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Title 3—

The President

Presidential Determination No. 2000–31 of September 28, 2000

Transfer of Economic Support Funds, Peacekeeping Operations Funds, and Foreign Military Financing Funds to the International Organizations and Programs Account and Use of Funds to Provide a U.S. Contribution of $29,407,000 to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby determine that it is necessary for the purposes of the Act that:

- $2.466 million in funds made available pursuant to chapter 6 of part II of the Act for fiscal year 2000;
- $2 million in funds made available pursuant to chapter 4 of part II of the Act for prior fiscal years; and
- $1.534 million in funds made available pursuant to section 23 of the Arms Export Control Act, as amended, for fiscal year 2000,

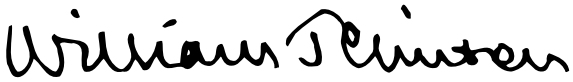
be transferred to, and consolidated with, funds made available for chapter 3 of part I of the Act.

In addition, pursuant to the authority vested in me by section 614(a)(1) of the Act, I hereby determine that it is important to the security interests of the United States to furnish up to:

- $20,307,000 in funds made available under the title II (Nonproliferation, Anti-Terrorism, Demining, and Related Programs) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as enacted in Public Law 106–113; and
- $9.1 million in funds made available pursuant to chapter 3 of part I of the Act for fiscal year 2000, comprised of $6 million in funds transferred pursuant to this determination and $3.1 million in funds otherwise available pursuant to chapter 3 of part I of the Act,

for assistance to KEDO without regard to any provision of law within the scope of section 614(a)(1) of the Act. I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 28, 2000.

[FR Doc. 00–25959
Filed 10–5–00; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 2000–32 of September 29, 2000

Presidential Determination on FY 2001 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), as amended, and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 80,000 refugees to the United States during FY 2001 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2001 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 80,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 2001 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa	20,000
East Asia	6,000
Eastern Europe	20,000
Former Soviet Union	17,000
Latin America/Caribbean	3,000
Near East/South Asia	10,000
Unallocated	4,000

The 4,000 unallocated numbers shall be allocated as needed to regional ceilings where shortfalls develop. Unused admissions numbers allocated to a particular region may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such use of the unallocated numbers or reallocation of numbers from one region to another.

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 2001 for the adjustment to permanent resident status under section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

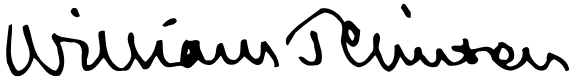
In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 2001, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam

b. Persons in Cuba

c. Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 29, 2000.

[FR Doc. 00–25960
Filed 10–5–00; 8:45 am]
Billing code 4710–10–M

Presidential Documents

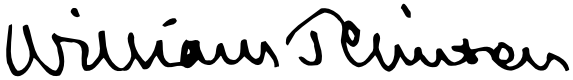
Presidential Determination No. 2000–33 of September 29, 2000

Military Drawdown for Tunisia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including Title III (Foreign Military Financing) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as enacted in Public Law 106–113 (Title III), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, and military education and training of the aggregate value of $4 million for Tunisia, consistent with the authority provided under Title III, for the purposes of part II of the Foreign Assistance Act of 1961.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 29, 2000.

[FR Doc. 00–25961
Filed 10–5–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 65, No. 195
Friday, October 6, 2000

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–135–AD; Amendment 39–11919; AD 2000–20–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that requires, for certain airplanes, inspection(s) to detect cracks of the doorjamb corners and follow-on actions. For certain other airplanes, this AD requires installation of a preventative modification; an inspection to detect cracks at the corners of the doorjambs of the passenger and service doors; and follow-on actions. This amendment is prompted by reports indicating that fatigue cracks were found in the fuselage skin and doublers at the corners of the doorjambs of the passenger and service doors. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Effective November 13, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes was published in the **Federal Register** on November 4, 1999 (64 FR 60134). For certain airplanes, that action proposed to require inspection(s) to detect cracks of the doorjamb corners and follow-on actions. For certain other airplanes, that AD also proposed to require installation of a preventative modification; an inspection to detect cracks at the corners of the doorjambs of the passenger and service doors; and follow-on actions.

Comments

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

Support for Proposed AD

One commenter supports the proposed AD.

Request to Revise a Certain Compliance Time

One commenter requests that paragraph (e) of the proposed AD be revised to include an inspection threshold that can be scheduled from the effective date of this AD. The commenter states that such a threshold would accommodate Group 4 airplanes that have unknown cycles accumulated since accomplishment of the modification.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the inspection. In addition, the compliance time of ''within 17,000 landings following accomplishment of the modification specified in the service bulletin'' is based on a damage tolerance assessment of the affected structure. Because the reported cracking was caused by fatigue related stress (as discussed in the preamble of the proposed AD), the FAA finds that airplanes that have accumulated unknown hours on the modification must be inspected at the earliest possible time to ensure no cracks have initiated since installation of the modification, which may have been accomplished more than 17,000 flight hours ago. In consideration of these items, the FAA has determined that 17,000 landings following accomplishment of the modification specified in the service bulletin represents an appropriate interval of time allowable wherein the inspection can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. However, under the provisions of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 294 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry will be affected by this AD.

Should an operator be required to accomplish the inspection(s), it will take 48 (Group 1 airplanes) and 74 (all other groups of airplanes) work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact

of the inspection(s) required by this AD on U.S. operators is estimated to be $2,880 (Group 1 airplanes) and $4,440 (all other groups of airplanes) per airplane, per inspection cycle.

Should an operator be required or elect to accomplish the preventative modification, it will take approximately 1,440 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,000 per airplane. Based on these figures, the cost impact of the preventative modification by this AD on U.S. operators is estimated to be $88,400 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–20–08 McDonnell Douglas: Amendment 39–11919. Docket 98–NM–135–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin and doublers at the corners of the doorjambs of the passenger and service doors, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words ''repair'' and ''modify/modification'' in this AD and in the referenced service bulletin are used interchangeably.

Note 4: This AD is related to AD 93–01–15, amendment 39–8469, and will affect Principal Structural Elements (PSE) 53.08.038, 53.08.039, 53.08.040, and 53.08.041 of the DC–8 Supplemental Inspection Document (SID), Report L26–011, Volume I, Revision 3, dated March 1991.

Group 1 Airplanes: Initial Inspection and Follow-on or Corrective Actions

(a) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, perform the applicable inspection(s) to detect cracks of the doorjamb corners in accordance with the service bulletin.

(1) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the applicable inspection(s) required by paragraph (a) of this AD thereafter at intervals specified for Group 1 airplanes in paragraph 1.E. of the service bulletin; or accomplish the preventative modification in accordance with the service bulletin. Accomplishment of the preventative modification constitutes terminating action for the repetitive inspection requirements of this paragraph.

(2) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

Group 1 Airplanes: Actions Following Accomplishment of Preventative Modification or Repair

(b) Within 17,000 landings following accomplishment of the modification/repair required by either paragraph (a)(1) or (a)(2) of this AD, perform an inspection to detect cracks of the doorjamb corners, in accordance with McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

Group 2 Airplanes: Preventative Modification, Inspection(s), and Repair, If Necessary

(c) For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, accomplish the preventative modification in accordance with the service bulletin. Within 17,000 landings following accomplishment of the preventative modification, perform an inspection to detect cracks of the doorjamb corners, in accordance with the service bulletin.

(1) If no crack is detected during any inspection required by paragraph (c) of this AD, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected during any inspection required by paragraph (c) of this AD, prior to further flight, repair it in accordance the service bulletin, except as provided by paragraph (f) of this AD.

Group 3 Airplanes: Revision of Maintenance or Inspection Program

(d) For airplanes identified as Group 3 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 6 years following accomplishment of the permanent repair or within 3 years after the effective date of this AD, whichever occurs later, revise the FAA-approved maintenance or inspection program to include an

inspection program for the doorjamb corners identified in the service bulletin. The new inspection program shall be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 5: Requests for approval of inspection procedures of the permanent repairs that are proposed for inclusion in the FAA-approved maintenance or inspection program, as required by this AD, should include a damage tolerance assessment.

Group 4 Airplanes: Inspection(s) and Repair, If Necessary

(e) For airplanes identified as Group 4 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 17,000 landings following accomplishment of the modification specified in the service bulletin, perform an inspection to detect cracks of the doorjamb corners, in accordance with the service bulletin.

(1) If no crack is detected during any inspection required paragraph (e) of this AD, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected during any inspection required by paragraph (e) of this AD, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

Exception to Procedures Specified in the Referenced Service Bulletin

(f) Where McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraphs (d) and (f) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25432 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–308–AD; Amendment 39–11920; AD 2000–20–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Powered by Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires modification of the nacelle strut and wing structure. This amendment is prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in primary strut structure prior to an airplane reaching its design service objective. The actions specified by this AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

DATES: Effective November 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on June 7, 2000 (65 FR 36095). That action proposed to require modification of the nacelle strut and wing structure.

Comments

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

One commenter supports the proposed rule.

One commenter states that it does not operate Boeing Model 757 series airplanes powered by Pratt & Whitney engines and is not affected by the proposed rule.

