphs (e)(4)(i) through (e)(4)(vii) of this section shall occur at 3,000 hours of use and at 3,000-hour intervals thereafter for engines rated under 130 kW, or at 4,500-hour intervals thereafter for nonroad compression-ignition engines rated at or above 130 kW.

(i) Fuel injectors.

(ii) Turbocharger.

(iii) Electronic engine control unit and its associated sensors and actuators.

(iv) Particulate trap or trap-oxidizer system (including related components).

(v) Exhaust gas recirculation system (including all related control valves and tubing), except as otherwise provided in paragraph (e)(3)(i) of this section.

(vi) Catalytic convertor.

(vii) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(f) Scheduled maintenance not related to emissions which is reasonable and technologically necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, lubrication of the exhaust manifold heat control valve, etc.) may be performed on durability vehicles at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (e.g., not the intervals recommended for severe service).

(g) Adjustment of engine idle speed on emission data engines may be performed once before the low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with advance approval of the Administrator.

(h) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and are:

(1) Used in conjunction with scheduled maintenance on such components; or

(2) Used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (e) of this section for emission data engines; or

(3) Specifically authorized by the Administrator.

(i) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 94.215.

(j)(1) The components listed in paragraphs (j)(1)(i) through (j)(1)(vi) of this section are defined as critical emission-related components.

(i) Catalytic convertor.

(ii) Electronic engine control unit and its associated sensors and actuators.

(iii) Exhaust gas recirculation system (including all related filters, coolers, control valves, and tubing).

(iv) Positive crankcase ventilation valve.

(v) Particulate trap or trap-oxidizer system.

(vi) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. The manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (j)(2)(i) through (j)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

(i) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical operation.

(ii) Survey data are submitted which adequately demonstrate to the Administrator with an 80 percent confidence level that 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(iii) A clearly displayed visible signal system approved by the Administrator is installed to alert the equipment operator that maintenance is due. A signal bearing the message ''maintenance needed'' or ''check engine,'' or a similar message approved by the Administrator, shall be actuated at the appropriate usage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator. The system must not be designed to deactivate upon the end of the useful life of the engine or thereafter.

(iv) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (j)(2)(ii) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(v) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under paragraph (a) of this section.

(vi) The manufacturer uses any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(3) Visible signal systems used under paragraph (j)(2)(iii) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act.

§ 94.212 Labeling.

(a) *General requirements.* (1) Each new engine covered by a certificate of conformity under § 94.208 shall be labeled by the manufacturer in the manner described in this paragraph (b) of this section at the time of manufacture.

(2) Each new marine engine modified from a base engine by post-manufacturer marinizers in accordance with the provisions of § 94.209 (b) and covered by a certificate of conformity under § 94.208 shall be labeled by the PMM in the manner described in paragraph (b) of this section.

(b) *Engine labels.* (1) Engine labels meeting the specifications of paragraph (b)(2) of this section shall be applied by every manufacturer at the point of original manufacture.

(2)(i) Engine labels shall be permanent and legible and shall be affixed to the engine in a position in which it will be readily visible after installation of the engine in the vessel.

(ii) The label shall be attached to an engine part necessary for normal operation and not normally requiring replacement during the useful life of the engine.

(iii) The label shall be affixed by the manufacturer in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such engine.

(iv) The label may be made up of more than one piece, provided that all pieces are permanently attached to the same engine part.

(v) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Marine Engine Emission Control Information.

(B) Full corporate name and trademark of the manufacturer.

(C) The model year.

(D) The category and subcategory of marine engine.

(E) Engine family and configuration identification.

(F) A prominent unconditional statement of compliance with U.S. Environmental Protection Agency regulations which apply to marine engines designated by the parameters of paragraph (b)(2)(v) (A) through (E) of this section

(G) The useful life of the engine.

(H) The standards and/or FELs to which the engine was certified.

(I) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speeds(s), injection timing, valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer.

(c) The provisions of this section shall not prevent a manufacturer from also providing on the label any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vessel or engine.

§ 94.213 Submission of engine identification numbers.

(a) Upon request of the Administrator, the manufacturer of any engine covered by a certificate of conformity shall, within 30 days of receipt of such request, identify by engine identification number, the engines covered by the certificate of conformity.

(b) The manufacturer of any engines covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any engine identification coding system in sufficient detail to enable the Administrator to identify those engines which are covered by a certificate of conformity.

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 94.215 Maintenance of records; submittal of information; right of entry.

(a) Any manufacturer subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records. The records required to be maintained by this paragraph (a) shall consist of:

(i) Identification and description of all certification engines for which testing is required under this subpart.

(ii) A description of all emission control systems which are installed on

or incorporated in each certification engine.

(iii) A description of all procedures used to test each such certification engine.

(iv) A copy of all applications for certification, filed with the Administrator.

(2) Individual records. (i) A brief history of each engine used for certification under this subpart including:

(A) In the case where a current production engine is modified for use as a certification engine, a description of the process by which the engine was selected and of the modifications made. In the case where the certification engine is not derived from a current production engine, a general description of the buildup of the engine (e.g., whether experimental heads were cast and machined according to supplied drawings). In the cases in the previous two sentences, a description of the origin and selection process for fuel system components, ignition system components (as applicable), intake air pressurization and cooling system components, cylinders, pistons and piston rings, exhaust smoke control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification engine, with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, or any other devices or components as applicable, that can reasonably be expected to influence exhaust emissions will be representative of production engines and that either: all components and/or engine, construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such engines are reasonably likely to be implemented for production engines; or that they are as close as practicable to planned construction and assembly process.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of hours accumulated on the engine.

(C) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(D) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(E) A brief description of any significant events affecting the engine during the period covered by the history and not described by an entry under one of the previous headings, including such extraordinary events as accidents involving the engine or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification engine and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of 8 years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to computer disks, etc., depending on the record retention procedures of the manufacturer: Provided, that in every case all the information contained in the hard copy shall be retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him/her the information that is required to be retained.

(6) EPA may void a certificate of conformity *ab initio* for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) The manufacturer of engines subject to any of the standards prescribed in this part shall submit to the Administrator, at the time of issuance by the manufacturer, copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such engine, relevant to the control of crankcase, or exhaust emissions issued by the manufacturer, for use by other manufacturers, assembly plants, distributors, dealers, owners and operators. Any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) Any manufacturer participating in averaging, banking and trading program of subpart D of this part 94 must comply with the maintenance of records requirements of § 94.308.

(d)(1) Any manufacturer who has applied for certification of a new engine subject to certification testing under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed;

(ii) Any facility where any engine which is being tested (or was tested, or is to be tested) is present;

(iii) Any facility where any construction process or assembly process used in the modification or buildup of such an engine into a certification engine is taking place or has taken place; or

(iv) Any facility where any record or other document relating to any of the activities listed in this paragraph (d)(1) is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities and testing facilities including, but not limited to, monitoring engine preconditioning, emissions tests, service accumulation, maintenance, and engine storage procedures, and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in subpart D of this part; and

(iii) To inspect and/or photograph any part or aspect of any such certification engine and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production engines, conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications applicable to those engines, as described in the application for certification for which a certificate of conformity has been issued, any manufacturer shall admit any EPA Enforcement Officer on presentation of credentials to:

(i) Any facility where any document, design or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production engines is located or carried on;

(ii) Any facility where any engines to be introduced into commerce are manufactured; and

(iii) Any facility where records specified this section are located.

(4) On admission to any such facility referred to in paragraph (d)(3) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any aspects of such manufacture and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such engine(s) and any component used in the assembly thereof that are reasonably related to the purpose of his/her entry; and

(iv) To inspect and make copies of any records and documents specified in this section.

(5) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he/she may request to help him/her discharge any function listed in this part. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer applies to any facility involved in the manufacturing or assembling of engines, whether or not the manufacturer owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that an engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this section:

(i) ''Presentation of credentials'' shall mean display of the document designating a person as an EPA Enforcement Officer.

(ii) Where component or engine storage areas or facilities are concerned, ''operating hours'' shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, ''operating hours'' shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to engine manufacture, or assembly is being carried out in a facility.

(iv) ''Reasonable assistance'' includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any engine which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance.

(8) EPA may void a certificate of conformity ab initio for engines introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

§ 94.216 Hearing procedures.

(a)(1) After granting a request for a hearing under § 94.210 or § 94.208, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 94.208, the Administrator may in his/her discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he/she may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon his/her appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator under § 94.210 or § 94.208 together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer, upon the request of any party, or in his/her discretion, may arrange for a prehearing conference at a time and place specified by him/her to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by him/her.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 30 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision, the Administrator shall have all the powers which he/she would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

§ 94.217 Emission data engine selection.

(a) The manufacturer must select for testing, from each engine family, the engine configuration which is expected to be worst-case for exhaust emission compliance on in-use engines, considering all exhaust emission constituents and the range of installation options available to vessel builders.

(b) Each engine in the test fleet must be constructed to be representative of production engines.

(c) After review of the manufacturer's test fleet, the Administrator may select from the available fleet one additional test engine from each engine family.

(d) Each engine selected shall be tested according to the provisions of subpart B of this part.

(e) In lieu of testing an emission data engine selected under paragraph (a) of this section and submitting the resulting data, a manufacturer may, with Administrator approval, use emission data on a similar engine for which certification has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

§ 94.218 Deterioration factor determination.

Manufacturers shall determine exhaust emission deterioration factors using good engineering judgement according to the provisions of this section. Every deterioration factor must be, in the Administrator's judgment, consistent with emissions increases observed in-use based on emission testing of similar engines. Deterioration factors that predict emission increases over the useful life of an engine that are significantly less than the emission increases over the useful life observed from in-use testing of similar engines shall not be used.

(a) A separate exhaust emission deterioration factor shall be established for each engine family and for each emission constituent applicable to that family.

(b) *Calculation procedures.* (1) For engines not utilizing aftertreatment technology (e.g., catalyst). For each applicable emission constituent, an additive deterioration factors shall be used; that is, a deterioration factor that when added to the low mileage emission rate equals the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this section.

(2) For engines utilizing aftertreatment technology (e.g., catalyst). For each applicable emission constituent, a multiplicative deterioration factors shall be used; that is deterioration factors that when multiplied by the low mileage emission rate equal the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this section.

(c) *Rounding.* (1) In the case of a multiplicative exhaust emission deterioration factor, the factor shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(2) In the case of an additive exhaust emission deterioration factor, the factor shall be established to a minimum of two places to the right of the decimal in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(d)(1) Except as allowed by paragraph (d)(2) of this section, the manufacturer shall determine the deterioration factors based on service accumulation and related testing, according to the manufacturer's procedures, and the provisions of §§ 94.219 and 94.220. The manufacturer shall determine the form and extent of this service accumulation, consistent with good engineering practice, and shall describe this process in the application for certification.

(2) *Alternatives to service accumulation and testing for the determination of a deterioration factor.* A written explanation of the appropriateness of using an alternative must be included in the application for certification.

(i) *Carryover and carryacross of durability emission data.* In lieu of testing an emission data or durability data engine selected under § 94.217 or § 94.219, and submitting the resulting data, a manufacturer may, with Administrator approval, use exhaust emission deterioration data on a similar engine for which certification to the same standard has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

(ii) *Use of non-marine deterioration data.* In the case where a manufacturer produces a certified motor vehicle engine, locomotive engine, or other nonroad engine that is similar to the marine engine to be certified, deterioration data from the non-marine engine may be applied to the marine engine. This application of deterioration data from such an engine to a marine engine is subject to Administrator approval, and the determination of whether the engines are similar shall be based on good engineering judgment.

(iii) *Engineering analysis for established technologies.* In the case where an engine family uses technology which is well established, an analysis based on good engineering practices may be used in lieu of testing to determine a deterioration factor for that engine family. Engines using exhaust gas recirculation or aftertreatment are excluded from this provision. The manufacturer shall provide a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the deterioration factor is based, are available to the Administrator upon request.

§ 94.219 Durability data engine selection.

(a) The manufacturer shall select for durability testing, from each engine family, the engine configuration which is expected to generate the highest level of exhaust emission deterioration on engines in use, considering all exhaust emission constituents and the range of installation options available to vessel builders. The manufacturer shall use good engineering judgment in making this selection.

(b) In lieu of testing the engine selected in paragraph (a) of this section, the manufacturer may select, using good engineering judgement, an equivalent or worse-case engine configuration. Carryover data satisfying the provisions of § 94.220 may also be used in lieu of testing the configuration selected in paragraph (a) of this section.

(c) Durability data engines shall be built from subsystems and components that are representative of actual production engines.

§ 94.220 Service accumulation.

(a) Stabilized emission service accumulation for emission data engines.

(1) Each test emission data engine in the test fleet must be operated with all emission control systems operating properly for a period sufficient to stabilize emissions.

(2) A manufacturer may elect to consider as stabilized emission levels from emission data engines with 125 or fewer hours of service.

(b) Durability data engines shall accummulate service in a manner which will represent the emission levels from in-use engines over their full useful life, consistent with good engineering judgement.

(1) Components may be removed from the engine and aged separately.

(2) End of useful life emission levels and deterioration factors may be projected from durability data engines which have completed less than full useful life service accumulation, provided that the amount of service accumulation completed and projection procedures are determined using good engineering judgement.

(c) No maintenance, other than recommended lubrication and filter changes or maintenance otherwise allowed by this part, may be performed during service accumulation without the Administrator's approval.

(d) Service accumulation should be performed in a manner using good engineering judgment to ensure that emissions are representative of in-use engines.

(e) The manufacturer must maintain, and provide to the Administrator if requested, records stating the rationale for selecting the service accumulation period and records describing the method used to accumulate service hours on the test engine(s).

§ 94.221 Application of good engineering judgment.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this subpart, including but not limited to selections, categorizations, determinations, and applications of the requirements of the subpart.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment or is otherwise inconsistent with the requirements of this subpart.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void *ab initio* a certificate of conformity.

(2) If the Administrator determines that the manufacturer's decision is not covered by the provisions of paragraph (d)(1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the manufacturer of this concern and the basis of the concern.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer's response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer's decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 94.216 of this subpart with respect to such issue.

Subpart D—Certification Averaging, Banking, and Trading Provisions

§ 94.301 Applicability.

Marine engine families subject to the standards of subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart. The provisions of this subpart apply to manufacturers of new engines that are subject to the emission standards of § 94.8.

§ 94.302 Definitions.

The definitions of subpart A of this part apply to this subpart. The following definitions also apply.

Applicable standard means a standard that would have otherwise been applicable had the engine not been certified under this subpart to an FEL different than that standard.

Broker means any entity that facilitates a trade between a buyer and seller.

Buyer means the entity that receives credits as a result of trade or transfer.

Reserved credits means credits that have been generated but have not yet been reviewed by EPA or used to demonstrate compliance under the averaging provisions of this subpart.

Seller means the entity that provides credits during a trade.

§ 94.303 General provisions.

(a) Participation in the averaging, banking, and trading program is voluntary. A manufacturer may choose to involve some or all of its engine families in any or all aspects of the program.

(b) An engine family is eligible to participate in the certification averaging, banking, and trading program for THC+NO_X and PM emissions if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. No averaging, banking, and trading program is available for meeting the CO standards of this part.

(c) Engines may not participate in the certification averaging, banking, and trading program if they are exported. Only engines certified under this part are eligible for inclusion in this certification averaging, banking, and trading program.

(d) Averaging involves the generation of credits by a manufacturer for use by that same manufacturer in the same calendar year. A manufacturer may use averaging during certification to offset an emission exceedance of an engine family caused by an FEL above the applicable emission standard, subject to the provisions of this subpart.

(e) Banking involves the generation of credits by a manufacturer in a given calendar year for use in a subsequent model year. A manufacturer may bank actual credits only after the end of the calendar year and after EPA has reviewed the manufacturer's end-of-year reports. During the calendar year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report. Credits declared for banking from the previous calendar year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(f) Trading involves the sale of banked credits for use in certification of new engines under this part. Only banked credits may be traded; reserved credits may not be traded.

§ 94.304 Compliance requirements.

(a) Manufacturers wishing to participate in certification averaging, banking and trading programs shall select a FEL for each engine family they wish to include. The level of the FEL shall be selected by the manufacturer, subject to the upper limits described in paragraph (m) of this section. An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the applicable THC+NO_X and PM emission standard for the family participating in the averaging, banking, and trading program.

(b) A manufacturer may certify one or more engine families at FELs above or below the applicable emission standard, provided the summation of the manufacturer's projected balance of all credit transactions in a given calendar year is greater than or equal to zero, as calculated for each family under § 94.305 and reported under § 94.309.

(c) Manufacturers certifying engine families with FELs exceeding the applicable emission standard shall obtain emission credits in amounts sufficient to address the shortfall. Credits may be obtained from averaging, banking, or trading, subject to the restrictions described in this subpart.

(d) Manufacturers certifying engine families with FELs below the applicable emission standard may generate emission credits to average, bank, or trade, or a combination thereof.

(e) Engine families may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(f) Credits may only be used for certification; they may not be used to remedy a violation of the FEL determined by production line or in-use testing. Credits may be used to allow subsequent production of engines for an engine family failing production line testing if the manufacturer elects to recertify to a higher FEL.

(g) [Reserved].

(h) If an FEL is changed after initial certification in any given model year, the manufacturer must conduct production line testing to verify that the emission levels are achieved.

(i) Manufacturers participating in the averaging, banking and trading program must demonstrate compliance with the applicable emission standards at the end of the model year. Manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standard and the FEL for such engine family (ies) will be in violation of the conditions of the certificate of conformity for such engine family (ies). The certificates of conformity may be voided *ab initio* for those engine families.

(j) In the event of a negative credit balance resulting from a credit trade, both the buyer(s) and the seller(s) are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided *ab initio*.

(1) Where a buyer of credits is not responsible for causing the negative credit balance, it is only liable to supply additional credits equivalent to any amount of invalid credits that it used.

(2) Credit holders responsible for the credit shortfall may be subject to the requirements of § 94.309(g)(3).

(k) Averaging sets. Credits generated by engine families in one averaging set may not be used for compliance by engine families in any other averaging set. The averaging sets are defined as:

(1) Category 1 engines certified to the Tier 2 standards.

(2) Category 2 engines certified to the Tier 2 standards.

(3) Category 1 engines certified to the Tier 3 standards.

(4) Category 2 engines certified to the Tier 3 standards.

(l) Credit life shall be unlimited.

(m) Upper limits. The FELs for THC+NO_X and PM for new engines certified for participation in this averaging, banking and trading program may not exceed the following values:

(1) For Category 1 engines, the FEL may not exceed the levels contained in Table D–1.

TABLE D–1.—CATEGORY 1 UPPER LIMITS FOR FAMILY EMISSION LIMITS

Subcategory liters/cylinder	Tier	Model year*	THC+NO_X FEL g/kW-hr	PM FEL g/kW-hr
Power ≥ 37 kW disp. < 0.9	Tier 2	2004	11.5	1.2
	Tier 3	2008	7.5	1.2
0.9 ≥ disp. < 1.2	Tier 2	2004	11.5	1.2
	Tier 3	2008	7.5	1.2
1.2 ≥ disp. < 1.5	Tier 2	2004	10.5	0.54
	Tier 3	2008	7.5	0.54
1.5 ≥ disp. < 2.0	Tier 2	2004	10.5	0.54
	Tier 3	2008	7.5	0.54

TABLE D–1.—CATEGORY 1 UPPER LIMITS FOR FAMILY EMISSION LIMITS—Continued

Subcategory liters/cylinder	Tier	Model year*	THC+NO_X FEL g/kW-hr	PM FEL g/kW-hr
2.0 ≥ disp. < 2.5	Tier 2	2006	10.5	0.54
	Tier 3	2008	7.5	0.54
2.5 ≥ disp. < 5.0	Tier 2	2008	10.5	0.54
	Tier 3	2010	7.5	0.54

* The model years listed indicate the model years for which the specified tier of limits take effect.

(2) For Category 2 engines, the FEL may not exceed the levels contained in Table D-2.

TABLE D–2.—CATEGORY 2 UPPER LIMITS FOR FAMILY EMISSION LIMITS

Tier	Model year*	THC+NO_X FEL g/kW-hr	PM FEL g/kW-hr
Tier 2	2008	10.7	0.60
Tier 3	2010	7.5	0.60

*The model years listed indicate the model years for which the specified tier of limits take effect.

§ 94.305 Credit generation and use calculation.

(a) For each participating engine family, THC+NO_X and PM emission credits (positive or negative) are to be calculated according to the equation in paragraph (b) of this section and rounded in accordance with ASTM E29–93a, to the nearest one-hundredth of a megagram (Mg). Consistent units are to be used throughout the calculation.

(b) Credits for each engine family are calculated as:

Emission credits = (Std—FEL) X (UL) X (Production) X (AvgPR) X (LF) X (10^{-6})

Where:

(i) Std=the applicable cycle-weighted marine engine THC+NO_X and/or PM emission standard in grams per kilowatt-hour.

(ii) FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)

(iii) UL = the useful life in hours.

(iv) Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.

(v) AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

(vi) LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

(A) 0.69 for propulsion engines,

(B) 0.51 for auxiliary engines.

§ 94.306 Certification.

(a) In the application for certification a manufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and/or trading programs. Separate declarations are required for each pollutant (THC+NO_X and PM).

(2) Declare FELs for each engine family participating in certification averaging, banking, and/or trading.

(i) The FELs must be to the same number of significant digits as the emission standard.

(ii) In no case may the FEL exceed the upper limit prescribed in § 94.304(m).

(3) Conduct and submit detailed calculations of projected emission credits (positive or negative) based on quarterly production projections for each participating family and for each pollutant, using the applicable equation in § 94.305 and the applicable values of the terms in the equation for the specific family.

(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically where the quarterly projected credits will be applied (manufacturer/engine family or reserved).

(4) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's engine families participating in the averaging, banking, and trading program.

(b) Based on this information, each manufacturer's certification application must demonstrate:

(1) That at the end of model year production, each engine family has a net emissions credit balance equal to or greater than zero for any pollutant and program for which participation in certification under averaging, banking, and/or trading is being sought. The equation in section § 94.305 shall be used in this calculation for each engine family.

(2) That the manufacturer will obtain sufficient credits to be used to comply with the emission standard for any engine family with an FEL that exceeds the applicable emission standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, for each engine family involved the manufacturer must identify specifically the source of the credits being used (manufacturer/engine family). All such reports shall include all credits involved in certification averaging, banking, or trading.

(3) That in cases where credits are being generated/supplied, the use of such credits is specifically designated (manufacturer/engine family or reserved). All such reports shall include all credits involved in certification averaging, banking, or trading.

(c) Manufacturers must monitor projected versus actual production throughout the model year to ensure that compliance with emission standards is achieved at the end of the model year

(d) At the end of the model year, the manufacturer must provide the end-of-year reports required under § 94.309.

(1) Projected credits based on the information supplied in the certification application may be used to obtain a certificate of conformity. However, any such projected credits must be validated based on review of the end of model year reports and may be revoked at a later time based on follow-up audits or any other verification measure deemed appropriate by the Administrator.

(2) Compliance for engine families using averaging, banking, or trading will be determined at the end of the model

year. Manufacturers that have certified engine families with credit balances for THC+NO_X and/or PM that do not equal or exceed zero shall be in violation of the conditions of the certificate of conformity for such engine families. The certificate of conformity may be voided *ab initio* for those engine families.

(e) *Other conditions of certification.* (1) All certificates issued are conditional upon compliance by the manufacturer with the provisions of this subpart both during and after the calendar year of production.

(2) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio*.

(3) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

§ 94.307 Labeling.

For all engines included in the certification averaging, banking, and trading program, the FEL to which the engine is certified must be included on the label required in § 94.212.

§ 94.308 Maintenance of records.

(a) The manufacturer of any engine that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such engine produced:

(1) EPA engine family and configuration;

(2) Engine identification number;

(3) Engine calendar year and build date;

(4) Rated power;

(5) Purchaser and destination or owner; and

(6) Assembly plant.

(b) The manufacturer of any engine family that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such family:

(1) Model year and EPA engine family;

(2) Family Emission Limit(s) (FEL);

(3) Rated power for each configuration;

(4) Projected applicable production/sales volume for the calendar year;

(5) Actual applicable production/sales volume for the calendar year; and

(6) Useful life.

(c) Any manufacturer producing an engine family participating in trading of credits must maintain the following records on a quarterly basis for each engine family in the trading program:

(1) The model year and engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 94.305;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(d) The manufacturer must retain all records required to be maintained under this section for a period of 8 years from the due date for the end-of-calendar year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(f) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(g) EPA may void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 94.309 Reports.

(a) Manufacturers must submit the certification information as required under § 94.306, and end-of-year reports each year as part of their participation in certification averaging, banking, and trading programs.

(b) Quarterly reports. All entities involved in credit trades must submit quarterly reports. The reports shall include the source or recipient of the credits, the amount of credits involved plus remaining balances, details regarding the pollutant, and model year as well as the information prescribed in § 94.308(c). Copies of contracts related to credit trading must be included or supplied by the buyer, seller, and broker, as applicable.

(c) End-of-year reports must include the information prescribed in § 94.308(b). The report shall include a calculation of credit balances for each family to show that the summation of the manufacturer's use of credits results in a credit balance equal to or greater than zero. The report shall be consistent in detail with the information submitted under § 94.306 and show how credit surpluses were dispersed and how credit shortfalls were met on a family specific basis. The end-of-year report shall incorporate any information reflected in previous quarterly reports.

(d) The applicable production/sales volume for quarterly and end-of-year reports must be based on the location of either the point of first retail sale by the manufacturer or the point at which the engine is placed into service, whichever occurs first. This is called the final product purchase location.

(e) Each quarterly and end-of-year report submitted shall include a statement certifying to the accuracy and authenticity of the material reported therein.

(f) Requirements for submission. (1) Quarterly reports must be submitted within 90 days of the end of the calendar quarter to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 401 M St., SW, Washington, D.C. 20460.

(2) End-of-year reports must be submitted within 120 days of the end of the calendar year to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 401 M St., SW, Washington, D.C. 20460.

(3) Failure by a manufacturer participating in the averaging, banking, or trading program to submit any quarterly or end-of-year reports in the specified time for all engines is a violation of sections 203(a)(1) and 213 of the Clean Air Act for each engine.

(4) A manufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (120 days after the end of the calendar year) may not use or trade the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(g) Reporting errors. (1) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected 180-days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180-days shall be correctable if, as a result of the correction, the manufacturer's 's credits are reduced. Errors in the manufacturer's favor are not corrected if discovered after the 180-day correction period allowed.

(2) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report

previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be corrected by EPA.

(3) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero. These credits must be supplied at the ratio of 1.1 credits for each 1.0 credit needed. If sufficient credits are not available to bring the credit balance to zero for the family(ies) involved, EPA may void the certificate(s) for that family(ies) *ab initio*. In addition, all engines within an engine family for which there are insufficient credits will be considered to have violated the conditions of the certificate of conformity and therefore are not covered by that certificate.

(4) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits are restored for use by the manufacturer.

§ 94.310 Notice of opportunity for hearing.

Any voiding of the certificate under this subpart will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

Subpart E—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program

§ 94.401 Applicability.

The requirements of this subpart of this part are applicable to manufacturers of engines subject to the provisions of subpart A of this part. The requirement to report emission-related defects affecting a given class or category of engines applies for eight years from the end of the year in which such engines were manufactured.

§ 94.402 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.403 Emission defect information report.

(a) A manufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects, (or based on other information) that a specific emission-related defect exists in 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected engines to an ultimate purchaser.

(b) Defect information reports required under paragraph (a) of this section must be submitted not more than 15 working days after the same emission-related defect is found to effect 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. Information required by paragraph (c) of this section that is either not available within 15 working days or is significantly revised must be submitted as it becomes available.

(c) Except as provided in paragraph (b) of this section, each defect report must contain the following information in substantially the format outlined:

(1) The manufacturer's corporate name.

(2) A description of the defect.

(3) A description of each class or category of engines potentially affected by the defect including make, model, calendar year produced, purchaser and any other information as may be required to identify the engines affected.

(4) For each class or category of engines described in response to paragraph (c)(3) of this section, the following shall also be provided:

(i) The number of engines known or estimated to have the defect and an explanation of the means by which this number was determined.

(ii) The address of the plant(s) at which the potentially defective engines were produced.

(5) An evaluation of the emissions impact of the defect and a description of any operational or performance problems which a defective engine might exhibit.

(6) Available emissions data which relate to the defect.

(7) An indication of any anticipated follow-up by the manufacturer.

§ 94.404 Voluntary emissions recall reporting.

(a) When any manufacturer initiates a voluntary emissions recall campaign involving an engine, the manufacturer shall submit to EPA a report describing the manufacturer's voluntary emissions recall plan as prescribed by this section within 15 working days of the date owner notification was begun. The report shall contain the following:

(1) A description of each class or category of engines recalled including the number of engines to be recalled, the calendar year if applicable, the make, the model, and such other information as may be required to identify the engines recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments, or other changes to be made to correct the engines affected by the emission-related defect.

(3) A description of the method by which the manufacturer will notify engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's reasons for imposing any such condition, and a description of the proof to be required of an engine owner to demonstrate compliance with any such condition.

(5) A description of the procedure to be followed by engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor to remedy the defect, and the designation of facilities at which the defect can be remedied.

(6) If some or all the nonconforming engines are to be remedied by persons other than authorized warranty agents of the manufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer who will remedy the defect.

(7) A copy of any written notification sent to engine owners.

(8) A description of the system by which the manufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the changes on fuel consumption, operation or performance, and safety of each class or category of engines to be recalled.

(11) A sample of any label to be applied to engines which participate in the voluntary recall campaign.

(b) Unless otherwise specified by the Administrator, the manufacturer shall report on the progress of the recall campaign by submitting subsequent reports for six consecutive quarters, or until proven that remedial action has been adequately taken on all affected engines, whichever occurs first, commencing with the quarter after the voluntary emissions recall campaign actually begins. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter. For each class or group of engine subject to the voluntary emissions recall campaign, the quarterly report shall contain the:

(1) Emission recall campaign number, if any, designated by the manufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of engines involved in the voluntary emissions recall campaign.

(4) Number of engines known or estimated to be affected by the emission-related defect and an explanation of the means by which this number was determined.

(5) Number of engines inspected pursuant to voluntary emission recall plan.

(6) Number of inspected engines found to be affected by the emissions-related defect.

(7) Number of engines actually receiving repair under the remedial plan.

(8) Number of engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrappage, or for other reasons (specify).

(9) Number of engines determined to be ineligible for remedial action due to a failure to properly maintain or use such engines.

(10) Three copies of any service bulletins which relate to the defect to be corrected and which have not previously been reported.

(11) Three copies of all communications transmitted to engine owners which relate to the defect to be corrected and which have not previously been submitted.

(c) If the manufacturer determines that any of the information requested in paragraph (b) of this section has changed or was incorrect, revised information and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (6), (7), (8), and (9) of this section shall be cumulative totals.

(d) The manufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, the names and addresses of engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) Who were determined not to qualify for such remedial action when eligibility is conditioned on proper maintenance or use.

(e) The records described in paragraph (d) of this section shall be made available to the Administrator upon request.

§ 94.405 Alternative report formats.

(a) Any manufacturer may submit a plan for making either of the reports required by §§ 94.403 and 94.404 on computer diskettes, magnetic tape or other machine readable format. The plan shall be accompanied by sufficient technical detail to allow a determination that data requirements of these sections will be met and that the data in such format will be usable by EPA.

(b) Upon approval by the Administrator of the reporting system, the manufacturer may use such system until otherwise notified by the Administrator.

§ 94.406 Reports filing: record retention.

(a) The reports required by §§ 94.403 and 94.404 shall be sent to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., S.W., Washington, D.C. 20460.

(b) The information gathered by the manufacturer to compile the reports required by §§ 94.403 and 94.404 shall be retained for not less than 8 years from the date of the manufacture of the engines and shall be made available to duly authorized officials of the EPA upon request.

§ 94.407 Responsibility under other legal provisions preserved.

The filing of any report under the provisions of this subpart shall not affect a manufacturer's responsibility to file reports or applications, obtain approval, or give notice under any provision of law.

§ 94.408 Disclaimer of production warranty applicability.

(a) The act of filing an Emission Defect Information Report pursuant to § 94.403 is inconclusive as to the existence of a defect subject to the warranty provided by section 207(a) of the Act.

(b) A manufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to these regulations is not conclusive as to the applicability of the Production Warranty provided by section 207(a) of the Act.

Subpart F—Manufacturer Production Line Testing Programs

§ 94.501 Applicability.

The requirements of this subpart of this part are applicable to manufacturers of engines subject to the provisions of Subpart A of this part.

§ 94.502 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.503 General requirements.

(a) Manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506.

(b) The Administrator may waive some or all of the requirements of this subpart.

(c) The requirements of this subpart apply with respect to all applicable standards and FELs of subpart A of this part, including the supplemental standards of § 94.8(e).

§ 94.504 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any engine is to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to a manufacturer's production line testing program or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test engine is present; and

(4) Any facility where any record required under § 94.509 or other document relating to this subpart is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of engine manufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine test procedures or activities, including test engine selection, preparation and service accumulation,

emission test cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of an engine; and

(4) To inspect and photograph any part or aspect of any engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer to make arrangements with those in charge of a facility operated for the manufacturer benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, and served on the manufacturer, a manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible.

(1)(i) The required sample size for a Category 1 engine family is one percent of projected annual production for all engine families, provided that no engine tested fails to meet applicable emission standards. The required sample size is zero if a manufacturer's projected annual production for all engine families is less than 100.

(ii) The required sample size for a Category 2 engine family is one percent of projected annual production for all engine families, with a minimum sample size of one test per model year provided that no engine tested fails to meet applicable emission standards.

(2) Manufacturers may elect to test additional engines. All additional engines must be tested in accordance with the applicable test procedures of this part.

(3) The Administrator may reject any engines selected by the manufacturer if he or she determines that such engines are not representitive of actual production.

(b) The manufacturer must assemble the test engines using the same mass production process that will be used for engines to be introduced into commerce.

(c) No quality control, testing, or assembly procedures will be used on any test engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other engines of that family, except with the approval of the Administrator.

§ 94.506 Test procedures.

(a)(1) For engines subject to the provisions of this subpart, the prescribed test procedures are those procedures described in subpart B of this part, except as provided in this section.

(2) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any engine he/she determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(3) If test procedures other than those in subpart B were used in certification of the engine family being tested under this subpart (other than alternate test procedures necessary for testing of a development engine instead of a low hour engine under § 94.9), the manufacturer shall use the test procedures used in certification for production line testing.

(b)(1) The manufacturer may not adjust, repair, prepare, modify, or perform any emission test on any test engine unless this adjustment, repair, preparation, modification and/or test is documented in the manufacturer's engine assembly and inspection procedures and is actually performed by the manufacturer or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) Any adjustable engine parameter must be set to values or positions that are within the range specified in the approved application for certification .

(3) The Administrator may adjust or require to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and production line testing, to any setting within the specified adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test.

(c) Service Accumulation/Green Engine Factor. The manufacturer shall accumulate up to 300 hours of service on the engines to be tested. In lieu of conducting such service accumulation, the manufacturer may establish a Green Engine Factor for each regulated pollutant for each engine family to be used in calculating emissions test results. The manufacturer shall obtain the approval of the Administrator prior to using a Green Engine Factor.

(d) The manufacturer may not perform any maintenance on test engines after selection for testing.

(e) If an engine is shipped to a facility other than the production facility for production line testing, and an adjustment or repair is necessary because of such shipment, the engine manufacturer must perform the necessary adjustment or repair only after the initial test of the engine, except where the Administrator has determined that the test would be impossible to perform or would permanently damage the engine.

(f) If an engine cannot complete the service accumulation (if applicable) or an emission test, because of a malfunction, the manufacturer may request that the Administrator authorize either the repair of that engine or its deletion from the test sequence.

(g) Retesting. If an engine manufacturer determines that any production line emission test of an engine is invalid, the engine must be retested in accordance with the requirements of this subpart. Emission results from all tests must be reported to EPA, including test results the manufacturer determines are invalid. The engine manufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in § 94.508(e). In the event a retest is performed, a request may be made to the Administrator, within ten days of the end of the production quarter, for permission to substitute the after-repair test results for the original test results. The Administrator will either affirm or deny the request by the engine manufacturer within ten working days from receipt of the request.

§ 94.507 Sequence of testing.

(a) If one or more engines fail a production line test, then the manufacturer must test two additional engines for each engine that fails.

(b) The two additional engines tested under paragraph (a) of this section shall be selected from either the next fifteen produced in that engine family, or from those engines produced in that engine family within 48 hours of the completion of the failed test.

§ 94.508 Calculation and reporting of test results.

(a) Manufacturers shall calculate initial test results using the applicable test procedure specified in § 94.506(a). These results must also include the Green Engine Factor, if applicable. The manufacturer shall round these results, in accordance with ASTM E29–93a (incorporated by reference at § 94.5), to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding in accordance with ASTM E29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) Manufacturers shall calculate the final test results for each test engine by applying the appropriate deterioration factors, derived in the certification process for the engine family, to the final test results, and rounding in accordance with ASTM E 29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(d) If, subsequent to an initial failure of a production line test, the average of the test results for the failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(e) Within 30 calendar days of the end of each quarter, each manufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) Total production and sample size for each engine family;

(3) The applicable standards and/or FELs against which each engine family was tested;

(4) A description of the test engines;

(5) For each test conducted:

(i) A description of the test engine, including:

(A) Configuration and engine family identification;

(B) Year, make, and build date;

(C) Engine identification number;

(D) Number of hours of service accumulated on engine prior to testing; and

(E) Description of Green Engine Factor; how it is determined and how it is applied;

(ii) Location(s) where service accumulation was conducted and description of accumulation procedure and schedule, if applicable;

(iii) Test number, date, test procedure used, initial test results before and after rounding, and final test results for all production line emission tests conducted, whether valid or invalid, and the reason for invalidation of any test results, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and testing which was performed on the test engine, has not been reported pursuant to any other paragraph of this subpart, and will not be performed on other production engines;

(v) Any other information the Administrator may request relevant to the determination whether the new engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(6) For each failed engine as defined in § 94.510(a), a description of the remedy and test results for all retests as required by § 94.512(g);

(7) The date of the end of the engine manufacturer's model year production for each engine family tested; and

(8) The following signed statement and endorsement by an authorized representative of the manufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR part 94. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 94.509 Maintenance of records; submittal of information.

(a) The manufacturer for any new engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) General records. A description of all equipment used to test engines in accordance with § 94.503. The equipment requirements in subpart B of this part apply to tests performed under this subpart.