Contact Manufacturer for Approval of Repairs

One commenter states that the instructions specified in paragraph (c) of the proposal do not clearly identify who should be contacted if any damage to the airplane structure is found during accomplishment of the modification referenced in the proposal. The commenter states that, based on instructions in Boeing Service Bulletin 757–54–0034, and the fact that the manufacturer is more knowledgeable about the modifications necessary; paragraph (c) should be revised to include contacting the manufacturer for repair of any damage.

The FAA concurs with the commenter's request, however, although Boeing Service Bulletin 757–54–0034 specifies that the manufacturer may be contacted for disposition of certain damage conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office

(ACO), FAA, or data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the FAA to make such findings. Paragraph (c) of this final rule has been revised to add Boeing DER approval for repairs.

Conclusion

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

Cost Impact

There are approximately 317 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry will be affected by this AD.

It will take approximately 800 work hours per airplane to accomplish the required modification of the nacelle strut and wing structure described in Boeing Service Bulletin 757–54–0034, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this required modification on U.S. operators is estimated to be $13,344,000, or $48,000 per airplane.

It will take approximately 26 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0027, Revision 1, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $433,680, or $1,560 per airplane.

It will take approximately 90 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0036, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $1,501,200, or $5,400 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–20–09 Boeing: Amendment 39–11920. Docket 99–NM–308–AD.

Applicability: Model 757 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 735 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Modifications

(a) Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 757–54–0034, dated May 14, 1998, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since the date of manufacture, whichever occurs first. Use of the optional threshold formula described in paragraph I.D. of the service bulletin is an acceptable alternative to the 20-year threshold.

(2) Within 3,000 flight cycles after the effective date of this AD.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph I.D., Table I, ''Strut Improvement Bulletins,'' on page 5 of Boeing Service Bulletin 757–54–0034, dated May 14, 1998; accomplish the actions specified in Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994, and Boeing Service Bulletin 757–54–0036, dated May 14, 1998, as applicable, in accordance with those service bulletins.

Repair

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 757–54–0034, dated May 14, 1998; Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994; and Boeing Service Bulletin 757–54–0036, dated May 14, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25433 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–29–AD; Amendment 39–11918; AD 2000–20–07]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 1900, 1900C, and 1900D airplanes. This AD requires you to modify the cockpit voice recorder (CVR) system. This AD is the result of instances where the recording quality of the CVR in the affected airplanes was so poor that the information was practically unrecoverable. The actions specified by this AD are intended to correct substandard quality cockpit voice recordings caused by the configuration of the present CVR system, which could affect air safety if important information that the CVR provides is not available after an accident. This information helps determine the probable cause of an accident and aids in developing necessary corrective action or design changes to prevent future accidents.

DATES: This AD becomes effective on November 22, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of November 22, 2000.

ADDRESSES: You may get the service information referenced in this AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556.

You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harvey E. Nero, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4137; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What caused this AD? The FAA has received reports of six instances where the recording quality of the cockpit voice recorder (CVR) system in Raytheon Beech Models 1900, 1900C, and 1900D airplanes was so poor that the information was practically unrecoverable.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 1900, 1900C, and 1900D. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 14, 2000 (65 FR 37311). The NPRM proposed to require you to modify the cockpit voice recorder (CVR) system.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Raytheon Recommended Service Bulletin SB 23–3094, Issued: November, 1999.

What is the potential impact if FAA took no action? This condition, if not corrected, could affect air safety if important information that the CVR provides is not available after an accident. This information helps determine the probable cause of an accident and aids in developing necessary corrective action or design changes to prevent future accidents.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the concerns received on the proposal and FAA's response to these concerns:

Comment Disposition

What is the commenter's concerns? The commenter requests that FAA:

- Clearly define in the AD that the CVR must be installed and not just the incorporation of a kit; and
- Identify all affected CVR's by manufacturer or model number.

The commenter operates several of the affected airplanes in a configuration of freight-only, single pilot. These airplanes incorporate supplemental type certificates that allow operation with nine or fewer passengers and freight conversions. Under section 135.151 of the Federal Aviation Regulations (14 CFR 135.151), this operator does not have to operate with a CVR. The commenter believes that FAA could eliminate confusion as to whether the AD applied if the Applicability of the AD was written to specify that the CVR must be installed. Then, if you installed the CVR in the future, you would have to comply with the AD.

The commenter believes that identifying the CVR by manufacturer or model number would also clarify the Applicability of the AD.

What is FAA's Response to the Concerns? We concur that specifying that the CVR must be installed would clarify the Applicability of the AD. We have changed the wording in the final rule accordingly.

We do not concur with including the manufacturer or model number of the CVR in the Applicability of the AD. The intent of the AD is to modify the configuration of the CVR system, which includes the wiring and audio amplifier.

The AD applies regardless of the CVR unit make and model that is installed.

The FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the change discussed above and minor editorial changes. These changes provide the intent that was proposed in the NPRM for correcting the unsafe condition and do not impose any additional burden than what was intended in the NPRM.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is ''within 12 months after the effective date of this AD.''

Why is the compliance in calendar time instead of hours time-in-service (TIS)? The unsafe condition defined in this document is not a result of the number of times the airplane is operated, rather is a result of the present configuration of the CVR system. The chance of this situation occurring is the same for an airplane with 100 hours time-in-service (TIS) as it is for an airplane with 1,000 hours TIS. For this reason, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Cost Impact

What is the cost impact of this AD on owners/operators of the affected airplanes? The following chart provides estimates of the cost this AD would impose upon the public:

Action	No. of airplanes affected	Labor costs	Parts cost	Cost impact
Replacement/Incorporation of Modification kit.	119	8 workhours at $60 per hour=$480 per airplane.	$1,728	$262,752, or $2,208 per airplane.
Audio Amplifier Modification and Electrical Wiring Changes.	377	8 workhours at $60 per hour=$480 per airplane.	679	$436,943, or $1,159 per airplane.

Regulatory Impact

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

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–20–07 Raytheon Aircraft Company (The Beech Aircraft Corporation previously held Type Certificate No. A24CE): Amendment 39–11918; Docket No. 2000–CE–29–AD.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are certificated in any category and are required to have a cockpit voice recorder (CVR) installed:

Models	Serial No.
1900 and 1900C	All serial number airplanes with the applicable Raytheon Aircraft Company (RAC) Kit No. 114–3020 variation (−1, −3, −7, or −9) incorporated.
1900 and 1900C	All serial number airplanes with RAC Kit No. 114–3032–1 incorporated.
1900 and 1900C	All serial number airplanes with RAC Kit No. 114–3008–1 incorporated.
1900 and 1900C	All serial number airplanes where RAC installed the CVR.
1900D	UE–1 through UE–376.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified in this document are intended to correct substandard quality cockpit voice recordings caused by the configuration of the present CVR system, which could affect air safety if important information that the CVR provides is not available after an accident. This information helps determine the probable cause of an accident and aids in developing necessary corrective action or design changes to prevent future accidents.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Action	Compliance time	Procedures
(1) Accomplish the CVR system modifications specified in Raytheon Recommended Servcie Bulletin SB 23–3094, Issued: November, 1999.	Within 12 months after the effective date of this AD.	Do the modifications in accordance with procedures in the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Recommended Service bulletin SB 23–3094, Issued: November, 1999.
(2) Do not install a CVR on any of the affected airplanes without incorporating the modifications required by paragraph (d)(1) of this AD.	As of the effective date of this AD.	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You may contact Harvey Nero, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4137; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Recommended Service Bulletin SB 23–3094, Issued: November, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on November 22, 2000.

Issued in Kansas City, Missouri, on September 26, 2000.

Michael K. Dahl,

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

[FR Doc. 00–25148 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–329–AD; Amendment 39–11915; AD 2000–20–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document supersedes an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model MD–90–30 series airplanes. That AD currently requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. The actions specified in that AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight. This amendment is prompted by the Federal Aviation Administration's determination that the existing AD must be revised to ensure that the requirements apply to the appropriate airplane groups.

DATES: Effective November 13, 2000.

The incorporation by reference of McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of November 13, 2000.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 19, 2000 (65 FR 49728, August 15, 2000).

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On August 3, 2000, the Federal Aviation Administration (FAA) issued AD 2000–16–01, amendment 39–11855 (65 FR 49728, August 15, 2000), which applies to certain McDonnell Douglas Model MD–90–30 series airplanes. That AD requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. That AD was prompted by reports of complete loss of the primary electrical power on an airplane during flight. The actions required by that AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight.

Need for the Correction

In the preamble of AD 2000–16–01, the FAA indicated that a supplemental notice of proposed rulemaking (NPRM) was published in the **Federal Register** on June 12, 2000 (65 FR 36799). After careful review of the available data, including the comments received from the public, the FAA determined that air safety and the public interest required the adoption of the rule as proposed in the supplemental NPRM. However, the FAA inadvertently included the requirements from the original NPRM (64 FR 68302, December 7, 1999) in the final rule, rather than the requirements specified in paragraphs (a) and (b) of the supplemental NPRM. The effect of this error is that operators of certain airplanes are not required to accomplish actions that apply to those airplanes,

and that certain actions are to be accomplished in accordance with a method approved by the FAA, rather than a specific service bulletin. Therefore, consistent with the FAA's intent in the supplemental NPRM, this correction is necessary to require operators of specific airplanes to replace certain ground block screws with new screws and to reterminate the circuit ground wires of the EPCU to separate grounding points.

These actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999; and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; as applicable. The FAA inadventently omitted McDonnell Douglas Service Bulletin MD90–24–062 from the incorporation by reference paragraph and is incorporating by reference that service bulletin in this final rule.

Correction of Publication

Action is taken herein to correct these inadvertent errors in AD 2000–16–01 and to correctly add this AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The AD is reprinted in its entirety for the convenience of affected operators.

Since this action only corrects current requirements, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11855 (65 FR 49728, August 15, 2000), and by adding a new airworthiness directive (AD), amendment 39-, to read as follows:

2000–20–04 McDonnell Douglas: Amendment 39–11915. Docket 99–NM–329–AD. Supersedes AD 2000–16–01, Amendment 39–11855.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a loose electrical ground block of the circuit ground wires of the electrical power control unit (EPCU), accomplish the following:

Replacement

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999: Within 30 days after the effective of this AD, replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999.

Note 2: Accomplishment of the replacement of electrical ground block screws prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, dated July 28, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Modification of the Electrical Power Control Unit

(b) For airplanes listed in McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000: Within 12 months after the effective date of this AD, reterminate the circuit ground wires of the EPCU to separate grounding points to ensure that a single point failure does not occur, in accordance with McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999; and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; as applicable.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, was approved previously by the Director of the Federal Register as of September 19, 2000 (65 FR 49728, August 15, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25149 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–356–AD; Amendment 39–11916; AD 2000–20–05]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to certain EMBRAER Model EMB–120 series airplanes, that requires revising the Airplane Flight Manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics.

DATES: Effective November 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on April 17, 2000 (65 FR 20388). That action proposed to require revising the Airplane Flight Manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and corrective action, if necessary.

Comments

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

Change Made to the Final Rule

Since the issuance of the proposed AD, the FAA has determined that the installation required by paragraph (c) must be accomplished only in accordance with EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997, after the effective date of this AD. (EMBRAER Service Bulletin 120–32–0077, Change 01, dated September 25, 1997; and EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997, were cited as the appropriate sources of service information in the proposed AD.) The final rule has been changed accordingly, and a new Note 2 has been added to give credit for accomplishment of the installation in paragraph (c) prior to the effective date of this AD in accordance with EMBRAER Service Bulletin 120–32–0077, Change 01, dated September 25, 1997.

Conclusion

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

Cost Impact

The FAA estimates that 213 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to incorporate the applicable AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AFM revision required by this Ad on U.S. operators is estimated to be $12,780, or $60 per airplane.

It will take approximately 1 work hour per airplane to perform the visual inspection of the check valve, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $60 per airplane.

It will take approximately 2 work hours per airplane to install the hydraulic tube assemblies incorporating a check valve, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,021 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $2,141 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–20–05 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11916. Docket 99–NM–356–AD.

Applicability: Model EMB–120 series airplanes as listed in EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 10 flight hours after the effective date of this AD, revise the ''Emergency Procedures'' and ''Abnormal Procedures'' sections of the FAA-approved AFM by inserting into the AFM a copy of EMB–120 AFM 120/794, Revision 45, dated October 14, 1996.

(b) For airplanes on which the check valve has been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997: Within 100 hours after the effective date of this AD, conduct a visual inspection to detect the check valve flow direction in accordance with Service Bulletin 120–32–0077, Change 02, dated December 23, 1997. If the check valve is installed incorrectly, prior to further flight, reinstall the check valve in the proper position in accordance with Change 02 of the service bulletin.

(c) For airplanes on which the check valve has not been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997; or Change 01, dated September 25, 1997; or Change 02, dated December 23, 1997: Within 2,000 flight hours after the effective date of this AD, install hydraulic tube assemblies incorporating a check valve in accordance with Service Bulletin 120–32–0077, Change 02, dated December 23, 1997.

Note 2: Accomplishment of the installation in accordance with EMBRAER Service Bulletin 120–32–0077, Change 01, dated September 25, 1997, prior to the effective date of this AD, is acceptable for compliance with this paragraph.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997. EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 11, 12	02	December 23, 1997.
3–10	01	September 25, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 97–05–03R2, dated March 16, 1998.

Effective Date

(g) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25150 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–26–AD; Amendment 39–11902; AD 2000–19–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) AD 2000–19–01 that was published in the **Federal Register** on September 20, 2000 (65 FR 56780). The typographical error resulted in failure to reference an acceptable method of compliance for a certain requirement. This AD is applicable to certain Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) series airplanes. This AD requires modification of the main landing gear (MLG) brake units and inboard MLG wheels; and a revision to the Airplane Flight Manual (AFM) to include the increased cooling times for the modified brakes. This AD allows, for certain cases, removal of the inboard and/or outboard wheel discs by installation of a placard to limit airplane operation on the ground and a revision to the AFM to include information for operating the airplane with the wheel discs removed. Additionally, this AD provides for an

acceptable method of compliance that involves installation of a new revision to the AFM.

DATES: Effective October 25, 2000.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2000–19–01, amendment 39–11902, applicable to certain Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) series airplanes, was published in the **Federal Register** on September 20, 2000 (65 FR 56780). That AD requires modification of the main landing gear (MLG) brake units and inboard MLG wheels; and a revision to the Airplane Flight Manual (AFM) to include the increased cooling times for the modified brakes. That AD allows, for certain cases, removal of the inboard and/or outboard wheel discs by installation of a placard to limit airplane operation on the ground and a revision to the AFM to include information for operating the airplane with the wheel discs removed. Additionally, that AD provides for an acceptable method of compliance that involves installation of a new revision to the AFM.

As published, paragraph (d) of the existing AD specifies that installation of a specific AFM revision is acceptable for compliance with the requirements of paragraphs (a) and (b) of that AD. The FAA inadvertently did not specify that installation of a specific AFM revision is also acceptable for compliance with the requirements of paragraph (c) of that AD.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains October 25, 2000.

§ 39.13 [Corrected]

On page 56782, in the second column, paragraph (d) of AD 2000–19–01 is corrected to read as follows:

* * * * *

(d) For all airplanes: Installation of the AFM revision specified in either paragraph (d)(1) or (d)(2) of this AD, as applicable, is acceptable for compliance with the requirements of paragraphs (a), (b), and (c) of this AD, as applicable.

(1) Bombardier Model CL–600–1A11 (CL–600) AFM Revisions A84 and 76, both dated February 7, 2000; or

(2) Bombardier Model CL600–2A12 (CL–601) AFM Revisions 45, 48, 50, and 86, all dated February 7, 2000.

* * * * *

Issued in Renton, Washington, on October 2, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25684 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–28]

Amendment of Class E Airspace; Picayune, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Picayune, MS. Picayune—Pearl River County Airport has closed and a new airport has been established approximately 3.5 miles southeast of the Picayune—Pearl River County Airport site. The name of the new airport is Picayune Municipal Airport. Area Navigation (RNAV) Runway (RWY) 18 and RWY 36 Standard Instrument Approach Procedures (SIAPs) have been developed for Picayune Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs at Picayune Municipal Airport. This action also changes the name of the airport in the airspace description from Picayune—Pearl River County to Picayune Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On August 18, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Picayune, MS, (65 FR 50470) to contain the RNAV RWY 18 and 39 SIAPs developed for the Picayune Municipal Airport. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 15 CFR 71.1, dated September 1, 1999. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Picayune, MS. This action also changes the name of the airport in the airspace description from Picayune—Pearl River County to Picayune Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ASO MS E5 Picayune, MS [Revised]

Picayune Municipal Airport, MS
(Lat. 30°29′15″ N, long. 89°39′04″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Picayune Municipal Airport.

* * * * *

Issued in College Park, Georgia, on September 26, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–25695 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–14]

Modification of Class E Airspace; Harbor Springs, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Harbor Springs, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 10, and an RNAV SIAP to Rwy 28, have been developed for Harbor Springs Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing controlled airspace extending upward from 1,200 feet for Harbor Springs Airport.

EFFECTIVE DATE: 0901 UTC, November 30, 2000.

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

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Harbor Springs, MI (65 FR 25457). The proposal was to modify controlled airspace extending upward from the 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The City of Harbor Springs, MI, requested additional information on the impact of the proposal on the local community. Subsequent communication between the city manager of Harbor Springs, MI, and the Chicago Flight Procedures Office, AVN–140B, satisfactorily provided that information. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 72 modifies Class E airspace at Harbor Springs, MI, to accommodate aircraft executing instrument flight procedures into and out of Harbor Springs Airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR PART 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by references in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AGL MI E5 Harbor Springs, MI [Revised]

Harbor Springs Airport, MI
(Lat. 45°25′32″ N., long. 84°54′48″ W).
Pellston VORTAC
(Lat. 45°37′50″ N., long. 84°39′51″ W).
Sault Ste Marie, Chippewa County International Airport, MI
(Lat. 46°15′03″ N., long. 84°28′21″ W).