(2) Individual records. These records pertain to each production line test conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The method by which the Green Engine Factor was calculated or the number of hours of service accumulated on the test engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test;

(iv) A record and description of any adjustment, repair, preparation or modification performed on test engines, giving the date, associated time, justification, name(s) of the authorizing

personnel, and names of all supervisory personnel responsible for the conduct of the action;

(v) If applicable, the date the engine was shipped from the assembly plant, associated storage facility or port facility, and the date the engine was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed directly by EPA), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in subpart B of this part;

(vii) A brief description of any significant events during testing not otherwise described under this paragraph (a)(2) of this section, commencing with the test engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer must retain all records required to be maintained under this subpart for a period of eight (8) years after completion of all testing. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer must, upon request by the Administrator, submit the following information with regard to engine production:

(1) Projected production for each configuration within each engine family for which certification has been requested and/or approved.

(2) Number of engines, by configuration and assembly plant, scheduled for production.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division 6403-J, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

(f) The manufacturer must electronically submit the results of its production line testing using an EPA information format.

§ 94.510 Compliance with criteria for production line testing.

(a) A failed engine is one whose final test results pursuant to § 94.508(c), for one or more of the applicable pollutants, exceed an applicable emission standard or FEL.

(b) An engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL.

§ 94.511 [Reserved]

§ 94.512 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine that fails a production line test pursuant to § 94.510(a), effective from the time the testing of that engine is completed.

(b) The Administrator may suspend the certificate of conformity for an engine family which is in noncompliance pursuant to § 94.510(b), thirty days after the engine family is deemed to be in noncompliance.

(c) If the results of testing pursuant to the regulations in this subpart indicate that engines of a particular family produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for engines manufactured by the manufacturer at all other plants.

(d) The Administrator may suspend a certificate of conformity for any engine family in whole or in part if:

(1) The manufacturer fails to comply with any of the requirements of this subpart.

(2) The manufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 94.504 for any reason.

(e) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part; a suspension or revocation is effective upon receipt of such notification or thirty days from the time an engine family is deemed to be in noncompliance under §§ 94.508(d), 94.510(a), or 94.510(b), whichever is earlier, except that the certificate is immediately suspended with respect to any failed engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the remedy is one requiring a design change or changes to the engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed engine, as provided for in paragraph (a) of this section, the manufacturer must take the following actions before the certificate is reinstated for that failed engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the engine conforms to applicable standards or family emission limits by retesting if applicable, the engine in accordance with this part; and

(3) Submit a written report to the Administrator, after successful completion of testing on the failed engine, which contains a description of the remedy and test results for each engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines, describes the remedy, including a description of any quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing engines selected from normal production runs of that engine family. Such testing must comply with the provisions of this subpart. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the applicable

standards or family emission limits through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the change(s) in engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer, within five working days after receipt of the report in paragraph (h)(1) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing engines selected from normal production runs of that engine family. When both of these requirements are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. If this subsequent testing reveals failing data the revocation remains in effect.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than 30 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), or (f) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraphs (a), (b), (c) and (d) of this section:

(1) Shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 94.513, 94.514, and 94.515 and

(2) Need not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or voids a certificate of conformity under paragraph § 94.215, and prior to the commencement of a hearing under § 94.513, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke, or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to recall all engines of that family produced from the time the certificate is conditionally reinstated if the family fails subsequent testing and must commit to remedy any nonconformity at no expense to the owner.

§ 94.513 Request for public hearing.

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 94.512(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 30 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division, Office of Mobile Sources and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which configuration(s) within a family is to be the subject of the hearing;

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 94.512(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 94.512(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 94.514 Administrative procedures for public hearing.

(a) The Presiding Officer shall be an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930).

(b) The Judicial Officer shall be an officer or employee of the Agency appointed as a Judicial Officer by the Administrator, pursuant to this section, who shall meet the qualifications and perform functions as follows:

(1) *Qualifications.* A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. The Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart. The Judicial Officer shall be a graduate of an accredited law school and a member in good standing of a recognized Bar Association of any state or the District of Columbia.

(2) *Functions.* The Administrator may consult with the Judicial Officer or delegate all or part of the Administrator's authority to act in a given case under this section to a Judicial Officer, provided that this delegation does not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) For the purposes of this section, one or more Judicial Officers may be designated by the Administrator. As work requires, a Judicial Officer may be designated to act for the purposes of a particular case.

(d)(1) In the case of a hearing requested under § 94.512(j), when it clearly appears from the data and other information contained in the request for

a hearing that no genuine and substantial question of fact or law exists with respect to the issues specified in § 94.513(c)(2), the Administrator may enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity.

(2) In the case of a hearing requested under § 94.513 to challenge a suspension of a certificate of conformity for the reason(s) specified in § 94.512(d), when it clearly appears from the data and other information contained in the request for the hearing that no genuine and substantial question of fact or law exists with respect to the issue of whether the refusal to comply with this subpart was caused by conditions and circumstances outside the control of the manufacturer, the Administrator may enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraph (d)(1) or (d)(2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to § 94.516.

(4) If the Administrator determines that a genuine and substantial question of fact or law does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, the Administrator shall grant the request for a hearing and publish a notice of public hearing in the **Federal Register** or by such other means as the Administrator finds appropriate to provide notice to the public.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section and § 94.513(c) must be filed with the Hearing Clerk of the Agency. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section and § 94.513(b). If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing referred to in paragraph (d)(4) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division 6403–J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Computation of time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his or her discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Hearing date.* To the extent possible hearings under § 94.513 will be scheduled to commence within 14 days of receipt of the request for a hearing.

§ 94.515 Hearing procedures.

The procedures provided in § 86.1014–84 (i) through (s) of this chapter apply for hearings requested pursuant to § 94.513 regarding suspension, revocation, or voiding of a certificate of conformity.

§ 94.516 Appeal of hearing decision.

The procedures provided in § 86.1014–84 (t) through (aa) of this chapter apply for appeals filed with respect to hearings held pursuant to § 94.515.

§ 94.517 Treatment of confidential information.

Except for information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e), information submitted pursuant to this subpart shall be made available to the public by EPA notwithstanding any claim of confidentiality made by the submitter. The provisions for treatment of confidential information described in § 94.4 apply to the information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e).

Subpart G [Reserved]

Subpart H—Recall Regulations

§ 94.701 Applicability.

The requirements of this subpart are applicable to all nonroad engines subject to the provisions of this part.

§ 94.702 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.703 Applicability of 40 CFR part 85, subpart S.

(a) Engines subject to provisions of this part are subject to recall regulations specified in part 85, subpart S of this chapter, except for the items set forth in this section.

(b) In § 85.1801, section 216 of the Clean Air Act applies, rather than section 214 of the Act.

(c) In § 85.1802(a), section 213 of the Act applies, rather than section 202 of the Act.

(d) In § 85.1803(a) and § 85.1805(a)(1) ''family emission limits as defined in part 94 promulgated under section 213 of the Act'' applies, rather than the reference to ''family particulate emission limits as defined in part 86 promulgated under section 202 of the Act''.

(e) Throughout the subpart references to ''engines'' apply rather than references to ''vehicles or engines''.

Subpart I—Importation of Nonconforming Engines

§ 94.801 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to importers of engines (and vessels containing engines) for which the Administrator has promulgated regulations under this part prescribing emission standards, that are offered for importation or imported into the United States, but which engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming engines as defined in § 94.2), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in U.S. Customs Service regulations (19 CFR Chapter I).

§ 94.802 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.803 Admission.

A nonconforming engine offered for importation may be admitted into the United States pursuant to the provisions of this subpart. In order to obtain admission the importer must submit to the Administrator a written request for approval containing the following:

(a) Identification of the importer of the engine and the importer's address, telephone number, and taxpayer identification number;

(b) Identification of the engine's owner, the owner's address, telephone number, and taxpayer identification number;

(c) Identification of the engine including make, model, identification number, and original production year;

(d) Information indicating the provision in this subpart under which the engine is to be imported;

(e) Identification of the place(s) where the engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(f) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(g) Such other information as is deemed necessary by the Administrator.

§ 94.804 Exemptions.

(a) Unless otherwise specified, any person may apply for the exemptions allowed by this section.

(b) Notwithstanding other requirements of this subpart, a nonconforming engine that qualifies for a temporary exemption under this paragraph may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for a temporary exemption from the Administrator shall contain the identification required in § 94.803 and information that demonstrates that the engines qualify for an exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond and/or exportation of the engine. The following temporary exemptions are permitted by this paragraph (b):

(1) *Exemption for repairs or alterations.* Upon written approval by EPA, a person may conditionally import under bond a nonconforming engine solely for purpose of repair(s) or alteration(s). The engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A nonconforming test engine may be conditionally imported by a person subject to the requirements of § 94.905. A test engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning the engine in accordance with § 94.905 for a subsequent one-year period.

(3) *Display exemptions.* (i) A nonconforming engine intended solely for display may be conditionally imported under bond subject to the requirements of § 94.906(b).

(ii) A display engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of an engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(iii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) National security exemption. Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the national security exemption found at § 94.908, if prior written approval for such permanent importation is obtained from the Administrator. A request for approval is to contain the identification information required in § 94.803 and information that demonstrates that the importer is entitled to the exemption.

(d) An application for exemption provided for in paragraphs (b) and (c) of this section shall be mailed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., SW., Washington, DC 20460, Attention: Imports.

§ 94.805 Prohibited acts; penalties.

(a) The importation of an engine (including an engine incorporated in an imported marine vessel) which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of an engine may not:

(1) Operate the engine in the United States; or

(2) Sell or lease or offer the engine for sale or lease.

(c) An engine conditionally admitted pursuant to § 94.804 and not otherwise permanently exempted or excluded by the end of the period of conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations by the end of the period of conditional admission. An engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to a civil penalty under section 205 of the Act and § 94.1106. In addition to the penalty provided in the Act and § 94.1106, where applicable, a person or entity who imports an engine under the exemption provisions of § 94.804 and, who fails to deliver the engine to the U.S. Customs Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

Subpart J—Exclusion and Exemption Provisions

§ 94.901 Purpose and applicability.

The provisions of this subpart of this part identify excluded engines (i.e.,

engines not covered by the Act) and allow for the exemption of engines from certain provisions of this part. The applicability of the exclusions is described in § 94.903, and the applicability of the exemption allowances is described in §§ 94.904 through 94.909.

§ 94.902 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.903 Exclusions.

(a) Upon written request with supporting documentation, EPA will make written determinations as to whether certain engines are excluded from applicability of this part. Any engines that are determined to be excluded are not subject to the regulations under this part. Requests to determine whether certain engines are excluded should be sent to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., SW., Washington, DC 20460.

(b) EPA will maintain a list of models of engines that have been determined to be excluded from coverage under this part. This list will be available to the public and may be obtained by writing to the address in paragraph (a) of this section.

(c) In addition to the engines excluded in paragraph (a) of this section, certain engines are not subject to the requirements and prohibitions of this part because they are excluded from the definitions of ''marine engine'' in § 94.2.

§ 94.904 Exemptions.

(a) Except as specified otherwise in this subpart, the provisions of §§ 94.904 through 94.911 exempt certain new engines from the standards, other requirements, and prohibitions of this part, except for the requirements of this subpart and the requirements of § 94.1104.

(b)(1) Any person may request a testing exemption subject to the provisions of § 94.905.

(2) Any engine manufacturer may request a national security exemption subject to the provisions of § 94.908.

(3) Engines manufactured for export purposes are exempt without application, subject to the provisions of § 94.909, except as otherwise specified by § 94.909.

(4) Manufacturer-owned engines are exempt without application, subject to the provisions of § 94.906 (a).

(5) Display engines are exempt without application, subject to the provisions of § 94.906 (b).

(6) Engines used solely for the purpose of competition are exempt, subject to the provisions of § 94.906 (c).

(7) Auxiliary engines used on foreign trade vessels are exempt, subject to the provisions of § 94.906 (d).

(8) Engines that are identical to engines that are covered by a certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 are exempt, subject to the provisions of § 94.907.

§ 94.905 Testing exemption.

(a)(1) The Administrator may exempt from the standards and/or other requirements and prohibitions of this part new engines that are being used solely for the purpose of conducting a test program. Any person requesting an exemption for the purpose of conducting a test program must demonstrate the following:

(i) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance this section;

(ii) That the proposed test program necessitates the granting of an exemption;

(iii) That the proposed test program exhibits reasonableness in scope; and

(iv) That the proposed test program exhibits a degree of oversight and control consonant with the purpose of the test program and EPA's monitoring requirements.

(2) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four elements identified in paragraphs (a)(1)(i) through (iv) of this section.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, technology development, or training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under § 94.1103. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

(1) An estimate of the program's duration; and

(2) The maximum number of engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the testing;

(2) The location(s) of the testing;

(3) The time, work, or mileage duration of the testing;

(4) The ownership arrangement with regard to the engines involved in the testing;

(5) The intended final disposition of the engines;

(6) The manner in which the engine identification numbers will be identified, recorded, and made available; and (7) The means or procedure whereby test results will be recorded.

(f) A manufacturer of new engines may request a testing exemption to cover engines intended for use in test programs planned or anticipated over the course of a subsequent two-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the engines are used for purposes consistent with paragraph (a) of this section.

(g) For engines being used for the purpose of developing a fundamentally new emission control technology related either to an alternative fuel or an aftertreatment device, the Administrator may exempt the engine from some or all of the applicable standards of this part for the full useful life of the engine, subject to the provisions of paragraphs (a) through (f) of this section.

§ 94.906 Manufacturer-owned exemption, display exemption, competition exemption, and foreign trade vessel exemption.

(a) Any manufacturer-owned-owned engine, as defined by § 94.2, is exempt from § 94.1103, without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer must establish, maintain, and retain the following adequately organized and indexed information on each exempted engine:

(i) Engine identification number;

(ii) Use of the engine on exempt status; and

(iii) Final disposition of any engine removed from exempt status.

(2) The manufacturer must provide right of entry and access to these records to EPA Enforcement Officers as outlined in § 94.208.

(3) The manufacturer must permanently affix a label to each engine on exempt status, unless the requirement is waived or an alternate procedure is approved by the Director, Engine Programs and Compliance Division. This label should:

(i) Be affixed in a readily visible portion of the engine;

(ii) Be attached in such a manner that cannot be removed without destruction or defacement;

(iii) State in the English language and in block letters and numerals of a color that contrasts with the background of the label, the following information:

(A) The label heading ''Emission Control Information'';

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement, engine family identification, and model year of engine; or person of office to be contacted for further information about the engine;

(D) The statement ''This engine is exempt from the prohibitions of 40 CFR 94.1103.''

(4) No provision of paragraph (a)(3) of this section prevents a manufacturer from including any other information it desires on the label.

(5) The engine is not used in revenue-generating service, or sold.

(b) Display exemption. An uncertified engine that is to be used solely for display purposes, and that will only be operated incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been obtained for the engine, is exempt without request from the standards of this part.

(c) Competition exemption. The Administrator may exempt, upon request, engines that are used solely for the purpose of competition.

(d) Foreign trade exemption. (1) The Administrator may exempt, upon request of the vessel owner, auxiliary engines used on foreign trade vessels.

(2) Vessel owners requesting an exemption under this paragraph (d) must demonstrate to the Administrator that the vessel will spend less than 25 percent of its operating time within 320 nautical kilometers of U.S. territory.

(3) For the purpose of this paragraph (d), the term ''vessel owner'' includes any entities that have contracted to purchase a new marine vessel.

§ 94.907 Non-marine-specific engine exemption.

(a)(1) For manufacturers selling non-marine-specific engines to be used as propulsion engines in marine vessels, such engines are exempt, provided:

(i) The engines are covered by a certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92;

(ii) The certified emission levels (after application of deterioration factors) are below the numerical levels of the otherwise applicable standards of this part for all pollutants;

(iii) More engines are reasonably projected to be sold and used under the certificate for non-marine use than for use in marine vessels;

(iv) The engine is sold to an engine dresser for marization prior to being placed in a vessel;

(v) The Administrator has approved the exemption as specified in paragraph (d) of this section.

(2) For the purposes of this section ''covered by a certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92'' means that:

(i) The engine complies with all applicable requirements of either 40 CFR part 89 or 40 CFR part 92;

(ii) The fuel system of the engine has not been modified after the original manufacture of the engine is complete;

(iii) The engine cooling system of an installed engine meets the original manufacturer's specifications for certified engines;

(iv) No other changes are made to the engine that could reasonably be expected to adversely effect the emissions performance of the engine; and

(v) The original emissions label remains clearly visible on the engine after installation in the vessel.

(b) For manufacturers selling non-marine-specific engines to be used as auxiliary engines in marine vessels, such engines are exempt from the certification requirements of subpart C of this part and the production line testing requirements of subpart F of this part, provided that they comply with all of the requirements of paragraph (a) of this section other than the requirement of paragraph (a)(1)(iv) of this section. These engines are not exempt from the standards of subpart A of this part.

(c) Manufacturers of engines exempted under this section shall:

(1) Report annually to EPA the number of engines exempted under paragraph (a) of this section;

(2) Upon the Administrator's request, provide test data showing the emissions of the engine when it is operated over a typical marine engine cycle; and

(3) Notify purchasers that the engine a dressed non-marine specific engine (e.g., is a dressed locomotive engine) that is exempt from the requirements of this part 94.

(d)(1) Manufacturers seeking an exemption under this section shall notify the Administrator of such intent in their applications for certification under 40 CFR part 89 or 40 CFR part 92.

(2) The Administrator shall deny a non-marine-specific exemption in any case where he/she has evidence that approving such an exemption would be inappropriate because of adverse environmental or economic impacts.

§ 94.908 National security exemption.

(a)(1) Any marine engine, otherwise subject to this part, which is used in a vessel that exhibits substantial features ordinarily associated with military combat such as armor and/or permanently affixed weaponry and which will be owned and/or used by an agency of the federal government with responsibility for national defense, will be exempt from the regulations in this subpart for purposes of national security. No request for exemption is necessary.

(2) Manufacturers may request a national security exemption for any marine engine, otherwise subject to this part, which does not meet the conditions described in paragraph (a)(1) of this section. A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

(b) EPA will maintain a list of models of marine engines (and the vessels which use them) that have been granted a national security exemption under paragraph (a)(2) of this section. This list will be available to the public and may be obtained by writing to the following address: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, (6403–J) Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

§ 94.909 Export exemptions.

(a) A new engine intended solely for export, and so labeled or tagged on the outside of any container and on the engine, is subject to the provisions of § 94.1103, unless the importing country has new marine engine emission standards which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards whatsoever is deemed to be a

country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void *ab initio* with respect to a new engine intended solely for export, where such engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

§ 94.910 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to § 94.905 or § 94.908, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void *ab initio* with respect to any engine. Consequently, the causing or the performing of an act prohibited under § 94.1103(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of § 94.1103(a) are applicable, liable to suit under sections 204 and 205 of the Act.

§ 94.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., S.W., Washington, D.C. 20460.

Subpart L—General Enforcement Provisions and Prohibited Acts

§ 94.1101 Applicability.

The requirements of this subpart are applicable to all persons with respect to engines subject to the provisions of subpart A of this part.

§ 94.1102 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.1103 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1)(i)(A) In the case of a manufacturer of new engines, the sale, the offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the distribution in commerce of any new engine manufactured after December 31, 2003 (the effective date of applicable emission standards under this part), unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(B) The manufacture of an engine for the purpose of an act listed in paragraph (a)(1)(i)(A) of this section unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part prior to its introduction into commerce.

(ii) In the case of any person, except as provided in Subpart I of this part, the importation into the United States of any engine manufactured on or after the implementation date of the applicable emission limits for the relevant engine, unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part. (2)(i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this part.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under this part.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required by this part.

(iv) For a person to fail to establish or maintain records as required under this part. (3)(i) For a person to remove or render inoperative a device or element of design installed on or in a engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer, as approved in the application for certification by the Administrator.

(ii) For a person to manufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(iii) For a person to deviate from the provisions of § 94.11 when rebuilding an engine (or rebuilding a portion of an engine or engine system).

(4) For a manufacturer of a new engine subject to standards prescribed under this part:

(i) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless the manufacturer has complied with the requirements of § 94.1107.

(ii) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless all required labels and tags are affixed to the engine in accordance with § 94.212.

(iii) To fail or refuse to comply with the requirements of § 94.1108.

(iv) Except as provided in § 94.211, to provide directly or indirectly in any communication to the ultimate purchaser or a subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of a part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons.

(v) To fail or refuse to comply with the terms and conditions of the warranty under § 94.1107.

(5) For a manufacturer of marine vessels to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity.

(6) For any person to install a recreational marine engine in a vessel that is manufactured on or after the implementation date of the applicable standards and that is not a recreational vessel.

(b) For the purposes of enforcement of this part, the following apply:

(1) Nothing in paragraph (a)(3) of this section is to be construed to require the use of any manufacturer's parts in maintaining or repairing a engine.

(2) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the

procedure, and the action results in the proper functioning of the device or element of design.

(3) Where the Administrator determines that no engine produced by any manufacturer and is certified to the requirements of this part is available with the appropriate physical or performance characteristics to repower a vessel, the Administrator may allow a replacement engine to be produced without complying with all of the otherwise applicable requirements of this part. Such engine shall not be subject to the prohibitions of paragraph (a)(1) of this section, provided that:

(i) The engine requiring replacement is not certified or is certified to emission standards that are less stringent than those in effect when the replacement engine is built; and

(ii) The engine manufacturer or its agent takes ownership and possession of the engine being replaced in partial exchange for the replacement engine; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved by the Administrator:

THIS ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1 [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY; and

(iv) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(3), the term ''engine manufacturer'' shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part; and

(v) Where the replacement engine is intended to replace an engine that is certified to emission standards that are less stringent than those in effect when the replacement engine is built, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(vi) Engines sold pursuant to the provisions of this paragraph will neither generate nor use emission credits and will not be part of any accounting under the averaging, banking and trading program.

§ 94.1104 General enforcement provisions.

(a) *Information collection provisions.* (1)(i) Every manufacturer of new engines and other persons subject to the requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer shall comply in all respects with the requirements of subpart E of this part.

(ii) Every manufacturer or owner of engines exempted from the standards or requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require regarding the emissions of such engines.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section, and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new engine from § 94.1103 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security, or for other purposes allowed by subpart J of this part.

(c) *Importation provision.* (1) A new engine, offered for importation or imported by a person in violation of § 94.1103 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a engine is finally refused admission under this paragraph (c), the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new engine intended solely for export, and so labeled or tagged on the outside of the container if used and on the engine, shall be subject to the provisions of § 94.1103, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart A of this part, then the engine must comply with the standards of the country that is to receive the engine.

(e) *Recordkeeping.* Except where specified otherwise, records required by this part must be kept for eight (8) years.

§ 94.1105 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 94.1103(a).

(b) Actions to restrain violations of § 94.1103(a) must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

§ 94.1106 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 94.1103(a)(1), (a)(4), (a)(5), or (a)(6), or a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) is subject to a civil penalty of not more than $25,000 for each violation unless modified by the Debt Collection Improvement Act and/or regulations issued there under.

(2) A person other than a manufacturer or dealer who violates § 94.1103(a)(3) (i) or (iii) or any person who violates § 94.1103(a)(3)(ii) is subject to a civil penalty of not more

than $2,500 for each violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(3) A violation with respect to § 94.1103(a)(1), (a)(3)(i), (a)(4), or (a)(5) constitutes a separate offense with respect to each engine.

(4) A violation with respect to § 94.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 94.1103(a)(5) constitutes a separate offense.

(5) A person who violates § 94.1103(a)(2) or (a)(5) is subject to a civil penalty of not more than $25,000 per day of violation unless modified by the Debt Collection Improvement Act and/or regulations issued there under.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph (b) may be brought in the district court of the United States for the district in which the defendant resides or has the Administrator's principal place of business, and the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph (b), the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) *Administrative assessment of certain penalties.* (1) *Administrative penalty authority.* In lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at part 22 of this chapter. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) *Determining amount.* In determining the amount of any civil penalty assessed under this paragraph (c), the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) *Effect of administrator's action.* (i) Action by the Administrator under this paragraph (c) does not affect or limit the Administrator's authority to enforce any provisions of the Act; except that any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this paragraph (c), or for which the Administrator has issued a final order not subject to further judicial review and for which the violator has paid a penalty assessment under this paragraph shall not be the subject of a civil penalty action under paragraph (b) of this section.

(ii) No action by the Administrator under this paragraph (c) shall affect a person's obligation to comply with a section of this part.

(4) *Finality of order.* An order issued under this paragraph (c) is to become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (c)(5) of this section.

(5) *Judicial review.* A person against whom a civil penalty is assessed in accordance with this paragraph (c) may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. The person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph (c) unless substantial evidence does not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) *Collection.* (i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of the Administrator, the Administrator shall request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty is not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is an amount equal to ten percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

§ 94.1107 Warranty provisions.

(a) The manufacturer of each engine must warrant to the ultimate purchaser and each subsequent purchaser or owner that the engine is designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period (as determined under § 94.10).

(b) For the purposes of this section, the owner of any engine warranted under this part is responsible for the proper maintenance of the engine. Proper maintenance includes replacement and/or service, as needed, at the owner's expense at a service

establishment or facility of the owner's choosing, of all parts, items, or devices which were in general use with engines prior to 1999. For diesel engines, this would generally include replacement or cleaning of the fuel delivery and injection system.

§ 94.1108 In-use compliance provisions.

(a) Effective with respect to engines subject to the requirements of this part:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life period (as defined under § 94.2), the Administrator shall immediately notify the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with respect to any class or category of engines shall be given to ultimate purchasers, subsequent purchasers (if known), and dealers (as applicable) in such manner and containing such information as required in subparts E and H of this part.

(3)(i) The certifying manufacturer shall furnish with each new engine written instructions for the proper maintenance and use of the engine by the ultimate purchaser as required under § 94.211.

(ii) The instruction under paragraph (a)(3)(i) of this section must not include any condition on the ultimate purchaser's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also must not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer, or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent engine repair facilities with which such manufacturer has no commercial relationship.

(iii) The prohibition of paragraph (a)(3)(ii) of this section may be waived by the Administrator if:

(A) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(B) The Administrator finds that such a waiver is in the public interest.

(iv) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to the engine that the engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under § 94.212.

(b) The manufacturer bears all cost obligation any dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

Appendix I to Part 94—Emission Related Engine Parameters and Specifications

I. Basic Engine Parameters—Reciprocating Engines.
1. Compression ratio.
2. Type of air aspiration (natural, Roots blown, supercharged, turbocharged).
3. Valves (intake and exhaust).
a. Head diameter dimension.
b. Valve lifter or actuator type and valve lash dimension.
4. Camshaft timing.
a. Valve opening—intake exhaust (degrees from TDC or BDC).
b. Valve closing—intake exhaust (degrees from TDC or BDC).
c. Valve overlap (degrees).
5. Ports—two stroke engines (intake and/or exhaust).
a. Flow area.
b. Opening timing (degrees from TDC or BDC).
c. Closing timing (degrees from TDC or BDC).

II. Intake Air System.
1. Roots blower/supercharger/turbocharger calibration.
2. Charge air cooling.
a. Type (air-to-air; air-to-liquid).
b. Type of liquid cooling (engine coolant, dedicated cooling system).
c. Performance (charge air delivery temperature (°F) at rated power and one other power level under ambient conditions of 80°F and 110°F, and 3 minutes and 15 minutes after selecting rated power, and 3 minutes and 5 minutes after selecting other power level).
3. Temperature control system calibration.
4. Maximum allowable inlet air restriction.

III. Fuel System.
1. General.
a. Engine idle speed.
2. Fuel injection—compression ignition engines.
a. Control parameters and calibrations.
b. Transient enrichment system calibration.
c. Air-fuel flow calibration.
d. Altitude compensation system calibration.
e. Operating pressure(s).
f. Injector timing calibration.

IV. Engine Cooling System.
1. Thermostat calibration.

V. Exhaust System.
1. Maximum allowable back pressure.

VI. Exhaust Emission Control System.
1. Air injection system.
a. Control parameters and calibrations.
b. Pump flow rate.
2. EGR system.
a. Control parameters and calibrations.
b. EGR valve flow calibration.
3. Catalytic converter system.
a. Active surface area.
b. Volume of catalyst.
c. Conversion efficiency.
4. Backpressure.

VII. Crankcase Emission Control System.
1. Control parameters and calibrations.
2. Valve calibrations.

VIII. Auxiliary Emission Control Devices (AECD).
1. Control parameters and calibrations.
2. Component calibration(s).

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Friday
December 11, 1998

Part III

Department of Health and Human Services

Program Support Center

Privacy Act of 1974; Republication of System of Records; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Privacy Act of 1974; Republication of System Notices

AGENCY: Program Support Center (PSC), HHS.

ACTION: Notification of Republication of System Notices.

SUMMARY: In accordance with the requirements of the Privacy Act, PSC has reviewed and is republishing nine system notices. This includes the publication of one new system of records notice and the notices of the major alteration of four systems of records. By reorganization order dated September 25, 1995, the Secretary of HHS established the Program Support Center (PSC) as an Operating Division (OPDIV) of HHS. The PSC maintains nine systems of records.

DATES: The PSC invites interested persons to submit comments on the proposed internal and routine use(s) on or before January 19, 1999. The PSC has sent a Report of New System and a Report of Altered Systems to the Congress and to the Office of Management and Budget (OMB) on December 1, 1998. The new and the altered systems of records will be effective 40 days from the date submitted to OMB unless PSC receives comments which would result in a contrary determination.

ADDRESS: Address comments to the Privacy Act Officer, Program Support Center, 5600 Fishers Lane, Room 17A–08, Rockville, Maryland 20857. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas Mortl, Room 17A–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The reorganization of September 25, 1995, transferred nine systems of records to PSC and created one new system of records. The PSC deleted one system of records. Listed below are the nine remaining systems and the proposed actions for each system. The PSC has reviewed and updated all of its system notices and is republishing the nine system notices in their entirety.

1. 09–40–0001—Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS. This system was transferred to PSC from the Office of the Assistant Secretary for Health (OASH). Its former number and title were 09–37–0002—PHS Commissioned Corps General Personnel Records, HHS/OASH/OSG. The review and update of this system notice resulted in the deletion of routine uses #4, #5, and #13. The information of #4 and #5 is now contained in the new payroll system 09–40–0006. The information of #13 was moved to the Record Access Procedures section.

2. 09–40–0002—Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0003—PHS Commissioned Corps Medical Records, HHS/OASH/OSG. The review and update of this system notice resulted in the addition of a new routine use. The proposed new routine use (#6) will permit PSC to disclose to the Social Security Administration (SSA) information relating to the disability or death of a commissioned officer. The purpose of the disclosure is to determine Social Security benefits or other benefits which may be due to the officer or to the survivors of a deceased officer. The disclosures pursuant to this routine use are compatible with the stated purposes of the system and were a part of the Purpose section prior to the separation of SSA from HHS. The review and update of this system notice resulted in the deletion of routine uses #2, #5, and #9. The disclosures under routine use #2 were internal uses and, therefore, were moved to the Purpose section. The disclosures under routine use #5 are properly made under system 09–40–0001. The information under routine use #9 was moved to the Record Access Procedures section.

3. 09–40–0003—Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0005—PHS Commissioned Corps Board Proceedings, HHS/OASH/OSG. The review and update of this system notice resulted in the deletion of routine use #8. This information was moved to the Record Access Procedures section.

4. 09–40–0004—Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0006—PHS Commissioned Corps Grievance, Investigatory and Disciplinary files, HHS/OASH/OSG.

5. 09–40–0005—Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records, HHS/PSC/HRS. This system was transferred from the Health Resources and Services Administration (HRSA) to PSC. Its former number and title were: 09–15–0029—PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BPHC. The system will be administered by the Division of Commissioned Personnel/HRS. The PSC proposes to add one new routine use (#8) to the system. The proposed new routine use will permit PSC to use a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. The disclosures pursuant to this routine use are compatible with the stated purposes of the system.

6. 09–40–0006—Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS. This is a new system of records. Prior to the reorganization, commissioned corps payroll records were maintained in system 09–90–0017—Pay, Leave and Attendance Records, HHS/OS/ASPER. This system has now been transferred to HRS/PSC. The PSC decided to create a separate payroll record system for the Division of Commissioned Personnel (DCP), HRS. The DCP administers the comprehensive personnel management program for the PHS Commissioned Corps. The DCP is responsible for performing all personnel operations functions associated with the commissioned corps personnel system including pay administration. Since DCP serves as the central repository for all records reflecting the service and status of commissioned corps personnel, the responsibility for maintaining the DCP payroll record system should also rest with DCP. Authorities: The DCP administers this system under the following authorities: The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, ''Numbering System for Federal Accounts Relating to Individual Persons''; E.O. 10450, ''Security Requirements for Government Employment''; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS. Purpose(s): This system of records is

used to: (1) Determine eligibility for pay allowances, entitlements, privileges, and benefits; (2) determine the eligibility or entitlements of dependents and beneficiaries; (3) give legal force to personnel transactions and establish officer rights and obligations under pertinent laws and regulations; (4) provide information to HHS components seeking to collect an overdue debt owed to the Federal Government; (5) provide information to the Federal Parent Locator System (FPLS), the Office of Child Support Enforcement (OCSE), and the Administration for Children and Families, HHS, for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 USC 653; (6) provide information to OCSE to verify with the Social Security Administration the Social Security Numbers in connection with the operation of the FPLS by OCSE; (7) provide information to OCSE to release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return; and (8) upon the request of the officer, provide information to charities, financial organizations, insurance organizations or other companies for the purposes of contributing to charity, payment of organizational dues, or payment for an organizational benefit (such as insurance). Categories of Records: The system will contain the following records: Commissioned Officers' names, home addresses, SSN; documents relating to pay, benefits, leave, travel and allowances, dependent status, special pay files, retirement pay files; and related correspondence. Routine Use Disclosures: The proposed 12 routine uses are compatible with the stated purposes of the system. The PSC will disclose relevant information to third parties outside the Department as follows: Routine use 1: To a congressional office upon the written request of the record subject to obtain assistance from his/her congressional representative. Routine use 2: To the Department of Justice in case of litigation where HHS determines that such disclosure is relevant and necessary and would help in the effective representation of the governmental party. Routine use 3: To the Department of Treasury for all pay-related activities. Routine use 4: To State and local government taxing authorities where a record subject is or was subject to taxes. Routine use 5: To the Social Security Administration for all FICA-related activities. Routine use 6: To appropriate Federal, State, local, or international agencies, or foreign governments should PSC become aware of evidence of a potential violation of civil or criminal law. Routine use 7: To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Routine use 8: To OMB in connection with private relief legislation or for budgetary or management oversight purposes. Routine use 9: To respond to interrogatories in the prosecution of a divorce action or settlement. Routine use 10: To disclose information about the entitlements and benefits of a beneficiary of a deceased officer, retiree, or annuitant for the purpose of making disposition of the estate. Routine use 11: To the Equal Employment Opportunity Commission in connection with an investigation. Routine use 12: To authorized officials of other Federal agencies where commissioned officers are assigned.

7. 09–40–0010—Pay, Leave and Attendance Records, HHS/PSC/HRS. This system was transferred from the Office of the Secretary, HHS, to PSC. Its former number and title were: 09–90–0017—Pay, Leave and Attendance Records, HHS/OS/ASPER. The system will be administered by the Personnel and Pay Systems Division/HRS. The PSC proposes to expand the Purpose section and to add six new routine uses. Purpose(s): The proposed new purposes and uses of the records within HHS are: (1) Provide information to the Federal Parent Locator System (FPLS), Office of Child Support Enforcement (OCSE), HHS, for locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 USC 653. (2) Provide information to OCSE for release to the Social Security Administration for verifying Social Security Numbers. (3) Provide information to OCSE for release to the Department of Treasury for the purpose of administering the Earned Income Tax Credit Program, and verifying a claim with respect to employment in a tax return. (4) Provide information to the HHS Voluntary Leave Transfer Program websites. (5) Provide information to HHS components seeking to collect an overdue debt owed to the Federal Government. Routine Uses: The proposed six new routine uses permit PSC to make the following disclosures: (1) #19: To other Federal organizations to collect an overdue debt owed to the Federal Government. (2) #20: To publicly recognized charitable payroll deductions or when necessary to adjudicate a claim. (3) #21: To provide information regarding contributions to charities and/or financial organizations at the request of the employee. (4) #23: To respond to court orders when an employee is involved in garnishment proceedings. (5) #24: To thrift and savings institutions to adjudicate a claim or conduct analytical studies of benefits paid. (6) #25: To the Federal Thrift Savings plan to maintain employees' thrift accounts, loans or loan repayment records. The disclosures pursuant to these routine uses are compatible with the stated purposes of the system. In addition, former routine use #8 has been separated into four routine uses (#7, 8, 9, and 10) to provide greater clarity and specificity in regard to disclosures to those agencies.

8. 09–40–0011—Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/PSC/HRS. This system was transferred to PSC from OASH. Its former number and title were 09–37–0017—Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.

9. 09–40–0012—Debt Management and Collection System, HHS/PSC/FMS, which was transferred from the Health Resources and Services Administration (HRSA) to PSC. Its former number and title were: 09–15–0045—Health Resources and Services Administration Loan Repayment/Debt Management Records

Systems, HHS/HRSA/OA. The system will be administered by the Division of Financial Operations/FMS. The Authorities section has been expanded to include the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) as amended. The PSC proposes to expand the Categories of Individuals section and to add four new routine uses. The HRSA used the system to collect debts owed to the Federal Government by students in the health professions and health professionals who had received various types of loans or grants for educational purposes. The PSC is using the system as a general debt collection system. Therefore, the Categories of Individuals section has been expanded to include all individuals owing monies to HHS Operating Divisions or other Federal entities for which PSC provides debt collection services; repayment of funds loaned to repatriates; repayment for services rendered such as Freedom of Information Act requests, queries

associated with the National Practitioner Data Bank, and Health Care Integrity and Protection Data Bank queries; and payroll debts of current and separated HHS employees. The proposed four new routine uses permit PSC to make the following disclosures: Routine Use Disclosures: (1) #14: To the Treasury Department or to an agency operating a Debt Collection Center to collect past due amounts. (2) #15: To provide information to purchasers of a debt, if PSC decides to sell a debt, pursuant to 31 U.S.C. section 3711(I).

(3) #16: PSC may publish or otherwise publicly disseminate information regarding the identity of a delinquent debtor and the existence of the debt, pursuant to 31 U.S.C. Section 3720(E). (4) #17: To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. The disclosures pursuant to these routine uses are compatible with the stated purposes of the system.

Safeguards: The safeguards of all nine systems have been reviewed and expanded. The PSC has instituted extensive safeguards to protect both the automated and non-automated records. The PSC Systems Security Officer has to certify that the safeguards for the system are commensurate with the sensitivity and criticality of the records. The system notices describe: (1) The safeguards that are in effect to ensure that only authorized users have access to the records; (2) the physical security measures used to protect the records; (3) the procedural safeguards to ensure data integrity and prevent unauthorized access and disclosure; and (4) security guidelines for contractors, as applicable.

Deletion of System Notice: The PSC is deleting system of records 09–37–0008—PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OSG, which was transferred from OASH to PSC. This system of records contains records in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. The reason for the deletion is that only duplicate records may be maintained in such offices. Original records must immediately be transferred to DCP. To accommodate the maintenance of duplicate records, PSC has added the following statement to all commissioned corps system notices: ''Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.''

Furthermore, PSC has updated the system notices and made editorial changes to improve their clarity and specificity.

The following system notices are written in the present rather than future tense to avoid the unnecessary expenditure of public funds to republish the notices after the new system and the major alterations become effective.

Dated: December 1, 1998.

Lynnda M. Regan,

Director, Program Support Center.

09–40–0001

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Division of Commissioned Personnel (DCP)/HRS/PSC, Room 4–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

PHS Health Data Center, GW Long Hansen's Disease Center, Carville, Louisiana 70721.

National Personnel Record Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, Missouri 63118.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Contact the Rockville, Maryland location before writing to other record sites.

Names and addresses of contractors given information under routine use 7 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of or who have some relationship with the PHS Commissioned Corps, including: Active duty commissioned officers, former commissioned officers, inactive reserve officers, retired commissioned officers, deceased commissioned officers, dependents and survivors of the above, former spouses of officers, and applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain:

1. Applications for appointment, references and other documents relating to qualifications or suitability for appointment and assignment.

2. Official Personnel Folders (OPF), for all officers who are, or were at one time, on active duty, which include: All documents related to the application and appointment process; effectiveness reports; career development and training records; documents relating to assignment, promotion, retention, separation and all other personnel actions; records of personnel actions relating to pay, travel and allowances (including overseas educational allowances for dependents); documentation of dependent status used to determine entitlement or eligibility for benefits and identification and privilege cards; applications and records of service action relating to the Commissioned Officer Student Training and Extern Programs (COSTEP) officers; survivor benefit elections; information supporting officer awards, honors and commendations; documentation supporting non-board terminations and reprimands issued after final administrative action; pay records and medical data after death of subject individual; and leave records.

3. Worksheets, internal forms, internal memoranda and other documents which result in, or contribute to, an action resulting in a record identified in 2. above.

4. Service Record cards (summarizing personnel actions).

5. Correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code [U.S.C.] 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, ''Numbering System for Federal Accounts Relating to Individual Persons''; E.O. 10450, ''Security Requirements for Government Employment''; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP,

HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Determine qualifications and suitability for appointment, selection, career development, training, promotions, assignments, mobilization, temporary duty, and other types of officer utilization.

2. Determine eligibility for pay, allowances, entitlements, privileges, and benefits.

3. Prepare the Commissioned Officer Roster and Promotion Seniority of the Public Health Service.

4. Determine the eligibility or entitlements of dependents and beneficiaries for benefits based on the service of a PHS commissioned officer.

5. Give legal force to personnel transactions and establish officer rights and obligations under the pertinent laws and regulations governing the commissioned corps personnel system.

6. Provide material for research by the Office of the Secretary, HHS, concerning the activities of health professionals.

7. Provide information to HHS components seeking to collect an overdue debt to the Federal Government, but only to the extent necessary to collect that overdue debt.

8. Provide information about professional qualifications, past performance and career interests of PHS officers to Department and Agency officials involved in the selection or assignment of an officer to a particular program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected.

4. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PHS becomes aware of evidence of a potential violation of civil or criminal law.

5. To disclose information to an individual who has been asked to provide a reference, to the extent necessary to clearly identify the individual to whom the reference will pertain, inform the source of the purpose(s) of the reference, and to identify the type of information requested from the source, where necessary to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit.

6. To disclose to any agency in the executive, legislative or judicial branch; the District of Columbia Government; a State or local government agency; a professional credentialing agency or a non-profit institution, in response to its request, or at the initiation of the PHS, information in connection with the hiring of an employee; the issuance of a license, grant or other benefit by the requesting agency; or the lawful statutory administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

8. To disclose information to the Department of State and officials of foreign governments for the issuance of passports, visas and other clearances before an active, retired or inactive officer is assigned to that country.

9. To disclose information to the Department of Labor, the Department of Veterans Affairs, Social Security Administration or other Federal agencies having special employee benefit programs; to a Federal, State, county or municipal agency; or to a publicly recognized charitable organization when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purposes for which the information was originally collected.

10. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.

11. To respond to interrogatories in the prosecution of a divorce action or settlement for purposes stated in 10 U.S.C. 1408 (''The Former Spouses' Protection Act'').

12. To disclose information about the entitlements and benefits of a beneficiary of a deceased officer, retiree, or annuitant for the purpose of making disposition of the estate.

13. To disclose information to the Department of Defense, United States Coast Guard or Federal Emergency Management Agency, to the extent necessary to facilitate participation of PHS employees in planning, training, and emergency operations in support of civil defense activities and to provide support in the event of a national emergency.

14. To disclose information to Government training facilities (Federal State, and local) and to non-Government training facilities (e.g., private vendors of training courses or programs, private schools), for training purposes such as crediting of work experience in the COSTEP, or verification of status or income.

15. To disclose information to the Defense Enrollment/Eligibility Reporting System, uniformed services medical treatment facilities and to the

Department of Defense, Office of the Civilian Health and Medical Program of the Uniformed Services when the information is needed to verify the eligibility of an officer, his/her dependents, or a former spouse for medical benefits.

16. To disclose information to agencies or organizations established in medically underserved areas which apply to the National Health Service Corps for the assignment of commissioned officers to such agencies or organizations.

17. To disclose information to an officer assigned to Federal health care facilities or private sector (i.e., other than Federal, State, or local government) agencies, boards or commissions (e.g., the Joint Commission on Accreditation of Healthcare Organizations), to obtain accreditation or other approval rating but only to the extent that the information disclosed is relevant and necessary for that purpose.

18. To disclose to a private employer who is considering hiring a former officer information such as the officer's dates of employment, salary, job title and description, duty station and character and nature of separation.

19. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

20. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individual's work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including the news media, which grant or publicize officer awards and honors.

21. To disclose information to officials of the Selective Service System to allow crediting of active service performed by an individual with PHS so that the individual may be properly classified if draft laws once again become operative.

22. To disclose administrative and personnel information, including data elements reflected in the Officer Information Summary, to authorized officials in Federal agencies and other programs where commissioned officers are assigned such as the State Department; the Department of Defense; the Department of Justice, Bureau of Prisons and the Immigration and Naturalization Service; the Transportation Department, United States Coast Guard; the Environmental Protection Agency; the Department of the Interior, the United States Park Service; and the Commerce Department, National Oceanic and Atmospheric Administration.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche, electronic medium and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

(a) Automated Records. Access to and use of automated records is limited to: (1) Personnel employed in the PSC and the Office of the Surgeon General (OSG)/OS, (2) personnel employed in DCP, (3) authorized officials in HHS components and organizations where commissioned officers are assigned whose official duties require such access, and (4) authorized officials in other Federal agencies, such as those in routine use 22 above, where commissioned officers are assigned whose official duties require such access. Automated data is provided to Department personnel officials to update information contained in their personnel records and pay, leave and attendance systems. The Human Resources Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization without the written approval of the Director of DCP or to an official to whom this authority has been delegated.

b. Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, OSG and personnel officials where

commissioned officers are employed. No access is permitted to organizations that do not have automated personnel record-keeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 7 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time. Applicant files of individuals selected for appointment as commissioned officers become a part of the OPF. Applicant files of individuals not selected for appointment are maintained for one year after the application process has been completed and are then destroyed, unless an applicant requests that the file be held open for an additional year. The OPF is maintained for one year after an officer is separated from active duty, at which time such officer's OPF is transferred to a Federal Records Center for permanent storage. The OPF for inactive reserve officers is maintained at the PHS Health Data Center. When inactive officers change status, the OPF is returned to DCP.

The records of a deceased officer are maintained until one year after an individual's death and are then transferred to a Federal Record Center for permanent storage, unless a dependent of a deceased officer continues to receive benefits from PHS based upon the deceased's PHS service. When a dependent or beneficiary dies or becomes ineligible for further benefits based on a deceased officer's service, all records are maintained for one year in the event information is needed from the records to help settle an estate, and are then transferred to the Federal Records Center for permanent storage.

Service Records Cards, which list critical data with regard to the dates or all officers' appointments, reassignments, separations, retirements and deaths, are maintained permanently by the System Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may contact the DCP Privacy Act Coordinator for information about obtaining access to the records. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP Privacy Act Coordinator. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP, HHS and other organizations where commissioned officers are assigned.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the Privacy Act Coordinator, DCP.

3. Requests by mail. Written requests must be addressed to the System Manager or the DCP Privacy Act Coordinator at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers, applicants, persons providing references, dependents, former spouses of officers, governmental and private training facilities, health professional licensing and credentialing organizations, government officials and employees and from the records contained in the following systems: 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS; 09–40–0003, Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS; 09–40–0004, Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS; 09–40–0005, Public

Health Service (PHS) Commissioned Corps Beneficiary-Contract Medical/Health Care Records, HHS/PSC/HRS; and 09–40–0006, Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0002

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Medical Affairs Branch (MAB), DCP/HRS/PSC, Room 4C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Records in this system are kept at the address shown above when the person to whom the record pertains has an active relationship with the PHS Commissioned Corps personnel system. When an officer ceases the active relationship with the commissioned corps, the records are combined with the Official Personnel Folder (OPF) in records system 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS, and transferred to the appropriate facility as outlined in 09–40–0001.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 4 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS commissioned officers (including active, inactive, terminated, retired and deceased officers), applicants to the commissioned corps, and dependents of officers seeking Defense Enrollment/Eligibility Reporting System eligibility on the basis of incapacity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical files and records on individuals identified above; medical board records from Medical Review Boards and Appeals Boards, including board reports and supporting medical documentation; death case files and supporting documents; sick leave records; performance and behavior documentation of individuals as may relate to medical conditions; and correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; E.O. 9397, ''Numbering System for Federal Accounts Relating to Individual Persons''; E.O. 10450, ''Security Requirements for Government Employment''; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Evaluate applicants for appointment and officers for reassignment, reactivation and fitness for duty and suitability for retention on active duty.
2. Make determinations about the level of an officer's disability and entitlement to disability severance or retired pay.
3. Make determinations regarding EEO complaints or grievances filed by the officer, if the nature of the complaint suggests that pertinent evidence may be located in the medical record.
4. Make determinations about the level of a dependent's disabilities or incapacities which may make the dependent eligible for benefits from PHS.
5. Make budgetary estimates about the cost of disability severance and retired pay.
6. Prepare reports or provide statistical information relating to the medical status of officers.
7. Initiate or support disciplinary or other adverse actions by the Director, DCP, against applicants or officers for misconduct.
8. Support monitoring of compliance of officers with the requirements of their professional licensing or certifying authorities.
9. Make decisions about funding, use, access, location and quality of medical care and promote continuity of medical evaluation and treatment.
10. Monitor officer compliance with recommended treatment and with commissioned corps policies regarding sick leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to the Department of Veterans Affairs; Bureau of Prisons (Department of Justice); Coast Guard (Department of Transportation); Department of State; Department of Defense; NOAA (Department of Commerce); Agency for International Development, Environmental Protection Agency and other Federal agencies or civilian health care providers where commissioned officers are assigned or are receiving medical treatment or voluntary or directed evaluations to ensure continuity of evaluation and/or treatment, to assure medically appropriate assignments and duty limitations, to support disciplinary or other adverse actions and to assure compliance with sick leave policies.
2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.
3. To promote continuity of care by supplying information to Government or civilian medical care facilities and/or practitioners who, under contract or as otherwise authorized or due to an emergency, provide treatment to officers and their dependents.
4. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards''.
5. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof

where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected.

6. To provide information relating to the disability or death of officers to the Social Security Administration to determine the Social Security benefits or other benefits which may be available to the officer or to the survivors of deceased officers.

7. To provide information to Federal agencies such as the Department of Veterans Affairs and State Workers' Compensation offices to help adjudicate post-service claims for benefits.

8. Information regarding the commission of crimes or the reporting of occurrences of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc., may be disclosed as required by health providers and facilities by State law or regulation of the department of health or other agency of the State or its subdivision in which the facility is located. Disclosures will be made to organizations as specified by the State law or regulation, such as births and deaths to the vital statistics agency and crimes to law enforcement agencies. Disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis, or treatment of alcohol or drug abuse is restricted under the provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulation 42 CFR part 2, as authorized by 21 U.S.C. 1175 and 42 U.S.C. 290dd.2, as amended by Pub. L. 98–24 and 102–321.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, Conserve-a-files, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to personnel employed in the MAB and certain employees of the Office of the Director, DCP. Selected information may be released to employees in DCP whose official duties require such access. The Human Resources Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization.

b. Nonautomated records. Access to and use of nonautomated records is limited to MAB, certain members of the Office of the Director, DCP, and departmental employees, such as EEO officials and members of Medical Review and Appeals Boards, whose official duties require such access to the information for purposes stated under routine uses or purposes. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals other than DCP employees must complete Privacy Act nondisclosure oaths and, except for Medical Board members, must submit written requests for access to these records showing the name and employing office of the requestor, the date on which the record is requested, and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, Office of the Surgeon General and personnel officials where commissioned officers are employed. No access is permitted to automated records from remote terminal sites maintained by individuals or organizations outside of DCP.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of MAB, DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make

no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

When an officer terminates his/her commission, records are incorporated into the OPF and transferred to a Federal Records Center in accordance with 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS, procedures. Medical records on nonselected applicants may be destroyed after two years. Records of retirees are incorporated into the OPF and disposed of in accordance with 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS procedures, unless the individual is on the temporary disability retirement list, in which case the file is maintained under the same conditions as an active duty officer's file until the individual is permanently retired, returned to active duty or terminated. Medical records of a dependent incapable of self support are maintained until the dependent is no longer eligible for benefits from PHS at which time the records are transferred to a Federal Records Center for permanent storage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact any DCP office or employee for information about obtaining access to the records. The DCP employees will inform each individual of the appropriate procedures to follow. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release automated records to the Medical Affairs Branch.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the MAB, DCP.

3. Requests by mail. Written requests must be addressed to the System Manager or the Medical Affairs Branch at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers and other commissioned corps officials; applicants; private and Government physicians; hospitals and clinics rendering treatment; investigative reports, records contained in system 09–40–0001, Public Health Service (PHS) Commissioned Officer General Personnel Records, HHS/PSC/HRS; records from system 09–40–0005, Public Health Service (PHS) Beneficiary Contract Medical/Health Care Records, HHS/PSC/HRS; death certificates and reports of death and from survivors and executors of estates.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0003

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Commissioned Personnel (DCP), HRS/PSC, Room 4–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 4 can be obtained from the System

Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned officers (including active, inactive, terminated, retired and deceased officers) and applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system consist of the following:

1. Appointment Board files consisting of applications, references, school transcripts, and other materials used in the appointment examination process.
2. Promotion Board files consisting of recommendations from PHS components and worksheets from previous promotion boards.
3. Officer Special Pay Review Board files consisting of Special Pay contracts, certification of eligibility by PHS components, information pertaining to disciplinary actions and related documents.
4. Assimilation Board files consisting of PHS component recommendations, information pertaining to disciplinary actions and related documents.
5. Three-Year File Review Board files consisting of recommendations from PHS components, information pertaining to disciplinary actions and related documents.
6. Chief Professional Officer Nominating Board files, consisting of recommendations from PHS programs and officials, curriculum vitae for officers under consideration, evaluation materials and other material used by the Board in its deliberations.
7. Flag Officer Billet Assignment Board and Flag Officer Nominations Board records consisting of recommendations from PHS programs and officials, curriculum vitae for officers under consideration, evaluation materials and other materials used by the Board in its deliberations.
8. Voluntary Retirement Board files consisting of recommendations from PHS components and worksheets.
9. Records from other Board processes instituted as part of the administration of the PHS Commissioned Corps personnel system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; E.O. 9397, ''Numbering System for Federal Accounts Relating to Individual Persons''; E.O. 10450, ''Security Requirements for Government Employment''; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Recommend or decide on appropriate actions in the areas of commissioned corps personnel administration listed above.
2. Prepare the ''PHS Commissioned Officer Roster and Promotion Seniority of the Public Health Service'' which contains the names and status of officers on active duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.
2. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.
3. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PHS becomes aware of evidence of a potential violation of civil or criminal law.
4. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''
5. To disclose information to the Department of Labor, the Department of Veterans Affairs, Social Security Administration or other Federal agencies having special employee benefit programs; to a Federal, State, county or municipal agency; or to a publicly recognized charitable organization when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purposes for which the information was originally collected.
6. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.
7. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (e.g. private vendors of training courses or program, private schools) for training purposes, such as crediting of work experience in Commissioned Officer Student Training and Extern Program or verification of status or income.
8. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individual's work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including the news media, which grant or publicize officer awards and honors.
9. Disclosure may be made to State Boards of Medical Examiners and to equivalent State licensing boards of professional review actions which adversely affect the clinical privileges of health care professionals who either: (a)

are or were employed by the Federal Government; (b) provide or have provided health care service under a fee-for-service contract with the Federal Government; (c) provide or have provided health care services on behalf of the Federal Government as a volunteer or visiting fellow. Boards of Medical Examiners and equivalent State licensing boards are required by the Health Care Quality Improvement Act of 1986 and by the Medicare and Medicaid Patient and Program Protection Act of 1987 to report this information to the National Practitioner Data Bank.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to DCP personnel involved in the specific Board process for which the information was collected. The Business Systems Engineering Division (BSED) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, BSED personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization.

b. Nonautomated records. Access to and use of nonautomated records is limited to DCP personnel involved in the specific Board process for which the information was collected, departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with combination locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, Office of the Surgeon General and personnel officials where commissioned officers are employed. No access is permitted to organizations that do not have automated personnel recordkeeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

Files pertaining to all board proceedings are only incorporated into 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS to the extent required to provide sufficient documentation of an involuntary or adverse action. Special Pay Review Boards and board of inquiry records remain in this system as long as they are needed for administrative purposes, after which time they are destroyed by shredding. All promotion, assimilation and 3 year review board documentation is retained for a period of 5 years after which it is destroyed by shredding. Appointment board files are incorporated into 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS when the applicant comes onto active duty with the commissioned corps with the exception of the reference forms which are shredded after 5 years. If the applicant does not come onto active duty, the file is destroyed by shredding when the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may contact the DCP Privacy Act Coordinator for information about obtaining access to the records. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP, HHS and other organizations where commissioned officers are assigned.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the DCP employee who reviewed the record.

3. Requests by mail. Written requests must be addressed to the System Manager or the DCP Privacy Act Coordinator at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers or their service records; efficiency reports; persons providing references; reports of findings and recommendations made by Board members; supervisors; private and Government physicians; hospitals and clinics rendering treatment; licensure and professional credentialing organizations; investigative reports, law enforcement organizations; court records; death certificates and reports of death; survivors and executors of estates; and the records contained in the following systems: 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS; 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS; and 09–40–0004, Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0004

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Commissioned Personnel (DCP), HRS/PSC, Room 4–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857-0001 and offices and organizations to which an individual commissioned officer is assigned. The exact location of any record may be obtained by contacting the Director, DCP, at the location identified below.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS Commissioned Corps officers, including active duty, inactive, terminated, separated and deceased officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files concerning grievances filed by or against commissioned officers; investigative files, records related to disciplinary actions, records related to involuntary retirements and involuntary separations (non-board or pre-board actions) taken against commissioned officers; and correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for

members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; E.O. 9397, ''Numbering System for Federal Accounts Relating to Individual Persons''; E.O. 10450, ''Security Requirements for Government Employment''; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions (OPDIVs) and other organizations where commissioned officers are assigned, to:

1. Investigate allegations of misconduct or marginal and substandard performance.

2. Process and decide grievances, involuntary retirements, involuntary separations, temporary grade reversions or disciplinary actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PHS becomes aware of evidence of a potential violation of civil or criminal law.

4. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

5. Disclosure may be made to State Boards of Medical Examiners and to equivalent State licensing boards of professional review actions which adversely affect the clinical privileges of health care professionals who either: (a) Are or were employed by the Federal Government; (b) provide or have provided health care services under a fee-for-service contract with the Federal Government; or (c) provide or have provided health care services on behalf of the Federal Government as a volunteer or visiting fellow. Boards of Medical Examiners and equivalent State licensing boards are required by the Health Care Quality Improvement Act of 1986 and by the Medicare and Medicaid Patient and Program Protection Act of 1987 to report this information to the National Practitioner Data Bank.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to DCP personnel involved in the grievance or investigation for which the information was collected. The Human Resources Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization.

b. Nonautomated records. Access to and use of nonautomated records is limited to DCP personnel involved in the specific grievance or investigatory process for which the information was collected. These records may be copied and related to departmental officials involved in a decisionmaking capacity in a given case. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with combination locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all or which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, OSG and personnel officials where commissioned officers are employed. No access is permitted to organizations that do not have automated personnel record-keeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

RETENTION AND DISPOSAL:

Grievance files are destroyed after two years or earlier if no longer needed for administrative purposes. Documentation which directly supports personnel actions affecting an individual is placed into the individual's Official Personnel Folder after a final, official decision has been made and/or the action has been effected, and is then treated in the same manner as other material in system 09–40–0001, ''PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS.'' Investigatory records concerning cases in which no final decisions have been made, or which are ongoing over a period of time are kept indefinitely until a final decision is made. Records concerning cases which are closed or on which final action has been taken, but which are not essential to document or support the final action, are retained as long as they are needed for administrative purposes and are then destroyed by shredding.

SYSTEM MANAGER(S) AND 2ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact the DCP Privacy Act Coordinator for information about obtaining access to the record. Each individual seeking access will be required to verify his/her identity to the satisfaction of the Privacy Act Coordinator. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the record.

3. Requests by mail. Written requests must be addressed to the System Manger or the DCP Privacy Act Coordinator at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers or their service records; efficiency reports; persons providing references; reports of findings and recommendations made by the commissioned corps Board members; supervisors, private and Government physicians; hospitals and clinics rendering treatment; licensure and professional credentialing organizations; investigative reports; law enforcement organizations; court records; death certificates and reports of death; survivors and executors of estates; and records contained in the following systems: 90–40–0001, Public Health Service (PHS) Commissioned

Corps General Personnel Records, HHS/PSC/HRS; 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS; 09–40–0003, Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS; and 09–40–0006, Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0005

SYSTEM NAME:

Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Medical Affairs Branch (MAB), Beneficiary Medical Programs Section, DCP/HRS/PSC, Room 4C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 8 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or were legally entitled to health care through the Public Health Service and who have received health care from health professionals or facilities under contract or agreement with the Department of Health and Human Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

May include any or all of the following: Diagnostic (laboratory/X-ray, etc.) and treatment data; sociological information; invoices for services; eligibility data including employment history; and uniformed services information (employing services, service numbers, duty station, home address, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 215 of the Public Health Service Act (42 U.S.C. 216) ''Regulations'' and section 326 of the Public Health Service Act (42 U.S.C. 253) ''Medical Services to Coast Guard, National Oceanic and Atmospheric Administration and the Public Health Service.''

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions and other organizations where commissioned officers are assigned, to:

1. Serve as the basis for payment for patient care and for continuity in the evaluation of the patient's condition and treatment.
2. Furnish documentary evidence of the course of the patient's medical evaluation and treatment to document communications between the responsible practitioner and any other health professionals contributing to the patient's care and treatment.
3. Verify patient eligibility.
4. Ensure quality assurance.
5. Monitor contract compliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of these records and information from these records may be made to:

1. Medical laboratories and facilities and non-agency physicians in order to facilitate treatment and payment of bills. Recipients are required to maintain adequate safeguards with respect to such records.
2. The Department of Commerce to report results of examination and/or treatment of that agency's personnel.
3. The Department of Defense and the Department of Veterans Affairs to assist uniformed services, personnel, retirees and veterans to obtain medical care or benefits.
4. A Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, other issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
5. A congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.
6. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her official capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.
7. Information regarding the commission of crimes or the reporting of occurrences of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc., may be disclosed as required by health providers and facilities by State law or regulation of the department of health or other agency of the State or its subdivision in which the facility is located. Disclosures will be made to organizations as specified by the State law or regulation, such as births and deaths to the vital statistics agency and crimes to law enforcement agencies. Disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis or treatment of alcohol or drug abuse is restricted under the provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulation 42 CFR part 2, as authorized by 42 U.S.C. 290dd–2.
8. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and electronic data base.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

a. Automated Records. Access to and use of automated records is limited to departmental employees whose official duties require such access; supervisory, contracting officials who review the contractor's records annually; and doctors, dentists, nurses, allied health professionals and administrative staff in

the contractor's office who are involved in patient care management.

b. Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access; contracting officials who review the contractor's records annually; and doctors, dentists, nurses, allied health professionals and administrative staff in the contractor's office. Access is also granted to individuals who have written permission to review the records when that permission has been obtained from the individual to whom the record pertains.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured behind locked inner office doors, in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 8 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and as stated in the contract.

RETENTION AND DISPOSAL:

a. *Automated records.* Automated billing data are retained for a period of six years and three months after the closing of a file. The record is then destroyed.

b. *Nonautomated records.* Nonautomated records are retained in the MAB files until the contract is terminated or the payment action completed. The medical records are then forwarded to the MAB, DCP, and retained as indicated in 09–40–0002, ''PHS Commissioned Corps Medical Records, HHS/PSC/HRS.'' Billing information is retained for three fiscal years, then purged and shredded. Patient care notes are retained in the chart until retirement, termination or inactivation. Once a chart is inactivated for over three years it is sent to storage at the Northeast Region Federal Records Center, Bayonne, New Jersey for 16 years. Destruction at that time is in accordance with standard practices of the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact any DCP office or employee for information about obtaining access to the records. The DCP employees will inform each individual of the appropriate procedures to follow. Individuals may also seek access to these records by initially contacting the duty station at which they believe the records are located. Individuals at the duty station will ascertain whether the records being sought are maintained at that location. If the records are not located at that duty station, the employee will instruct the individual as to where these records may be located. Each individual seeking access will be required to verify his/her identity to the satisfaction of the employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that s/he is duly authorized to review the record by either the individual or the individual's legal guardian. A parent, guardian or legal representative who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate employee who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the employee will provide them to the individual. The employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet

maintained in the Beneficiary Medical Program office.

3. Requests by mail. Written requests must be addressed to the System Manager at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures made outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided from Individuals, employers, other health care providers, families and social agencies, and 09–40–0002, Public Health Service (PHS) Commissioned Corps Medical Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0006

SYSTEM NAME:

Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Division of Commissioned Personnel (DCP)/HRS/PSC, Room 4–50, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

Records in this system are kept at the address shown above when the person to whom the record pertains has an active relationship with the PHS commissioned corps personnel system. When an officer ceases the active relationship with the commissioned corps, the records are combined with the Official Personnel Folder (OPF) in records system 09–40–0001, ''PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS'' and transferred to the appropriate facility as outlined in 09–40–0001, ''PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS.''

Duplicates of records may also be maintained in operating offices (duty stations) of the Department and other agencies and organizations to which PHS Commissioned Corps officers are assigned. Contact the System Manager for the location of specific records.

Names and addresses of contractors given information under routine use 7 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of or who have some relationship with the PHS Commissioned Corps, including: Active duty commissioned officers; former commissioned officers; inactive reserve officers; retired commissioned officers; deceased commissioned officers; dependents and survivors of the above; former spouses of officers; and qualified applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain:

1. Documents related to pay, including payroll deductions, leave, allotments, charitable contributions and garnishments; travel and allowances (including overseas educational allowances for dependents); documentation of dependent status used to determine entitlement or eligibility for benefits; debt collections proceedings; survivor benefit elections and pay records; worksheets, internal forms, internal memoranda and other documents which result in, or contribute, to an action.

2. Special pay files containing special pay contracts, personnel orders and supporting documentation concerning special pay; worksheets, internal forms, internal memoranda and other documents which result in, or contribute, to an action.

3. Retirement pay files containing personnel orders and supporting documentation concerning retirement pay; worksheets, internal forms, internal memoranda and other documents which result in, or contribute to, an action.

4. Correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) *et seq.*); portions of Title 10, U.S.C., related to the uniformed services; portions of the Title 37, U.S.C., related to pay and allowance for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Department of Veterans Affairs; sections of 50 U.S.C. App., related to the selective service obligations and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, ''Numbering System for Federal Accounts Relating to Individual Persons''; E.O. 10450, ''Security Requirements for Government Employment''; and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, HHS.

PURPOSE(S):

The information is used by the Program Support Center (PSC), DCP, HHS Operating Divisions and other organizations where commissioned officers are assigned, to:

1. Determine eligibility for pay, allowances, entitlements, privileges, and benefits.

2. Determine the eligibility or entitlements of dependents and beneficiaries for benefits based on the service of a PHS commissioned officer.

3. Give legal force to personnel transactions and establish officer rights and obligations under the pertinent laws and regulations governing the commissioned corps personnel system.

4. Provide information to HHS components seeking to collect an overdue debt to the Federal government, but only to the extent necessary to collect that overdue debt.

5. Provide information to the National Directory of New Hires, the Federal Parent Locator System (FPLS), the Office of Child Support Enforcement (OCSE) and the Administration for Children and Families, HHS, for use in

locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 U.S.C. 653.

6. Provide information to the OCSE to verify with the Social Security Administration the Social Security numbers in connection with the operation of the FPLS by OCSE.

7. Provide information to the Office of Child Support Enforcement to release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

8. Upon the request of the officer, provide information to charities, financial organizations, insurance organizations or other companies for the purposes of contributing to charity, payment of organizational dues or payment for an organizational benefit (such as insurance).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, a court or other tribunal, when (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose information, such as, but not limited to, name, home address, Social Security Number, earned income, withholding status, and amount of taxes withheld, to the Department of Treasury for the following purposes: preparation and issuance of salary, retired pay, and annuity checks; issuance of U.S. savings bonds; recording income information; and collection of income taxes.

4. To disclose to State and local government agencies having taxing authority pertinent records relating to employees, retirees, and annuitants, including name, home address, Social Security Number, earned income, and amount of taxes withheld, when these agencies have entered into tax withholding agreements with the Secretary of Treasury, but only to those State and local taxing authorities for which a member, retiree, or annuitant is or was subject to tax, regardless of whether tax is or was withheld.

5. To disclose to the Social Security Administration pertinent records relating to employees, retirees, and annuitants, including name, home address, Social Security Number, earned income, and amount of taxes withheld.

6. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PSC becomes aware of evidence of a potential violation of civil or criminal law.

7. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

8. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.

9. To respond to interrogatories in the prosecution of a divorce action or settlement for purposes stated in 10 U.S.C. 1408 (''The Former Spouses'' Protection Act'').

10. To disclose information about the entitlements and benefits of a beneficiary of a deceased officer, retiree, or annuitant for the purpose of making disposition of the estate.

11. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

12. To disclose payroll information to authorized officials in Federal agencies where commissioned officers are assigned, such as the State Department; the Department of Defense; the Department of Justice, Bureau of Prisons and the Immigration and Naturalization Service; the Transportation Department; United States Coast Guard; the Environmental Protection Agency; the Department of the Interior, the United States Park Service; and the Commerce Department, National Oceanic and Atmospheric Administration.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, microfiche, electronic medium and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in shelves, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number and/or by Social Security Number.

SAFEGUARDS:

1. *Authorized Users*

Automated Records. Access to and use of automated records is limited to: (1) Personnel employed in the PSC and the Office of the Surgeon General (OSG)/OS; (2) personnel employed in DCP; (3) authorized officials in HHS components and organizations where commissioned officers are assigned whose official duties require such access; and (4) authorized officials in other Federal agencies, such as those in routine use 13 above, where commissioned officers are assigned whose official duties require such access. Automated data is provided to Department personnel officials to update information contained in their personnel records and pay, leave and attendance systems. The Human Resource Service (HRS) provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, HRS personnel are not authorized to grant access to or make disclosures from automated data in this system to anyone or any organization without the written approval of the Director of DCP or to an official to whom this authority has been delegated.

b. Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the records. This written request is then placed into the record.

2. *Physical safeguards*

a. Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks. During nonwork hours, all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer.

3. *Procedural safeguards*

a. Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated record allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, OSG and personnel officials where commissioned officers are employed. No access is permitted to organizations that do not have automated personnel record-keeping systems that comply with Privacy Act requirements.

b. Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier room where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.* A contractor who is given records under routine use 7 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and stated in the contract.

RETENTION AND DISPOSAL:

When an officer is separated, records are incorporated into the OPF and transferred to a Federal Records Center in accordance with 09–40–0001, ''PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS'' procedures.

When an officer retires from the commissioned corps, a retirement payment file is generated and maintained in DCP. When the officer and/or annuitant dies, the file is retained in DCP for 3 years, then is incorporated into the OPF and transferred to a Federal Records Center in accordance to 09–40–0001, ''PHS Commissioned Corps General Personnel Records, HHS/PSC/HRS'' procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. General procedures. An individual (and/or the individual's legal representative) seeking access to his/her records may initially contact the DCP Privacy Act Coordinator for information about obtaining access to the records. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP Privacy Act Coordinator. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The System Manager has authority to release records to authorized officials within DCP, HHS and other organizations where commissioned officers are assigned.

2. Requests in person. An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license or passport). Identification cards with current photograph are required. The records will be reviewed in the presence of an appropriate DCP employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the date of access, and information about the verification of identity on a separate log sheet maintained in the office of the Privacy Act Coordinator, DCP.

3. Requests by mail. Written requests must be addressed to the System Manager or the DCP Privacy Act Coordinator at the address shown as the System Location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when

only the original will satisfy the purpose of the request.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's records may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. Requests by phone. Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records will not be honored.

6. Accounting of disclosures. An individual who is the subject of records maintained in this records system may also request an accounting of all disclosures outside the Department, if any, that have been made from that individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers, applicants, dependents, former spouses of officers, governmental and private training facilities, health professional licensing and credentialing organizations, government officials and employees and from the records contained in the following systems: 90–40–0001, Public Health Service (PHS) Commissioned Officer Personnel Records'' HHS/PSC/HRS and 09–40–0010, Pay, Leave and Attendance Records, HHS/PSC/HRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

09–40–0010

SYSTEM NAME:

Pay, Leave and Attendance Records, HHS/PSC/HRS.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

HRS, Personnel and Pay Systems Division, Silver Spring Centre, Room 1154, 8455 Colesville Road, Silver Spring, Maryland 20910.

FMS, Division of Information Systems and Technology, Room 17–66, 5600 Fishers Lane, Rockville, Maryland 20857.

NIH, Center for Information Technology, 9000 Rockville Pike, Bethesda, Maryland 20205.

Inactive records: Federal Retirement Record Center, Boyers, PA.

In addition, records are maintained by timekeepers and payroll liaisons. Contact the System Manager at the location identified below for specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees paid through the Department of Health and Human Services civilian payroll system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to pay, allowance and leave determinations made about each employee paid through the HHS civilian payroll system such as employee's name, date of birth, Social Security Number, home address; employing organization, pay plan and grade, hours worked, leave, timekeeper number, income taxes, withholdings and allotments, insurance, retirement, Thrift Savings Plan, voluntary leave transfer, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S. Code, Chapter 55—Pay Administration Title 5 U.S. Code, Chapter 63—Leave

PURPOSE(S):

Records in this system are used to:

1. Ensure that each employee in the payroll system receives proper pay and allowances.

2. Ensure that proper deductions and authorized allotments are made from employees' pay.

3. Ensure that employees are credited and charged with the proper amount of sick and annual leave.

4. Provide information to the Federal Parent Locator System (FPLS), the Office of Child Support Enforcement (OCSE), locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action in accordance with 42 U.S.C. 653.

5. Provide information to OCSE for release to the Social Security Administration for verifying Social Security Numbers in connection with the operation of the FPLS.

6. Provide information to OCSE for release to the Department of Treasury for purpose of administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

7. Provide information to the HHS Voluntary Leave Transfer Program websites for Departmentwide announcement and produce summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained and for related personnel management functions or pay studies, and other purposes compatible with the intent for which the record system was created.

8. Provide information to HHS components seeking to collect an overdue debt owed to the Federal Government, but only to the extent necessary to collect that overdue debt.

9. Provide Department management with information systems reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be used:

1. To prepare W–2 Forms to submit to the Internal Revenue Service and to disclose to State and local government agencies having taxing authority pertinent records relating to employees, including name, home address, earned income, and amount of taxes withheld.

2. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as routine uses to the appropriate agency, whether State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. When a contract between a component of the Department and a labor organization recognized under E.O. 11491 of 5 U.S.C. Chapter 71 provides that the agency will disclose personal records when relevant and necessary to the labor organization's duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

5. To financial organizations designated to receive labor organizations or management association dues withheld from employees' pay, in order to account for the amounts withheld.

6. When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

7. To disclose to the U.S. Office of Personnel Management that information that is relevant and necessary to carry out its role as the oversight agency responsible for promoting the effectiveness of personnel management and ensuring compliance with personnel laws and regulations.

8. To disclose to the Merit Systems Protection Board (including its Office of the Special Counsel) that information that is relevant and necessary to carry out its role as the oversight agency responsible for protecting the integrity of Federal merit systems and the rights of Federal employees working in the systems.

9. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, or other functions vested in the Commission.

10. To disclose to the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Service Impasses Panel) that information that is relevant and necessary to carry out its oversight role for the Federal service labor-management relations program.

11. To the Department of Labor to make compensation determination in connection with a claim filed by the employee for compensation on account of a job-connected injury or disease.

12. To respond to court orders for garnishments of an employee's pay for alimony or child support.

13. To the Department of Treasury to disclose information such as name, home address, Social Security Number, earned income, withholding status, and amount of taxes withheld for the following purposes: preparation and issuance of salary, retired pay, and annuity checks; issuance of U.S. Savings Bonds; recording of income information; and collection of income taxes.

14. To State officers of unemployment compensation in connection with claims filed by former HHS employees for unemployment compensation.

15. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

16. To the Department of Justice, a court or other tribunal when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

17. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders when PSC becomes aware of evidence of potential violation of civil or criminal law.

18. To disclose information for the purpose of conducting computer matching programs designed to reduce fraud, waste and abuse in Federal, State and local public assistance programs and operations.

19. To disclose information to other Federal organizations to collect an overdue debt owed to the Federal Government, but only to the extent necessary to collect that overdue debt.

20. To publicly recognized charitable organizations for payroll deductions or when necessary to adjudicate a claim.

21. Provide information to charities, financial organizations at the request of the employee for the purposes of facilitating an employee's request for direct deposit or contribution to a charity, starting or modifying a savings program, etc.

22. To a Federal agency in response to a written request from the agency head specifying the particular portion desired and the law enforcement activity for which the record is sought. The request for the record must be connected with the agency's auditing and investigative functions designed to reduce fraud, waste and abuse; it must be based on information which raises questions about an individual's eligibility for benefits or payments; and it must be made reasonably soon after the information is received.