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Harbor Springs Airport and the airspace extending upward from 1,200 feet above the surface within an area bounded on the north by latitude 46° 03′ 00″ N, on the northeast by the 22-mile radius of the Chippewa County International Airport, on the southeast by the 16.6-mile radius of the Pellston VORTAC, on the south by latitude 45°45′00″ N, and on the west by longitude 85°56′00″ W, excluding that airspace within V78, and the Manistique, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on September 21, 2000.

Douglas F. Powers,

Acting Manager, Air Traffic Division.

[FR Doc. 00–25639 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. FAA–00–7018; Amendment No. 187–11]

RIN 2120–AG17

Fees for FAA Services for Certain Flights; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On June 6, 2000, the FAA published an Interim Final Rule (IFR) establishing fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States and invited comments for a 120-day period. The IFR went into effect on August 1, 2000, and the comment period was originally scheduled to close on October 4, 2000. However, the FAA is extending the comment period to October 27, 2000, to ensure that affected entities(mostly foreign) have sufficient time to comment on the contents of the docket.

DATES: Comments must be received on or before October 27, 2000.

ADDRESSES: Address your comments to the Docket Management System (DMS), U.S. Department of Transportation, Room Plaza Level 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number ''FAA–00–7018'' at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov.

You may review the public docket containing comments to this interim rule in person in the Dockets Office between 9 a.m. and 5 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: Randall Fiertz, Office of Performance Management, (APF–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, 20591; telephone (202) 267–7140; fax (202) 493–4191.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the interim rule 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 interim rule are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this interim rule will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date. Late-filed comments will be considered to the extent practicable. The Interim Final Rule, as well as the Final Rule, may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–00–7018.'' The postcard will be date-stamped and mailed to the commenter.

Availability of Interim Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy 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. Make sure to identify the docket number of this rulemaking.

Extension of Comment Period

On June 6, 2000, the FAA published Amendment No. 187–11, Fees for FAA Services for Certain Flights (65 FR 36002). The FAA requested that comments to that document be submitted on or before October 4, 2000. The FAA has received and reviewed approximately 70 comments. In response to the extreme significance and international implications of this IFR, as expressed in the comments, FAA is extending the comment period to give affected entities (mostly foreign) additional time to comment on the contents of the docket. Also, the first billing under this rule has recently occurred and entities that may not have commented to date may desire to comment. This action provides the opportunity.

The FAA determines that extending the comment period is in the public interest and that good cause exists for taking this action. Accordingly, the comment period for Amendment No. 187–11 is extended until October 27, 2000. If possible, any comments received after this date will be considered by the FAA prior to any further action in this rulemaking.

Issued in Washington, DC, September 29, 2000.

Donna McLean,

Assistant Administrator for Financial Services.

[FR Doc. 00–25633 Filed 10–3–00; 2:42 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 101

[Docket No.: 000609172–0268–02]

RIN: 0607–AA33

Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. 141(c) and Availability of Other Population Information

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is issuing a final rule setting forth how the Bureau of the Census will carry out its responsibilities to report tabulations of population to States and localities pursuant to 13 U.S.C. 141(c) and in making available certain other population information.

DATES: This rule is effective November 6, 2000.

FOR FURTHER INFORMATION CONTACT: John H. Thompson, (301) 457–3946.

SUPPLEMENTARY INFORMATION: Through the Census Act, which is codified in title 13 of the United States Code, Congress has delegated to the Secretary of Commerce its broad constitutional authority over the decennial census (see U.S. Constitution Art. I, Sec. 2, Cl.3). On June 13, the Commerce Department issued a proposed rule that would set forth how the Bureau of the Census will carry out its responsibilities to report tabulations of population to States and localities pursuant to the Census Act. *See* 65 FR 38370 (June 20, 2000). The proposed rule would establish a process for the release of data to the States and codify the process by which a committee of senior career officials of the Census Bureau would advise the Director of the Census. In addition, the proposed rule contained a delegation of authority from the Secretary to the Director of the Census to make a determination regarding the methodology to be used in calculating the tabulations of population to be reported to States and localities pursuant to 13 U.S.C. 141(c). While the background and basis for the entire proposal were included in the June 20 publication and are not repeated here, this delegation of authority to the Director, in particular, was included in the proposed rule because the decision turns entirely on operational and methodological implementation within the scientific expertise of the Bureau of the Census, and it is important to avoid even the appearance that considerations other than those relating to statistical science are being taken into account.

Comments and Responses

Comments in Support of the Proposed Rule

The Department received 17 letters in support of the proposed rule. There were a total of 243 signatories to these letters. Comments included one letter signed by four former Directors of the Census Bureau; five letters with six signatories from statistical, social science, and survey research organizations; three letters with six signatories from universities or university-based research institutions; two letters signed by 69 Members of Congress; three letters with 15 signatories from national associations and organizations; two letters with two signatories from state or local government officials; and one letter with 141 signatories from a public interest organization.

Comment

Common to the letters in support of the proposed rule were the following two comments: (1) The decision on the use of statistically corrected redistricting and other non-apportionment data from Census 2000 is a technical/scientific decision that should be made by the Director of the Census upon the recommendation of his or her professional staff, and (2) the rule ensures that other, irrelevant considerations, especially those that are political in nature, do not affect the decision-making process. A number of comments stated agreement with the intent to ensure that politics do not dictate what should be a scientific decision. Others said the proposed rule sets forth a fair and unbiased procedure for making a vital decision on the release of statistically corrected redistricting and other non-apportionment data. Others viewed the release of the recommendation of the Executive Steering Committee for Accuracy and Coverage Evaluation (A.C.E.) Policy (ESCAP) to the public at the same time that it is delivered to the Director as helpful in ensuring that the proposed decision-making process is an open and transparent one.

Response

The Department notes the support for the proposal stated in these comments.

Comments in Opposition to the Proposed Rule

The Department received seven letters in opposition to the proposed rule. There were a total of 12 signatories to these letters. Two of these letters were signed by university officials; one letter was signed by six Members of Congress; two letters with two signatories from state government officials; one letter with one signatory from a non-profit legal organization; and one letter from a private individual.

Comment

Several of those commenting viewed the contents of the ''Accuracy and Coverage Evaluation—Statement on the Feasibility of Using Statistical Methods to Improve the Accuracy of Census 2000,'' 65 FR 38373–38398 (hereinafter, the Feasibility Statement), as evidence that the Census Bureau pre-judged the superior accuracy of the sampling-based counts.

Response

We regret this concern. To date, no decision has been reached. The Census Bureau has stated that it expects the statistically corrected data to be more accurate for non-apportionment uses of the data, including redistricting and for this reason it is implementing the Accuracy and Coverage Evaluation (A.C.E.) (see the Feasibility Statement). However, the Census Bureau will not determine whether it is appropriate to release statistically corrected redistricting data until it has brought its technical judgment to bear in assessing the available data to verify that its expectations have been met. The Census Bureau will consider operational data to validate the successful conduct of the A.C.E., assess whether the A.C.E. measurements of undercount are consistent with historical patterns of undercount and independent Demographic Analysis benchmarks, and review measures of quality. If the Census Bureau determines that incorporating the results of the survey would not improve the accuracy of the initial census counts, then the data without statistical correction would be released to meet the requirements of Pub.L. 94–171.

Comment

Several letters raised technical concerns regarding the use of statistical methods to correct the census and challenged the arguments set forth in the Feasibility Statement.

Response

These concerns or issues are beyond the scope of the rulemaking and will not be addressed specifically. However, as part of the evaluation process described in the proposed rule, these and other technical issues will be considered. Also, this fall, at a public meeting with outside statistical experts and other interested parties, the Census Bureau will provide additional information regarding the detailed analyses it plans to conduct as part of its decision-making process.

Comment

Two letters questioned the expertise of the National Academy of Sciences (NAS) panels that have been convened over this decade to review the planning and conduct of Census 2000. One questioned the expertise of the Secretary of Commerce's and the Census Bureau's advisory committees in their work relating to Census 2000.

Response

The NAS panels and the various advisory committees are composed of professionals with excellent credentials to review and provide advice on the planning and conduct of the decennial census. In particular, the NAS panel members are carefully selected from among the country's leading experts in

a wide variety of research fields, including statistical and survey methodology. The NAS has a long and distinguished history of advising the federal government on scientific and technical matters. With regard to the selection of advisory committee members, both the Secretary of Commerce and the Census Bureau went to great lengths to ensure that the committees possess well-documented expertise in a wide range of areas relating to the conduct of the decennial census, including, but not limited to, statistical and survey methodology.

Comment

Several letters indicated that the Census Bureau professional staff have a vested interest in the acceptance and use of the statistically derived counts. One stated that past Census Bureau judgments on adjustment issues lead one to question the agency's ability to reach the correct decision. In addition, one letter stated that the lack of review or input from independent scientific experts biases the decision making process.