23. To respond to court orders when an employee is involved in garnishment proceedings arising because an employee is involved in a personal debt collection action.

24. To thrift and savings institutions to adjudicate a claim under a program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purpose for which the information was ordinarily collected.

25. To the Federal Thrift Savings Plan to maintain employees thrift accounts, loans or loan repayment records.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on disks, microfiche, electronic media, magnetic tapes and on websites. Nonautomated (hard-copy) files are kept in locked offices, and may be stored in locked shelves, safes, cabinets, bookcases or desks.

RETRIEVABILITY:

Records are maintained by pay period and are retrieved by name and/or Social Security Number and timekeeper number within each pay period.

SAFEGUARDS:

1. *Authorized Users*

Automated Records. Access to and use of automated records is limited to: (1) Personnel employed in the PSC and the HHS Operating Division personnel offices, (2) authorized officials in HHS components and organizations whose official duties require such access, and (3) authorized officials in other Federal agencies for whom the PSC is providing personnel and/or payrolling service.

Nonautomated records. Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from

the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards*

Automated records. Terminals by which automated records are accessed are kept in offices secured with locks. Automated records on magnetic tape, disks and other computer equipment are kept in rooms designed to protect the physical integrity of the records media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with locks.

Nonautomated records. Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are secured in filing cabinets inside secured office space which is locked at all times. Access to the office space requires a key card to enter and access is permitted only to authorized personnel.

3. *Procedural safeguards*

Automated records. Automated records are secured by assigning individual access codes to authorized personnel, and by the use of passwords for specific records created by authorized personnel. Access codes and passwords are changed on a random schedule. In addition, programming for automated record allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the PSC, and OPDIV personnel officials. No access is permitted to OPDIVs that do not have automated personnel recordkeeping systems that comply with Privacy Act requirements.

Nonautomated records. All files are secured when employees are absent from the premises and are further protected by locks on entry ways. Official records may not be removed from the physical boundaries of PPSD. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the copier areas where they can be read, but are destroyed or obliterated.

4. *Contractor Guidelines.*

A contractor who is given records under routine use 6 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured though inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and stated in the contract.

RETENTION AND DISPOSAL:

When an employee is separated leave records are incorporated into the Official Personnel Folder (OPF) maintained by the servicing personnel office (SPO) and payroll retirement information is transferred to the Federal Retirement Records Center in Boyers, PA. The OPF is forwarded to the new employing agency by the SPO. These procedures are in accordance with U.S. Office of Personnel Management policies and procedures.

When an employee retires or dies, the employee or his/her beneficiary receives a payment for his/her annual leave balance and the retirement information is transferred to the Federal Retirement Records Center in Boyers, PA. The SPO transfers the OPF to the Federal Records Center. These procedures are in accordance with U.S. Office of Personnel Management policies and procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel and Pay Systems Division, Human Resources Service, PSC, HHS, Suite 700, 8455 Colesville Road, Silver Spring, MD 20910.

NOTIFICATION PROCEDURES:

The same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* A subject individual, or parent, or legal guardian of an incompetent individual, who appears in person at a specific location seeking access to or disclosure of records relating to him/her may initially contact his/her agency personnel office or payroll liaison for information about obtaining access to the records. Such individuals will be required to verify their identity to the satisfaction of the agency employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

2. *Requests by mail.* Written requests must be addressed to the System Manager or the appropriate Payroll Liaison Representative. A comparison will be made of that signature and the signature maintained in a file prior to release of the material request. Copies of the records to which access has been requested will be mailed to the individual.

3. *Requests by phone.* Unless positive identification of the caller can be established, telephone requests for access to records will not be honored.

4. *Accounting of disclosures.* An individual who is the subject of the records in this system may also request an accounting of all disclosures outside the Department, if any, that have been made from the individual's records.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is supplied directly by the individual, derived from information supplied by the individual, or supplied by timekeepers and other authorized officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION(S) OF THE ACT:

None.

09–40–0011

SYSTEM NAME:

Proceedings of the Board for Correction of PHS Commissioned Corps Records, HHS/PSC/HRS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board for Correction of PHS Commissioned Corps Records, HHS/PSC/HRS, Room 17A–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; and Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409. Records also may be located at the contractor site. The names and addresses of contractors used by the Board for Correction can be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned Officers of the PHS Commissioned Corps who appeal to the Board for Correction, former officers, their spouses and heirs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commissioned Officer case files consisting of requests for correction of alleged errors or injustices; administrative reports; case summaries; findings; conclusions; recommendations; Board for Correction decisions and related documents, including copies of records from other systems of records as specified under Record Source Categories below.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1552 ''Correction of Military Records''; Public Health Service Act, 42 U.S.C. 213a(a)(12); Executive Order 9397, ''Numbering System for Federal Accounts Relating to Individual Persons.''

PURPOSE(S):

This system of records is used:

1. To process appeals from current or former Commissioned Officers, their spouses and heirs to determine the existence of alleged errors or injustices resulting from the administration of laws and regulations.

2. To review and adjudicate these appeals.

3. To disclose the decisions of the Board for Correction to the Division of Commissioned Personnel (DCP) for appropriate action. The DCP is not authorized to release copies of original Board for Correction records without approval by the System Manager.

4. To document all actions and activities of the Board for Correction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information:

1. To a congressional office from the record of any individual in response to an inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component thereof; or (b) Any HHS employee in his or her official capacity; or (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components; is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when HHS becomes aware of evidence of a potential violation of civil or criminal law.

4. To private contractors who record and transcribe tapes of Board for Correction meetings. Contractors are required to comply with Privacy Act safeguards and the HHS Privacy Act Regulations with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

5. To properly identified attorneys of subject individuals or their personally designated representatives, to court-appointed representatives of mentally incompetent or otherwise legally handicapped subject individuals and to guardians to the extent necessary to assure attainment of rights or payment of benefits to which such individuals would be entitled.

6. To Federal, State or local government agencies (such as those concerned with disability compensation, health and human services, hospitals, and legal affairs) or to public interest organizations (such as the American Red Cross, the American Civil Liberties Union, Disabled American Veterans, and the Legal Aid Society) when the subject individual's request for correction will affect the individual's entitlement to rights or benefits, and when such agencies may have information which will assist the Board for Correction in clarifying that entitlement.

7. To authorized experts or consultants in a Federal agency or in the private sector if the Board for Correction has determined that it needs such opinions to arrive at an equitable decision concerning the subject individual's request; or to authorized officials in a Federal agency if required to facilitate equitable handling of a case, e.g., to an EEO official when a complaint is initiated by a PHS commissioned officer, to ensure that the same complaint has not already been decided through the Board for Correction process. All consultants, experts and Federal officials are required to comply with Privacy Act safeguards and the HHS Privacy Act Regulations with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, computerized records, disks and microfiche.

RETRIEVABILITY:

Last name and case number.

SAFEGUARDS:

1. *Authorized Users:* The System Manager and/or the Executive Secretary of the Board for Correction will control access to the data. Additional authorized personnel having access to the data are: (1) The Executive Director of the Board for Correction; (2) Designated clerical support staff in the offices of the System Manager and the Executive Secretary; (3) Board for Correction members on a need-to-know basis; and (4) Experts, consultants or private contractors when approved by the System Manager.

2. *Physical Safeguards:* Automated records. Automated records are stored on personal computers which require passwords for access, or on disks, and are located in offices with locks. During nonwork hours, all cabinets, storage facilities and offices are locked and the premises are patrolled regularly by building security forces. Nonautomated records. When records are not in use they are stored in filing cabinets with locks located in an inner office occupied during working hours and locked at all other times.

3. *Procedural Safeguards:* Authorized personnel are trained to comply with provisions of the Privacy Act and the HHS Privacy Act Regulations. Records are transmitted in sealed envelopes and are identified as confidential material. When copying records for authorized purposes, care is taken to ensure that no imperfect or extra pages are left in the copier room. These pages are disposed of by shredding.

4. *Contractor Guidelines:* Contractor compliance is assured through inclusion of privacy requirements in contract clauses, and through monitoring by contract and project officers. A contractor who is given records must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractors are instructed to make no disclosure of the records except as authorized by the System Manager.

RETENTION AND DISPOSAL:

Original records are retained at the System Location either for one year after the Board for Correction's recommendation for favorable decision is upheld by the approving official, or for three years after the approval of the Board for Correction's recommendation for denial of an appeal, whichever applies to the final disposition of a case. The records are then transferred to the Washington National Records Center (WNRC) and are destroyed by the WNRC after 20 years.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director of the Board for Correction of PHS Commissioned Corps Records, Room 17–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURES:

Same as Access Procedures. The requester is required to specify reasonably the contents of the records being sought.

RECORD ACCESS PROCEDURES:

To determine whether information about themselves is contained in this system, the subject individual should contact the System Manager at the above address.

A subject individual who appears in person is required to provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, Social Security card, or discharge or separation papers).

An individual making a written inquiry is required to sign the request mailed to the System Manager. The signature given is compared with the signature on file prior to release of the material requested.

If the subject individual is represented by an attorney, other than the one shown on the application to the Board for Correction, it is necessary to have in the case file a dated letter signed by the subject individual giving the name of the attorney and stating that he/she has been authorized access to the case file. If the subject individual is represented by another person, it is necessary to have in the case file a dated letter signed by the individual giving the name of the representative and stating that he/she has been authorized access to the case file. In both instances, the person representing the subject individual would be required to present documentation identifying him/herself as being the person mentioned in the application or in a letter on file with the Board for Correction.

If the subject individual is judged to be mentally incompetent to handle his/her personal affairs, a court order should be issued to that effect. The person identifying him/herself as representing the subject individual in this circumstance is required to present a copy of the court order and to personally identify him/herself as being the person identified in the order.

If the subject individual is physically incapacitated, a medical statement certifying to the physical disability is required, signed and dated by a licensed physician. The person presenting this statement is required to personally identify him/herself and provide documentation of his/her relationship to the subject individual (e.g., marriage license, birth certificate, etc.).

If the subject individual is deceased, proof of death is required, signed and dated by the appropriate certifying agency of the Federal Government. The person presenting this document is required to personally identify him/herself and provide documentation of his/her relationship to the deceased (e.g., marriage license, birth certificate, etc.).

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on either the subject individual or the determination of his/her request, the requester (whether the subject individual, his/her personal representative, an attorney other than the one shown on the application to the Board for Correction, a court appointed representative, or a guardian) shall be asked to designate in writing a physician or other health professional who is willing to review the material and inform the requester of its contents, at the discretion of the health professional. The person designated to evaluate the medical information must provide proof that he/she is duly authorized by the requester to review the material.

An individual who is the subject of the records maintained in this records system may request an accounting of disclosures that have been made of his/her records, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, the requester shall contact the System Manager above, reasonably identify the records, specify the information being contested, and state the corrective action sought, with supporting documentation, to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are obtained from applicants; reports of findings and recommendations made by Board for Correction members; Board for Correction decisions; supervisors; private and Government physicians; hospitals and clinics rendering treatment; investigative reports; death certificates and reports of death; survivors and executors of estates; private and Government agency reports of service delivery, compensation, disability and legal opinions; and records contained in systems 09–40–0001, Public Health Service (PHS) Commissioned Corps General Personnel Records, HHS/PSC/HRS; 09–40–0002, Public Health Service (PHS) Commissioned Officer Medical Records, HHS/PSC/HRS; 09–40–0003, Public Health Service (PHS) Commissioned Corps Board Proceedings, HHS/PSC/HRS; 09–40–0004, Public Health Service (PHS) Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS; 09–40–0005, Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records, HHS/PSC/HRS; and 09–40–0006, Public Health Service (PHS) Commissioned Corps Payroll Records, HHS/PSC/HRS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–40–0012

SYSTEM NAME:

Debt Management and Collection System, HHS/PSC/FMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Financial Operations, Financial Management Service, Program Support Center, Room 2B–40, Parklawn Building, 5600 Fishers Lane, Rockville, 20857.

Division of Accounting, Food and Drug Administration, Room 11–41, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of State Legislation and Repatriation, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Division of Health Professions Support, Indian Health Service, Twinbrook Metro Plaza Building, Suite 100, 12300 Twinbrook Parkway, Rockville, MD 20850.

Division of Financial Management, Substance Abuse and Mental Health Services Administration, Room 16C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of Commissioned Personnel, Human Resources Service, Program Support Center, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Personnel and Pay Systems Division, Human Resources Service, Program Support Center, 8455 Colesville Road, Suite 700, Silver Spring, MD 20910.

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, Health Resources and Services Administration, 10th Floor, East/West Towers, 4350 East-West Highway, Bethesda, MD 20814.

Division of Accounting, Health Care Financing Administration, Room C3–09–17, 7500 Security Blvd., Baltimore, MD 21244.

Division of Financial Management, National Institutes of Health, Building 31, Room B1B63, 9000 Rockville Pike, Bethesda, MD 20892.

Financial Management Office, Centers for Disease Control and Prevention, Room 3149, 1600 Clifton Road, Atlanta, GA 30333.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

Names and addresses of contractors given information under routine use 17 can be obtained from the System Manager at the location identified below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals owing monies to HHS Operating Divisions or other Federal entities for which PSC provides debt collection services.

2. Individuals owing monies include, but are not limited to, students and health care professionals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act, as amended, and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs.

3. Repatriates owing repayment of funds loaned to them by the United States.

4. Individuals owing repayment for services rendered such as Freedom of Information Act requests and queries associated with the National Practitioner Data Bank, and Health Care Integrity and Protection Data Bank queries.

5. Current and separated HHS employees who have incurred payroll debts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include records such as: Name; taxpayer identification number and/or Social Security Number; address; amount of debt; rate of interest; account and repayment history and status; discipline/specialty; lending institutions; and invoice number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982 (Pub. L. 97–365), as amended; and Debt Collection Improvement Act of 1996 (Pub. L. 104–134), as amended.

PURPOSE(S):

The purpose of the system is:

1. To reduce the amount of outstanding debts owed to the Federal Government.

2. To protect the programmatic and financial integrity of Federal funds paid or awarded to individuals.

3. To be used by other components within HHS to facilitate debt management activities.

4. To be used for developing both regulatory and ad hoc management reports relating to debt collection activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed:

1. To a congressional office in response to an inquiry from the congressional office made at the written request of that individual.

2. To authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships and grants.

3. To the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party of litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

4. To the General Accounting Office, the HHS Inspector General's Office, private auditing firms, and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

5. To a consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes:

a. To establish creditworthiness of a loan/grant/scholarship/ traineeship applicant; and

b. To assess and verify the ability of a debtor to repay debts owed to the Federal Government.

Disclosures are limited to the individual's name, address, Social Security Number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the application or claim is being processed.

6. To debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be

limited to the debtor's name, address, Social Security Number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose.

7. To any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be limited to information necessary to identify the individual.

8. To the Defense Manpower Data Center, Department of Defense, to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government. The PSC will disclose this information in an effort to collect the debts by administrative or salary offset under the provisions of the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

9. To the United States Postal Service to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government. The PSC will disclose this information in an effort to collect the debts by administrative or salary offset, under the provisions of the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

10. To the following entities to help collect a debt owed:

a. To the Treasury Department or another Federal agency in order to effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to or held on behalf of the individual); and

b. To debt collection agents or contractors under 31 U.S.C. 3718 or under common law to help collect a past due amount or locate or recover debtors' assets.

11. The PSC will disclose from this system of records a delinquent debtor's name, address, Social Security Number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset;

b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money payable to or held on behalf of debtors other than Federal employees; and

c. To the Department of Treasury, Internal Revenue Service to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

12. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute, rule, regulation, or order.

13. To the Department of the Treasury, Internal Revenue Service, as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible—either because the time period for collection under the statute of limitations has expired, or because the Government agrees to forgive or compromise the debt.

14. To the Treasury Department or to an agency operating a Debt Collection Center designated by the Treasury Department in order to collect past due amounts.

15. If PSC or an agency to which PSC provides debt collection services decides to sell a debt pursuant to 31 U.S.C. section 3711(I), a record from the system may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

16. Pursuant to 31 U.S.C. Section 3720E, or specific program regulations, PSC may publish or otherwise publicly disseminate information regarding the identity of a delinquent debtor and the existence of the debt.

17. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled ''Safeguards.''

SPECIAL DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HHS to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security Number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, ledgers, magnetic tapes, electronic media and diskettes.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, taxpayer identification number and account number.

SAFEGUARDS:

1. *Authorized Users:* Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing programs funded by Operating Divisions or agencies served by PSC.

2. *Physical Safeguards:* File folders, reports and other forms of data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonduty hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. *Procedural Safeguards:* All authorized users protect information from public view and from unauthorized personnel entering an office.

4. *Technical Safeguards:* PSC conducts regular reviews of computer access to the automated system by reviewing listings of employees who have access to the system via terminal entry. All personal computers having forte boards with modems are protected. Access is limited by use of IDs and passwords. PSC utilizes a Resource Access Control Facility program product which provides systems security, resource access control, auditability and accountability and administrative control.

Contractor Guidelines: A contractor who is given records under routine use 17 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager and stated in the contract.

RETENTION AND DISPOSAL:

Records are retained by the responsible organizations listed under ''System Location'' until completion of the repayment of the debt. The records are then sent to the Federal Records Center for a retention period of six years and three months, and are subsequently disposed of in accordance with National Archives and Records Administration standard disposal practices.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Debt Management Branch, Division of Financial Operations, Financial Management Service, Program Support Center, Parklawn Building, Room 2B40, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you, contact the System Manager at the above address.

Requests in person: A subject individual, or parent, or legal guardian of an incompetent individual, who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a fine. In addition, the following information is needed: (1) The name of the assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

Requests by mail: Written requests must be addressed to the System Manager and must contain the name and address of the requester, his/her date of birth, and either his/her notarized signature to verify his/her identity, or a written certification that the requester is who he/she claims to be and understands that the known and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a fine. In addition, the following information is needed: The name of the assistance program that he/she participated in and, for student assistance programs, dates of enrollment in the program, and school(s) of attendance.

In addition, be informed that provision of the Social Security Number may assist in the verification of your identity as well as the identification of your record. Providing your Social Security Number is voluntary and you will not be refused access to your record for failure to disclose your Social Security Number.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system; Federal agencies, including but not limited to all Operating Divisions of the Department of Health and Human Services and the Department of the Treasury; credit reporting agencies; lending institutions; professional associations; schools of higher education; and Federal and State courts.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. 98–32625 Filed 12–10–98; 8:45 am]

BILLING CODE 4168–17–P

federal register

Friday
December 11, 1998

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 105, 106, and 107

Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 105, 106, and 107

[Docket No. RSPA-98-3974]

RIN 2137-AD20

Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to President Clinton's mandate to Federal agencies to make communications with the public more understandable, RSPA is issuing this NPRM in which it proposes to revise and clarify the hazardous materials safety rulemaking and program procedures by:

- Putting them into plain language and making minor substantive changes.
- Creating a new part that will contain all defined terms used in RSPA's procedural regulations.
- Demonstrating clearer **Federal Register** and Code of Federal Regulations (CFR) formats.

DATES: Send your comments on or before February 9, 1999.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590-0001. You must identify the docket number RSPA-98-3974 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA has received your comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail to rspa.counsel@rspa.dot.gov. You may review public dockets containing comments to these proposed regulations in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Karin Christian, Office of the Chief Counsel, (202) 366-4400, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

1. Proposed Substantive Changes

RSPA (''we'') proposes to revise all of parts 106 and 107, and to create a new part 105 that will eventually contain all definitions for terms used in Title 49, parts 106, 107 and 110, and perhaps parts 130 and 171 through 180. The proposed revisions respond to President Clinton's June 1, 1998 Executive Memorandum directing Federal agencies to make communications with the public more understandable. We propose to clarify existing requirements and make minor substantive changes which are explained in the following paragraphs. We will revise the remainder of subchapter A into plain language in a future rulemaking.

Part 105

We propose to create a new part 105 that will tell you how to obtain information from us about our procedural regulations and the Hazardous Materials Regulations (HMR). It will also explain subpoenas and service of documents. We also have revised mailing addresses throughout parts 105 and 106 to ensure that documents you send us reach the appropriate RSPA office in a timely manner.

Also, proposed part 105 would eventually contain all definitions that are now in various places throughout subchapter A and may eventually include the definitions now found throughout subchapters B and C. This change would let you go to a single location for all defined terms. Part 105 would also include some definitions found in section 5102 of Federal hazardous material transportation law, 49 U.S.C. 5101 et seq, that apply to terms used in the Hazardous Materials Regulations but do not appear in the regulations themselves. As a result of the present deficiency, you must refer to the statute to determine what particular words in the regulations mean.

At this time, proposed part 105 contains a limited number of definitions that have been rewritten into plain language. Many of these terms are also defined in 49 CFR parts 107 and 171. Consequently, the same term may be defined with different language in part 105 on the one hand and parts 107 and 171 on the other. Nevertheless, the plain language definitions in proposed part 105 are intended to have the same meaning as those in parts 107 and 171; we did not intend to make any substantive changes when we rewrote the proposed part 105 definitions into plain language.

Part 106

Proposed § 106.5 contains new information on our rulemaking process. Specifically, it states that we use informal rulemaking procedures under the Administrative Procedure Act. Furthermore, this section sets out the types of rulemaking documents we normally use to propose and adopt changes to our regulations.

Section 106.15 describes an advance notice of proposed rulemaking.

Section 106.20 describes a notice of proposed rulemaking.

Section 106.30 describes a final rule.

Section 106.35 describes an interim final rule.

Section 106.40 describes a direct final rule.

Section 106.70 proposes to allow commenters to electronically file their comments in a rulemaking proceeding. It also would allow us to reject paper and electronic comments that are frivolous, abusive, or repetitious.

Sections 106.80 through 106.95 talk about ''public meetings'' rather than ''informal hearings.'' We are proposing this language change to more accurately reflect the nature of these public, information-gathering sessions.

Sections 106.115 through 106.140 propose to eliminate the current petition-for- reconsideration procedures in § 106.35 and § 106.38. Current § 106.35 requires that you file a petition for reconsideration of a rule with either RSPA's Associate Administrator for Hazardous Materials Safety or RSPA's Chief Counsel, depending on the subject matter of the regulation you are challenging. Current § 106.38 then allows you to appeal the decision of the Associate Administrator or the Chief Counsel by filing an appeal with RSPA's Administrator.

Only the Administrator has the authority, delegated from the Secretary of Transportation, to grant a petition for reconsideration that results in a new final rule. Therefore, petitions for reconsideration and appeals are currently processed through the Administrator. The proposed regulatory change avoids duplicative appeal procedures by limiting the process to action by the Administrator only.

Part 107

The substance of the procedural regulations in part 107, subpart A, has been captured in proposed parts 105 and 106. Consequently, with the exception of § 107.1—which would contain the definitions now found in

§ 107.3—we propose to remove the regulations currently contained in Part 107 subpart A.

2. Clearer Federal Register and CFR Formats

Plain language helps readers find requirements quickly and understand them easily. To do that, we have reorganized and reworded the parts using plain-language techniques not usually found in the **Federal Register** and CFR, such as these:

• Undesignated center headings cluster related sections within subparts.

• Short sections, paragraphs, sentences, and words speed up reading and enhance understanding.

• Sections as questions and answers focus sections better and combine to establish a rule.

• Personal pronouns reduce passive voice and draw readers into the writing.

• Tables display complex information in a simple, easy-to-read format.

In coordination with the Office of the Federal Register (OFR) and the National Partnership for Reinventing Government (NPR), RSPA is proposing changes in format that would make all regulations easier to read. The changes respond to the call in President Clinton's Executive Memorandum of June 1, 1998, for writing that uses ''easy-to-read design features.'' RSPA intends to use these and other plain language techniques, as appropriate, in future rulemaking projects if the OFR approves them for general use. The public and all agencies are invited to comment on the proposed changes.

Staggering Paragraph Levels

OFR strongly recommends that agencies never use more than three levels of paragraphs (for example (a)(1)(i)), but distinguishing one level from another is hard because all paragraphs in the CFR start at the same distance from the left margin. To make relative importance stand out, we have drafted this proposed rule using the following format features:

• *Different paragraph levels start in different places.* You see the limit of three levels and proposed staggered indentations at § 106.45. Indenting first lines of three levels of paragraphs has virtually no effect on the length of the text.

• *Main paragraphs start at the margin.* This change would show that main paragraphs (those without numbers or letters) are at the highest level. See the first sentence in § 106.45.

Spacing Between Paragraphs

The dense formats of the **Federal Register** and CFR save on pages but hinder reading. Though section headings are framed by blank lines above and below them, there is no such relief to the fine print within a section, where users do their closest reading. To make navigation faster and easier, at least one commercial publisher of the Federal Acquisition Regulations has adopted two techniques that RSPA proposes here:

• *Blank half lines separate paragraphs.* The visual relief helps readers move around and spot things fast. Using this proposed rule document as an example, blank half lines add about one-half page in 10 (or an increase of about 5 percent). Agencies may be able to offset this space increase and resulting increases in publication costs by taking advantage of some economies of plain language.

• *All new paragraphs start on new lines.* Most paragraphs do start on new lines now, with this exception: when a paragraph consists of just a heading, the next paragraph starts beside it. The compression creates an occasional inconsistency that complicates reading. Imagine § 106.40(d)(1) starting next to ''Withdrawing a direct final rule.'' The proposed change makes the placement of section designations entirely consistent. It lets readers devote more of their limited time to understanding the substance and less to compensating for the format's irregularities.

RSPA, OFR and NPR are interested in your views on the need for format changes in the **Federal Register** and CFR. Changes can be implemented over time, as new regulatory documents are published, but where? In the **Federal Register** alone? In the CFR as well? Within the **Federal Register**, should blank half lines between paragraphs be added to regulatory text alone or to preambles as well?

Identifying Defined Terms

RSPA proposes to list, at the beginning of each subpart, the defined terms that are used within the subpart and to refer the reader to the new part 105 definitions. This way, readers will know that RSPA has given a term a precise meaning and will know where to find it. This proposal leaves certain practices unchanged. In a definitions section, writers would still underline a term on its first appearance and OFR would still italicize the defined term. In such a section, writers would still have the option of ending a definition with a cross-reference to the term's first substantive use. Similarly, writers would still have the option of following the first substantive use of a defined term with a cross-reference back to the section that defines it.

Clarifying Table Format

This proposal illustrates the use of horizontal lines and plain language in a table format, and adopts other standard features of table design. For an example, see the table in § 106.110.

• *Tables use horizontal lines.* This is common practice in newspapers and magazines (stock market tables are an example). But tables in the **Federal Register** and CFR often have vertical lines between columns, separating closely related matter and blocking normal left-to-right reading. Under this proposal, if-then tables would appear with horizontal lines between rows and no vertical lines anywhere.

• *Column widths vary.* Currently, columns may be too wide or too narrow for the amount of text. This proposal would have column widths adjusted to fit the text in them.

• *Column headings start at left margins.* Currently, column headings which are centered do not contribute to the clean left margin that substitutes for a vertical line.

• *Column headings appear in boldface.* In plain text now, they do not stand out as they might. Agencies would continue to have the option of submitting tables in camera-ready form.

• *Tables use text font.* In the past, tables and text have appeared in different fonts, a visual inconsistency we propose to eliminate.

Centering Headings in the Federal Register

After clustering related sections into subparts, writers currently have the option of clustering them further under center headings. They draft these headings in initial caps, without number or letter designations, in both the text and tables of contents. You see the organizing power of center headings throughout parts 105 and 106.

Currently, undesignated center headings appear as intended in the CFR but not in the **Federal Register**. In the latter, center headings appear at the left margin and look like section headings without section numbers. The effect is confusing, especially for first-time readers. The proposed change would improve the placement and look of undesignated center headings in the **Federal Register** by making them appear centered as they do in the CFR.

Using Bulleted Lists in Preamble Summaries

Currently, preamble summaries appear in running text only. But the information required there--what the rule does, why it is necessary, and the intended effect--lends itself to vertical listing with bullets. (See this preamble's summary.)

3. Regulatory Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. RSPA will not prepare a regulatory impact analysis or a regulatory evaluation because this proposed rule has minimal economic impact. This determination may change as a result of public comment. This proposed rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

Executive Order 12612

RSPA has analyzed this proposed rule in accordance with the principles and criteria in Executive Order 12612 (''Federalism''). RSPA has determined that this proposed rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13084

We do not believe that the revised regulations evolving from this NPRM will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), RSPA must consider whether a notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. This proposed rule clarifies and revises RSPA's general procedures and rulemaking procedures to assist the public to better understand our procedures. Therefore, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This proposed rule does not propose any new information collection requirements.

Regulation Identifier Number (RIN)

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

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modifications to computer systems. Because this NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in this NPRM.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

Accordingly, RSPA proposes to amend 49 CFR chapter I, subchapter A, as follows:

1. Add part 105 to read as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

Subpart A—Definitions

Sec.
105.5 How does RSPA identify defined terms?
105.10 How does RSPA define the terms used in this subchapter?

Subpart B—General Procedures

105.15 Which defined terms are used in this subpart?

Obtaining Guidance and Public Information

105.20 Where can I get guidance and interpretations?
105.25 Where can I review public documents on file with RSPA?
105.30 Is information I submit to RSPA made available to the public?

Serving Documents

105.35 How may RSPA and others serve documents in RSPA proceedings?
105.40 How do I designate an agent to receive documents on my behalf if I am not a United States resident?

Subpoenas

105.45 What is involved in issuing a subpoena?
105.50 How are subpoenas served?
105.55 What if I do not want to obey a subpoena?

Authority: 49 U.S.C. 5101-5127.

Subpart A—Definitions

§ 105.5 How does RSPA identify defined terms?

This part contains the definitions for certain words and phrases used throughout this subchapter (49 CFR parts 105 through 110). At the beginning of each subpart, the Research and Special Programs Administration (''RSPA'' or ''we'') will identify the

defined terms that are used within the subpart -- by listing them -- and refer the reader to the definitions in this part. This way, readers will know that RSPA has given a term a precise meaning and will know where to look for it.

§ 105.10 How does RSPA define the terms used in this subchapter?

Terms used in this subchapter are defined as follows:

Approval means written consent, including a competent authority approval, from the Associate Administrator for Hazardous Materials Safety to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

Competent Authority means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for competent authority is ''appropriate authority'' which is used in the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator for Hazardous Materials Safety is the United States Competent Authority for purposes of 49 CFR part 107.

Competent Authority Approval means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) An exemption or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator for Hazardous Materials Safety.

Exemption means a document issued by RSPA under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 through 5127 (e.g., Federal Highway Administration routing rules at 49 CFR part 397).

Federal hazardous material transportation law and *Federal hazmat law* mean 49 U.S.C. 5101 through 5127.

File or *Filed* means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document.

Hazardous material means a substance or material that the Secretary of Transportation determines is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and designates as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

Hazardous materials regulations or *HMR* means the regulations at 49 CFR parts 171 through 180.

Indian tribe has the same meaning as it does under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

Person means an individual, firm, copartnership, corporation, company, association, or joint- stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) when it offers hazardous materials for transportation in commerce or transports hazardous materials to further a commercial enterprise. Person excludes the following:

(1) The United States Postal Service.

(2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties).

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political body of a State; or a public corporation, board, or commission established under the laws of one or more States.

Preemption determination means an administrative decision by RSPA that Federal hazardous materials law does or does not void a specific State, political subdivision, or Indian tribe requirement.

Regulations issued under Federal hazmat law means regulations contained in this subchapter (49 CFR parts 105 through 110) and in subchapter C of this chapter (49 CFR parts 171 through 180).

State means:

(1) Any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary of Transportation.

(2) As used in 49 U.S.C. 5119 (uniformity of State registration and permitting forms and procedures), a State of the United States or the District of Columbia.

Transports or *Transportation* means movement of property, and any loading, unloading, or storage incidental to that movement.

Waiver of Preemption means a decision by RSPA to forego preemption of a non-Federal requirement (that is, to allow a State, political subdivision or Indian tribe requirement to remain in effect) that provides at least as much public protection as Federal hazmat law and the regulations issued under Federal hazmat law, and does not unreasonably burden commerce.

Subpart B—General Procedures

§ 105.15 Which defined terms are used in this subpart?

The following defined terms (see subpart A of this part) appear in this subpart: Approval; Exemption; Federal hazardous materials law; Hazardous materials; Hazardous materials regulations; Indian tribe; Preemption determination; State; Transportation; Waiver of preemption.

Obtaining Guidance and Public Information

§ 105.20 Where can I get guidance and interpretations?

(a) *Hazardous materials regulations.* You can get information and answers to your questions on compliance with the hazardous materials regulations (49 CFR parts 171 through 180) and interpretations of those regulations by contacting RSPA's Office of Hazardous Materials Safety as follows:

(1) Call the hazardous materials information line at 1-800-467-4922 (in the Washington, DC area call 202-366-4488). The line is staffed from 9:00 a.m. through 5:00 p.m. Eastern time, Monday through Friday except Federal holidays.

After hours, you can leave a recorded message and your call will be returned by the next business day.

(2) Access the Office of Hazardous Materials Safety's home page via the Internet at http://hazmat.dot.gov.

(3) Send a letter, with your return address and a daytime telephone number, to:

Guidance and Interpretations
Attn: DHM-333
RSPA/U.S. Department of Transportation (USDOT)
Washington, DC 20590-0001.

(b) *Federal Hazmat law and preemption.* You can get information and answers to your questions on Federal hazardous materials transportation law, 49 U.S.C. 5101 through 5127, and Federal preemption of State, local, and Indian tribe hazardous material transportation requirements, by contacting RSPA's Office of the Chief Counsel as follows:

(1) Call the office of the Chief Counsel at (202) 366-4400 from 9:00 a.m. to 5:00 p.m. Eastern time, Monday through Friday except Federal holidays.

(2) Access the Office of the Chief Counsel's home page via the Internet at http://rspa- atty.dot.gov.

(3) Send a letter, with your return address and a daytime telephone number, to:

Office of the Chief Counsel
Attn: DCC-10
RSPA/USDOT
Washington, DC 20590-0001.

§ 105.25 Where can I review public documents on file with RSPA?

RSPA is required by statute to make certain documents and information available to the public. You can review and copy publicly available documents and information at the locations described in this section.

(a) *DOT Docket Management System.* Unless a particular document says otherwise, the following documents are available for public review and copying at the Department of Transportation's Docket Management System, Room PL 401, 400 7th Street, SW, Washington, DC 20590-0001, or for review and downloading through the Internet at http://dms.dot.gov:

(1) Rulemaking documents in proceedings started after February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA after February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA after February 1, 1997. Also available are public comments, **Federal Register** notices, and RSPA's rulings, determinations, and orders issued in response to those applications.

(b) *Hazardous Materials Record Center.* Unless a particular document says otherwise, the following documents are available for public review and copying at RSPA's Hazardous Materials Record Center, USDOT, room 8421, 400 7th Street, SW, Washington, DC 20590-0001:

(1) Rulemaking documents in proceedings started before February 1, 1997, including notices of proposed rulemaking, advance notices of proposed rulemaking, public comments, related **Federal Register** notices, final rules, appeals, and RSPA's decisions in response to appeals.

(2) Applications for exemption received by RSPA before February 1, 1997. Also available are supporting data, memoranda of any informal meetings with applicants, related **Federal Register** notices, public comments, and decisions granting or denying exemptions applications.

(3) Applications for preemption determinations and waiver of preemption determinations received by RSPA before February 1, 1997. Also available are public comments, **Federal Register** notices, and RSPA's rulings, determinations, and orders issued in response to those applications.

(4) Interpretations of RSPA's regulations.

(c) *Office of Hazardous Materials Safety.*

(1) Upon your written request, we will make the following documents and information available to you:

(i) Appeals under 49 CFR part 107 and RSPA's decisions issued in response to those appeals.

(ii) Records of compliance order proceedings and RSPA compliance orders.

(iii) Applications for approval, including supporting data, memoranda of any informal meetings with applicants, and decisions granting or denying approvals applications.

(iv) Other information about RSPA's hazardous materials program required by statute to be made available to the public for review and copying and any other information RSPA decides should be available to the public.

(2) Your written request to review documents should include the following:

(i) A detailed description of the documents you wish to review.

(ii) Your name, address, and telephone number.

(3) Send your written request to:

Request to Review Documents
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 105.30 Is information I submit to RSPA made available to the public?

When you submit information to RSPA during a rulemaking proceeding, as part of your application for exemption or approval, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential.

(a) *Asking for confidential treatment.* You may ask us to give confidential treatment to information you give to the agency by taking the following steps:

(1) Mark ''confidential'' on each page of the original document you would like to keep confidential.

(2) Send us, along with the original document, a second copy of the original document with the confidential information deleted.

(3) Explain why the information you are submitting is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552; it is information referred to in 18 U.S.C. 1905).

(b) *RSPA Decision.* RSPA will decide whether or not to treat your information as confidential. We will notify you, in writing, of a decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond.

Serving Documents

§ 105.35 How may RSPA and others serve documents in RSPA proceedings?

(a) *Service by RSPA.* We may serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If we serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) We may serve a person's authorized representative or agent by registered or certified mail, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Publication in the **Federal Register**.

(b) *Service by others.* If you are required under this subchapter to serve a person with a document, serve the document by one of the following methods, except where a different method of service is specifically required:

(1) Registered or certified mail.

(i) If you serve a document by registered or certified mail, it is considered served when mailed.

(ii) An official United States Postal Service receipt from the registered or certified mailing is proof of service.

(iii) You may serve a person's authorized representative or agent by registered or certified mail, return receipt requested, or in any other manner authorized by law. Service on a person's authorized agent is the same as service on the person.

(2) Personal service.

(3) Electronic service.

(i) In a proceeding under § 107.317 of this subchapter (an administrative law judge proceeding), you may electronically serve documents on us.

(ii) Serve documents electronically through the Internet at http://dms.dot.gov.

§ 105.40 How do I designate an agent to receive documents on my behalf if I am not a United States resident?

(a) *General requirement.* If you are not a resident of the United States but are required by this subchapter or subchapter C of this chapter to designate a permanent resident of the United States to act as your agent and receive documents on your behalf, you must prepare a designation and file it with us.

(b) *Agents.* An agent:

(1) May be an individual, a firm, or a domestic corporation.

(2) May represent any number of principals.

(3) May not reassign responsibilities under a designation to another person.

(c) *Preparing a designation.* Your designation must be written and dated, and it must contain the following information:

(1) The section in the HMR that requires you to file a designation.

(2) A certification that the designation is in the correct legal form required to make it valid and binding on you under the laws, corporate bylaws, or other requirements that apply to designations at the time and place you are making the designation.

(3) Your full legal name, the principal name of your business, and your mailing address.

(4) A statement that your designation will remain in effect until you withdraw or replace it.

(5) The legal name and mailing address of your agent.

(6) A declaration of acceptance signed by your agent.

(d) *Address.* Send your designation to:

Designation of Agent
Attn: DHM-333
RSPA/USDOT
Washington, D.C. 20590-0001.