Response

The senior professional officials who serve on the Executive Steering Committee for A.C.E. Policy (ESCAP) are distinguished, objective, career civil servants whose only interest is in producing the most reliable and accurate census data possible. Many of these individuals have been recognized by leading statistical organizations for their significant contributions in the areas of survey methodology and statistics in general. Based on their years of experience and expertise, these officials are best suited to bring their professional judgment and integrity to bear in reviewing all the available data and directing a comprehensive, scientifically-defensible analysis in making a recommendation on their findings to the Director regarding the use of the statistically corrected census data. The ESCAP's recommendation will be released publicly, at the same time that it is delivered to the Director, to demonstrate the thoroughness and integrity of the process for all interested parties.

Comment

One comment acknowledged that the Census Bureau committed itself to achieving an open and transparent planning and decision process, however, the writer considered Census Bureau reports and documentation, including the A.C.E. documentation, on statistical adjustment to be difficult to access because they were not catalogued to facilitate external access.

Response

The Census 2000 A.C.E. methodology has been pre-specified and documentation regarding the methodology has been disseminated through a variety of forums including the Census Bureau's website, public meetings, two public workshops sponsored by the National Academy of Sciences (October 6, 1999, and February 2–3, 2000), and at a May 19, 2000, hearing before the House Subcommittee on the Census. The Census Bureau will continue to make documentation relating to Census 2000 publicly available and available upon request.

Comment

One comment questioned whether the Secretary's proposed delegation of authority to the Director of the Census for making certain determinations concerning the census amounted to a divestiture of obligations vested in the Secretary by the Congress. The comment expressed three key concerns: (1) That the delegation of authority is, in fact, a ''divestiture'' of authority because the Secretary is seeking to escape responsibility for the decision of the Census Director by stating that the Secretary will not review or reverse that decision, (2) that by issuing a regulation that allegedly divests the Secretary of his statutory responsibility, the Secretary is attempting to supersede the statutory scheme passed by the Congress, and (3) that if ''the Commerce Secretary believes he cannot, or should not, be responsible for the final release of adjusted numbers, then he should ask that Congress remove the Census Bureau entirely from the Commerce Department and make it a separate agency.''

Response

The Department of Commerce considers Section 4 of Title 13, United States Code to clearly provide the Secretary authority to issue the proposed rule and to include in that proposal the delegation of authority at issue. That section provides that:

> The Secretary shall perform the functions and duties imposed upon him by this title, *may issue such rules and regulations as he deems necessary* to carry out such functions and duties, and *may delegate the performance of such functions and duties* and the authority to issue such rules and regulations to such officers and employees of the Department of Commerce as he may designate. (Emphasis added.)

This statutory language provides the Secretary with broad authority to take the steps he deems appropriate to carry out his responsibilities under the law, and that language does not establish limitations on the Secretary's ability to delegate the performance of his functions and duties under the Census Act. As such, the Secretary may delegate the authority to determine the methodology to be used in calculating the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c).

The delegation of authority contained in the Department's proposed rule is not an unlawful divestiture of the Secretary's statutory responsibility or authority because the delegation, if adopted in a final rule, would not be irrevocable. Thus, the current or any future Secretary of Commerce could revoke that delegation by issuing another final rule doing so. It is unassailable that a rule revoking the delegation would be effective, if it satisfied the requirements of the Administrative Procedure Act and other applicable legal standards. Further, the fact that the rule seeks to authorize the Director of the Census to make a determination under the Census Act, and states that the Director's decision would not be subject to review or reconsideration by the Secretary, does not mean the Secretary would escape responsibility for that determination. By establishing this delegation of authority by regulation, the Secretary is merely creating a transparent process for allowing a scientific determination to be made by scientists. However, the decision is being made on behalf of the Secretary. Inherent in the delegation of authority is the notion that the Secretary is responsible for the determination made by the head of the scientific bureau in which the particular knowledge and experience for making that determination lies. Nevertheless, in order to erase any doubt that the delegation of authority is not a divestiture of obligations or responsibility by the Secretary, text has been added to 15 CFR 101.1(a) that explicitly states that nothing in the rule diminishes the authority of the Secretary of Commerce to revoke this delegation of authority or relieves the Secretary of Commerce of responsibility for any decision made by the Director of the Census pursuant to this delegation, and that this rule shall remain in effect unless or until amended or revoked by the Secretary of Commerce.

Comment

One letter provided the Memorandum of Law in a case currently proceeding in the U.S. District Court for the District of Columbia (*Commonwealth of Virginia* v. *United States of America,* Case No.

1:00CV00751) stating that the memorandum demonstrates the rulemaking provides no real opportunity to provide meaningful comments.

Response

The Department considers the notice and comment associated with this rulemaking to be an appropriate venue for meaningful comment. With respect to the Memorandum of Law, the Department is not party to the case and, therefore, does not believe it appropriate to make any statement on the arguments presented.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined to be not significant under section 3(f) of Executive Order 12866.

Paperwork Reduction Act

This final rule contains no new information collection requests subject to the Paperwork Reduction Act.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. Thus, the factual basis for the certification has not changed. As such, a final regulatory flexibility analysis is not required, and none has been prepared.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 15 CFR Part 101

Administrative practice and procedure, Census data.

Dated: September 28, 2000.

Norman Y. Mineta,

Secretary of Commerce.

For the reasons set out in the preamble, 15 CFR Part 101 is added to read as follows:

PART 101—RELEASE OF DECENNIAL CENSUS POPULATION INFORMATION

101.1 Report of tabulations of population to states and localities pursuant to 13 U.S.C. 141(c).
101.2 Availability of other population information.

Authority: 5 U.S.C. 301; 13 U.S.C. 4, 141, 195; 15 U.S.C. 1512.

PART 101—RELEASE OF DECENNIAL CENSUS POPULATION INFORMATION

§ 101.1 Report of tabulations of population to states and localities pursuant to 13 U.S.C. 141(c).

(a)(1) The Director of the Census shall make the final determination regarding the methodology to be used in calculating the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c). The determination of the Director will be published in the **Federal Register**.

(2) All relevant authority of the Secretary of Commerce under 13 U.S.C. 141(c) and other applicable provisions of title 13 of the U.S. Code with respect to the decision to be made pursuant to paragraph (a)(1) of this section is hereby conferred upon the Director of the Census.

(3) The Director of the Census shall not make the determination specified in paragraph (a)(1) of this section until after he or she receives the recommendation of the Executive Steering Committee for A.C.E. Policy (ESCAP) in accordance with paragraph (b)(1) of this section.

(4) The determination of the Director of the Census shall not be subject to review, reconsideration, or reversal by the Secretary of Commerce.

(5) Nothing in this section diminishes the authority of the Secretary of Commerce to revoke or amend this delegation of authority or relieves the Secretary of Commerce of responsibility for any decision made by the Director of the Census pursuant to this delegation. This section shall remain in effect unless or until amended or revoked by the Secretary of Commerce.

(b)(1) The Executive Steering Committee for A.C.E. Policy shall prepare a written report to the Director of the Census recommending the methodology to be used in making the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c).

(2) The report of the Executive Steering Committee for A.C.E. Policy described in paragraph (b)(1) of this section shall be released to the public at the same time it is delivered to the Director of the Census. This release to the public shall include, but is not limited to, posting of the report on the Bureau of the Census website and publication of the report in the **Federal Register**.

(3) The ''Executive Steering Committee for A.C.E. Policy'' (ESCAP) is composed of the following employees of the Bureau of the Census:

(i) Deputy Director and Chief Operating Officer;

(ii) Principal Associate Director and Chief Financial Officer;

(iii) Principal Associate Director for Programs;

(iv) Associate Director for Decennial Census (Chair);

(v) Assistant Director for Decennial Census;

(vi) Associate Director for Demographic Programs;

(vii) Associate Director for Methodology and Standards;

(viii) Chief; Planning, Research, and Evaluation Division;

(ix) Chief; Decennial Management Division;

(x) Chief; Decennial Statistical Studies Division;

(xi) Chief; Population Division; and

(xii) Senior Mathematical Statistician.

§ 101.2 Availability of Other Population Information.

(a) When the Director of the Census determines pursuant to § 101.1(a)(1) of this part to use methodologies including the statistical method known as ''sampling'' to produce the tabulations of population to report to States and localities pursuant to 13 U.S.C. 141(c), data prepared without the use of such statistical method shall be made available to the public in accordance with the standards set forth in section 209(j) of Public Law 105–119, 111 Stat. 2440, simultaneously with the issuance of the report to States.

(b) When the Director of the Census determines pursuant to § 101.1(a)(1) of this part to produce tabulations of population without the use of methodologies including the statistical method known as sampling, for reporting to States and localities pursuant to 13 U.S.C. 141(c) notwithstanding a recommendation by the Executive Steering Committee for A.C.E. Policy to use sampling, data prepared with the use of such statistical method shall be made available to the public in accordance with the standards set forth in section 209(j) of Public Law 105–119, 111 Stat. 2440, for the release of data prepared without the use of such statistical method, simultaneously with the issuance of the report to States.