(e) *Designations are binding.* You are bound by your designation of an agent, even if you did not follow all the requirements in this section, until we reject your designation.

Subpoenas

§ 105.45 What is involved in issuing a subpoena?

(a) *Subpoenas explained.* A subpoena is a document that may require you to attend a hearing or produce documents or other physical evidence in your possession or control. RSPA may issue a subpoena either on its initiative or at the request of someone participating in a hearing. Anyone who requests that RSPA issue a subpoena must show that the subpoena seeks information that will materially advance the hearing.

(b) *Attendance and mileage expenses.*

(1) If you receive a subpoena to attend a hearing under this part, you may receive money to cover attendance and mileage expenses. The attendance and mileage fees will be the same as those paid to a witness in a proceeding in the district courts of the United States.

(2) If RSPA issues a subpoena to you based upon a request, the requester must serve a copy of the original subpoena on you, as required in § 105.50. The requester must also include attendance and mileage fees with the subpoena unless they ask RSPA to pay the attendance and mileage fees because of demonstrated financial hardship.

(3) If RSPA issues a subpoena at the request of an officer or agency of the Federal government, the officer or agency is not required to include attendance and mileage fees when serving the subpoena. The officer or agency must pay the fees before you leave the hearing at which you testify.

§ 105.50 How are subpoenas served?

(a) *Personal service.* Anyone who is not an interested party and who is at least 18 years of age may serve you with a subpoena and fees by handing the subpoena and fees to you, by leaving them at your office with the individual in charge, or by leaving them at your house with someone who lives there and is capable of making sure that you receive them. If RSPA issues a subpoena to an entity, rather than an individual, personal service is made by delivering the subpoena and fees to the entity's registered agent for service of process or to any officer, director or agent in charge of any of the entity's offices.

(b) *Service by mail.* You may be served with a copy of a subpoena and fees by certified or registered mail at your last known address. Service of a subpoena and fees may also be made by registered or certified mail to your agent for service of process or any of your representatives at that person's last known address.

(c) *Other methods.* You may be served with a copy of a subpoena by any method where you receive actual notice of the subpoena and receive the fees before leaving the hearing at which you testify.

(d) *Filing after service.* After service is complete, the individual who served a copy of a subpoena and fees must file the original subpoena and a certificate of service with the RSPA official who is responsible for conducting the hearing.

§ 105.55 What if I do not want to obey a subpoena?

(a) *Quashing or modifying a subpoena.* If you receive a subpoena, you can ask RSPA to overturn (''quash'') or modify the subpoena within 10 days after the subpoena is served on you. Your request must briefly explain the reasons you are asking for the subpoena to be quashed or modified. RSPA may then do the following:

(1) Deny your request.

(2) Quash or modify the subpoena.

(3) Grant your request on the condition that you satisfy certain specified requirements.

(b) *Failure to obey.* If you disobey a subpoena, RSPA may ask the Attorney General to seek help from the United States District Court for the appropriate District to compel you, after notice, to appear before RSPA and give testimony, produce subpoenaed documents, or produce physical evidence.

2. Revise part 106 to read as follows:

PART 106—RULEMAKING PROCEDURES

Subpart A—RSPA Rulemaking Documents

Sec.
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106.10 How does RSPA issue rules?
106.15 What is an advance notice of proposed rulemaking?
106.20 What is a notice of proposed rulemaking?
106.25 May RSPA change its regulations without first issuing an ANPRM or NPRM?
106.30 What is a final rule?
106.35 What is an interim final rule?
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106.50 Which defined terms are used in this subpart?
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Written Comments

106.60 Who may file comments?
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106.140 How will RSPA handle my appeal?

Authority: 49 U.S.C. 5101-5127.

Subpart A—RSPA Rulemaking Documents

§ 106.5 Which defined terms are used in this subpart?

The following defined terms (see part 105, subpart A, of this subchapter) appear in this subpart: File; Person; State.

§ 106.10 How does RSPA issue rules?

(a) RSPA (''we'') uses informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to add, amend, or delete regulations. To propose or adopt changes to a regulation, RSPA may issue one or more of the following documents. We publish the following rulemaking documents in the **Federal Register** unless we name and personally serve a copy of a rule on every person subject to it:

(1) An advance notice of proposed rulemaking.

(2) A notice of proposed rulemaking.

(3) A final rule.

(4) An interim final rule.

(5) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

(1) The topic involved in the rulemaking document.

(2) RSPA's legal authority for issuing the rulemaking document.

(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).

(4) Whom to call if you have questions about the rulemaking document.

(5) The date, time, and place of any public meetings being held to discuss the rulemaking document.

(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

§ 106.15 What is an advance notice of proposed rulemaking?

An advance notice of proposed rulemaking (ANPRM) tells the public that RSPA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 106.20 What is a notice of proposed rulemaking?

A notice of proposed rulemaking (NPRM) proposes RSPA's specific regulatory changes for public comment and contains supporting information. It generally includes proposed regulatory text.

§ 106.25 May RSPA change its regulations without first issuing an ANPRM or NPRM?

RSPA may add, amend, or delete regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may go directly to a final rule or interim final rule if, for good cause, we find that a notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest. We must place that finding and a brief statement of the reasons for it in the final rule or interim final rule.

(b) We may issue a direct final rule (see § 106.40).

§ 106.30 What is a final rule?

A final rule sets out new regulatory requirements and their effective date. A final rule will also identify issues raised by commenters in response to the notice of proposed rulemaking and give the agency's response.

§ 106.35 What is an interim final rule?

An interim final rule sets out new regulatory requirements and their effective date. RSPA may issue an interim final rule without first issuing a notice of proposed rulemaking and accepting public comment if it finds, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. RSPA will clearly set out this finding in the interim final rule. After receiving and reviewing public comments, as well as any other relevant documents, RSPA may revise the interim final rule and issue it as a final rule.

§ 106.40 What is a direct final rule?

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless RSPA receives an adverse comment or notice of intent to file an adverse comment within the comment period -- generally 60 days after the

direct final rule is published in the **Federal Register**.

(a) *Actions taken by direct final rule.* We may use direct final rulemaking procedures to issue rules that do any of the following:

(1) Make minor substantive changes to regulations.

(2) Incorporate by reference the latest edition of technical or industry standards.

(3) Extend compliance dates.

(4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

(b) *Adverse comment.* An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue, unless the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

(c) *Confirmation of effective date.* We will publish a confirmation document in the **Federal Register**, generally within 15 days after the comment period closes, if we have not received an adverse comment or notice of intent to file an adverse comment. The confirmation document tells the public the effective date of the rule--either the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(d) *Withdrawing a direct final rule.*

(1) If we receive an adverse comment or notice of intent to file an adverse comment, we will publish a document in the **Federal Register** before the effective date of the direct final rule advising the public and withdrawing the direct final rule in whole or in part.

(2) If we withdraw a direct final rule because of an adverse comment, we may incorporate the adverse comment into a later direct final rule or may publish a notice of proposed rulemaking.

(e) *Appeal.* You may appeal RSPA's issuance of a direct final rule (see § 106.115) only if you have previously filed written comments (see § 106.60) to the direct final rule.

§ 106.45 How can I track RSPA's rulemaking activities?

The following identifying numbers allow you to track RSPA's rulemaking activities:

(a) *Docket number.* We assign an identifying number, called a docket number, to each rulemaking proceeding. Each rulemaking document that RSPA issues in a particular rulemaking proceeding will display the same docket number. This number allows you to do the following:

(1) Associate related documents that appear in the **Federal Register**.

(2) Search the DOT Docket Management System (''DMS'') for information on particular rulemaking proceedings -- including notices of proposed rulemaking, public comments, petitions for rulemaking, appeals, records of additional rulemaking proceedings and final rules. There are two ways you can search the DMS:

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, plaza level 401, 400 7th Street, SW, Washington, DC 20590-0001.

(ii) View and download docketed materials through the Internet at http://dms.dot.gov.

(b) *Regulation identifier number.* The Department of Transportation publishes a semiannual agenda of all current and projected Department of Transportation rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations which is published in the **Federal Register** in April and October of each year. The semiannual agenda tells the public about the Department's--including RSPA's --regulatory activities. The Department assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the **Federal Register** and makes it easy for you to track those rulemaking proceedings in both the **Federal Register** and the semiannual regulatory agenda itself.

Subpart B—Participating in the Rulemaking Process

§ 106.50 Which defined terms are used in this subpart?

The following defined terms (see part 105, subpart A, of this subchapter) appear in this subpart: File; Person; Political subdivision; State.

§ 106.55 How may I participate in RSPA's rulemaking process?

You may participate in RSPA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an advance notice of proposed rulemaking, notice of proposed rulemaking, interim final rule, or direct final rule.

(b) Ask that we hold a public meeting in any rulemaking proceeding, and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to add, amend, or delete a regulation.

(d) File an appeal that asks us to reexamine our decision to issue all or part of a final rule, interim final rule, or direct final rule.

Written Comments

§ 106.60 Who may file comments?

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any State government agency, any political subdivision of a State, and any interested person invited by RSPA to participate in the rulemaking process.

§ 106.65 What information must I put in my written comments?

Your comments must be in English and must contain the following:

(a) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(b) Information, views, or arguments that follow the instructions for participation that appear in the rulemaking document on which you are commenting.

(c) All material that is relevant to any statement of fact in your comments.

(d) The document title and page number of any material that you reference in your comments.

§ 106.70 Where and when do I file my comments?

(a) Unless you are told to do otherwise in the rulemaking document

on which you are commenting, send your comments to us in either of the following ways:

(1) By mail to:

Docket Management System
USDOT
Room PL 401
Washington, DC 20590-0001.

(2) Through the Internet to http://dms.dot.gov.

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late-filed comments to the extent possible.

(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the DOT website.

§ 106.75 May I ask for more time to file my comments?

Yes. If RSPA grants your request, it is granted to all persons. We will notify the public of the extension by publishing a document in the **Federal Register**. If RSPA denies your request, RSPA will notify you of the denial. To ask for more time, you must do the following:

(a) File a request for extension at least ten days before the end of the comment period established in the rulemaking document.

(b) Show that you have good cause for the extension and that an extension is in the public interest.

(c) Include the docket number of the rulemaking document you are seeking additional time to comment on, clearly set out at the beginning of your request.

(d) Send your request to:

Request for Extension
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

Public Meetings and Other Proceedings

§ 106.80 What takes place at a public meeting?

A public meeting is a nonadversarial, fact-finding proceeding conducted by a RSPA representative. Generally, public meetings are announced in the **Federal Register**. Interested persons are invited to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. Sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

§ 106.85 May I ask RSPA to hold a public meeting?

If a rulemaking document does not provide for a public meeting, you may ask for one by filing a written request with RSPA no later than 20 days before the expiration of the comment period specified in the rulemaking document. Send your request for a public meeting to:

Request for Public Meeting
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.90 How will RSPA handle my request for a public meeting?

RSPA will review your request and, if you have shown good cause for a public meeting, will grant it and publish a notice of the meeting in the **Federal Register**.

§ 106.95 What other proceedings might I take part in?

During a rulemaking proceeding, RSPA may invite you to do the following:

(a) Participate in a conference at which minutes are taken.

(b) Make an oral presentation.

(c) Participate in any other public proceeding to ensure that RSPA makes informed decisions during the rulemaking process and to protect the public interest, including a negotiated rulemaking or work group led by a facilitator.

Petitions for Rulemaking

§ 106.100 May I ask RSPA to add, amend, or delete a regulation?

You may ask RSPA to add, amend, or delete a regulation by filing a petition for rulemaking as follows:

(a) For regulations in 49 CFR parts 110, 130, 171 through 180, submit the petition to:

Petition for Rulemaking
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

(b) For regulations in 49 CFR parts 105, 106, or 107, submit the petition to:

Office of the Chief Counsel
Attn: DCC-10
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.105 What information must I include in a petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) A summary of your proposed action and an explanation of its purpose.

(2) The language you propose for a new or amended rule, or the language you would delete from a current rule.

(3) An explanation of your interest in your proposed action and the interest of anyone you may represent.

(4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(5) Any specific cases that support or demonstrate the need for your proposed action.

(b) If the impact of your proposed action is substantial, and data or other information about that impact are available to you, we may ask that you provide information about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law (Title 5, U.S.C.), of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)

(3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(4) The record keeping and reporting burdens of your proposed action and whom they would affect.

(5) The effect of your proposed action on the quality of the natural and social environments.

§ 106.110 How will RSPA handle my petition for rulemaking?

We will review and respond to your petition for rulemaking as follows:

If your petition is ...	And if we determine that ...	Then ...
(a) Incomplete		we may return your petition with a written explanation
(b) Complete	your petition does not justify a rulemaking action	we will notify you in writing that we will not start a rulemaking proceeding
(c) Complete	your petition does justify a rulemaking action	we will notify you in writing that we will start a rulemaking proceeding

Appeals

§ 106.115 May I appeal an action that RSPA has taken?

You may appeal the following RSPA actions:

(a) Any regulation that RSPA issues under the rulemaking procedures in this part. However, you may appeal RSPA's issuance of a direct final rule only if you previously filed comments to the direct final rule (see § 106.40(e)).

(b) Any RSPA decision on a petition for rulemaking.

§ 106.120 What information must I put in my appeal?

(a) *Appeal of a regulation*. If you appeal RSPA's issuance of a regulation, your appeal must include the following:

(1) The docket number of the rulemaking you are concerned about, clearly set out at the beginning of your appeal.

(2) A brief statement of your concern about the regulation at issue.

(3) An explanation of why compliance with the regulation is not practical, reasonable, or in the public interest.

(4) If you want RSPA to consider more facts, the reason why you did not present those facts within the time given during the rulemaking process for public comment.

(b) *Appeal of a decision*. If you appeal RSPA's decision on a petition for rulemaking, you must include the following:

(1) The contested aspects of the decision.

(2) Any new arguments or information.

§ 106.125 What is the deadline for filing my appeal?

(a) *Appeal of a regulation*. If you appeal RSPA's issuance of a regulation, your appeal document must reach us no later than 30 days after the date RSPA published the regulation in the **Federal Register**. After that time, RSPA will consider your petition to be one for rulemaking under § 106.100.

(b) *Appeal of a decision*. If you appeal RSPA's decision on a petition for rulemaking, your appeal document must reach us no later than 30 days from the date RSPA served you with written notice of RSPA's decision.

§ 106.130 Where do I file my appeal?

Send your appeal to:

Appeal
Attn: DHM-333
RSPA/USDOT
Washington, DC 20590-0001.

§ 106.135 Will the filing of my appeal keep a final rule from becoming effective?

No, unless RSPA provides otherwise.

§ 106.140 How will RSPA handle my appeal?

(a) *Appeal of a regulation*.

(1) We may consolidate your appeal with other appeals of the same rule.

(2) We may grant or deny your appeal, in whole or in part, without further rulemaking proceedings, unless granting your appeal would result in the issuance of a new final rule.

(3) If we decide to grant your appeal, we may schedule further proceedings and an opportunity to comment.

(4) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA published the rule at issue in the **Federal Register**. If we do not issue a decision on your appeal within the 90-day period, and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date. We will also publish a notice of the delay in the **Federal Register**.

(b) *Appeal of a decision*.

(1) We will not consider your appeal if it merely repeats arguments that RSPA has previously rejected.

(2) RSPA will notify you, in writing, of the action on your appeal within 90 days after the date that RSPA served you with written notice of its decision on your petition for rulemaking. If we do not issue a decision on your appeal within the 90-day period, and we anticipate a substantial delay, we will notify you directly about the delay and will give you an expected decision date.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127, 44701; Sec. 212-213, Pub. L. 104-121, 110 Stat. 857; 49 CFR 1.45, 1.53.

§§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14 [Removed]

§ 107.3 [Redesignated as § 107.1]

2. Part 107, subpart A, would be amended by revising the subpart heading; by removing §§ 107.1, 107.5, 107.7, 107.9, 107.11, 107.13, 107.14; and by redesignating § 107.3 as § 107.1, to read as follows:

Subpart A—Definitions

Issued at Washington, DC on November 18, 1998, under authority delegated in 49 CFR part 106.

Judith S. Kaleta,

Chief Counsel.

[FR Doc. 98–31506; Filed 12–10–98; 8:45 am]

BILLING CODE 4910–60–F

federal register

Friday
December 11, 1998

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 25 and 33

Airworthiness Standards; Bird Ingestion; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25 and 33

[Docket No. FAA–1998–4815; Notice No. 98–19]

RIN 2120–AF34

Airworthiness Standards; Bird Ingestion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the FAA type certification standards for aircraft turbine engines with regard to bird ingestion. The proposed standards reflect recent analyses defining the actual bird threat encountered in service by turbine engines, and would harmonize the FAA bird ingestion standards with those being drafted by the Joint Aviation Authorities (JAA). The proposed changes would establish nearly uniform bird ingestion standards for aircraft turbine engines certified by the United States under FAA standards and by the JAA countries under JAA standards, thereby simplifying airworthiness approvals for import and export.

DATES: Comments to be submitted on or before March 11, 1999.

ADDRESSES: Comments on this document should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. FAA–1998–4815, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: ''Docket No. FAA–1998–4815.'' Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7120; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as report summarizing each substantive public contact with FAA personnel on this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1998–4815.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (800)–322–2722 or (202)–267–5948.

Internet users may reach the FAA's webpage at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/su__docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

In 1976, the National Transportation Safety Board (NTSB), in response to an accident involving a wide-bodied aircraft that may have experienced multiple bird ingestion into the engines, issued Safety Recommendation A–76–64, recommending that the FAA, ''amend 14 CFR 33.77 to increase the maximum number of birds in the various size categories required to be ingested into turbine engines with large inlets.'' Safety Recommendation A–76–64 also stated, ''these increased numbers and sizes should be consistent with the birds ingested during service experience of these engines.'' In response to the recommendation, the FAA sponsored an industry wide study of the types, sizes, and quantities of birds that had been ingested into aircraft turbine engines of all sizes, and the resulting affects on engine performance. Subsequently, the FAA requested that the Aerospace Industries Association (AIA) analyze the data, and report back to the FAA. Based on the AIA report, the FAA determined the actions to be taken, as well as the disposition of the NTSB safety recommendation A–76–64. The FAA concluded that the regulations contained in (33.77 should be modified to increase the severity of the bird ingestion testing requirements regarding large, high bypass ratio engines. In addition, the FAA found that it should update the design and testing requirements for all engine sizes to reflect the actual numbers and bird sizes being ingested. This effort was adopted as a part 33 and Joint Aviation Regulations for engines (JAR–E) harmonization project and was selected as an Aviation Rulemaking Advisory Committee (ARAC) project.

Industry Study

The industry study consisted of FAA sponsored contracts which are summarized in FAA report number DOT/FAA/CT–84/13, dated September 1984. The AIA and the Association Europeenne Des Constructeurs De Material Aerospatial (AECMA), initially reviewed the historical bird threat and resulting impact to flight safety for a 20-year period through 1987. The data collected represented a cross-section of large, high bypass turbofan engines in service during that time period. After collection and review of the available data, an analysis was performed to characterize both the threat of bird

ingestion (sizes, quantities and occurrence rates) and consequences. The results of this initial data analysis were presented to the FAA in AIA reports dated October 17, 1986, and November 10, 1988. The results of the analysis were compared to the historical design standards and certification bases for the family of engines comprised in the database. As a result of that analysis, the industry study group identified bird encounter threats more severe than were addressed in either engine design practices of the time, or in part 33. Subsequently, additional data was collected and analyzed for small and medium sized turbine engines which were not represented within the initial database. This data is contained within FAA Technical Center reports dated December 1990, December 1991, and July 1992.

In addition to the industry study and data analysis for large engines, industry also addressed the service experience of the small turbojet and turbofan engine designs. With the rapid expansion of the turbojet and turbofan engine powered business jet fleet in the late 1960's and early 1970's, a significant number of multiple engine power loss accidents occurred due to flocking bird ingestion. Careful review of these turbojet and turbofan engine events showed that the flight crews had often flown through very large flocks of birds with ingestion of many birds in each engine which resulted in multiple engine flameouts.

At the time, the FAA engaged in a discussion with engine manufacturers, and concluded that mechanical design changes alone would not alleviate the adverse affects of severe inlet blockage caused by massive flocking bird ingestions. The FAA and the manufacturers, then embarked upon a campaign to better inform the aviation community regarding bird hazards and necessary airport controls, and the accident rate due to bird ingestion decreased markedly. Additionally, the FAA amended part 33 effective October 31, 1974 (amendment 33–6), to require manufacturers to incorporate significant design improvements to address the typical flocking bird threat. The service experience of business jet engine designs that meet the standards of amendment of 33–6 indicates that resistance to bird ingestion induced damage has greatly improved over earlier service history.

Aviation Rulemaking Advisory Committee (ARAC) Project

The FAA is committed to undertaking and supporting the harmonization of part 33 with JAR–E. In August 1989, as a result of that commitment, the FAA Engine and Propeller Directorate participated in a meeting with the Joint Aviation Authorities (JAA), AIA, and AECMA. The purpose of the meeting was to establish a philosophy, guidelines, and a working relationship regarding the resolution of issues identified as needing to be harmonized, including some where new standards are needed. All parties agreed to work in a partnership to jointly address the harmonization effort task. This partnership was later expanded to include the airworthiness authority of Canada, Transport Canada.

This partnership identified seven items as the most critical to the initial harmonization effort. The proposed bird ingestion standards represent one item on the list of seven, and, therefore, represent a critical harmonization effort.

The bird ingestion standards proposal was selected as an ARAC project, and assigned to the Engine Harmonization Working Group (EHWG) of the Transport Airplane and Engine Issues Group (TAEIG) on December 11, 1992 (57 FR 58840). On April 9, 1997, the TAEIG recommended that the FAA proceed with the proposed rulemaking and associated advisory material even though one working group member disagreed with the proposal. This proposed NPRM reflects the ARAC recommendations on that rulemaking.

The basis for the development of this proposed rule is to (1) minimize the threat to aircraft from the historical bird threat to one or more engines; and (2) substantiate that the engine design provides at least a 1E–8 per aircraft cycle freedom from risk of a hazardous consequence to the aircraft due to the bird ingestion threat. For all bird ingestion threats, a hazardous consequence occurs when the resulting damage to the engine results in an unsafe condition specified in § 33.75; and in the specific case of small and medium birds, where insufficient power is retained to provide engine run-on capability to ensure a safe landing.

Medium bird ingestion criteria for small engines was established consistent with corresponding criteria for medium and large engines, which is freedom from multi-engine power loss events at a rate of 1E–8 per aircraft cycle. These criteria are based on the assumption that current standards for airport certification will be maintained, that the historical environment will not worsen, and that airport operators and pilots will maintain at least their current awareness of the bird ingestion threat.

The development of this proposal recognizes that each engine design must address the bird ingestion threat, without regard to the ingestion capability of previous designs as described in the service history database. Unless the proposal addresses the actual in-service bird ingestion threat, there can be no assurance that future designs would continue to exhibit acceptable capability.

The results of this data analysis are summarized as follows:

1. Dual engine power loss events with hazardous consequences (flocking birds of all sizes) have occurred at the rate of 3.2E–7 occurrences per aircraft cycle for large high-bypass ratio engines. This finding reflects service data for the 20-year period through 1987.

2. Multiple engine ingestion of flocking birds up to 2.5 lbs. has occurred at the rate of 1E–6 occurrences per aircraft cycle for large high-bypass ratio engines.

3. Single engine power loss events due to ingestion of birds smaller than the current § 33.77 standard has occurred at a rate of 1E–6 or greater per aircraft cycle for all large high-bypass ratio engines.

4. Single engine ingestion of a large bird (4–8 lb. based on inlet area) has occurred at a rate up to 3.1E–6 occurrences per aircraft cycle.

5. Dual engine ingestion of flocking birds up to 1.5 lbs. has occurred at a rate of 1E–8 occurrences per aircraft cycle for small engines.

6. Bird ingestion service difficulty issues relating to engine models not type certificated to the proposed requirements, can safely be addressed by continued airworthiness control programs.

This proposal recognizes the need to design a conservative test, while at the same time being representative of in-service combinations of critical ingestion parameters. Since testing for all possible combinations of events is impractical, a degree of conservatism was called for in a single test demonstration. That conservatism was incorporated into the proposed tests by selecting bird sizes or quantities, or both, among the most severe encountered within the 1E–8 service history, as well as requiring critical test parameters to be at worse case combination (speeds and aim points). It is therefore reasonable to accept a satisfactory test outcome which is conservative with respect to the various combinations of critical test parameters, and their demonstrated rate of occurrence in service.

An example of parametric rule consideration during regulatory tests is the question of multiple bird impacts to the same rotor blade. The likelihood of multiple impacts on one blade is dependent on the number of birds, the

number of blades, and the exposed frontal area. The aircraft and engine manufacturers have stated that it is not always possible to achieve a uniform distribution of birds across the complete face of the engine in a single engine test. This situation could result in multiple birds striking the same blade, and may be viewed as unrepresentative and overly conservative based on probabilities appropriate to a random ingestion (averaged over a multiple ingestion event).

With respect to the flocking bird threat, this proposal considers the potential affects on the engine associated with the size and number of birds, and operating conditions of pertinent aircraft. For smaller flocking birds (0.5 to 1.5 lb.), greater quantities of birds may be ingested when compared to quantities associated with larger size flocking birds. The proposed tests would require the applicant to consider both the affects of bird size on the impact loading of the engine components, as well as the quantity ingested with potential multiple target locations being struck on the face of the engine. Additionally, the applicant would have to consider the potential affects of the ingestion and the resultant damage to the front face of the engine, as they affect the engine core and engine's run-on capability.

Analysis of the service record of engines with an inlet surface area larger than 2,000 square-inches over a 20-year period has led to the conclusion that some additional certification standards are required. The proposed standards are intended to reduce the risk of a dual engine power loss from current in-service rates. The improvement goal is approximately 1E–8 or better per aircraft departure. The data analysis has identified specific flocking bird threats up to approximately 8 lb. size (Canada goose). Therefore, it is the intent of this proposed rule to strengthen the engine airworthiness requirements by increasing the medium bird ingestion requirements from 1.5 to 2.5 lb. birds (representing the herring gull threat) and, by increasing the single large bird ingestion requirements, to address bird threats from 4 to 8 lb. (Canada goose). (The term ''1E–8'' is a standard scientific notation.)

The FAA recognizes that flocking birds larger than those specified in this proposed rule may be encountered. While available engine technology alone may not provide mitigation of this risk to approximately 1E–8 or better per aircraft departure, mitigation of this threat may be provided by compliance with the more severe requirements of this proposal. In addition, the introduction of aircraft that can be operated with up to a 50-percent power loss from each engine (large, twin engine, transport aircraft) and improved airport bird control methods and awareness will further address this very large bird threat. The data summary supporting this conclusion for medium to large high bypass engines (70 to 100 inch inlet diameter except as noted) is as follows:

Multiple engine ingestions of birds greater than 1.0 lb. = 2.1E–6*
Multiple engine ingestions of birds greater than 1.5 lb. = 1.4E–6*
Multiple engine ingestions of birds greater than 2.5 lb. = 1.4E–7**
Multiple engine ingestions of birds greater than 4.0 lb. = 8.8E–8**
Multiple engine ingestions of birds greater than 2.5 lb. = 9.5E–8***

*Data collection period 1970–1987
**Data collection period 1970–1995
***Data collection period 1970–1995 for 60 to 100 inch diameter inlets

The data also suggests that the number of birds likely to be ingested into all engines during a flock encounter was inversely proportional to the size of birds. These data were examined on an exceedence basis, and show that 95-percent of the time no more than the following quantities of birds would be ingested into all engines on an aircraft during a flock encounter. As an example, the following quantities of birds ingested for engines in the 6,000 square-inch class are as follows:

Weight of bird	Number of birds
1.0–1.5	3
1.5–2.5	3
2.5+	2

Considering the desire to evaluate multiple critical target locations on the face of the engine, this proposal selects a size of flocking bird that corresponds to a bird quantity of two or more birds. However, the FAA recognizes that there would be a residual risk of encounter of potentially larger bird sizes than specified in this proposed rule, and possibly greater quantities of birds than specified in this proposed rule. This proposal, however significantly increases the severity of the certification demonstration and provides a reduction in risk of a dual engine power loss due to flocking bird ingestion of any size and quantity.

In considering single large bird threats for sizes greater than that demonstrated under the medium flocking bird threat to multiple engines, the data analysis attempted to quantify exposure rates for birds weighing 4 lbs. and up as a function of inlet throat area. Data from a series of FAA Technical Center reports published between 1990 and 1992 were used, in addition to the original AIA studies.

The data showed that small and medium engine sizes up to an inlet throat area of 2,100 square-inches had a relatively constant threat from birds greater than 4 lbs. at approximately 5E–7 ingestions per aircraft departure. Reports from the manufacturers also showed that this size of engine was more likely to ingest only portions of large birds, due to the much higher probability that an ingested bird may not enter the inlet on the engine centerline and, therefore, would strike the inlet structure and be dismembered before reaching the engine rotor blades. This conclusion is further substantiated by the absence of reports of unsafe engine shutdown due to single large birds greater than 4 lbs. for engines in this size range.

For engines with inlets larger than 2,100 square-inches, the rate of exposure to single large birds tracked roughly with increasing inlet size. The exposure rate for birds larger than 4 lbs. for the large population of engines with inlet surface areas in the 2,100 to 6,000 square-inch range was 1.5E–6 ingestions per aircraft departure. Review of the revenue service data however showed that medium and large turbofans exposed to single large birds above 4 lbs. have demonstrated safe shutdown characteristics as defined under § 33.75 even with bird sizes up to 15 lbs. The rate of unsafe shutdown occurrences in accordance with § 33.75 criteria was approximately one event per 120 occurrences. This unsafe shutdown rate was attributed to the blade-out containment test requirements of § 33.94 constituting a more severe test relative to safe shutdown criteria for almost all engines.

The intent of this proposed rule is to establish the single large bird size as a function of inlet surface area greater than 2,100 square-inches at a level where the exposure to birds beyond that specified in this proposed rule would be in the range of 1E–6 to 1E–7 ingestions per aircraft departure. This coupled with the prior service history record of satisfactory shutdown experience when exposed to very large birds, provides a potential improvement for hazardous consequences to continued safe flight into the extremely remote range of probability, i.e., 1E–7 to 1E–9.

This proposed rule conservatively establishes the single, large bird requirement for engines with inlet surface areas in the 2,100 to 6,000

square-inch range at 6 lbs. where the average exposure to larger birds was 8E–7 ingestions per aircraft departure. For engines with inlet surface areas greater than 6,000 square-inches, the requirement was increased to 8 lbs. to maintain an equivalent margin of safety.

The selection of the 200-knot ingestion speed for the large bird test was based on consideration of impact loading on the engine front stage blading. It was determined that for most current turbine engine designs, conducting the test at 250-knots (maximum allowed airspeed below 10,000-feet altitude) would likely result in a relatively low blade impact vector, which results in less than maximum bird impact forces on the blade(s). Coupled with the specified bird mass variations with engine inlet size, the proposed rule would fix the ingestion speed at 200-knots, and would require applicants to perform an analysis to determine the critical spanwise target location for a particular engine application.

Large turbofan engines certified to the medium bird requirements of § 33.77, amendment 33–6, which requires bird velocities of 250-knots, sustained in-service blade fractures and loss of power for ingested bird weights less than those demonstrated for certification test. Second generation turbofan engines certified under § 33.77, amendment 33–10, used bird velocities which were equivalent to V_2 (takeoff safety speed) for the application aircraft (160 to 180-knots for the large transports). While the in-service record was significantly improved, these second generation engines were still experiencing blade fractures and power loss for bird weights less than the certification standard.

Engine ingestion parameters contributing to more than 50-percent power loss events were evaluated by AIA and AECMA. The most critical of the parameters evaluated which affected power loss were found to be bird weight, bird velocity, aiming point, and engine power setting. Each of these critical ingestion parameters have been evaluated in the proposed rule to determine the most severe conditions under which the medium bird test should be conducted.

The velocity to be used for the medium bird test was first established as the most critical velocity between V_1 (takeoff decision speed) and 250-knots indicated airspeed (KIAS) in order to cover the full range of takeoff and initial climb conditions that were considered to be potentially hazardous to the aircraft. In recognition of commuter and small business jet applications, the criterion was modified to reflect the fact that 250 KIAS was above the normal takeoff and climb speeds for this class of aircraft. A compromise criterion was chosen which required the medium bird ingestion velocity to be the most critical velocity between V_1 and the velocity reached at 1,500-feet above ground level (AGL).

Bird strike data for rotorcraft are not as comprehensive as that available for fixed wing aircraft, probably for a variety of reasons associated with reporting standards, forward speed, low altitude operations, and the extensive use of inlet protection or inherent installation shielding on rotorcraft. The following helicopter bird ingestion data was reviewed in support of this proposal: (France) Direction Generale de L'Aviation Civile (DGAC), 1983 through 1990; (United Kingdom) Civil Aviation Authority (CAA), 1976 through 1987, and 1989 through 1990; (U.S.A.) FAA, 1985 through 1990; (Canada) Transport Canada, 1981 through 1989; and International Civil Aviation Organization (ICAO), 1981 through 1989. The review showed reports of more than 600 bird strike events, but only four events were reported as engine ingestions, and none were multiple events. Many of the 600 events involved flocks of small birds making engine ingestion very probable. Since there are no reports of significant power loss or mechanical damage it can be assumed that these ingestions had no affect on the engine.

The FAA did not find any records of hazardous events or service difficulties associated with engine bird ingestion in multi-engine rotorcraft operation. To require a rotorcraft engine to demonstrate medium bird ingestion capability will impose an unnecessary burden upon the design while producing no measurable safety benefit. The FAA, therefore, proposes that engines intended for use in multi-engine rotorcraft need not show compliance with the medium bird ingestion requirements of this proposed rule.

With respect to the actual test day conditions when demonstrations are made, this proposal considers the variability of engine performance as a function of changing ambient conditions. For example, substantial variations in engine rotor speed may take place between test demonstrations performed on cold days versus testing on hot days. These variations in rotor speed could in turn lead to variations in resulting damage, engine power, and operating characteristics. Even with no variation in blade damage, significant variations in power or other characteristics could be expected for conditions considerably different than for the test demonstration. Therefore, the FAA proposes to allow the actual test day ambient conditions and engine pretest conditions to vary, permitting equal flexibility among applicants and avoid conduct of engine tests in unrepresentative conditions which could lead to cycle mismatches. However, each applicant must account for these potential variations by extrapolation to other conditions specified in the type design. From the standpoint of power and operating characteristics, the applicant must show that the engine condition following bird ingestion can be extrapolated to that specified in the type design. Therefore, the FAA determined that the sea level, hot day, corner point represents a worst case set of ambient conditions for which to substantiate bird ingestion capability for both single large and flocking birds. From the standpoint of potential limit exceedences, the applicant must consider the worst performing production engine that is allowed by the type design.

The current rules consider the possibility of imminent failure following a bird ingestion encounter producing damage. Considering this possibility, the proposed rule recognizes the need to provide a positive margin to demonstrate run-on capability and the ability for an engine to safely function throughout a conservative time for an emergency return to the airport of departure immediately following a bird ingestion event. This scenario includes a recognition that the most critical encounters typically occur during heavy weight takeoffs and may require dumping of fuel before returning to land. During this period, it may be necessary to operate damaged engines throughout their operating cycle, including a need to make a go-around due to debris or equipment on the runway. This proposed rule would require the applicant to demonstrate the engine's ability to operate satisfactorily during such circumstances. However, this proposal also recognizes that it is not possible to extend this demonstration to include all possible conditions occurring throughout a flight, particularly should the pilot decide to continue the flight to its originally intended destination. Lastly, considering the probable nature of bird ingestions, compliance with § 33.75 does not allow for circumstances which could lead to a hazardous failure as defined under that section. Therefore, seemingly normal operation of multiple damaged engines will not likely result in the failure of multiple engines within

the same flight. For these reasons, there is no requirement within this proposed rule to further consider imminent failure after bird ingestion.

The EHWG also considered differences between part 33 and JAR-E with respect to the maximum emergency rating. The EHWG reached a consensus that there is no need to consider emergency ratings if it can be shown that the relative frequency of a bird ingestion event when using an emergency engine rating is less than 1E–8. Since part 33 does not define emergency ratings for turbofan engines, and the EHWG did not recommend that the FAA add that language, this proposal would not result in harmonizing part 33 with JAR-E in this regard.

Critical ingestion parameter tolerances were reviewed, and supporting arguments were made to justify the reasonableness of using a plus or minus 10-percent tolerance for variations within the test parameters. The application of this tolerance was discussed in the context of setting the engine speed and thrust parameters to test day takeoff conditions as described within this proposed rule. In contrast, the bird weight is controlled to ''no less than'' the weight specified within this proposed rule. The expectations of achieving the bird aim points and impact speed within plus or minus 10-percent or its equivalent regarding aim point was compared against the general collective test experience. A sensitivity analysis was conducted to evaluate the expected affect on thrust or power, should there be first stage blade damage, for variations in the following test parameters up to 10-percent: engine speed, bird speed, and target location. In general, these tolerances resulted in damage variations which produced approximately a 5-percent affect on thrust or power.

The EHWG determined that the current requirements of § 33.75 and JAR–E510 are not exactly the same, and, therefore, are not fully harmonized. The requirement of § 33.75 is restated in the proposed § 33.76 compliance criteria for the proposed medium and large bird ingestion tests. The bird ingestion requirements proposed by the JAA (Notice of Proposed Amendment (NPA–E–20)) includes a reference to JAR–E 510 for compliance criteria. However, the JAA compliance criteria is not the same as contained in this proposed rule. The FAA recognizes that full harmonization of § 33.75 and JAR–E 510 is still desirable, and will address this issue in future propulsion harmonization activities.

Disposition of Minority Position (as Stated in the NPA for the JAR on This Subject)

The JAA has expressed disagreement with a portion of this proposal, and is quoted as follows:

The JAA expressed a dissenting opinion by requiring the new rules to include consideration of the threat which is created by flocking birds larger than 2.5 lb. The JAA proposed, in the draft new rules, the imposition of an additional requirement for each engine having an inlet area of 2100 square-inches or more. The applicant would be required to establish that when the fan assembly of such an engine is subjected to the ingestion of a single bird weighing at least 4 lb., under the same ingestion conditions as prescribed for the 6 lb. or 8 lb. bird ingestion test, the fan assembly retains sufficient integrity to demonstrate a total imbalance level less than 12 percent of the imbalance level corresponding to the loss of one complete fan blade airfoil.

The JAA Rationale

The stated aims of the draft new rules include reducing the risk of a dual engine power loss, the improvement goal being approximately 1E–8 or better per aircraft departure, and substantiation of that goal. The preamble also states that ''unless the rule addresses the actual in-service bird threat, there can be no assurance that future designs would continue to exhibit acceptable capability''. Allowing fan blades to be shown, during certification, as being less capable to withstand some sizes of birds than current in-service designs is not compatible with those stated aims.

The draft new rules (without the addition proposed by JAA) retain the same acceptance criteria for single large bird ingestion standard as in the existing rules. Extensive damage leading either to an immediate shutdown or necessitating a shutdown after 15 seconds is permitted, the only limit to the severity of the damage to the fan being safe containment, safe loads and no fire. However, in practice there are very good reasons for the manufacturers to establish that, with respect to containment, loads, fire, etc., the damage is not more severe than occurs with a full fan blade release. That practice is recognized in the draft new rules by a provision for waiving a full engine test demonstration of compliance with the large bird ingestion standard if it can be demonstrated that compliance with the requirements for containment of a full fan blade is a more severe demonstration.

Thus, because the minimum design allowed by the draft new rules is actually set primarily by the blade containment requirements, the large bird is allowed to cause extensive damage equivalent to that which results from the release of one entire fan blade. The increase of the weight of the large bird in the draft new rules, from 4 lb. to 6 lb. or 8 lb., will not improve the safety level if engines are designed to the minimum allowed by those new rules because it is a lower minimum that was demonstrated during certification of many, possibly most, of the current in-service engines. Further, it does not automatically follow that designing for a ''safe'' shutdown with a 6 lb. or 8 lb. bird results in a higher safety level than designing for a ''safe'' shutdown with a 4 lb. bird.

The certification tests on most of the types of large engines currently in service demonstrated that the 4 lb. bird certification ingestion test did not result in extensive damage to their fan blades. Therefore, the service experience which is the basis for the aims of the draft new rules is derived mainly from engines which were better during certification than required by the existing rules and better than can be allowed under the draft new rules without the JAA proposed addition.

The draft new rules require the large engines to retain a run-on and a 75 percent thrust capability when subjected to a multiple 2.5 lb. bird ingestion test but, as mentioned previously, the 6 lb. or 8 lb. bird ingestion is allowed to result in such extensive fan damage as to necessitate an immediate shutdown. In this case no information would then be available on the behavior of the fan in the event of a 4 lb. bird ingestion because the draft new rules do not address either medium (flocking) birds heavier than 2.5 lb. or large birds lighter than 6 lb. or 8 lb. The ingestion of a 4 lb. bird could, with some fan designs, also result in an immediate unavoidable engine shutdown.

There is already an example of a new engine which complies with the draft new rules for 2.5 lb. and 8 lb. bird ingestion's but the 8 lb. bird was shown to cause extensive damage commensurate with an immediate unavoidable shutdown. It would not have been possible, from only that damage, to make any reasonable assessment of what damage would have resulted from a 4 lb. large bird certification test. Economic pressure could lead to an increased use of fan blades which are designed to the minimum allowed by the draft new rules because it provides an opportunity to reduce the weight of the fan blades, disc and containment ring.

Allowing new fan designs to be less capable than current in-service designs to withstand the ingestion of a 4 lb. bird would not be a concern if the multi-engine ingestion threat did not include birds weighing up to, and more than, 4 lb. However, the service experience supporting the draft new rules shows that the multiple engine ingestion rate for birds larger than 2.5 lb. is greater than 1E–7. With current in-service engines these events have resulted in a marginally acceptable risk of multi-engine shutdown. If no certification data is available to show that new designs are equal to, or better than, current designs at withstanding those birds, it must be assumed that such encounters will result in unavoidable multi-engine shutdowns at a rate of roughly 1E–7 which is in excess of the declared aim of 1E–8. The JAA proposed additional requirement is intended to provide such certification data.

All parties involved in the development of the draft new rules recognize that flocking birds larger than 2.5 lb. may be encountered and the JAA does not disagree totally with the position that mitigation of this risk to 1E–8 or better per airplane departure cannot be

economically provided entirely by available engine technology. However, the JAA believes that future engine fan technology must not be allowed to be less capable at mitigating that risk than current in-service engines.

Consequently the JAA concluded that the draft new rules are not achieving the stated aims by an amount that is more than necessary and not ensuring an achievable retention or improvement to the safety level by not ensuring that new fan designs are equal to, or better than, current designs at retaining their integrity when subjected to the ingestion of a 4 lb. bird under the conditions applicable to large bird ingestion requirements. The additional 4 lb. bird consideration proposed by JAA is intended to do no more than to provide some assurance of parity with current in-service fan designs, it is not intended to ensure a full run-on capability after the ingestion of a 4 lb. bird.

The FAA disagrees. The JAA position statement contains two major concerns: (1) That flocking birds larger than 2.5 lb. are a significant enough threat to require an evaluation for run-on capability; and (2) that this proposed rule may allow a lesser capable engine than those certified to the current rule with respect to medium flocking and single large bird ingestion.

With respect to JAA's first major concern, the FAA believes this proposed rule adequately addresses the flocking bird threat within the stated goal of this proposed rulemaking. That improvement goal is to reduce the risk of a dual engine power or thrust loss greater than 50-percent from current in-service rates to approximately 1E–8 or better per aircraft departure.

The worldwide bird ingestion threat database used for the medium and large engine portion of this proposed rulemaking includes substantial data from 1970 through 1995 and encompasses approximately 85-million aircraft flights. The database includes data for engine models with fan inlet diameters from 60 to 100 inches. This database shows the rate of multi-engine ingestions of birds larger than 2.5 lb. to be approximately 1E–7 per aircraft departure. The probability of a dual engine shutdown is predicted to be approximately 1E–8 per aircraft departure. This probability is based on the observed multi-engine ingestion rate and demonstrated rate of engine shutdown for ingestion of birds in this size range. These rates and probabilities are for engines certified to the current 1.5 lb. medium flocking and 4 lb. single large bird standards, which are less severe than this proposed rule.

The JAA position statement notes that the dual engine power loss and shutdown rate is marginally acceptable today. This proposed rule requires 2.5 lb. medium flocking birds and 6 to 8 lb. large single birds, depending on inlet size, both of which are more severe demonstrations, and which the FAA believes can only improve the overall worldwide fleet bird ingestion capability. This conclusion is also supported by the additional run-on evaluation requirements for the proposed medium bird test. Therefore, the FAA disagrees that additional run-on evaluation requirements for flocking birds larger than 2.5 lb. is necessary.

With respect to the JAA's second major concern for ingestion of medium flocking birds, the current marginally acceptable dual engine power loss rate relates primarily to engines certified to a 1.5 lb. bird ingestion requirement with 5 minutes of run-on. This proposed rule is for a 2.5 lb. bird with a 20 minute run-on evaluation requirement. This proposed rule represents a more severe design and test requirement than for engines certified to the current rule and should yield a more capable engine, not a less capable one. This requirement is supported by a test that is run to worst case conditions of fan speed, target location, number of birds, and new run-on evaluation requirements. The original review of historical data used in the development of this proposed rule showed that ingestion of single large birds greater than 2.5 lb. resulted in a significant engine power loss about 50-percent of the time, which was mostly due to mechanical damage to the fan. It is difficult to see how these earlier certified engines could have a greater ingestion capability than that demonstrated by a minimum engine that passes both the proposed 2.5 lb. medium flocking run-on and 6 to 8 lb. single large bird safe shutdown tests.

With respect to single large bird ingestion, the current marginally acceptable dual engine power loss rate relates primarily to engines certified to a 4 lb. single large bird safe shutdown requirement. With identical test criteria, an engine passing the proposed test will be at least as capable of a large bird safe shutdown as a current engine. Engine models that are tested using the proposed certification standards would have greater axial loads and greater local stresses on the impacted blades than for the 4 lb. requirement. Therefore, the blades must have greater capability with respect to a safe shutdown criteria. The FAA does not believe the proposed large bird ingestion criteria allows sufficient latitude such that an engine can pass the proposed 6 to 8 lb. test but not the current 4 lb. test. The proposal does not alter the current objective of a safe shutdown after a large bird ingestion.

The JAA also states that economic pressures could reduce the margin above the stated compliance criteria that engines may be designed for, and therefore result in less costly and less capable new designs of reduced margin when compared to engines currently in service. The FAA does not believe it is necessary to consider the margin above the certification standard with which any particular engine model demonstrates compliance, and that discussion of economic pressure has no place in objective evaluations of safety. The purpose of this proposed rule is to establish minimum certification requirements below which it is considered unsafe. Every engine meeting these proposed minimum requirements will be considered safe; either the regulatory criteria is appropriate, or it is not. Margin is not an issue when discussing properly chosen criteria. The FAA considers this proposed criteria as appropriate and, therefore, demonstrated margin above that criteria is not necessary. With respect to engines certified to the current 4 lb. single large bird ingestion safe shutdown test standard, some fan designs have exhibited blade fragmentation during the test while others have not. It is incorrect, however, to infer continued run-on capability simply from lack of fan blade fragmentation during the 15-second ''hands-off'' period of the large bird ingestion test. Secondary damage and operability affects of continued high power operation with mechanical or aerodynamic unbalance, or both, would have to be taken into consideration.

It is also true that currently certified designs which have experienced fan blade fragmentation in large bird ingestion tests have accumulated well over 50-million hours in revenue service with a satisfactory bird ingestion record. The fact that these engines continue to operate and produce greater than 50-percent thrust in a significant percentage of revenue service large bird ingestion events, may well be attributable more to the combination of ingestion conditions being less severe than the certification test, rather than to the robustness of the fan design. The FAA expects this same mixed result will continue to occur in the single large bird ingestion certification test. In addition, such mixed results relative to fan blade fragmentation are not significant relative to this proposed rulemaking's intent of improving the world fleet rate of dual engine power loss.

The FAA disagrees with the JAA statement that this proposed rule has a lower design minimum than the current rule. The FAA believes that this

proposed rule significantly increases the certification standards for medium and large bird ingestion by increased severity of bird size, run-on, and target location. The test criteria of the current rule is less severe than that specified under this proposed rule, therefore, it cannot be described as providing a ''greater margin'' when compared to a marginally compliant engine under this proposed rule. Furthermore, no evidence has been offered to demonstrate that engines certified under the current rule would always have a margin for run-on following the ingestion of a 4 lb. flocking bird. Thus, the arguments of current versus proposed criteria are considered subjective and unproven as indicators of future performance in service.

Consequently, for the reasons stated above, the FAA has concluded that evaluation of run-on capability for birds or ingestions larger than 2.5 lb. is not necessary to meet this proposed rulemaking objective, and therefore the JAA proposal does not need to be incorporated into this proposed rule.

General Discussion of the Proposals

Sections 23.903(a)(2) and 25.903(a)(2)

The proposal revises parts 23 and 25 requirements associated with foreign object ingestion into turbine engines to be consistent with the proposed part 33 requirements.

Section 33.76

The proposed new (§ 33.76 would contain the new bird ingestion requirements. This proposal was developed by the engine harmonization working group, and contains substantial common language that will be reflected both in part 33 and JAR–E. Also, the proposed new section adopts the approximate metric equivalents for certain test parameters to further commonality between part 33 and JAR–E.

Section 33.77

The proposed revisions to (§ 33.77 would remove the bird ingestion standards now specified in (§ 33.77(a) and (§ 33.77(b). Paragraphs (a) and (b) would be held in reserve. Paragraphs (d) and (e) would be revised to eliminate any reference to paragraphs (a) and (b). The table in paragraph (e) would be revised to remove bird ingestion standards.

Paperwork Reduction Act

As there are no requirements for information collection associated with this proposed rule, no analysis of paperwork requirements is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Evaluation Summary

Four principal requirements pertain to the economic impacts of changes to the Federal regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. The order also requires federal agencies to assess whether a proposed rule is considered a ''significant regulatory action.'' Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this proposed rule would generate cost-savings that would exceed any costs, and is not ''significant'' as defined under section 3 (f) of Executive Order 12866 and DOT policies and procedures (44 FR 11034, February 26, 1979). In addition, under the Regulatory Flexibility Determination, the FAA certifies that this proposal would not have a significant impact on a substantial number of small entities. Furthermore, this proposal would not impose restraints on international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

Cost and Benefits

The FAA estimates that the proposed rule would add $250,000 to $500,000 to each new engine model's certification costs, depending on engine inlet area. These costs would be incurred primarily in two areas. First, additional analysis required to verify the affects of a large bird impact on the front of the engine could necessitate a component test costing $250,000. Second, the proposed rule would require additional analysis or testing on the full fan assembly for engines with inlet areas greater than 2,092 square-inches. Such testing would cost an additional approximately $250,000 for those engines.

In addition, the revised bird test weights could necessitate strengthening fan components, thereby affecting fan performance. The FAA estimates that reduced fan efficiency would result in a 0.2-percent increase in fuel consumption. On average, this would increase annual fuel costs by $4,770 per airplane.

Benefits associated with the proposed rule include: (1) benefits from averted fatalities and injuries, (2) benefits from averted property damage (primarily hull losses), and (3) benefits associated with reduced maintenance and repair costs. Based on historical accident information, the FAA estimates that the expected annual per-airplane benefit from averted airplane damage or loss is approximately $657. The expected annual per-airplane benefit from averted fatalities and injuries is $654 and $75, respectively.

The estimated value of maintenance/repair savings associated with the proposed rule is based on an analysis of the relationship between bird ingestion weight and the probability of damage. The FAA estimates that, on average, the proposed rule would save operators approximately $4,654 per airplane per year.

To compare the costs and benefits of the proposed rule, the evaluation considers a hypothetical representative engine certification. The engines are assumed to be installed on a notional twin-engine jet transport with a seating capacity of 161 (the average seating capacity of jet transports in commercial service in 1996). In addition, this analysis assumes that: (1) the discount rate is 7-percent, (2) incremental engine certification costs equal $250,000 in year 0 and $250,000 in year 1, (3) production of engines commences in year 2, (4) engines are installed in aircraft and enter service beginning in year 3, (5) each engine has a 15-year service life, and (6) 24 engines are produced per year for 10 years so that there are 240 total engines and 120 airplanes per certification. Under these assumptions, the expected discounted benefits of the proposed rule would exceed discounted costs by a factor of 1.11 ($4,333,000 to $3,906,000).

International Trade Impact Analysis

The proposed rule would have little or no affect on international trade for either U.S. firms marketing turbine engines in foreign markets or foreign firms marketing turbine engines in the U.S.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule

and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a preliminary analysis of all proposed rules to determine whether the rule will have a significant economic impact on a substantial number of small entities; if the determination is that it will, the agency must prepare an initial regulatory flexibility analysis (RFA).

However, if after a preliminary analysis for a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the Act provides that the head of the agency may so certify. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required preliminary analysis of this proposal and determined that it will not have a significant economic impact on a substantial number of small entities. The following statement summarizes the basis for this determination. The proposed rule would apply only to newly designed turbine aircraft engines certificated in the future. Each new engine certification could affect two types of small entities.

First, the manufacturer would be required to perform additional analysis or testing to demonstrate that the proposed new bird ingestion requirements are met. There are currently nine turbine aircraft engine manufacturers with headquarters in the U.S. (this count includes subsidiaries of foreign entities and consortiums of domestic and/or foreign entities). Information available to the FAA at this time indicates that only one of these—a U.S. manufacturer of small turbine engines—has less than 1,500 employees and, therefore, qualifies as a small business under guidelines issued by the Small Business Administration.

It is difficult to estimate total costs to this single manufacturer because these costs are a function of the number of engines certificated. The manufacturer is not expected to conduct bird ingestion testing in the foreseeable future. In view of this uncertainty, this analysis focuses on per engine costs for both manufacturers and operators. The proposed rule is estimated to add about $250,000 for a small engine type as currently manufactured by the single small entity (these are one time costs per certification). The FAA estimates that the proposed rule would impose no manufacturing costs. In light of the fact that there is only one known small business manufacturing turbine aircraft engines, and that manufacturer is not expected to be affected by the proposed rule in the foreseeable future, this analysis will assume that manufacturing costs imposed by this proposed rule will be passed on to operators who purchase the new engines and analyze these costs on small operators.

Aircraft operators would incur slightly higher engine prices, plus pay increased operating or fuel costs due to the small decrease in engine efficiency described in the full regulatory evaluation. According to FAA data, there are about 3,000 air carriers having less than 1,500 employees—approximately 100 air carriers operating under part 121 (or both part 121 and part 135), and 2,900 air carriers operating under part 135.

Assuming conservatively that: (1) All incremental certification costs are passed on to the buyer/operator, (2) the manufacturer recovers incremental certification costs by applying a uniform price increase to 240 engines produced during a 10-year production run, and (3) that the discount rate is 7-percent; then the FAA estimates that average engine prices will increase by approximately $3,070 per larger engine and $1,587 per smaller engine. When these costs are amortized over the 15-year life of an engine (again, assuming a 7-percent discount rate), the incremental annualized cost per engine is approximately $315 and $163 for larger and smaller engines, respectively. Therefore, assuming a typical airplane has two engines, the incremental annualized cost for a large airplane is approximately $630 and the incremental annualized cost for a smaller airplane is approximately $326.

For larger engines, the rule will also increase annual airplane operating costs as a result of the proposed medium bird ingestion requirements (these requirements would have a negligible affect on smaller engines). On average, annual operating costs per large airplane, therefore, would increase by approximately $4,770. However, the reduction in average annualized maintenance costs associated with the more damage resistant engines that would be developed as a result of this proposed rule would almost completely offset incremental operating costs. These reduced maintenance costs are described more fully in the full regulatory evaluation.

Total annualized costs for operators of larger and smaller airplanes would therefore be approximately $630 and $326 per airplane, respectively. Consequently, the FAA makes an initial certification that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct affects 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; and would not impose substantial direct compliance costs on States or local governments. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to require consultation with representatives of affected States and local governments.

In addition, the regulations proposed herein would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs on such communities. Therefore, in accordance with Executive Order 13084, it is determined that this proposal would not require consultation with representatives of affected Indian tribal governments.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation. In accordance with FAA Order 1050.1D, paragraph 32, the FAA has determined that there are no extraordinary circumstances warranting preparation of an environmental assessment for this proposed rule.

List of Subjects in 14 CFR Parts 23, 25 and 33

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 23, 25 and 33 of Title 14, Code of Federal Regulations as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Section 23.903 is amended by revising paragraph (a)(2) to read as follows:

§ 23.903 Engines.

(a) * * *

(2) Each turbine engine and its installation must comply with one of the following:

(i) Sections 33.76, 33.77 and 33.78 of this chapter in effect on (effective date of final rule), or as subsequently amended; or

(ii) Sections 33.77 and 33.78 of this chapter in effect on April 30, 1998, or as subsequently amended before (effective date of final rule); or

(iii) Section 33.77 of this chapter in effect on October 31, 1974, or as subsequently amended before April 30, 1998, unless that engine's foreign object ingestion service history has resulted in an unsafe condition; or

(iv) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

4. Section 25.903 is amended by revising paragraph (a)(2) to read as follows:

§ 25.903 Engines.

(a) * * *

(2) Each turbine engine must comply with one of the following:

(i) Sections 33.76, 33.77 and 33.78 of this chapter in effect on (effective date of final rule), or as subsequently amended; or

(ii) Sections 33.77 and 33.78 of this chapter in effect on April 30, 1998, or as subsequently amended before (effective date of final rule); or

(iii) Comply with § 33.77 of this chapter in effect on October 31, 1974, or as subsequently amended prior to April 30, 1998, unless that engine's foreign object ingestion service history has resulted in an unsafe condition; or

(iv) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

5. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

6. Section 33.76 is added to read as follows:

§ 33.76 Bird ingestion.

(a) *General.* Compliance with paragraphs (b) and (c) of this section shall be in accordance with the following:

(1) All ingestion tests shall be conducted with the engine stabilized at no less than 100-percent takeoff power or thrust for test day ambient conditions prior to the ingestion. In addition, the demonstration of compliance must account for engine operation at sea level takeoff conditions on the hottest day that a minimum engine can achieve maximum rated takeoff thrust or power.

(2) The *engine inlet area* as used in this section to determine the bird quantity and weights will be established by the applicant and identified as a limitation on the inlet throat area in the installation instructions required under § 33.5.

(3) The impact to the front of the engine from the single large bird and the single largest medium bird which can enter the inlet must be evaluated. It must be shown that the associated components when struck under the conditions prescribed in paragraphs (b) or (c) of this section, as applicable, will not affect the engine to the extent that it cannot comply with the requirements of paragraphs (b)(3) and (c)(6) of this section.

(4) For an engine that incorporates an inlet protection device, compliance with this section shall be established with the device functioning. The engine approval will be endorsed to show that compliance with the requirements has been established with the device functioning.

(5) Objects that are accepted by the Administrator may be substituted for birds when conducting the bird ingestion tests required by paragraphs (b) and (c) of this section.

(6) If compliance with the requirements of this section is not established, the engine type certification documentation will show that the engine shall be limited to aircraft installations in which it is shown that a bird cannot strike the engine, or be ingested into the engine, or adversely restrict airflow into the engine.

(b) *Large birds.* Compliance with the large bird ingestion requirements shall be in accordance with the following:

(1) The large bird ingestion test shall be conducted using one bird of a weight determined from Table 1 aimed at the most critical exposed location on the first stage rotor blades and ingested at a bird speed of 200 knots for engines to be installed on airplanes, or the maximum airspeed for normal rotorcraft flight operations for engines to be installed on rotorcraft.

(2) Power lever movement is not permitted within 15 seconds following ingestion of the large bird.

(3) Ingestion of a single large bird tested under the conditions prescribed in this section may not cause the engine to:

(i) Catch fire;

(ii) Release hazardous fragments through the engine casing;

(iii) Generate loads greater than those ultimate loads specified under § 33.23(a); or

(iv) Lose the ability to be shut down.

(4) Compliance with the large bird ingestion test requirements of this paragraph may be waived if it can be demonstrated that the containment requirements of § 33.94(a) constitute a more severe demonstration than the requirements of this paragraph.

TABLE 1.—LARGE BIRD WEIGHT REQUIREMENTS

Engine inlet area (A) square-meters (square-inches)	Bird weight kg. (lb.)
1.35 (2,092)>A ...	1.85 (4.07) minimum, unless a smaller bird is determined to be a more severe demonstration.
1.35 (2,092)≤A<3.90 (6,045).	2.75 (6.05).
3.90 (6,045)≤A ...	3.65 (8.03).

(c) *Small and medium birds.* Compliance with the small and medium

bird ingestion requirements shall be in accordance with the following:

(1) Analysis or component test, or both, acceptable to the Administrator, shall be conducted to determine the critical ingestion parameters affecting power loss and damage. Critical ingestion parameters shall include, but are not limited to, the affects of bird speed, critical target location, and first stage rotor speed. The critical bird ingestion speed should reflect the most critical condition within the range of airspeeds used for normal flight operations up to 1,500 feet above ground level, but not less than V_1 minimum for airplanes.

(2) Medium bird engine tests shall be conducted so as to simulate a flock encounter, and will use the bird weights and quantities specified in Table 2. When only one bird is specified, that bird will be aimed at the engine core primary flow path; the other critical locations on the engine face area must be addressed, as necessary, by appropriate tests or analysis, or both. When two or more birds are specified in Table 2, the largest of those birds must be aimed at the engine core primary flow path, and a second bird must be aimed at the most critical exposed location on the first stage rotor blades. Any remaining birds must be evenly distributed over the engine face area.

(3) In addition, except for rotorcraft engines, it must also be substantiated by appropriate tests or analysis or both, that when the full fan assembly is subjected to the ingestion of the quantity and weights of birds from Table 3, aimed at the fan assembly's most critical location outboard of the primary core flowpath, and in accordance with the applicable test conditions of this paragraph, that the engine can comply with the acceptance criteria of this paragraph.

(4) A small bird ingestion test is not required if the prescribed number of medium birds pass into the engine rotor blades during the medium bird test.

(5) Small bird ingestion tests shall be conducted so as to simulate a flock encounter using one 85 gram (0.187 lb.) bird for each 0.032 square-meter (49.6 square-inches) of inlet area, or fraction thereof, up to a maximum of 16 birds. The birds will be aimed so as to account for any critical exposed locations on the first stage rotor blades, with any remaining birds evenly distributed over the engine face area.

(6) Ingestion of small and medium birds tested under the conditions prescribed in this paragraph may not cause any of the following:

(i) More than a sustained 25-percent power or thrust loss;

(ii) The engine to be shut down during the required run-on demonstration prescribed in paragraphs (c)(7) or (c)(8) of this section;

(iii) The conditions defined in paragraph (b)(3) of this section.

(iv) Unacceptable deterioration of engine handling characteristics.

(7) Except for rotorcraft engines, the following test schedule shall be used:

(i) Ingestion so as to simulate a flock encounter, with approximately 1 second elapsed time from the moment of the first bird ingestion to the last.

(ii) Followed by 2 minutes without power lever movement after the ingestion.

(iii) Followed by 3 minutes at 75 percent of the test condition.

(iv) Followed by 6 minutes at 60 percent of the test condition.

(v) Followed by 6 minutes at 40 percent of the test condition.

(vi) Followed by 1 minute at approach idle.

(vii) Followed by 2 minutes at 75 percent of the test condition.

(viii) Followed by stabilizing at idle and engine shut down. The durations specified are times at the defined conditions with the power lever being moved between each condition in less than 10 seconds.

(8) For rotorcraft engines, the following test schedule shall be used:

(i) Ingestion so as to simulate a flock encounter within approximately 1 second elapsed time between the first ingestion and the last.

(ii) Followed by 3 minutes at 75 percent of the test condition.

(iii) Followed by 90 seconds at descent flight idle.

(iv) Followed by 30 seconds at 75 percent of the test condition.

(v) Followed by stabilizing at idle and engine shut down. The duration specified are times at the defined conditions with the power being changed between each condition in less than 10 seconds.

(9) Engines intended for use in multi-engine rotorcraft are not required to comply with the medium bird ingestion portion of this section, providing that the appropriate type certificate documentation is so endorsed.

(10) If any engine operating limit(s) is exceeded during the initial 2 minutes without power lever movement, as provided by paragraph (c)(7)(ii) of this section, then it shall be established that the limit exceedence will not result in an unsafe condition.

TABLE 2.—MEDIUM FLOCKING BIRD WEIGHT AND QUANTITY REQUIREMENTS

Engine inlet area (A) square-meters (square-inches)	Bird quantity	Bird weight kg. (lb.)
0.05 (77.5)> A	None	
.05 (77.5)≤ A < 0.10 (155)	1	0.35 (0.77).
0.10 (155)≤ A < 0.20 (310)	1	0.45 (0.99).
0.20 (310)≤ A < 0.40 (620)	2	0.45 (0.99).
0.40 (620)≤ A < 0.60 (930)	2	0.70 (1.54).
0.60 (930)≤ A < 1.00 (1,550)	3	0.70 (1.54).
1.00 (1,550)≤ A < 1.35 (2,092)	4	0.70 (1.54).
1.35 (2,092)≤ A < 1.70 (2,635)	1	1.15 (2.53).
	Plus 3	0.70 (1.54).
1.70 (2,635)≤ A < 2.10 (3,255)	1	1.15 (2.53).
	Plus 4	0.70 (1.54).
2.10 (3,255)≤ A < 2.50 (3,875)	1	1.15 (2.53).
	Plus 5	0.70 (1.54).
2.50 (3,875)≤ A < 3.90 (6045)	1	1.15 (2.53)
	Plus 6	0.70 (1.54).
3.90 (6045)≤ A < (6975)	3	1.15 (2.53)
4.50 (6975)≤ A	4	1.15 (2.53).

TABLE 3.—ADDITIONAL INTEGRITY ASSESSMENT

Engine inlet area (A) square-meters (square-inches)	Bird quantity	Bird weight kg. (lb.)
1.35 (2,092)> A	None	
1.35 (2,092)≤ A 2.90 (4,495)	1	1.15 (2.53).
2.90 (4,495)≤ A < 3.90 (6,045)	2	1.15 (2.53).
3.90 (6,045)≤ A	1	1.15 (2.53).
	Plus 6	0.70 (1.54).

7. Section 33.77 is amended by removing and reserving paragraphs (a) and (b) and by revising paragraphs (d)(3) and (e) to read as follows:

§ 33.77 Foreign object ingestion.

* * * * *

(d) * * *

(3) The foreign object, or objects, stopped by the protective device will not obstruct the flow of induction air into the engine with a resultant sustained reduction in power or thrust greater than those values required by paragraph (c) of this section.

(e) Compliance with paragraph (c) of this section must be shown by engine test under the following ingestion conditions:

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
Ice	Maximum accumulation on a typical inlet cowl and engine face resulting from a 2-minute delay in actuating anti-icing system, or a slab of ice which is comparable in weight or thickness for that size engine.	Sucked in	Maximum cruise	To simulate a continuous maximum icing encounter at 25 degrees Fahrenheit.

Issued in Washington, DC, on December 2, 1998.

Elizabeth Erickson,

Director, Aircraft Certification Service.

[FR Doc. 98–32734 Filed 12–10–98; 8:45 am]

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federal register

Friday
December 11, 1998

Part VI

Department of Agriculture

Rural Utilities Service

7 CFR Part 1780 and 1794
Environmental Policies and Procedures; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1780 and 1794

RIN 0572–AB33

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS implementation of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on new Congressional mandates, changes in the electric industry, and RUS experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The implementation of this rule has required that certain changes be made to 7 CFR part 1780 regarding environmental compliance. The amendments published in this document consist of those necessary to make the provisions of Part 1780 subject to the environmental requirements of this rule.

EFFECTIVE DATE: December 11, 1998.

FOR FURTHER INFORMATION CONTACT: Gary J. Morgan, Director, or Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250–1571. Telephone (202) 720–1784. E-mail address gmorgan@rus.usda.gov or lwolfe@rus.usda.gov.

This rule and the guidance bulletins described in this rule will be available on the Internet via the RUS home page at www.usda.gov/rus/.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in sec. 3 of the Executive Order.

In accordance with the Executive Order and the rule; (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retro-active effect will be given to the rule; and (3) administrative proceedings are required to be exhausted prior to initial litigation against the Department (7 U.S.C. 6912).

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The application for financial assistance under the RUS Electric and Telecommunications programs and the application for loans and grants under the RUS Water and Waste program are discretionary; regulatory requirements will, therefore, apply only to those entities which choose to apply for financial assistance or funding.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35,) under control number 0572–0117.

National Performance Review

This regulatory action is being taken as part of the National Performance Review to eliminate unnecessary regulations and improve those that remain in force.

Environmental Justice

This rule is subject to the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Implementation of these requirements will occur at the time of actions performed hereunder.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs described by this proposed rule are listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, 10.760, Water and Waste Disposal System for Rural Communities, 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This rule excludes the Electric and Telecommunications Programs from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled, ''Department Program and Activities Excluded from Executive Order 12372,'' (50 FR 47034) determined that RUS loans and loan guarantees, and RTB bank loans, were not covered by Executive Order 12372. The Water and Waste Program is subject to the provisions of Executive Order 12372. Consultation will be completed at the time of actions performed hereunder.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

On March 13, 1984, the Rural Electrification Administration (predecessor of RUS) published 7 CFR Part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (49 FR 9544) covering the actions of the Electric and Telecommunications programs. Based on new congressional mandates, changes in the electric industry, and RUS experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The existing 7 CFR part 1794 was designed to implement the requirements of NEPA and the CEQ regulations for RUS Electric and Telecommunications programs. As a result of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), the programs of the Rural Electrification Administration, were combined with the Water and Waste program from the former Farmers Home Administration (FmHA) into RUS. Most changes proposed to 7 CFR part 1794 result from the addition of the Water and Waste program to RUS.

For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of guidance bulletins. Three program specific bulletins are available which provide guidance in preparing the Environmental Report (ER) for proposed actions classified as categorical exclusions and proposed actions which require an Environmental Assessment (EA). Further information on these bulletins is provided in § 1794.7.

This final rule contains a variety of substantive and procedural changes from the provisions of the current rule. Some of these revisions are minor (§ 1794.4, Trivial Violations was deleted) or are merely intended to clarify existing RUS policies and procedures (§ 1794.6, Definitions, was added). Other revisions reflect changes in RUS implementation of the CEQ regulations as outlined below.

The relationship between RUS and its Electric and Telecommunications applicants has changed substantially since RUS issued the final rule in March of 1984. Changes that have occurred in the last 4 years have been particularly dramatic. Historically, RUS provided substantially all of its applicants' capital needs and established a lending relationship reflecting that dominant lending role. However, because of limited annual loan authorization levels, RUS no longer serves such a role. Moreover, in a 1993 amendment to section 306E of the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 936e), Congress required RUS to abandon its close hands-on control of its applicants and instead follow the practices of private market lenders. RUS has done so through the development of new forms of loan agreements and security instruments and the publication of 7 CFR Part 1717, subpart M, Operational Controls, which reduce or eliminate much of the oversight and control historically exercised by RUS over its Electric applicants.

Reflecting these changes and reforms, RUS has revised § 1794.3 of the rule. Environmental reviews will continue to be required in connection with the approval of financial assistance for applicants and the issuance of rules, regulations, and bulletins by RUS. However, no reviews will be required in connection with approvals provided by RUS pursuant to its loan contracts and security instruments with applicants such as approvals of lien accommodations or the use of general funds by applicants. These approvals are not major Federal actions significantly affecting the quality of the human environment.

Within subpart C of this rule, a classification system defines the level of environmental review required for RUS and applicant proposed actions. In Section 1794.20 RUS has clarified its position for determining circumstances under which an applicant's participation in a project results in a Federal action. Sections 1794.21 through 1794.25 of this subpart are further subdivided when appropriate to differentiate between actions being proposed by RUS and actions proposed by Electric, Telecommunications, and Water and Waste program applicants.

A number of classification changes have been made within subpart C of this rule. These reclassifications involve minor actions proposed by applicants which rarely, if ever, result in significant environmental impact or public interest. RUS believes this rule includes adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

RUS has modified the thresholds for acreage (facility sites), and capacity (generation facilities) within § 1794.22(a). In addition to modifying the thresholds for acreage and capacity, RUS has imposed different thresholds for construction of electric generating capacity at new sites versus existing sites within § 1794.23(c). Acreage and capacity threshold changes within § 1794.24, and a capacity threshold change within § 1794.25 reflect changes that have been made in §§ 1794.22(a), and 1794.23(c). No changes were made to the existing thresholds for transmission line length. Capacity thresholds have been eliminated for hydroelectric proposals in §§ 1794.22 and 1794.23. RUS will normally adopt the NEPA document prepared by the Federal licensing agency of hydroelectric projects in which RUS applicants participate.

The thresholds for proposed actions in the Water and Waste program are classified in §§ 1794.21(c) and 1794.22(b). Based on historical experience and a survey of the thresholds established by the Environmental Protection Agency which administers similar programs, RUS has eliminated the two tiered classification for EAs that is contained in 7 CFR Part 1940, Subpart G, the environmental regulation of the former FmHA, and adopted the more traditional classification scheme as outlined in 40 CFR 1508.9. Because RUS co-funds a significant portion of its projects with other Federal and state agencies, a more traditional classification and documentation scheme is thought to be more conducive to minimizing duplicative environmental review efforts.

RUS has modified its procedures in subparts D through G of this part. The EA will be the subject document of the notice of availability requirements in § 1794.42, where previously, the applicant's ER was the subject document. By this change, the notice requirements for all three programs will be consistent for both EA proposals and EA with scoping proposals. This change will encourage more public involvement by allowing public review of EA proposals prior to the issuance of a Finding of No Significant Impact (FONSI).

RUS has also changed its notice requirements for Electric program projects requiring scoping. The timing of RUS **Federal Register** notice for public scoping meetings in § 1794.52(b) has been reduced from 30 days to 14 days prior to the meeting. No appreciable benefit resulted from an earlier notice requirement. The existing regulation allows RUS to adopt the applicant's ER as its EA but requires RUS to prepare its own EA from the applicant's Environmental Analysis (EVAL) where a proposed action requires scoping. RUS has changed this requirement by allowing the EVAL to serve as its EA (see § 1794.53) consistent with 40 CFR § 1506.5(b).

RUS has modified its policy regarding the use of contractor prepared EISs. Under the existing regulation, RUS was required to use agency funds when an independent contractor was chosen by RUS to prepare the EIS. In accordance with the provisions of 7 CFR Part 1789, ''Use of Consultants Funded by Applicants'' and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996, the draft and final EIS may be prepared by a consultant selected by RUS and funded by the applicant. A new requirement, publication of a notice of availability by RUS and the applicant for a Record of Decision is established in § 1794.63.

Preparation of the Rulemaking

The proposed rule (7 CFR part 1794) was published in the **Federal Register** on November 24, 1997 (62 FR 62527). Public comment was invited for a 60-day period, ending on January 23, 1998.

Eighty-nine written comments were received representing 32 specific organizations and individuals. These included two Federal agencies, eight Federal agency state offices, one regional commission, two electric cooperative associations, and seventeen rural electric cooperatives. All comments were fully considered when revising the proposed rule for publication as a final rulemaking.

Every effort has been made to respond in detail in the preamble to every question raised or suggestion offered. Where commenters pointed out errors in spelling, syntax, and minor technical errors these errors were corrected and not mentioned further in the preamble. In addition, many commenters made similar suggestions or raised similar issues. In the interest of clarity, comments that were similar in nature were grouped and discussed in the most relevant section in the preamble. Some comments pointed out vague and unclear language. Clarifying and explanatory language was added to the rule and preamble as appropriate. The discussion under General Comments responds to general comments and clarification of misunderstandings as to RUS's intent. The statements under Comments on Specific Sections address the more significant comments received on particular provisions and how RUS responded to them.

General Comments

Several comments focused on the background discussion of the preamble to the proposed rule regarding the proposed renumbered § 1794.3, entitled ''Actions requiring environmental review.'' The background discussion explained that, because of changes in law and reforms in the Electric and Telecommunications industry, RUS proposed to revise that section to reflect that RUS would no longer treat as Federal actions subject to environmental reviews, approvals provided by RUS pursuant to its loan contracts and security instruments. The preamble explained that these approvals are ''ministerial'' and not major Federal actions for the purposes of NEPA. The commenters, who uniformly supported the proposed revision, asked that RUS identify all approvals that would no longer be subject to environmental review or clarify that only the approval of loans and loan guarantees will require an environmental review.

Agency Response: The proposed revision to § 1794.3 deletes reference to ''lien accommodations, and approvals provided pursuant to loan contracts and security instruments (e.g., approvals of the use of general funds).'' In pertinent part, the revised section identifies as actions requiring environmental review, ''the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs.'' In response to the comments, RUS has added a clarifying sentence to § 1794.3 stating that, ''Approvals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purpose of this part and the provisions of this part shall not apply to the exercise of such approvals.'' RUS believes that, while it is principally the approvals of loans and loan guarantees to which environmental reviews attach, it is possible that other types of discretionary financial assistance could be available under the RUS program, which would trigger environmental reviews. Examples include lien subordinations under § 306 of the RE Act (7 U.S.C. 936). The regulatory text should not limit those actions requiring environmental review to the approval of loans and loan guarantees. Consequently, no other change has been made in response to the comments.