[FR Doc. 00–25501 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–07–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 97C–0415]

Listing of Color Additives Exempt From Certification; Luminescent Zinc Sulfide; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of September 8, 2000, for the final rule that appeared in the **Federal Register** of August 8, 2000 (65 FR 48375). The final rule amended the color additive regulations to provide for the safe use of luminescent zinc sulfide as a color additive in certain externally applied cosmetics.

DATES: Effective date confirmed: September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Aydin Orstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 8, 2000 (65 FR 48375), FDA amended the color additive regulations to add § 73.2995 *Luminescent zinc sulfide* (21 CFR 73.2995) to provide for the safe use of luminescent zinc sulfide as a color additive in certain externally applied cosmetics.

FDA gave interested persons until September 7, 2000, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of August 8, 2000, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the August 8, 2000, final rule. Accordingly, the amendments issued thereby became effective September 8, 2000.

Dated: September 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25697 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 97C–0466]

Listing of Color Additives Exempt From Certification; Phaffia Yeast; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 8, 2000, for the final rule that appeared in the **Federal Register** of July 6, 2000 (65 FR 41584), and that amended the color additive regulations to provide for the safe use of phaffia yeast as a color additive in the feed of salmonid fish to enhance the color of their flesh.

DATES: Effective date confirmed: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Aydin Orstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 2000 (65 FR 41584), FDA amended the color additive regulations to add new § 73.355 *Phaffia yeast* (21 CFR 73.355) to provide for the safe use of phaffia yeast as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FDA gave interested persons until August 7, 2000, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of July 6, 2000, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the July 6, 2000, final rule. Accordingly, the amendments issued thereby became effective August 8, 2000.

Dated: September 29, 2000.

Margret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25704 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 98C–0212]

Listing of Color Additives Exempt From Certification; Haematococcus Algae Meal; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 8, 2000, for the final rule that appeared in the **Federal Register** of July 6, 2000 (65 FR 41581), and that amended the color additive regulations to provide for the safe use of haematococcus algae meal as a color additive in the feed of salmonid fish to enhance the color of their flesh.

DATES: Effective date confirmed: August 8, 2000.

FOR FURTHER INFORMATION CONTACT: Aydin Orstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 2000 (65 FR 41581), FDA amended the color additive regulations to add § 73.185 *Haematococcus algae meal* (21 CFR 73.185) to provide for the safe use of haematococcus algae meal as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FDA gave interested persons until August 7, 2000, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of July 6, 2000, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the July 6, 2000, final rule. Accordingly, the amendments issued thereby became effective August 8, 2000.

Dated: September 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25703 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 97N–0165]

Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to reincorporate a regulation that was inadvertently omitted. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective October 6, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has discovered that an error has caused an omission in the agency's codified regulations for part 601 (21 CFR part 601). In the **Federal Register** of May 17, 1999 (64 FR 26657), FDA published a final rule that inadvertently omitted § 601.37 when subpart D was revised. Accordingly, § 601.37, which was added in the **Federal Register** of December 2, 1998 (63 FR 66672), is being reincorporated into the regulations and redesignated as § 601.28. In addition, FDA is removing subpart B and reorganizing subpart C in part 601. Accordingly, current § 601.28 is redesignated as § 601.15. This document corrects those errors. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

PART 601—LICENSING

1. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

§ 601.12 [Redesignated to subpart C]

2. Section 601.12 *Changes to an approved application* is redesignated from subpart B to subpart C.

Subpart B [Removed and Reserved]

3. Subpart B is removed and reserved.

Subpart C—Biologics Licensing

4. The heading for subpart C is revised to read as set forth above.

§ 601.28 [Redesignated as § 601.15]

5. Section 601.28 is redesignated as § 601.15 in subpart C, and a new § 601.28 is added to subpart C to read as follows:

§ 601.28 Annual reports of postmarketing pediatric studies.

Sponsors of licensed biological products shall submit the following information each year within 60 days of the anniversary date of approval of the license to the Director, Center for Biologics Evaluation and Research:

(a) *Summary.* A brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Where possible, an estimate of patient exposure to the drug product, with special reference to the pediatric population (neonates, infants, children, and adolescents) shall be provided, including dosage form.

(b) *Clinical data.* Analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. An assessment of data needed to ensure appropriate labeling for the pediatric population shall be included.

(c) *Status reports.* A statement on the current status of any postmarketing studies in the pediatric population performed by, or on behalf of, the applicant. The statement shall include whether postmarketing clinical studies in pediatric populations were required or agreed to, and if so, the status of these studies, e.g., to be initiated, ongoing (with projected completion date), completed (including date), completed and results submitted to the biologics license application (including date).

Dated: September 29, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–25705 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–431; Ref: Notice Nos. 890 and 895]

RIN: 1512–AB86

Labeling of Flavored Wine Products (98R–317P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations to prohibit the use of any varietal designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation in statements of composition for flavored wines and other wine specialty products. The regulations are also being amended to provide that references on labels to such designations in the brand name, product name, or fanciful name are limited to standard grape wines. ATF believes that the final regulations will ensure that consumers are not misled as to the identity of the products they purchase.

ATF's proposal to amend the existing definition of ''brand label'' for wine will be addressed separately in the near future.

DATES: This rule is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

I. Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as the delegate of the Secretary of the Treasury, to prescribe regulations with respect to the bottling, packaging, and labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations shall prevent deception of the consumer and provide the consumer with adequate information as to the identity and quality of the product. Regulations that implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4.

The regulations require that all wines sold, shipped, or otherwise introduced into interstate commerce bear labels that contain certain mandatory information. Section 4.32(a)(2) provides that, among other things, wine labels must contain a statement relating to the class, type, or other designation of the wine. If the class of wine is not defined by the regulations, section 4.34(a) requires that a truthful and adequate statement of composition appear on the brand label in lieu of the class designation.

Subpart C of part 4 sets forth the standards of identity for the several classes and types of wine. Section 4.21(a) defines ''grape wine'' as wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes. Pure condensed grape must and wine spirits may be added to grape wine. Section 4.21(a) also provides limitations on the amelioration of grape wine. Over-ameliorated grape wine may not be designated as ''grape wine.'' Rather, section 4.21(h) requires that such wine be designated as ''substandard wine'' or ''other than standard wine.''

In the case of still grape wine there may appear, in lieu of the class designation, any varietal (grape type) designation (*e.g.,* Chardonnay), type designation of varietal significance (*e.g.,* Muscatel), semi-generic geographic type designation (e.g., Chablis), or geographic distinctive designation (*e.g.,* Bordeaux). In general, section 4.23 provides that the name of a grape variety may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin (*e.g.,* ''California Chardonnay'') and if not less than 75 percent of the finished wine is derived from grapes of the named variety.

In the case of still grape wine there may also appear, in lieu of the class designation, a type designation of varietal significance. This applies to American wines only. Section 4.28 provides several examples of type designations of varietal significance, such as Muscatel and Scuppernong.

As specified in section 4.24(b), a semi-generic designation is a name of geographic significance that is also the designation of a class or type of wine determined by the Director to be semi-generic. Semi-generic designations are also established by the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5388(c). Examples of semi-generic names that are also type designations for grape wines are Burgundy, Chablis, and Champagne. A semi-generic name of geographic significance may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine (*e.g.,* ''California Burgundy''), and if the wine so designated conforms to the standard of identity for the product or, if there is no such standard, to the trade understanding of such class or type.

Under section 4.24(b), a geographic distinctive designation is a name of geographic significance that has not been found by the Director to be generic or semi-generic and may be used only to designate wines of the origin indicated by such name. Examples of such nongeneric names which are also distinctive designations of specific grape wines are Bordeaux and Graves.

In addition, grape wine may be vintage dated if it is made in accordance with the standards prescribed in section 4.27(a). Vintage wine is wine labeled with the year of harvest of the grapes, and made in accordance with classes 1, 2, or 3 of section 4.21.

Section 4.21 does not allow for the addition of flavoring material(s) to wines with a standard of identity under subpart C of part 4. For example, a class 1, grape wine containing added flavoring material(s) is not entitled to a standard grape wine designation, appellation of origin, or vintage date since these statements only apply to a ''standard'' grape wine. Likewise, ''substandard wine'' or ''other than standard wine'' under section 4.21(h)(2) does not specifically include wine to which flavoring material(s) have been added. Substandard wine or other than standard wine includes any wine to which has been added sugar and water solution in an amount that is in excess of the limitations prescribed in the standards of identity for these products.

It has been ATF's long-standing policy that wines to which flavoring material(s) are added do not fall within any of the current standards of identity set forth in the wine regulations. As such, a truthful and adequate statement of composition is required on the brand label for such flavored wine products, pursuant to section 4.34(a).

II. Flavored Wine Products

Flavored wine products are composed differently from wines made in accordance with the standards of identity in subpart C. Flavored wines may be derived from grape wine or other wines, including citrus wine (e.g., orange wine, grapefruit wine), fruit wine (e.g., apple wine, berry wine, pear wine) or other agricultural products (e.g., carrot wine, dandelion wine, honey wine). Such flavored wine products contain the addition of flavoring material(s) and may contain coloring material(s). Flavored wine products may also contain sugar and water in excess of that allowed in standard wine.