Ten commenters expressed concern about the two-tier classification that was created for ''categorically excluded'' proposals in §§ 1794.21 and 1794.22, which they believe is overly burdensome and confusing. They further believe that many of the size, voltage, distance, and acreage thresholds have been arbitrarily determined and need to be reevaluated.

Agency Response: RUS established the two-tier classification system for categorically excluded proposals specifically to reduce the burden on applicants without compromising the requirements of NEPA and the CEQ regulations. Categorically excluded proposals listed in § 1794.21 normally do not significantly impact the quality of the human environment. Therefore the submittal of an ER is not required. An ER is required for categorically excluded proposals listed in § 1794.22 to provide for circumstances in which a normally excluded action may have a significant impact (see 40 CFR 1508.4). Prior to issuing the proposed rule, RUS reevaluated the thresholds established in the existing regulation and determined that the revised thresholds included in the proposed rule represent a reasonable delineation consistent with 40 CFR 1508.4.

The commenters also questioned why an environmental report should be required for a proposal that is normally categorically excluded and recommend that where appropriate, proposals listed in § 1794.22 be incorporated into § 1794.21.

Agency Response: The changes proposed by these comments are not consistent with the definition of categorical exclusion in 40 CFR 1508.4. In order to ensure that a proposed action does not significantly affect the quality of the human environment, RUS must conduct an environmental review. The two-tiered classification system for Categorical Exclusions establishes the level of information that must be provided by the applicant for proposals listed in each tier. This information is necessary so RUS can identify extraordinary circumstances in which a normally excluded action may have significant environmental effects.

One commenter recommended incorporating language into § 1794.21 by which RUS could increase the level of environmental review for any categorically excluded project, which had a significant environmental effect. Other commenters point out that proposals in these two categories already must meet the requirements of § 1794.31. Therefore a safeguard already exists whereby RUS can evaluate each project and determine if further environmental review is appropriate.

Agency Response: This rule includes a requirement in § 1794.22(a) by which RUS reserves the right to request environmental documentation for proposals listed in § 1794.21(b) and (c) if significant environmental effects result from the implementation of the proposal. RUS believes that determining whether an ER should be prepared for all categorically excluded proposals on a case-by-case basis would be inconsistent with the CEQ regulations (40 CFR 1508.4) and would extend the RUS environmental review process.

Three commenters assert that the thresholds established to differentiate between projects that require an environmental assessment (EA) with and without scoping (§§ 1794.23 and 1794.24) were also arbitrarily determined and point out that a 1 MW increase in capacity can increase the level of review. The commenters recommend that all § 1794.24 proposals which normally require scoping be incorporated into § 1794.23 and that RUS adopt language allowing the agency to require scoping for projects which are expected to have significant impacts.

Agency Response: RUS has reevaluated the thresholds that were established in the existing regulation for proposed actions listed in §§ 1794.23 and 1794.24. The thresholds accurately delineate the difference between proposed actions which can be adequately reviewed with an EA and those actions which have a higher potential for needing an EIS. The latter required the preparation of an EVAL by the applicant. The EVAL will serve as the RUS EA, (40 CFR 1506.5(b)). Instead of establishing a single classification system for actions normally requiring an EA and determining the need for scoping on an individual basis, RUS agrees some flexibility is needed and has included a provision to modify or waive scoping requirements in § 1794.52 for actions that normally require an EA with scoping.

Two commenters expressed concern with the provisions of the proposed rule that allow the applicant or its consultant to prepare the environmental report (ER) which normally serves as RUS'' EA for Water and Waste proposals. These commenters assert that there may be an appearance of a conflict of interest.

Agency Response: Agency responsibility is addressed in 40 CFR 1506.5. The CEQ regulations allow an agency to require an applicant to submit environmental information for possible use by that agency (40 CFR 1506.5(a)). The agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information provided by the applicant and accept responsible for its accuracy. RUS has developed guidance Bulletin 1794A–602 for that purpose. An agency can permit an applicant to prepare an EA provided the agency makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA (40 CFR 1506.5(b)).

One commenter recommends that the procedures defined in 7 CFR 1940–G under which RUS reviews information submitted by the applicant and completes the assessment should be used for Water and Waste proposals.

Agency Response: This rule provides for an agency-prepared EA. Section 1794.41 states that the ER will normally serve as the RUS EA. The decision of whether RUS uses the applicant's ER as its EA or prepares the EA from information provided in the ER will be made by the State Environmental Coordinator (SEC).

Another commenter noted that by not allowing RUS employees to complete EAs, the agency is limiting the ability of its employees to provide technical assistance to rural areas.

Agency Response: RUS does not agree with this statement. By improving the efficiency of document preparation, Rural Development staff will have more time to provide meaningful guidance and technical assistance to applicants.

Comments on Specific Sections

Background: One commenter requested clarification of paragraph 9 of the proposed rules Background section that discusses exempting from review approvals provided by RUS pursuant to its loan contracts and security instruments.

Agency Response: This comment is addressed in the response to the first general comment.

Section 1794.2: One commenter questioned whether the item (d) in this section correctly characterized the roles RUS and the applicant play under NEPA and the CEQ regulations. He asserts that the applicant should be responsible for the accuracy of the information contained in environmental documents and the agency should be responsible for compliance with appropriate regulations.

Agency Response: RUS agrees. The text of item (d) has been changed to clarify the role of the applicant. RUS is responsible for compliance with NEPA, including verifying the accuracy of the information it uses in its environmental review (40 CFR 1506.5). The applicant is responsible for compliance with all applicable RUS requirements.

Section 1794.3: Six commenters recommended that this section clearly state that the rule applies only to direct loans and loan guarantee approvals.

Agency Response: This comment is addressed in the response to the first general comment.

Section 1794.5 (now § 1794.4): Two commenters support the proposed format of placing metric units in parentheses following the non-metric equivalents which is the reverse of the current format. Another commenter questioned whether the change in metric system format would be contrary to the national effort to convert to the metric system and not in compliance with Executive Order 12770.

Agency Response: It has been RUS experience that the current format in which metric units are followed by the non-metric equivalents in parentheses has been impractical and has confused readers. This rule's provisions for the use of metric units comply with Executive Order 12770.

Section 1794.7 (now § 1794.6): One commenter suggested adding ''the environment'' to the definition of Emergency Situation to account for threats to the environment and including a definition of ''multiplexing sites.''

Agency Response: The words ''or to the human environment'' have been added to the end of the definition of Emergency Situation and a definition has been included in this section for multiplexing sites.

Another commenter suggested deleting the words ''document and'' from the definition of ER.

Agency Response: RUS recognizes that the amount of documentation that can be included in an ER can vary for the types of proposals listed in §§ 1794.22 and 1794.23 from a few pages to 100 pages or more. Since the word ''document'' does not add any significance to the definition of ER, the word has been deleted.

A third commenter thought that the terms ER, EA and Environmental Impact Assessment were confusing and needed further explanation.

Agency Response: RUS agrees and has reverted to the terminology used in the existing rule. RUS has in the past and proposes to continue to differentiate between the documentation submitted by the applicant for proposals that normally require an EA (§ 1794.23) and proposals that normally require an EA with scoping (§ 1794. 24) by titling the former an ER and the later an EVAL. The agency prepared document for proposals listed in §§ 1794.23 and 1794.24 is still titled an EA (40 CFR 1508.9).

One commenter requested that this section be modified so the ER and EA can be stand-alone documents and not a mandatory part of the Preliminary Engineering Report (PER) for Water and Waste proposals. This commenter asserts that such a restriction precludes the use of other resources to complete the preparation of the environmental documentation.

Agency Response: Although RUS intends for the ER to be submitted with the PER for Water and Waste proposals, there is no requirement that the ER be prepared exclusively by the engineering consultant that prepares the PER. The key issue is that environmental concerns be considered at the earliest planning stage of a proposal to ensure that environmental values are given appropriate consideration. The earliest planning stage of a proposal is the PER.

Section 1794.8 (now § 1794.7): Two commenters noted that RUS Bulletin 1780–26 already has been designated for guidance for another purpose.

Agency Response: The designations for the guidance documents referenced in this section have been corrected.

One commenter recommended that a standard format be developed for applicants to follow in the preparation of an ER or EA.

Agency Response: The appropriate bulletins referenced in this section will contain a standard format for preparing an ER; the applicant does not prepare an EA.

The same commenter further recommended that State Directors be able to issue supplements with less than approval by the Administrator.

Agency Response: State Directors have the ability to issue supplements. However, to ensure compliance with environmental laws and regulations and maintain uniformity with neighboring states and within a region, requires Administrator review and approval of supplements.

Six commenters urged RUS to consult with interested parties regarding the referenced electric and telecommunications guidance documents prior to taking final action on this rule.

Agency Response: RUS has considered all comments received on the current versions of Bulletins 1794A–600 and 1794A–601 in preparing the revisions to these two Bulletins. Both Bulletins will be made available to applicants via the Internet prior to the effective date of this final rule.

Two commenters believe that the referenced Water and Waste bulletin (RUS Bulletin 1794A–602) should be published for comment and one commenter requested a 60-day extension to the comment period on the proposed rule following the release of that draft bulletin.

Agency Response: RUS Bulletin 1794A–602 was reviewed by Rural Development staff prior to the effective date of this final rule. RUS does not agree that the comment period on the proposed rule should be extended subject to the release of the draft bulletin.

Section 1794.10: One commenter recommended replacing ''under RUS direct guidance and supervision'' with ''with advise from RUS'' instead.

Agency Response: The referenced language has been revised. RUS will assist applicants by outlining the types of information required and provide guidance and oversight in the development of the documentation (40 CFR 1506.5).

This commenter also recommended that the language in §§ 1794.10 and 1794.31(b) be consistent and refer to the SEC or neither.

Agency Response: The language in § 1794.10 applies to all three RUS programs. Therefore, a specific agency official is only identified in § 1794.31(b), which is specific to the Water and Waste program.

Section 1794.13: One commenter recommended that in (a)(3) all comments on Water and Waste proposals be sent directly to the RUS State Office instead of through the applicant.

Agency Response: Applicant notices must state that comments should be sent to the RUS appropriate office for Water and Waste proposals and to the Washington, DC, office for Electric and Telecommunications proposals. However, RUS recognizes that both verbal and written comments on a proposal are sometimes directed to the applicant. This subsection accounts for this possibility by requiring the applicant to submit comments to RUS.

Seven commenters were concerned that the requirement in § 1794.13(a)(4) making all environmental documents and documentation related to the proposed action available in specific locations was too broad and created an overly burdensome and onerous responsibility for the applicant. They recommended that RUS narrow the scope of information that the applicant is required to make available in a public setting and require the applicant to designate a contact person to respond to requests for additional and supporting information.

Agency Response: RUS agrees that the requirement making all environmental documents and documentation available in specific locations creates an overly burdensome and onerous responsibility for the applicant and does not enhance public participation in the environmental process. The language in § 1794.13(a)(4) has been revised. RUS will determine which project related environmental documents will be made available for review at locations convenient for the public. To ensure full public disclosure, a list of all documents not provided for public review will be included. Documents not provided will be available for inspection through a designated RUS or applicant contact person.

Two commenters requested that § 1794.13(a)(5) be expanded to note that public hearings are to be confined to the environmental aspects of a proposed action.

Agency Response: RUS believes that the purpose of the public hearings or meetings has been adequately identified in this section.

One commenter requested that RUS coordinate its meetings with meetings, hearings, and environmental reviews, which may be held and/or required by others.

Agency Response: RUS agrees with this comment and has revised § 1794.13(a)(5) to include coordination of its meetings with the requirements of other interested agencies and groups.

Six commenters questioned why RUS has established differing thresholds for publication of notices in the **Federal Register** with respect to the Electric and Telecommunications programs in § 1794.13(b) and the Water and Waste program in § 1794.13(c). They recommended that the language in § 1794.13(c) be consistent for all three programs.

Agency Response: RUS agrees and has decided to revise the language in §§ 1794.13(b) and 1794.42(b) thereby making the thresholds for publication of notices consistent for all three programs. RUS will provide interested agencies with notification of its FONSI determinations through direct mailings or, at its option, the **Federal Register**, when appropriate.

Section 1794.14: One commenter endorsed the flexibility provided in this section and recommended that this flexibility be more clearly stated. The commenter also suggested that the duties of a cooperating agency are unclear and a brief list should be included.

Agency Response: The duties of a cooperating agency are described in 40 CFR 1501.6 and are incorporated by reference.

Section 1794.17: One commenter questioned whether the mitigative measures would be discussed in the FONSI memo to the file in addition to the FONSI public notice. Two commenters noted that the provisions of (b)(3) appear to expand the responsibilities of field staff beyond that of development specialists. One commenter suggested that a better role for the agency would be to notify the appropriate regulatory agency to enforce the mitigative measures.

Agency Response: Mitigation measures shall be discussed in both the FONSI memo and public notice. The responsibilities of field staff have not been expanded. In the routine process of checking on-site conditions for compliance with relevant loan or grant provisions, it is appropriate for staff to document the applicant's compliance status with regard to mitigation measures that were agreed upon as part of the conditions for the loan/grant. If discrepancies are noted, the agency may need to notify the appropriate regulatory agency for action.

Section 1794.21(a): Six commenters recommended that in addition to defining ''emergency situation'' this

section be expanded to account for such situations.

Agency Response: RUS has added action (4) to account for emergency situations.

Section 1794.21(b): One commenter questioned why a ''detailed description'' was required for 12 actions in this category when all actions in this category had to be sufficiently described. That commenter recommended this requirement be deleted.

Agency Response: RUS has determined through experience that the types of proposals contained in this section normally do not significantly affect the quality of the human environment. Thus the submission of an ER is not normally required. However, in order to waive the ER requirement for the 12 actions in this category so designated, the RUS reviewer must have a complete description of what is being proposed, how it will be constructed, and the setting in which the proposed project will be located. Evaluating these 12 actions on a case-by-case basis is more effective than uniformly requiring the mandatory submittal of an ER.

Another commenter was concerned that the submittal of an environmental document was not required for proposed actions described in § 1794.21(b) (4), (8), (14), (15) and (16), which could under certain circumstances provide a hazard to birds.

Agency Response: RUS agrees that under certain circumstances actions described in § 1794.21(b) (4), (8), (14), (15), and (16) could result in significant effects to the human environment, such as presenting a hazard to birds. The description of the facilities to be constructed that must be provided for these actions and others so noted in § 1794.21(b) is used by RUS to determine whether the current level of review is adequate or a higher level of review is warranted.

One commenter expressed concern over the provision in action § 1794.21(b)(18) which require the applicant obtain certification from the utility owner that the facilities to be purchased are in compliance with applicable environmental laws and regulations. This commenter believes that the normal environmental review process should be sufficient to identify and resolve issues that may be encountered.

Agency Response: RUS agrees that obtaining a certification of compliance for the purchase of existing facilities is not the appropriate form of documentation. Upon further review, RUS has determined that establishing two separate levels of review for the purchase of existing facilities, specifically action (18) in § 1794.21(b) and action (7) in § 1794.23(b), is not warranted. Both references to these actions have been deleted from the final rule and replaced by new action (11) in § 1794.22(a). Under the new requirement applicants will have the option of submitting an ER or the results of a facility environmental audit. A higher level of review may be required before RUS approves an applicant's purchase of facilities that are determined to be in violation of Federal, state, or local environmental laws or regulations.

One commenter recommended that the threshold for action described in § 1794.21(b)(21), standby diesel generators, be increased from 1 megawatt (MW) to 2 MW and also be utilized for load management purposes in addition to emergency power.

Agency Response: RUS does not agree. The purpose of this category is to exclude standby diesel generators that would be subject to limited use (i.e. emergency outages). Utilizing such facilities for load management purposes increases the hours of usage and thus increase potential effects to the quality of the human environment.

A commenter asserts that the action described in § 1794.21(b)(24) could create a major change in local air quality.

Agency Response: RUS agrees that wording describing action (24) could be misinterpreted and has added the following statement: ''Repowering or uprating that results in an increased fuel consumption or the substitution of one fuel combustion technology with another is excluded from this classification.'' Because this action does not include an increase in fuel consumption, no change in local air quality is anticipated.

This commenter further recommended that the type of customer facilities covered in § 1794.21(b)(24) include commercial and agricultural.

Agency Response: RUS agrees to add commercial and agriculture facilities to item (24).

Section 1794.22: Three commenters noted that proposals identified in § 1794.22(a)(11) and § 1794.21(b)(20) which discuss facilities that will reduce the amount of pollutants released into the environment are redundant and the reference in § 1794.22 should be deleted.

Agency Response: RUS agrees that the requirements of § 1794.22(a)(11) and § 1794.21(b)(20) are redundant. Accordingly, action #11 in § 1794.22(a) of the proposed rule has been deleted.

One commenter asserted that proposals listed in § 1794.22(b)(3) and (4) have the potential to impact important resources but will be excluded from environmental review.

Agency Response: Applicants are required to prepare and submit an ER for all proposed actions listed in § 1794.22(b). RUS will review the ER to determine whether a normally categorically excluded action may have a significant environmental effect (40 CFR 1508.4).

One commenter suggested that § 1794.22(c) belongs in § 1794.23 which describes EA proposals.

Agency Response: Proposals listed in § 1794.22(c) were so designated to parallel the level of documentation required by the EPA in 40 CFR 6.505(c) for similar proposals. Agencies with similar programs are encouraged by CEQ to consult with each other to coordinate their procedures, especially for programs requesting similar information from applicants (40 CFR 1507.3(a)). RUS believes that these actions are correctly described in § 1794.22(c).

One commenter noted that § 1794.22(c)(1) and (2) only apply to discharges and need to be expanded to include water withdrawals.

Agency Response: RUS agrees and has expanded the discussion in § 1794.22(c) to clarify this issue.

Two commenters requested that ''substantial increases'' in § 1794.22 (c)(2) be defined and one commenter also questioned how this term applied to a new facility.

Agency Response: The term ''substantial increases'' has not been defined because its interpretation depends on local conditions and regulatory requirements. RUS agrees that this action should not include new facilities and has revised the language accordingly.

One commenter noted that § 1794.22 (c)(3) stipulates no greater than a 30 percent growth factor whereas § 1794.22 (b)(3) stipulates a modest growth potential and requests consistency within the rule.

Agency Response: The 30 percent growth factor is an established threshold, whereas the term ''modest growth'' applies to local conditions and regulatory requirements.

Another commenter asserts that the thresholds in § 1794.22(c)(3) need to be changed because it appears that a small system (20–30 EDU's) could be expanded up to 500 EDU's and still be a categorically excluded proposal.

Agency Response: RUS believes the capacity criteria as stated is sufficient for the purposes of classifying an action

as a categorical exclusion. Two other provisions may be applicable to the commenter's point. First, the ER would provide sufficient information to determine if there are any extraordinary circumstances in which a normally categorically excluded action may have a significant environmental effect (see 40 CFR 1508.4). Second, under § 1794.22(b)(2), RUS could determine that the facility improvements are not modest in use, size, capacity, purpose, or location and would require an EA.

Section 1794.23: One commenter recommended that for consistency, this section be titled ''Proposals normally requiring an EA without scoping.''

Agency Response: RUS disagrees. Early public involvement may be appropriate for any level of environmental review and should not be explicitly dismissed by excluding scoping for certain thresholds.

Section 1794.31: One commenter stated that RUS should not be supervising or giving direct guidance to the applicant. He suggested modifying the wording in (b) to ''with advice from RUS.''

Agency Response: This issue is addressed in the response to the comment on § 1794.10.

Another commenter noted that the SEC would be unable to devote the time necessary to supervise all applicants.

Agency Response: High volume states have been provided additional environmental specialist positions in anticipation of the increased workload.

Section 1794.32: One commenter wanted clarification in (b) on the criteria used to determine when public notice would be required if important land resources are affected. Another commenter suggested that in (b) reference should be made to § 1794.7 or the RUS Bulletin 1794A–602.

Agency Response: RUS agrees with this suggestion and has referenced the two bulletins that provide guidance in preparing an ER.

Section 1794.33: One commenter noted that this section allows RUS to act on an application without any environmental review.

Agency Response: The commenter's interpretation of § 1794.33 is incorrect. RUS shall conduct an environmental review for all proposed actions covered by this section. Proposals listed in § 1794.21(b) and (c) normally require the submittal of a project description. Whereas, proposals listed in § 1794.22(a) and (b) normally require the submittal of an ER. RUS reserves the right to require additional environmental information on any proposal the agency believes may have significant effects on the quality of the human environment (§ 1794.30).

Section 1794.41: One commenter noted that the typical applicant would need assistance from their consulting engineer in preparing the ER, resulting in a fee increase to the applicant. If the SEC retains approval authority for the ER, another layer of review is added before the ER is accepted.

Agency Response: RUS anticipates that the applicant's engineer will prepare the ER at the same time that project planning is done. RUS further anticipates that any increase in the engineering fee should be modest since the engineer in most projects has been preparing the applicant's environmental information for the agency. The SEC should be the only agency approval official for the ER.

Section 1794.44: Two commenters noted that it appears RUS will take final action on proposals covered by this section without waiting for public input.

Agency Response: Actions listed in § 1794.23 are subject to public input when the EA is made available for review through applicant notice. Normally there is no provision for additional public input when RUS makes a FONSI determination for actions listed in § 1794.23.

These commenters also noted that draft RUS Bulletin 1794A–602 calls for a 15-day review period if significant comments are received on the draft EA.

Agency Response: The reference to the 15-day review period was inadvertently omitted from the proposed rule. Section 1794.44 has been modified to include an opportunity for the public to review the RUS FONSI determination if substantive comments are received on the EA.

Section 1794.51: One commenter noted that no mention is made in (a) where the applicant's notice will be published.

Agency Response: The commenter is correct that § 1794.51 does not state where the applicant's notice will be published. That information is provided in § 1794.13(a)(1) and (2).

Section 1794.61: Two commenters asserted that the cost of an EIS would be prohibitive for nearly all Water and Waste applicants which could result in even high priority projects being canceled due to the inability of the applicant to fund the EIS.

Agency Response: RUS agrees that an EIS can be an expensive document to prepare and has identified certain methods of funding an EIS in § 1794.61(a).

Section 1794.70: One commenter recommends that this section be expanded to allow the adoption of environmental documents prepared by state or local agencies or other parties in accordance with the provisions of § 1794.84 of the existing regulation.

Agency Response: The CEQ regulations in 40 CFR 1506.3 only permit a Federal agency to adopt documents prepared by or for another Federal Agency. In 40 CFR 1506.2, Federal agencies are required to cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements by jointly preparing EAs and EISs. RUS acknowledges that its policy on the incorporation of environmental documents prepared by others was omitted from the proposed rule. This omission has been corrected with the addition of § 1794.74.

One commenter suggested that RUS be more flexible in its adoption procedures and not duplicate another agency's public notice and comment period.

Agency Response: RUS believes that its decisions must be subject to public notification regardless of who prepares the environmental documentation. The preferred strategy to avoid duplication of effort would be for RUS to participate with other agencies in the preparation of the initial environmental documents as stated in § 1794.14.

This commenter also recommended that RUS accept environmental documents prepared by states under the State Revolving Fund (SRF) programs as its own documents or at a minimum adopt the subject documents.

Agency Response: RUS may adopt environmental documents prepared by state agencies administering SRF programs under the Clean Water Act (32 U.S.C. 1251) and the Safe Drinking Water Act (42 U.S.C. 300). Where appropriate, the State Director will enter into an agreement with appropriate state agencies to establish the necessary procedures.

Any environmental document accepted or prepared by RUS prior to the effective date of these regulations may be developed in accordance with RUS environmental requirements in effect at the time the document was accepted or prepared by RUS.

List of Subjects in 7 CFR Part 1780

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

Therefore RUS amends chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

Subpart B—Loan and Grant Application Processing

1. Section 1780.31 is amended by revising paragraph (e) to read as follows:

§ 1780.31 General.

* * * * *

(e) Starting with the earliest discussion with prospective applicants, the State Environmental Coordinator shall discuss with prospective applicants and be available for consultation during the application process the environmental review requirements for evaluating the potential environmental consequences of the project. Pursuant to 7 CFR part 1794 and guidance in RUS Bulletin 1794A–602, the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. This should provide flexibility to consider reasonable alternatives to the project and development methods to mitigate identified adverse environmental effects. Mitigation measures necessary to avoid or minimize any adverse environmental effects must be integrated into project design.

2. Section 1780.33 is amended by revising paragraphs (c)(3), and (f) to read as follows:

§ 1780.33 Application requirements.

* * * * *

(c) * * *

(3) The State staff engineer will consult with the applicant's engineer as appropriate to resolve any questions concerning the PER. Written comments will be provided by the State staff engineer to the processing office to meet eligibility determination time lines.

* * * * *

(f) Environmental Report. For those actions listed in §§ 1794.22(b) and 1794.23(b), the applicant shall submit, in accordance with RUS Bulletin 1794A–602, two copies of the completed Environmental Report.

(1) Upon receipt of the Environmental Report, the processing office shall forward one copy of the report with comments and recommendation to the State Environmental Coordinator for review.

(2) The State Environmental Coordinator will consult with the applicant as appropriate to resolve any environmental concerns. Written comments will be provided by the State Environmental Coordinator to the processing office to meet eligibility determination time lines.

* * * * *

3. Section 1780.39 is amended by revising paragraph (b) introductory text and removing and revising paragraph (h).

§ 1780.39 Application processing.

* * * * *

(b) Professional services and contracts related to the facility. Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when RUS financing is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, environmental review and documentation requirements, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Applicants should negotiate for procurement of professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to RUS concurrence.

* * * * *

4. Section 1780.41 is amended by revising paragraph (a)(8) to read as follows:

§ 1780.41 Loan or grant approval.

(a) * * *

(8) Completed environmental review documents including copies of public notices and appropriate proof of publication, if applicable; and

* * * * *

SUBPART C—PLANNING, DESIGN, BIDDING, CONTRACTING, CONSTRUCTING AND INSPECTIONS

5. Section 1780.55 is revised to read as follows:

§ 1780.55 Preliminary engineering reports.

Preliminary engineering reports and Environmental Reports. Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental Reports must meet the policies and intent of the National Environmental Policy Act and RUS procedures. Guidelines for preparing Environmental Reports are available in RUS Bulletin 1794A–602.

6. Section 1780.57 is amended by revising paragraph (a) to read as follows:

§ 1780.57 Design policies.

* * * * *

(a) *Environmental review.* Facilities financed by the Agency must undergo an environmental impact analysis in accordance with the National Environmental Policy Act and RUS procedures. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental consequences of the proposed project. Facility design shall incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review.

* * * * *

7. Part 1794 is revised to read as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

Subpart A—General

Sec.
1794.1 Purpose.
1794.2 Authority.
1794.3 Actions requiring environmental review.
1794.4 Metric units.
1794.5 Responsible officials.
1794.6 Definitions.
1794.7 Guidance.
1794.8–1794.9 [Reserved]

Subpart B—Implementation of the National Environmental Policy Act

1794.10 Applicant responsibilities.
1794.11 Apply NEPA early in the planning process.
1794.12 Consideration of alternatives.
1794.13 Public involvement.
1794.14 Interagency involvement and coordination.
1794.15 Limitations on actions during the NEPA process.
1794.16 Tiering.

1794.17 Mitigation.
1794.18–1794.19 [Reserved]

Subpart C—Classification of Proposals

1794.20 Control.
1794.21 Categorically excluded proposals without an ER.
1794.22 Categorically excluded proposals requiring an ER.
1794.23 Proposals normally requiring an EA.
1794.24 Proposals normally requiring an EA with scoping.
1794.25 Proposals normally requiring an EIS.
1794.26–1794.29 [Reserved]

Subpart D—Procedure for Categorical Exclusions

1794.30 General.
1794.31 Classification.
1794.32 Environmental report.
1794.33 Agency action.
1794.34–1794.39 [Reserved]

Subpart E—Procedure for Environmental Assessments

1794.40 General.
1794.41 Document requirements.
1794.42 Notice of availability.
1794.43 Agency finding.
1794.44 Timing of agency action.
1794.45–1794.49 [Reserved]

Subpart F—Procedure for Environmental Assessments With Scoping

1794.50 Normal sequence.
1794.51 Preparation for scoping.
1794.52 Scoping meetings.
1794.53 Environmental analysis.
1794.54 Agency determination.
1794.55–1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statements

1794.60 Normal sequence.
1794.61 Environmental impact statement.
1794.62 Supplemental EIS.
1794.63 Record of decision.
1794.64 Timing of agency action.
1794.65–1794.69 [Reserved]

Subpart H—Adoption of Environmental Documents

1794.70 General.
1794.71 Adoption of an EA.
1794.72 Adoption of an EIS.
1794.73 Timing of agency action.
1794.74 Incorporation of environmental materials.
1794.75–1794.79 [Reserved]

Authority: 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

Subpart A—General

§ 1794.1 Purpose.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500 through 1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders (EO) that apply to RUS programs and administrative actions.

(b) The policies and procedures contained in this part are intended to help RUS officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. In assessing the potential environmental impacts of its actions, RUS will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with information on the issues that are truly significant to the action in question.

§ 1794.2 Authority.

(a) This part derives its authority from and is intended to be compliant with NEPA, CEQ Regulations for Implementing the Procedural Provisions of NEPA, and other RUS regulations.

(b) Where practicable, RUS will use NEPA analysis and documents and review procedures to integrate the requirements of related environmental statutes, regulations, and orders.

(c) This part integrates the requirements of NEPA with other planning and environmental review procedures required by law, or by RUS practice including but not limited to:

(1) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(2) The National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(3) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(4) E.O. 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 Comp., p. 154);

(5) E.O. 11514, Protection and Enhancement of Environmental Quality (3 CFR, 1970 Comp., p. 104);

(6) E.O. 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117);

(7) E.O. 11990, Protection of Wetlands (3 CFR, 1977 Comp., p. 121); and

(8) E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (3 CFR, 1994 Comp., p. 859).

(d) Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements. Environmental documents submitted by the applicant shall be prepared under the oversight and guidance of RUS. RUS will evaluate and be responsible for the accuracy of all information contained therein.

§ 1794.3 Actions requiring environmental review.

The provisions of this part apply to actions by RUS including the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs, the disposal of property held by RUS pursuant to such programs, and the issuance of new or revised rules, regulations, and bulletins. Approvals provided by RUS pursuant to loan contracts and security instruments, including approvals of lien accommodations, are not actions for the purposes of this part and the provisions of this part shall not apply to the exercise of such approvals.

§ 1794.4 Metric units.

RUS normally will prepare environmental documents using non-metric equivalents with one of the following two options; metric units in parentheses immediately following the non-metric equivalents or a metric conversion table as an appendix. Environmental documents prepared by or for a RUS applicant should follow the same format.

§ 1794.5 Responsible officials.

The Administrator of RUS has the responsibility for Agency compliance with all environmental laws, regulations, and EOs that apply to RUS programs and administrative actions. Responsibility for ensuring environmental compliance for actions taken by RUS has been delegated as follows:

(a) *Electric and Telecommunications Programs.* The appropriate Assistant Administrator is responsible for ensuring compliance with this part for the respective programs.

(b) *Water and Waste Program.* The Assistant Administrator for this program is responsible for ensuring compliance with this part at the national level. The State Director is the responsible official for ensuring compliance with this part for actions taken at the State Office level.

§ 1794.6 Definitions.

The following definitions, as well as the definitions contained in 40 CFR part 1508 of the CEQ regulations, apply to the implementation of this part:

Applicant. The organization applying for financial assistance or other approval from either the Electric or Telecommunications programs or the organization applying for a loan or grant from the Water and Waste program.

Construction Work Plan (CWP). The document required by 7 CFR part 1710.

Emergency Situation. A natural disaster or system failure that may

involve an immediate or imminent threat to public health, safety, or the human environment.

Environmental Analysis (EVAL). The document submitted by the applicant for proposed actions subject to compliance with § 1794.24 and under special circumstances § 1794.25.

Environmental Report (ER). The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 and 1794.23. An ER for the Water and Waste Program refers to the environmental review documentation normally included as part of the Preliminary Engineering Report.

Environmental review. Any one or all of the levels of environmental analysis described under subpart C of this part.

Equivalent Dwelling Unit (EDU). Level of water or waste service provided to a typical rural residential dwelling.

Important Land Resources. Defined pursuant to the U.S. Department of Agriculture's Departmental Regulation 9500–3, Land Use Policy, as important farmland, prime forestland, prime rangeland, wetlands, and floodplains. Copies of this Departmental Regulation are available from USDA, Rural Utilities Service, Washington, DC 20250.

Loan Design. Document required by 7 CFR part 1737.

Multiplexing Center. A field site where a telecommunications provider houses a device that combines individual subscriber circuits onto a single system for economical connection with a switching center. The combiner, or ''multiplexer,'' may be mounted on a pole, on a concrete pad, or in a partial or full enclosure such as a shelter, or small building.

Natural Resource Management Guide. Inventory of natural resources, land uses, and environmental factors specified by Federal, State, and local authorities as deserving some degree of protection or special consideration. The guide describes the standards or types of protection that apply.

Preliminary Engineering Report (PER). Document required by 7 CFR part 1780 for Water and Waste Programs. A PER is prepared by an applicant's engineering consultant documenting a proposed action's preliminary engineering plan and design and the applicable environmental review activities as required in this part. Upon approval by RUS, the PER, or a portion thereof, shall serve as the RUS environmental document.

Supervisory Control and Data Acquisition System (SCADA). Electronic monitoring and control equipment installed at electric substations and switching stations.

Third party Consultant. A party selected by RUS to prepare the EIS for proposed actions described in § 1794.25 where the applicant initiating the proposal agrees to fund preparation of the document in accordance with the provisions of 7 CFR Part 1789, ''Use of Consultants Funded by Borrowers'' and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2204b(b)).

§ 1794.7 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1794A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)) and RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) Telecommunications only and (c));. Copies of these bulletins are available upon request by contacting Rural Utilities Service, Publications Office, PDRA, Stop 1522; 1400 Independence Avenue, SW; Washington, DC 20250–1522.

(b) *Water and Waste Program.* RUS Bulletin 1794A–602 provides guidance in preparing the ER for proposed actions classified as CEs (§ 1794.22(b)) and EAs (§ 1794.23(b)). A copy of this bulletin is available upon request by contacting the appropriate State Director. State Directors may provide supplemental guidance to meet state and local laws and regulations and to provide for orderly application procedures and efficient service to applicants. State Directors shall obtain the Administrator's approval for all supplements to RUS Bulletin 1794A–602. Each State Office shall maintain an updated Natural Resource Management Guide and provide applicants with pertinent sections or a copy of the current edition thereof.

§§ 1794.8–1794.9 [Reserved]

Subpart B—Implementation of the National Environmental Policy Act

§ 1794.10 Applicant responsibilities.

As described in subpart C of this part, applicants shall prepare the applicable environmental documentation concurrent with a proposed action's engineering, planning, and design activities. RUS shall assist applicants by outlining the types of information required and shall provide guidance and oversight in the development of the documentation. Documentation shall not be considered complete until all public review periods, as applicable, have expired and RUS concurrence, as set forth in the appropriate decision document and associated public notice, has been issued.

§ 1794.11 Apply NEPA early in the planning process.

The environmental review process requires early coordination with and involvement of RUS. Applicants should consult with RUS at the earliest stages of planning for any proposal that may require RUS action. For proposed actions that normally require an EIS, applicants shall consult with RUS prior to obtaining the services of an environmental consultant.

§ 1794.12 Consideration of alternatives.

In determining what are reasonable alternatives, RUS considers a number of factors. These factors may include, but are not limited to, the proposed action's size and scope, state of the technology, economic considerations, legal and socioeconomic concerns, availability of resources, and the timeframe in which the identified need must be fulfilled.

§ 1794.13 Public involvement.

(a) In carrying out its responsibilities under NEPA, RUS shall make diligent efforts to involve the public in the environmental review process through public notices and public hearings and meetings.

(1) All public notices required by this part shall describe the nature, location, and extent of the proposed action and indicate the availability and location of additional information. They shall be published in newspaper(s) of general circulation within the proposed action's area of environmental impact and the county(s) in which the proposed action will take place or such other places as RUS determines.

(2) The number of editions in which the notices should be published will be specified in the Bulletins referenced in § 1794.7 or established on a project-by-project basis. Alternative forms of notice may also be necessary to ensure that residents located in the area affected by the proposed action are notified. The applicant should not publish notices for compliance with this part until so notified by RUS.

(3) A copy of all comments received by the applicant concerning environmental aspects of the proposed action shall be provided to RUS in a timely manner. RUS and applicants shall assess and consider public comments both individually and collectively. Responses to public comments will be appended to the applicable environmental document.

(4) RUS and applicants shall make available to the public those project related environmental documents that RUS determines will enhance public participation in the environmental process. These materials shall be placed in locations convenient for the public as determined by RUS in consultation with applicants. Included with the documentation shall be a list of other project-related information that shall be available for inspection through a designated RUS or applicant contact person.

(5) Public hearings or meetings shall be held at reasonable times and locations concerning environmental aspects of a proposed action in all cases where, in the opinion of RUS, the need for hearings or meetings is indicated in order to develop adequate information on the environmental implications of the proposed action. Public hearings or meetings conducted by RUS will be coordinated to the extent practicable with other meetings, hearings, and environmental reviews which may be held or required by other Federal, state and local agencies. Applicants shall, as necessary, participate in all RUS conducted public hearings or meeting.

(6) Scoping procedures, in accordance with 40 CFR 1501.7, are required for proposed actions normally requiring an EA with scoping (§ 1794.24) or an EIS (§ 1794.25). RUS may require scoping procedures to be followed for other proposed actions where appropriate to achieve the purposes of NEPA.

(b) The applicant shall have public notices described in this section published in a newspaper(s). Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document. Where the proposed action requires an EIS RUS shall, in addition to applicant published notices, publish notice in the **Federal Register**. In all cases, RUS may publish notices in the **Federal Register** as appropriate.

§ 1794.14 Interagency involvement and coordination.

In an attempt to reduce or eliminate duplication of effort with state or local procedures, RUS will, to the extent possible and in accordance with 40 CFR 1506.2, actively participate with any governmental agency to cooperatively or jointly prepare environmental documents so that one document will comply with all applicable laws. Where RUS has agreed to participate as a cooperating agency, in accordance with 40 CFR 1501.6, RUS may rely upon the lead agency's procedures for implementing NEPA procedures. In addition, RUS shall request that:

(a) The lead agency indicates that RUS is a cooperating agency in all NEPA-related notices published for the proposed action;

(b) The scope and content of the EA or EIS satisfies the statutory and regulatory requirements applicable to RUS; and

(c) The applicant shall inform RUS in a timely manner of its involvement in a proposed action where another Federal agency is preparing an environmental document so as to permit RUS to adequately fulfill its duties as a cooperating agency.

§ 1794.15 Limitations on actions during the NEPA process.

(a) *General.* Until RUS concludes its environmental review process, the applicant shall take no action concerning the proposed action which would have an adverse environmental impact or limit the choice of reasonable alternatives being considered in the environmental review process (40 CFR 1506.1).