As stated above, wines to which flavoring materials are added do not fall within any of the current standards of identity set forth in the wine regulations. As such, a truthful and adequate statement of composition is required on the brand label for such flavored products. The labels on these products have traditionally displayed statements of composition such as ''Grape Wine With Natural Flavors'' to describe to consumers the composition of these products.

Recently, some domestic wineries have begun using varietal and semi-generic names in the statement of composition on their product labels to describe the base wine portion of their flavored wine products. These flavored wine products most often have an appellation of origin such as California'' in conjunction with the grape varietal or semi-generic name in the statement of composition (e.g., ''California Chardonnay (or Chablis) With Natural Flavors''). We are aware that the recent appearance of these grape varietal and semi-generic names on flavored wine products has caused a great deal of discussion within the wine industry. On February 26, 1998, we wrote to the Wine Institute, a national trade association

representing over 500 California winery and associate members, to respond to their concerns about this matter. Soon after the letter was sent to the Wine Institute, it was placed on our internet website as public information.

III. Consumer Survey

In view of our concerns about the labeling of flavored wine products, we commissioned a consumer survey in July of 1998 to determine consumer interpretations of varietal and semi-generic claims on labels of flavored wine products. Among other things, the survey was designed to assess whether wine consumers distinguish between grape wine and flavored wine products based on information provided on product labels. The survey involved obtaining consumer reactions to examples of two flavored wine products: one product was portrayed as containing a grape wine base that qualified as a varietal wine and another was portrayed as a product containing a grape wine base that qualified as a semi-generic wine. Both products chosen for the survey were depicted in ''bag-in-box'' containers. Consumers were shown labels bearing only varietal or semi-generic designations and labels bearing a varietal or semi-generic type designation as part of a statement of composition including the term ''With Natural Flavors.'' Consumers were shown boxes bearing the statement of composition on the side panel only, and other boxes with the statement of composition prominently displayed on the front label. None of the labels was identical to the labels of wines currently marketed. The brand names, package designs, and label information were selected by the contractor, U.S. Research Company, in order to best measure consumer perceptions about the overall label presentations and were chosen in order to ensure that the results were not specific to any one particular product or brand of wine.

The survey revealed that even when the ''With Natural Flavors'' disclosure was prominently displayed on the front panel of the product, a large majority (80%) of the respondents failed to distinguish between grape wine and flavored wine products. The survey also revealed that placing the term ''With Natural Flavors'' on the label had no impact on consumer understanding of the amount of varietal or semi-generic wine in the product. This is important because over fifty-five percent of the consumers surveyed believed that all or almost the entire product was composed of the varietal or semi-generic wine. Moreover, when asked to interpret the ''With Natural Flavors'' disclosure, more than one-third of the consumers surveyed perceived it to convey a positive ''no chemicals or additives'' message. Seventeen percent indicated that they thought the ''With Natural Flavors'' disclosure meant that the product was ''natural,'' and only fourteen percent suggested that it indicated that flavors had been added to the product.

IV. Petition—California Association of Winegrape Growers

ATF received a petition, dated September 15, 1999, filed on behalf of the California Association of Winegrape Growers (CAWG), requesting an amendment of the regulations to prohibit the use of any varietal, semi-generic, or geographic name as part of a statement of composition on wine specialty products. Specifically, CAWG requested an amendment of section 4.34(a). This section states that if the class of wine is not defined in the standards of identity in subpart C of part 4, ''a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation.'' The petitioner requested that the regulation be amended to add the following wording:

> A statement of composition shall include the standard of identity (class and type designation) of the wine used in the product, but shall not be permitted to include, in lieu of the class designation for the wine used in the product, any varietal (grape type) designation, type designation of varietal significance, or semigeneric geographic type designation, or geographic distinctive designation, to which the wine used in the product may otherwise be entitled.

The petitioner contended that the manner in which flavored wine products are labeled, packaged, and marketed deceives consumers into thinking they are consuming varietal wine rather than flavored wine. As stated in the petition,

> Varietal-based specialty products appear on retailers' shelves next to or intermingled with traditional still wines, in packaging similar to traditional still wines [750 milliliter or 1.5 liter glass bottles sealed with a cork, or 5 liter ''bag-in-box'' containers] and with a varietal designation and an appellation of origin traditionally associated with still wines prominently displayed.

The petitioner asserted that over the last 20 years, American wine producers and grape growers have developed an important consumer market for still grape wines with varietal designations and appellations of origin. According to the petitioner, these wines represent a large volume of the domestic wine sold in the United States (64 percent for the 52 week period ending July 18, 1999). As stated in the petition, ''[v]arietal designations and appellations of origin have earned an important place in the wine consumer marketplace as indications of quality wines with certain distinctive tastes and styles.''

In support of its petition, CAWG commissioned a survey to study consumers' understanding of the current labeling of flavored wine products that include a varietal name with an appellation of origin in the statement of composition. A total of 800 telephone interviews were conducted. According to CAWG, the results of the survey showed that most respondents believe that wine labels accurately reflect what is in the container and that label information is important to their buying decisions. A little more than 48 percent of the respondents stated that they expected products containing labels with such statements as ''California Cabernet Sauvignon with natural flavors'' and ''California Chardonnay with natural flavors'' to be standard grape wines that contain 75 percent wine made from grapes of that variety. The petitioner noted that flavored wine products that include a varietal name in the statement of composition have no minimum varietal content requirement.

CAWG stated that the results of its survey clearly show that the labeling of flavored wine products that include a variety name along with an appellation of origin in the statement of composition is misleading to consumers. The petitioner believes that its proposed amendment ''is targeted directly at the misleading nature of current statements of composition on varietal-based specialty products.'' By prohibiting varietal and semi-generic designations and appellations of origin in the statement of composition, the petitioner contends that consumers will not be misled as to the actual identity of the product. Flavored wine products that have a varietal wine base would have statements of composition in the form ''grape wine with natural flavors'' or ''white wine with natural flavors.''

ATF did not propose the amendment requested by CAWG. However, we did solicit comments on the petition. This will be addressed further in the section titled ''Notice No. 890.''

V. Significance of Wine Labeling Terms

ATF believes that consumers have learned to attach significance to varietal/semi-generic designations, appellations of origin, and vintage dates on grape wines. This belief is based on the fact that for many years the grape wine industry has heavily utilized varietal/semi-generic designations, appellations of origin, and vintage

dating in the marketing of grape wines. Additionally, we have conducted rulemaking projects spanning nearly 14 years identifying American grape variety names (See Treasury Decision ATF–370, 61 FR 522, January 8, 1996). Similarly, Congress has recently amended the IRC to recognize semi-generic names as being distinctive grape wine designations. 26 U.S.C. 5388(c), as added by Public Law 105–34, section 910(a). These efforts illustrate the importance of varietal and semi-generic grape wine designations to both the wine industry and to wine consumers. This was also addressed in the CAWG petition.

ATF believes that consumers are confused about the distinction between an existing standard of identity wine and flavored wine products, especially when grape varietal or semi-generic terms appear on the labels of flavored wine products. Flavored wine products are often located next to varietal wines or semi-generic wines on the shelves of grocery and liquor stores. Also, the promotional and advertising materials accompanying these flavored wine products frequently feature or highlight the varietal or semi-generic component of the finished wine product, even though the finished flavored wine product is not entitled to the varietal or semi-generic designation. We concluded that current statements of composition that include varietal or semi-generic names do not provide consumers with adequate information about the identity and quality of the flavored wine product and are likely to mislead consumers to believe that flavored wine products are the same as wines that meet the requirements for a varietal or semi-generic designation. We also believe that the consumer survey we commissioned and the CAWG consumer survey support that conclusion.

Furthermore, examination of this issue caused us to review our policy relating to statements of composition for all flavored wine products, including those that do not include varietal or semi-generic names, such as those that state ''Grape Wine With Natural Flavors,'' since the finished products are no longer ''Grape Wine'' but are ''Flavored Wine Products'' because of the presence of flavors.

VI. Notice No. 890

On December 28, 1999, we published a notice of proposed rulemaking in the **Federal Register** concerning the labeling of flavored wine products (Notice No. 890, 64 FR 72612). We proposed to establish a new class designation, ''Flavored Wine Product.'' Under this designation, a flavored wine product would be a wine-based alcohol beverage that does not qualify for any of the class or type designations listed in the existing wine regulations because of the addition of flavoring material(s).

As stated in Notice No. 890, we believe that all flavored wine products need to be labeled to indicate to consumers that such products are composed differently from wines entitled to be labeled with a standard of identity under subpart C. We, therefore, proposed to add a Class 10 to the standards of identity for wine to be called ''Flavored Wine Product.'' As proposed, such product would be required to be designated on labels as ''flavored wine product,'' together with a truthful and adequate statement of composition, all of which would be required to appear in the same size, style, and color typeface on the brand label.