(b) *Electric Program*. In determining which applicant activities related to a proposed action can proceed prior to completion of the environmental review process, RUS must determine, among other matters that:

(1) The activity shall not have an adverse environmental impact and shall not preclude the search for other alternatives. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (e.g. rail spur) or development of a related facility (e.g. opening a captive mine) normally will have an adverse environmental impact.

(2) Expenditures are minimal. To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Administrator, and must not compromise the objectivity of RUS environmental review. Not withstanding other considerations, expenditures equivalent to up to 10 percent of the proposed action's cost normally will not compromise RUS objectivity. Expenditures for the purpose of producing documentation required for RUS environmental review are excluded from this limitation.

§ 1794.16 Tiering.

It is the policy of RUS to prepare programmatic level analysis in order to tier an EIS and an EA where:

(a) It is practicable, and

(b) There will be a reduction of delay and paperwork, or where better decision making will be fostered (40 CFR 1502.20).

§ 1794.17 Mitigation.

(a) *General.* In addition to complying with the requirements of 40 CFR 1502.14(f), it is RUS policy that a discussion of mitigative measures essential to render the impacts of the proposed action not significant will be included in or referenced in the Finding of No Significant Impact (FONSI) and the Record of Decision (ROD).

(b) *Water and Waste Program*. (1) Mitigation measures which involve protective measures for environmental resources cited in this part or restrictions or limitations on real property located in the service areas of the proposed action shall be negotiated with applicants and any relevant regulatory agency so as to be enforceable. All mitigation measures incorporating land use issues shall recognize the rights and responsibilities of landholders in making private land use decisions and recognize the responsibility of governments in influencing how land may be used to meet public needs.

(2) Mitigation measures shall be included in the letter of conditions.

(3) RUS has the responsibility for the post approval construction or security inspections or monitoring to ensure that all mitigation measures included in the environmental documents have been implemented as specified in the letter of conditions.

§§ 1794.18–1794.19 [Reserved]

Subpart C—Classification of Proposals

§ 1794.20 Control.

Electric and Telecommunications Programs. For environmental review purposes, RUS has identified and established categories of proposed actions (§§ 1794.21 through 1794.25). An applicant may propose to participate with other parties in the ownership of a project where the applicant(s) does not have sufficient control to alter the development of the project. In such a case, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Where the applicant proposes to participate with other parties in the

ownership of a proposed project and all applicants cumulatively own:

(a) Five percent or less of a project is not considered a Federal action subject to this part;

(b) Thirty-three and one-third percent or more of a project shall be treated in its usual category;

(c) More than five percent but less than 33⅓ percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that RUS's action will be considered a Federal action subject to this part. Consideration shall be given to such factors as:

(1) Whether construction would be completed regardless of RUS financial assistance or approval;

(2) The stage of planning and construction;

(3) Total participation of the applicant;

(4) Participation percentage of each utility; and

(5) Managerial arrangements and contractual provisions.

§ 1794.21 Categorically excluded proposals without an ER.

(a) *General.* Certain types of actions taken by RUS do not normally require an ER. Proposed actions within this classification are:

(1) The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices;

(2) Procurement activities related to the operation of RUS;

(3) Personnel and administrative actions; and

(4) Repairs made because of an emergency situation to return to service damaged facilities of an applicant's system.

(b) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed in this paragraph (b) normally do not require the submission of an ER. These types of actions are subject to the requirements of § 1794.31. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. Detailed descriptions shall be provided for each proposal noted in this section. RUS normally requires additional information in addition to a description of what is being proposed, to ensure that proposals are properly classified. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in this section. Proposed actions within this classification are:

(1) Purchase of land where use shall remain unchanged, or the purchase of existing water rights where no associated construction is involved;

(2) Additional or substitute financial assistance for proposed actions which have previously received environmental review and approval from RUS, provided the scope of the proposal and environmental considerations have not changed;

(3) Rehabilitation or reconstruction of transportation facilities within existing rights-of-way (ROW) or generating facility sites. A description of the rehabilitation or reconstruction shall be provided to RUS;

(4) Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare). A description of the additions or changes and the area to be impacted by the expansion shall be provided to RUS;

(5) Internal modifications or equipment additions (*e.g.*, computer facilities, relocating interior walls) to structures or buildings;

(6) Internal or minor external changes to electric generating or fuel processing facilities and related support structures where there is negligible impact on the outside environment. A description of the changes shall be provided to RUS;

(7) Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites);

(8) The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site. A description of the facilities to be constructed shall be provided to RUS;

(9) SCADA and energy management systems involving no new external construction;

(10) Testing or monitoring work (*e.g.*, soil or rock core sampling, monitoring wells, air monitoring);

(11) Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed;

(12) Construction of electric power lines within the fenced area of an existing substation, switching station, or within the boundaries of an electric generating facility site;

(13) Contracts for certain items of equipment which are part of a proposed action for which RUS is preparing an EA or EIS, and which meet the limitations on actions during the NEPA process as established in 40 CFR 1506.1(d) and contained in § 1794.15(b)(2);

(14) Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way. A description of the facilities to be constructed shall be provided to RUS;

(15) Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities. A description of the facilities to be constructed shall be provided to RUS;

(16) Construction of new power lines, substations, or telecommunications facilities on industrial or commercial sites, where the applicant has no control over the location of the new facilities. Related off-site facilities would be treated in their normal category. A description of the facilities to be constructed shall be provided to RUS;

(17) Participation by an applicant(s) in any proposed action where total applicant financial participation will be five percent or less;

(18) Construction of a battery energy storage system at an existing generating station or substation site. A description of the facilities to be constructed shall be provided to RUS.

(19) Additional bulk commodity storage (*e.g.*, coal, fuel oil, limestone) within existing generating station boundaries. A certification attesting to the current state of compliance of the existing facilities and a description of the facilities to be added shall be provided to RUS;

(20) Proposals designed to reduce the amount of pollutants released into the environment (e.g., precipitators, baghouse or scrubber installations, and coal washing equipment) which will have no other environmental impact outside the existing facility site. A description of the facilities to be constructed shall be provided to RUS;

(21) Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant. A description of the facilities to be constructed shall be provided to RUS;

(22) Construction of onsite facilities designed for the transfer of ash, scrubber wastes, and other byproducts from coal-

fired electric generating stations for recycling or storage at an existing coal mine (surface or underground). A description of the facilities to be constructed shall be provided to RUS;

(23) Changes or additions to an existing water well system, including new water supply wells and associated pipelines within the boundaries of an existing well field or generating station site. A description of the changes or additions shall be provided; and

(24) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station in order to improve the efficiency or the energy output of the facility. Repowering or uprating that results in increased fuel consumption or the substitution of one fuel combustion technology with another is excluded from this classification.

(c) *Water and Waste Program*. Applications for financial assistance for certain proposed actions do not normally require the submission of an ER. Applicants shall sufficiently identify all proposed actions so their proper classification can be determined. These types of actions are subject to the requirements of § 1794.31. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in this section. Proposed actions within this classification are:

(1) Management actions relating to invitation for bids, award of contracts, and the actual physical commencement of construction activities;

(2) Proposed actions that primarily involve the purchase and installation of office equipment or motorized vehicles;

(3) The award of financial assistance for technical assistance, planning purposes, environmental analysis, management studies, or feasibility studies; and

(4) Loan closing and servicing activities that do not alter the purpose, operation, location, or design of the proposal as originally approved, such as subordinations, amendments and revisions to approved actions, and the provision of additional financial assistance for cost overruns.

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) *Electric and Telecommunications Programs*. Applications for financial assistance for the types of proposed actions listed in this section normally require the submission of an ER and are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less that 69 kilovolts (kV);

(ii) Less than 230 kV if no more than 25 miles (40.2 kilometers) of line are involved; or

(iii) 230 kV or greater involving no more than three miles (4.8 kilometers) of line;

(2) Construction of buried and aerial telecommunications lines, cables, and related facilities;

(3) Construction of microwave facilities, SCADA, and energy management systems involving no more than five acres (2 hectares) of physical disturbance at any single site;

(4) Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property;

(5) Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same ROW. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction;

(6) Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(7) Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(8) Construction of diesel electric generating facilities of five megawatts (MW) (nameplate rating) or less either at an existing generation or substation sites. This category also applies to a diesel electric generating facility of five MW or less that is located at or adjacent to an existing landfill site and supplied with refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Additions to or the replacement of existing generating units at a hydroelectric facility or dam which result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

(10) Construction of new water supply wells and associated pipelines not located within the boundaries of an existing well field or generating station site; and

(11) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged. The results of a facility environmental audit can be substituted for the ER.

(b) *Water and Waste Program*. For certain proposed actions, applications for financial assistance normally require the submittal of an ER as part of the PER. These types of actions are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Rehabilitation of existing facilities, functional replacement or rehabilitation of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities, including but not limited to, replacement of utilities such as water or sewer lines and appurtenances for existing users with modest or moderate growth potential, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements;

(2) Facility improvements to meet current needs with a modest change in use, size, capacity, purpose or location from the original facility. The proposed action must be designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts;

(3) Construction of new facilities that are designed to serve not more than 500 EDUs and with modest growth potential. The proposed action must be designed for predominantly residential use with other users being small-scale, commercial enterprises having limited secondary impacts;

(4) The extension, enlargement or construction of interceptors, collection, transmission or distribution lines within a one-mile (1.6-kilometer) limit from existing service areas estimated from any boundary listed as follows:

(i) The corporate limits of the community being served;

(ii) If there are developed areas immediately contiguous to the corporate limits of a community, the limits of these developed areas; or

(iii) If an unincorporated area is to be served, the limits of the developed areas;

(5) Installation of new water supply wells or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection;

(6) Actions described in § 1794.21(c)(4) which alter the purpose,

operation, location, or design of the proposed action as originally approved, and such alteration is equivalent in magnitude or type as described in paragraphs (b)(1) through (b)(5) of this section; and

(7) The lease or disposal of real property by RUS, which may result in a change in use of the real property in the reasonably foreseeable future and such change, is equivalent in magnitude or type as described in paragraphs (b)(1) through (b)(5).

(c) *Specialized criteria for not granting a CE for Water and Waste Projects.* An EA must be prepared if a proposed action normally classified as a CE meets any of the following:

(1) Will either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters;

(2) Will result in substantial increases in the volume or the loading of pollutants from an existing discharge to receiving waters;

(3) Will cause a substantial increase in the volume of withdrawal from surface or ground waters at an existing site; or

(4) Would provide capacity to serve more than 500 EDUs or a 30 percent increase in the existing population whichever is larger.

§ 1794.23 Proposals normally requiring an EA.

RUS will normally prepare an EA for all proposed actions which are neither categorical exclusions (§§ 1794.21 and 1794.22) nor normally requiring an EIS (§ 1794.25). For certain actions within this class, scoping and document procedures contained in §§ 1794.50 through 1794.54 shall be followed (see § 1794.24). The following are proposed actions which normally require an EA and shall be subject to the requirements of §§ 1794.40 through 1794.44.

(a) *General.* Issuance or modification of RUS regulations concerning environmental matters.

(b) *Telecommunications and Water and Waste Programs.* An EA shall be prepared for applications for financial assistance for all proposed actions not specifically defined as a CE or otherwise specifically categorized by the Administrator on a case-by-case basis.

(c) *Electric Program.* Applications for financial assistance for certain proposed actions normally require the preparation of an EA. Proposed actions falling within this classification are:

(1) Construction of combustion turbine or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of combustion turbine or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facilities of 10 MW (nameplate rating) or less. All new associated facilities and related electric power lines shall be covered in the EA;

(4) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station where the existing fuel combustion technology of the affected unit(s) is substituted for another (*e.g.* coal or oil-fired boiler is converted to a fluidized bed boiler or replaced with a combustion turbine unit);

(5) Installation of new generating units at an existing hydroelectric facility or dam, or the replacement of existing generating units at a hydroelectric facility or dam which will result in a change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the EA;

(6) A new drilling operation or the expansion of a mining or drilling operation;

(7) Construction of cooperative headquarters, maintenance, and equipment storage facilities involving more than 10 acres (4 hectares) of physical disturbance or fenced property;

(8) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more involving more than three miles (4.8 kilometers) but not more than 25 miles (40 kilometers) of line;

(9) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 69 kV or more but less than 230 kV where more than 25 miles (40 kilometers) of power line are involved;

(10) The construction of substations or switching stations requiring greater than five acres (2 hectares) of new physical disturbance at a single site; and

(11) Construction of facilities designed for the transfer and storage of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations that will be located beyond the existing facility site boundaries.

§ 1794.24 Proposals normally requiring an EA with scoping.

(a) *General.* Applications for financial assistance for certain proposed actions require the use of a scoping procedure in the development of the EA. These types of actions are subject to the requirements of §§ 1794.50 through 1794.54. RUS has the discretion to modify or waive the requirements listed in § 1794.52 for a proposed action in this category.

(b) *Electric Program.* Proposed actions falling within this classification are:

(1) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more where more than 25 miles (40 kilometers) of power line are involved;

(2) Construction of combustion turbines and diesel generators of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 10 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

(c) *Telecommunications and Water and Waste Programs.* There are no actions normally falling within this classification.

§ 1794.25 Proposals normally requiring an EIS.

Applications for financial assistance for certain proposed actions that may significantly affect the quality of the human environment shall require the preparation of an EIS.

(a) *Electric Program.* An EIS will normally be required in connection with proposed actions involving the following types of facilities:

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than diesel generators or combustion turbines. All new associated facilities and related electric power lines shall be covered in the EIS; and

(2) A new mining operation when the applicants have effective control (e.g., dedicated mine or purchase of a substantial portion of the mining equipment).

(b) Proposals listed above are subject to the requirements of §§ 1794.60, 1794.61, 1794.63, and 1794.64. Preparation of a supplemental draft or final EIS in accordance with 40 CFR 1502.9 shall be subject to the requirements of §§ 1794.62 and 1794.64.

(c) *Telecommunications and Water and Waste Programs.* No groups or sets of proposed actions normally require the preparation of an EIS. The

environmental review process, as described in this part, shall be used to identify those proposed actions for which the preparation of an EIS is necessary. If an EIS is required, RUS shall proceed directly to its preparation. Prior completion of an EA is not mandatory.

§§ 1794.26–1794.29 [Reserved]

Subpart D—Procedure for Categorical Exclusions

§ 1794.30 General.

The procedures of this subpart which apply to proposed actions classified as CEs in §§ 1794.21 and 1794.22 provide RUS with information necessary to determine if the proposed action meets the criteria for a CE. Where, because of extraordinary circumstances, a normally categorically excluded action may have a significant effect on the quality of the human environment, RUS may require additional environmental documentation.

§ 1794.31 Classification.

(a) *Electric and Telecommunications Programs.* RUS will normally determine the proper environmental classification of projects based on its evaluation of the project description set forth in the construction work plan or loan design which the applicant is required to submit with its application for financial assistance. Each project must be sufficiently described to ensure its proper classification. RUS may require the applicant to provide additional information on a project where appropriate.

(b) *Water and Waste Program.* RUS will normally determine the proper environmental classification for projects based on its evaluation of the preliminary planning and design information.

§ 1794.32 Environmental report.

(a) For proposed actions listed in § 1794.21(b) and (c), the applicant is normally not required to submit an ER.

(b) For proposed actions listed in § 1794.22(a) and (b), the applicant shall normally submit an ER. Guidance in preparing the ER for Electric and Telecommunication proposals is contained in RUS Bulletin 1794A–600. Guidance in preparing the ER for Water and Waste proposals is contained in RUS Bulletin 1794A–602. The applicant may be required to publish public notices and provide evidence of such if the proposed action is located in, impacts, or converts important land resources.

§ 1794.33 Agency action.

RUS may act on an application for financial assistance upon determining, based on the review of documents as set forth in § 1794.32 and such additional information as RUS deems necessary, that the project is categorically excluded.

§§ 1794.34–1794.39 [Reserved]

Subpart E—Procedure for Environmental Assessments

§ 1794.40 General.

This subpart applies to proposed actions described in § 1794.23. Where appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA, RUS determines that the proposed action will have a significant effect on the quality of the human environment, the preparation of an EIS shall be required and the procedures in subpart G of this part shall be followed.

§ 1794.41 Document requirements.

Applicants will provide an ER in accordance with the appropriate guidance documents referenced in § 1794.7. After RUS has evaluated the ER and has determined the ER adequately addresses all applicable environmental issues, the ER will normally serve as RUS' EA. However, RUS reserves the right to prepare its own EA from the information provided in the ER. RUS will take responsibility for the scope and content of an EA.

§ 1794.42 Notice of availability.

Prior to RUS making a finding in accordance with § 1794.43 and upon RUS authorization and guidance, the applicant shall have a notice published which announces the availability of the EA and solicits public comments on the EA.

§ 1794.43 Agency finding.

(a) *General.* If RUS finds, based on an EA that the proposed action will not have a significant effect on the quality of the human environment, RUS will prepare a FONSI. Upon authorization of RUS, the applicant shall have a notice published which informs the public of the RUS finding and the availability of the EA and FONSI. The notice shall be prepared and published in accordance with RUS guidance.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

§ 1794.44 Timing of agency action.

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the RUS and applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action shall not be taken until this review period has expired.

§§ 1794.45–1794.49 [Reserved]

Subpart F—Procedure for Environmental Assessments With Scoping

§ 1794.50 Normal sequence.

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at which the Environmental Analysis (EVAL) is submitted (see § 1794.54). After the EVAL has been submitted, RUS will make a judgment to utilize the EVAL as its EA and issue a FONSI or prepare an EIS.

§ 1794.51 Preparation for scoping.

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS shall have its notice of intent to prepare an EA or EIS (§ 1794.13) published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

(b) As part of the early planning, the applicant should consult with appropriate Federal, state, and local agencies to inform them of the proposed action, identify permits and approvals which must be obtained, and administrative procedures which must be followed.

(c) Before formal scoping is initiated, RUS will require the applicant to submit an Alternative Evaluation Study and either a Siting Study (generation) or a Macro-Corridor Study (transmission lines).

(d) The applicant is encouraged to hold public information meetings in the general location of the proposed action and any reasonable alternatives when such applicant meetings will make the scoping process more meaningful. A written summary of the comments made

at such meetings must be submitted to RUS as soon as practicable after the meetings.

§ 1794.52 Scoping meetings.

(a) Both RUS and the applicant shall have a notice published which announces a public scoping meeting is to be conducted, either in conjunction with the notice of intent or as a separate notice.

(b) The RUS notice shall be published in the **Federal Register** at least 14 days prior to the meeting(s). The applicant's notice shall be published in a newspaper at least 10 days prior to the meeting(s). Other forms of media may also be used by the applicant to notice the meetings.

(c) Where an environmental document is the subject of the hearing or meeting, that document will be made available to the public at least 10 days in advance of the meeting.

(d) The scoping meeting(s) will be held in the area of the proposed action at such place(s) as RUS determines will best afford an opportunity for public involvement. Any person or representative of an organization, or government body desiring to make a statement at the meeting may make such statement in writing or orally. The format of the meeting may be one of two styles. It can either be of the traditional style which features formal presentations followed by a comment period, or the open house style in which attendees are able to individually obtain information on topics or issues of interest within an established time period. A transcript will be made of the scoping meeting.

(e) As soon as practicable after the scoping meeting(s), RUS, as lead agency, shall determine the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. RUS will develop a proposed scope for further environmental study and review. RUS shall send a copy of this proposed scope to cooperating agencies and the applicant, and allow recipients 30 days to comment on the scope's adequacy and emphasis. After expiration of the 30-day period, RUS shall provide written guidance to the applicant concerning the scope of environmental study to be performed and information to be gathered.

§ 1794.53 Environmental analysis.

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an EVAL. The EVAL shall be prepared under the supervision and guidance of RUS staff and RUS shall evaluate and be responsible for the accuracy of all information contained therein.

(b) The EVAL will normally serve as the RUS EA. The EVAL can also serve as the basis for an EIS, and under such circumstances will be made an appendix to the EIS. After RUS has reviewed and found the EVAL to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the EVAL to satisfy the RUS distribution plan.

(c) The EVAL shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information. and shall be incorporated by summary or reference into the FONSI or ROD.

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory EA, RUS shall determine whether the proposed action is a major Federal action significantly affecting the quality of the human environment. If RUS determines the action is significant, RUS will continue with the procedures in subpart G of this part. If RUS determines the action is not significant, RUS will proceed in accordance with §§ 1794.42 through 1794.44.

§§ 1794.55–1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statements

§ 1794.60 Normal sequence.

For proposed actions requiring an EIS (see § 1794.25), the NEPA process shall proceed in the same manner as for proposed actions requiring an EA with scoping through the point at which the scoping process is completed (see § 1794.52).

§ 1794.61 Environmental impact statement.

(a) *General.* An EIS shall be prepared in accordance with 40 CFR part 1502. Funding, in whole or in part, for an EIS can be obtained from any lawful source (*e.g.*, cooperative agreements developed in accordance with Section 759A, Federal Agricultural Improvement and Reform Act of 1996, Pub. L. 104–127 and 31 U.S.C. 6301). A third-party consultant selected by RUS and funded by the applicant (7 CFR part 1789) may prepare the EIS.

(1) After a draft or final EIS has been prepared, RUS and the applicant shall concurrently have a notice of availability for the document published. The time period allowed for review will be a minimum of 45 days for a draft EIS and 30 days for a final EIS. This period is measured from the date that the U.S. Environmental Protection Agency (EPA) publishes a notice in the **Federal Register** in accordance with 40 CFR 1506.10.

(2) In addition to circulation required by 40 CFR 1502.19, the draft and final EIS (or summaries thereof, at RUS discretion) shall be circulated to the appropriate state, regional, and metropolitan clearinghouses.

(3) Where a final EIS does not require substantial changes from the draft EIS, RUS may document required changes through errata sheets, insertion pages, and revised sections to be incorporated into the draft EIS. In such cases, RUS shall circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. RUS will not circulate the draft EIS again, although RUS will provide the draft EIS if requested within 30 days of publication of notice of availability of the final EIS.

(b) *Electric Program.* Where the applicant or its consultant has prepared an EVAL, RUS will develop its draft and final EIS from the EVAL. An EVAL will not be required if a third-party consultant prepares the draft and final EIS.

§ 1794.62 Supplemental EIS.

(a) A supplement to a draft or final EIS shall be prepared, circulated, and given notice by RUS and the applicant in the same manner (exclusive of scoping) as a draft and final EIS (see § 1794.61).

(b) Normally RUS and the applicant will have published notices of intent to prepare a supplement to a final EIS in those cases where a ROD has already been issued.

(c) RUS, at its discretion, may issue an information supplement to a final EIS where RUS determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). RUS and the applicant shall concurrently have a notice of availability published. The notice requirements shall be the same as for a final EIS and the information supplement shall be circulated in the same manner as a final EIS. RUS shall take no final action on any proposed modification discussed in the information supplement until 30 days after the RUS notice of availability or the applicant's notice is published, whichever occurs later.

§ 1794.63 Record of decision.

(a) Upon completion of the review period for a final EIS, RUS will have its ROD prepared in accordance with 40 CFR 1505.2.

(b) Separate RUS and applicant notices of availability shall be published concurrently. The notices shall summarize the RUS decision and announce the availability of the ROD. Copies of the ROD will be made available upon request from the point of contact identified in the notice.

§ 1794.64 Timing of agency action.

(a) RUS may take its final action or execute commitments on proposed actions requiring an EIS or Supplemental EIS at any time after the ROD has been published.

(b) For budgetary purposes some financial assistance may be approved conditionally with a stipulation that no funds shall be advanced until a ROD has been prepared.

§§ 1794.65–1794.69 [Reserved]

Subpart H—Adoption of Environmental Documents

§ 1794.70 General.

This subpart covers the adoption of environmental documents prepared by other Federal agencies. Where applicants participate in proposed actions for which an EA or EIS has been prepared by or for another Federal agency, RUS may adopt the existing EA or EIS in accordance with 40 CFR 1506.3.

§ 1794.71 Adoption of an EA.

RUS may adopt a Federal EA or EIS or a portion thereof as its EA. RUS shall make the EA available and assure that notice is provided in the same manner as if RUS had prepared the EA.

§ 1794.72 Adoption of an EIS.

(a) Where RUS determines that an existing Federal EIS requires additional information to meet the standards for an adequate statement for RUS proposed action, RUS may adopt all or a portion of the EIS as a part of its draft EIS. The circulation and notice provisions for a draft and final EIS (see § 1794.61) apply.

(b) If RUS was not a cooperating agency but determines that another Federal agency's EIS is adequate, RUS shall adopt that agency's EIS as its final EIS. RUS and the applicant shall have separate notices published advising of RUS adoption of the EIS and independent determination of its adequacy.

(c) If the adopted EIS is generally available and meets RUS standards, RUS shall have a public notice published informing the public of its action and availability of the EIS to interested parties upon request. If the adopted EIS is not generally available, RUS shall have a public notice published informing the public of its action and will circulate copies of the EIS in accordance with 40 CFR 1502.19 and 40 CFR 1506.3.

§ 1794.73 Timing of agency action.

Where RUS has adopted another agency's environmental documents, the timing of the action shall be subject to the same requirements as if RUS had prepared the required EA or EIS.

§ 1794.74 Incorporation of environmental materials.

RUS may incorporate into its environmental documents, environmental documents or portions thereof prepared by state, or local agencies or other parties for purposes other than compliance with the requirements of NEPA. RUS will circulate the incorporated documents as a part of its EA or draft and final EIS in the same manner as if prepared by RUS.

§ 1794.75–1794.79 [Reserved]

Dated: December 7, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–32882 Filed 12–10–98; 8:45 am]

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Friday
December 11, 1998

Part VII

Department of the Interior

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment; Proposed Rule

Dungeness Crab Commercial Fishery Compensation Program Application Procedures; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Reopen the public comment period for the Proposed Rule and Environmental Assessment.

SUMMARY: Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (''the Act''), signed into law on October 21, 1998, establishes statutory requirements for the management of commercial fishing in Glacier Bay National Park. The congressional managers of this legislation directed the National Park Service (NPS) ''to extend the public comment period on the pending regulations (62 FR 18547, April 16, 1997) until January 15, 1999, modify the draft regulations to conform to [section 123's] language and publish the changes in the final regulations.'' Accordingly, the public comment period on the Proposed Rule and Environmental Assessment (EA) for commercial fishing will remain open until January 15, 1999.

DATES: Comments on the proposed rule and EA will be accepted through January 15, 1999.

ADDRESSES: Comments on the proposed rule and EA should be submitted to the: Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. Comments on the proposed rule and EA may be made on the park's Web site at *http://www.nps.gov/glba*, or by phoning the park at (907) 697–2230.

FOR FURTHER INFORMATION CONTACT: Copies of the EA and the Executive Summary are available by writing to Glen Yankus, National Park Service Support Office, 2525 Gambell St., Anchorage, Alaska 99503, or calling (907) 257–2645. The EA Executive Summary, Proposed Rule, and Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 are also available on the park's Web site at *ttp://www.nps.gov/glba*.

SUPPLEMENTARY INFORMATION: Section 123 of the Act (Pub. L. 105–277) directs the secretary of the interior and the state of Alaska to develop a cooperative management plan for the regulation of commercial fisheries within the park consistent with protection of park values and purposes, a prohibition on new or expanded fisheries, and opportunities for study of marine resources. The law provides for the continuation of commercial fishing in the marine waters of Glacier Bay National Park outside Glacier Bay proper. The law limits =-commercial fisheries within Glacier Bay proper to Tanner crab, halibut and salmon, and limits participation in these commercial fisheries to the lifetimes of individual fishermen with a qualifying history. Areas in the upper reaches and inlets of Glacier Bay proper are closed to all commercial fishing or are limited to winter season king salmon trolling by grandfathered fishermen. Designated marine wilderness areas in the park are closed to commercial fishing. Compensation is provided for qualifying Dungeness crab fishermen displaced by closure of designated wilderness waters of the Beardslee Islands and Dundas Bay. The full text of Section 123 of the Act is provided at the end of Supplementary Information.

NPS will publish a final rule regarding commercial fishing in the marine waters of Glacier Bay National Park after the close of the public comment period, as directed by Congress. Section 123 determines by statute several aspects of the NPS's proposed rule, but leaves other aspects open for final rulemaking. For example, Section 123 establishes by statute the phase-out of commercial fishing in Glacier Bay proper proposed by the rule. However, whereas the proposed rule would have eliminated commercial fishing in the bay after a 15-year period, Section 123 allows qualifying fishermen to fish in the bay throughout their lifetimes. In deference to rulemaking, Section 123 leaves to the Secretary of the Interior the determination of the number and timeframe of years that will qualify individuals for the nontransferable lifetime permits. The proposed rule would have required a fisherman to have participated in a Glacier Bay-proper fishery for a minimum of six years during the period of 1987 through 1996 to qualify for the 15-year access permit contemplated by the proposed rule. The final rule will determine the appropriate eligibility requirement for the lifetime access permit mandated by the statute. NPS welcomes and encourages ideas on what are reasonable eligibility criteria for lifetime access to the commercial Tanner crab, halibut and salmon fisheries authorized in Glacier Bay proper by the Act. Are the eligibility criteria outlined in the proposed rule appropriate? Should a different number and timeframe of qualifying years (e.g., three out of a five-year period) be considered? Should the three fisheries have the same eligibility criteria, or are there differences among the fisheries that support different eligibility criteria for different fisheries?

NPS will implement the statutory requirements of Section 123 of the Act in a final rule. All issues raised by the proposed rule not explicitly resolved by Section 123 of the Act are still open for comment. For example, Section 123 of the Act directs the state of Alaska and the secretary of the interior to develop a cooperative management plan (see Section 123 (a)(1), at the end of **SUPPLEMENTARY INFORMATION**). The proposed rule also contemplated such a plan. As cooperative management is envisioned, the state would continue its role in management of commercial fisheries and NPS would contribute expertise in protection of park purposes and values; both state and federal agencies could jointly develop appropriate marine research projects. NPS seeks public comments and ideas on federal-state cooperative management to help federal and state officials begin their discussions. However, details of cooperative management will not be included in the final rulemaking because such details will be developed cooperatively with the state of Alaska.

The proposed rule (including the preamble) raises other issues not addressed by the Act, such as proposals to develop a Hoonah Tlingit cultural fishery and consider fisheries research opportunities. NPS acknowledges that some issues raised in the proposed rule may be more appropriately considered in development of a cooperative management plan with the state of Alaska. NPS will review all comments received to date on the proposed rule and EA and encourages additional comments in light of the new legislation. In addition to being published in the **Federal Register**, this notice is being mailed to all 1,300+ individuals who have already provided comment on the proposed rule. Consequently, all commenters have an opportunity to provide new or additional comments.

The full text of Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Pub. L. 105–277) is provided below.[11]

[11] Note: The text of section 123 is provided for the convenience of the reader. The official version of section 123 appears in Pub. L. 105–277, 112 Stat. 2681.

COMMERCIAL FISHING IN GLACIER BAY NATIONAL PARK

SEC. 123. (a) GENERAL—

(1) The Secretary of the Interior and the State of Alaska shall cooperate in the development of a management plan for the regulation of commercial fisheries in Glacier Bay National Park pursuant to existing State and Federal statutes and any applicable international conservation and management treaties. Such management plan shall provide for commercial fishing in the marine waters within Glacier Bay National Park outside of Glacier Bay Proper, and in the marine waters within Glacier Bay Proper as specified in paragraphs (a)(2) through (a)(5), and shall provide for the protection of park values and purposes, for the prohibition of any new or expanded fisheries, and for the opportunity for the study of marine resources.

(2) In the nonwilderness waters within Glacier Bay Proper, commercial fishing shall be limited, by means of non-transferable lifetime access permits, solely to individuals who—

(A) Hold a valid commercial fishing permit for a fishery in a geographic area that includes the nonwilderness waters within Glacier Bay Proper;

(B) Provide a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that such individual engaged in commercial fishing for halibut, Tanner crab, or salmon in Glacier Bay Proper during qualifying years which shall be established by the Secretary of the Interior within one year of the date of the enactment of this Act; and

(C) Fish only with—

(i) Longline gear for halibut;

(ii) Pot or ring nets for Tanner crab; or

(iii) Trolling gear for salmon.

(3) With respect to the individuals engaging in commercial fishing for Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the West Arm of Glacier Bay Proper (West Arm) north of 58 degrees, 50 minutes north latitude except for trolling for king salmon during the period from October 1 through April 30. The waters of Johns Hopkins Inlet, Tarr Inlet and Reid Inlet shall remain closed to all commercial fishing.

(4) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in the East Arm of Glacier Bay Proper (East Arm) north of a line drawn from Point Caroline, through the southern end of Garforth Island to the east side of the Muir Inlet, except that trolling for king salmon during the period from October 1 through April 30 shall be allowed south of a line drawn across Muir Inlet at the southernmost point of Adams Inlet.

(5) With respect to the individuals engaging in commercial fishing in Glacier Bay Proper pursuant to paragraph (2), no fishing shall be allowed in Geikie Inlet.

(b) THE BEARDSLEE ISLANDS AND UPPER DUNDAS BAY.—Commercial fishing is prohibited in the designated wilderness waters within Glacier Bay National Park and Preserve, including the waters of the Beardslee Islands and Upper Dundas Bay. Any individual who—

(1) On or before February 1, 1999, provides a sworn and notarized affidavit and other available corroborating documentation to the Secretary of the Interior sufficient to establish that he or she has engaged in commercial fishing for Dungeness crab in the designated wilderness waters of the Beardslee Islands or Dundas Bay within Glacier Bay National Park pursuant to valid commercial fishing permit in at least six of the years during the period 1987 through 1996;

(2) At the time of receiving compensation based on the Secretary of the Interior's determination as described below—

(A) Agrees in writing not to engage in commercial fishing for Dungeness crab within Glacier Bay Proper;

(B) Relinquishes to the State of Alaska for the purposes of its retirement any commercial fishing permit for Dungeness crab for areas within Glacier Bay Proper;

(C) At the individual's option, relinquishes to the United States the Dungeness crab pots covered by the commercial fishing permit; and

(D) At the individual's option, relinquishes to the United States the fishing vessel used for Dungeness crab fishing in Glacier Bay Proper; and

(3) Holds a current valid commercial fishing permit that allows such individual to engage in commercial fishing for Dungeness crab in Glacier Bay National park, shall be eligible to receive from the United States compensation that is the greater of (i) $400,000, or (ii) an amount equal to the fair market value (as of the date of relinquishment) of the commercial fishing permit for Dungeness crab, of any Dungeness crab pots or other Dungeness crab gear, and of not more than one Dungeness crab fishing vessel, together with an amount equal to the present value of the foregone net income from commercial fishing for Dungeness crab for the period January 1, 1999 through December 31, 2004, based on the individual's net earnings from the Dungeness crab fishery during the period January 1, 1991 through December 31, 1996. Any individual seeking such compensation shall provide the consent necessary for the Secretary of the Interior to verify such net earnings in the fishery. The Secretary of the Interior's determination of the amount to be paid shall be completed and payment shall be made within six months from the date of the application by the individuals described in this subsection and shall constitute final agency action subject to review pursuant to the Administrative Procedures Act in the United States District Court for the District of Alaska.

(c) DEFINITION AND SAVINGS CLAUSE.—

(1) As used in this section, the term ''Glacier Bay Proper'' shall mean the marine waters within Glacier Bay, including coves and inlets, north of a line drawn from Point Gustavus to Point Carolus.

(2) Nothing in this section is intended to enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within the boundaries of Glacier Bay National Park, or the tidal or submerged lands under any provision of State or Federal law.

Dated: December 4, 1998.

John Quinley,

Acting Regional Director, Alaska.

[FR Doc. 98–32997 Filed 12–10–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Dungeness Crab Commercial Fishery Compensation Program Application Procedures

AGENCY: National Park Service, Interior.

ACTION: Glacier Bay National Park Dungeness crab commercial fishery compensation program application procedures.

SUMMARY: Section 123 (b) (1)—(3) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999Act (''the Act'')(see **SUPPLEMENTARY INFORMATION** in the document extending the comment period on Glacier Bay National Park commercial fishing proposed rules published elsewhere in this issue of the **Federal Register**) authorizes compensation for qualifying fishermen with a history of commercial Dungeness crab fishing in designated wilderness waters of the Beardslee Islands or Dundas Bay in at least six of the years during the period of 1987 through 1996. This **Federal Register** notice serves to provide application instructions for individuals who believe they qualify for compensation as outlined by the Act. Applications must be provided to the Superintendent, Glacier Bay National Park and Preserve, on or before February 1, 1999.

DATES: Applications for the Dungeness crab commercial fishery compensation program will be accepted on or before February 1, 1999.

ADDRESSES: Applications for the Dungeness crab commercial fishery compensation program should be submitted to the Superintendent, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826

FOR FURTHER INFORMATION CONTACT: For information regarding the Dungeness crab commercial fishery compensation program, please contact Randy King, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Phone: (907) 697–2230.

SUPPLEMENTARY INFORMATION: The Act requires fishermen to provide certain information sufficient to determine their eligibility for compensation. Fishermen making application to NPS for compensation, as outlined by the Act, must provide the following information to the Superintendent: (1) Full name, mailing address, and a contact phone number. (2) A sworn and notarized personal affidavit attesting to the applicant's history of participation in the Beardslee Island or Dundas Bay wilderness water commercial fisheries for Dungeness crab for at least 6 of 10 years, during the period of 1987 through1996. (3) A copy of the fisherman's current state of Alaska Dungeness crab commercial fishing permit. (4) Any available corroborating information—including sworn and notarized affidavits of witnesses or documentation of commercial Dungeness crab landings from the Alaska Department of Fish and Game shellfish statistical units that include wilderness areas in the Beardslee Islands or Dundas Bay—that can assist in a determination of eligibility for compensation.

The superintendent will make a written determination on eligibility for compensation based on the information provided by the applicant. The superintendent will also make a written determination on the amount of compensation to be paid to an eligible applicant. The amount of compensation will depend on the compensation formula and options selected by the applicant and—as appropriate—the fair market values of the Dungeness crab commercial fishing permit and the fishing vessel and gear used in the fishery. The Act requires payment within six months from the date of application. If an application for compensation is denied, the superintendent will provide the reasons for the denial in writing. Any applicant adversely affected by the superintendent's determination may appeal to the regional director, Alaska region, within 60 days. Applicant's must substantiate the basis of their disagreement with the superintendent's determination. The regional director will provide opportunity for an informal oral hearing. After consideration of written materials and oral hearing, if any, and within a reasonable time, the regional director will affirm, reverse, or modify the superintendent's determination and set forth in writing the basis for the decision. A copy of the decision will be forwarded promptly to the applicant and will constitute final agency action.

Dated: December 4, 1998.

John Quinley,

Acting Regional Director, Alaska.

[FR Doc. 98–32998 Filed 12–10–98; 8:45 am]

BILLING CODE BILLING CODE: 4310–70–P

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A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.