At a minimum, we proposed that the statement of composition for flavored wine products must meet the following requirements:

1. Identify Class and/or Type

We proposed to require that the class and/or type of each wine used in the flavored wine product (*e.g.,* ''grape wine,'' ''table wine,'' ''peach wine,'' ''honey wine'') be identified. A single grape variety, type designation of varietal significance, or semi-generic name could be used if such named grape variety, type designation of varietal significance, or semi-generic name appeared together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or sem-generic wine constituted not less than 75 percent by volume of the finished flavored wine product. For *Vitis labrusca* varieties, we proposed that the named grape variety must constitute not less than 51 percent by volume of the finished flavored wine product. Under our proposal, an appellation of origin would not otherwise appear on the label of a product of this class. Similar provisions were proposed for specialty products that do not contain any flavor(s) (§ 4.34(c)).

2. Identify Added Flavoring Material(s)

We proposed to require that if one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.*, ''strawberry flavor''). If two or more flavoring materials are used in the production of the flavored wine product, we proposed that each flavoring material may be specifically identified (*e.g.*, peach flavor,'' ''kiwi flavor,'' or ''peach and kiwi flavors'') or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as ''other flavor(s).''

With regard to the term ''natural'' as used on alcohol beverage labels to describe a flavor, *e.g.*, ''With Natural Flavors,'' we stated in the notice that it is our belief that there is no consensus among consumers as to a meaning for the term ''natural.'' This belief is based upon our experience in regulating the wine industry and on the consumer survey noted above. An example indicated in the survey reflects that fully one-third of respondents considered the term ''natural'' to indicate that no additives or chemicals are present in the product. This conclusion is clearly erroneous. Therefore, to avoid consumer deception concerning the identity of flavored wine products, we proposed that the term ''natural'' may not be used anywhere on the flavored wine product labels to describe flavoring materials. When artificial flavoring material(s) are used, they would be so described (*e.g.*, ''artificial raspberry flavor'').

3. Identify Added Coloring Material(s)

We proposed to require that coloring materials(s) be disclosed in the statement of composition, whether added directly or through flavoring material(s). The coloring materials would be identified specifically (*e.g.,* ''caramel,'' ''certified color,'' ''annato,'' etc.) or as a general statement, such as ''artificially colored,'' to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c).

4. Include a Reference to Sugar

We proposed to require that sugar be listed in the statement of composition if sugar is used in the production of the flavored wine product (not including its use in the production of the base wine within the range authorized by the regulations).

5. Include a Reference to Water

We proposed to require that water be listed in the statement of composition, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the finished flavored wine product.

6. Include a Reference to Wine Spirits

We proposed to require, except for flavored wine products made from a

base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits in the statement of composition, whether such wine spirits are added in the production of the wine component of the flavored wine product or added in the production of the finished flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented. Section 4.39(a)(7) prohibits the appearance on a wine label of any statement that the wine contains distilled spirits with one exception. Accordingly, we proposed to amend the exception to cover the reference to distilled spirits in the statements of composition for flavored wine products.

Although in Notice No. 890 we solicited comments on the CAWG petition, we did not propose the amendment requested by the petitioner. We believed that the regulation change proposed by CAWG was more restrictive than ATF's proposals and did not provide the industry with flexibility in labeling their flavored wine products.

Miscellaneous—Amended Definition of ''Brand Label''

In Notice No. 890, we also proposed to revise the definition of the term ''brand label.'' As defined in section 4.10, the ''brand label'' is the label carrying, in the usual distinctive design, the brand name of the wine. Pursuant to section 4.32, certain mandatory information is required to appear on the brand label, including the brand name, the class, type, or other designation of the product, and the alcohol content.

We believe that the existing definition of the term ''brand label'' allows certain of the mandatory information to be placed on the container in such a way that it is not readily visible to consumers. We also believe consumers are having difficulty locating important mandatory product label information necessary to be adequately informed as to the identity and quality of wine products, including bag-in-boxes and other new wine containers. In addition, the popularity of flavored wine products and the potential for consumer confusion between such products and other wines that fit specific class designations necessitates a more specific definition of ''brand label.''

Accordingly, in Notice No. 890 we proposed to amend the definition of ''brand label'' to mean the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

The proposed definition is based on the definition of ''brand label'' that is currently in the distilled spirits regulations and is consistent with the principal display panel approach of the Fair Packaging and Labeling Act.

The comment period for Notice No. 890, initially scheduled to close on March 29, 2000, was extended until May 5, 2000, pursuant to Notice No. 895 (65 FR 17839, April 5, 2000).

VII. Analysis of Comments

In response to Notice No. 890, ATF received 152 comments, representing 186 signatures. Comments were submitted by members of Congress, consumers, representatives of State government, members of the industry (representing both domestic and foreign interests), and various organizations (*e.g.*, California Association of Winegrape Growers, the Presidents' Forum, the Wine Institute, the National Association of Beverage Importers, Inc., the Flavor and Extract Manufacturers' Association of the U.S., the American Vintners Association, and the French Wine and Spirits Exporters Federation).

One commenter requested an amendment of the regulations (section 4.39(a)(7)) to allow references to distilled spirits on labels of standard wine if such references are true. The amendment requested by the commenter is beyond the scope of this rulemaking. However, it may be included as part of a future rulemaking proceeding.

Six commenters either supported the proposed regulations or expressed support for specific proposals. For example, two commenters supported ATF's proposal to prohibit the term ''natural'' from appearing on labels of flavored wine products when describing flavoring materials. One of the commenters also supported our proposal to establish a new standard of identity for flavored wine products (*i.e.*, ''flavored wine product''). Two commenters supported ATF's proposal to allow a single grape variety, type designation of varietal significance, or semi-generic name in the statement of composition for a wine specialty product, provided the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent (51 percent for *Vitis labrusca* varieties) by volume of the finished wine specialty product.

Of the 141 comments that addressed the labeling of flavored wine products, 136 (97 percent) opposed ATF's proposed regulations. Most commenters agreed with ATF's finding that current statements of composition on flavored wines that include a varietal or semi-generic name are likely to mislead the consumer and do not provide the consumer with adequate information as to the identity and quality of the product. Examples were provided in the comments that support this conclusion. However, the commenters believe that it is not necessary to establish a new standard of identity for flavored wine products in order to resolve the problem. Rather, they support the CAWG petition or a similar proposal that would prohibit the use of varietal and semi-generic names in statements of composition for wine specialty products. Approximately 75 commenters contend that ATF's proposed regulations are too broad, too complex, and would affect the labeling of all wine specialty products. They argue that there is no documented evidence of consumer confusion for many of these products. As one commenter stated:

> [We have] been producing and bottling plum wine with natural flavors and grape wines with natural flavors since 1984 with no apparent confusion on the part of our consumers with regard to the product that they are buying.

In addition, many commenters object to ATF's proposal that would allow the use of varietal and semi-generic names as part of the statement of composition on both the new class of flavored wine products and other wine specialty products that are not 100 percent standard grape wine. They maintain that varietal and semi-generic names and related appellations of origin should only be used on products that are 100 percent standard grape wine. With respect to the use of varietal names on wine labels, many commenters stated the following:

> The standard for varietal content was carefully developed to maintain the varietal character of the wine, and in the context of products which are 100% grape wine. Therefore, varietal terms should only be used on products which are 100% grape wine.

Three comments objected to the proposed designation of the new standard of identity. They argue that the term ''flavored wine product'' implies that the product is ''lesser than, or subordinate to grape wine,'' and ''both degrades and cheapens everything that we put in to them.''

Several commenters contend that ATF's proposed regulations are not cost effective and would impose an undue burden on the industry. According to one commenter, the massive relabeling of products required by the proposed regulations will result in substantial costs for the domestic and international wine trade without improving consumers' understanding of wine labeling. Another commenter provided specific information—

> [Our] line alone includes eight (8) items, all well established as a result of extensive marketing efforts, which would become non-conforming were the proposed regulatory changes to be enacted. Collectively these eight (8) items represented nearly one quarter (25%) of our sales volume last year, calendar [year] 1999. In addition to the tens of thousands of dollars of investment in artwork, design and marketing, * * * [we have] well over one hundred thousand dollars ($100,000) invested in labels, silk screened bottles and point-of-sale materials for these eight (8) items.

Several commenters objected to ATF's proposals concerning the statement of composition for flavored wine products. One commenter stated that the proposed regulations are excessive and burdensome and ''turn a truthful and adequate statement of composition into a version of ingredient labeling without providing adequate justification for the change.'' Other commenters shared this view.

Many commenters objected specifically to ATF's proposal to prohibit the use of the term ''natural'' in the statement of composition for flavored wines and other wine specialty products. They maintain that ATF has had a long-standing policy of allowing wine producers to identify a flavor as being ''natural'' or ''artificial,'' provided it was a truthful characterization of the flavoring. According to one commenter, adopting the proposed regulation ''would reverse that long standing policy, cause thousands of labels to change, and would be totally inconsistent with all other food labeling without justification.'' Another commenter stated that prohibiting the term ''natural'' to describe a flavor is significantly different from ATF's policy regarding statements of composition as discussed in its publication ''Compliance Matters 97–1.'' In addition, one commenter indicated that if ATF believes there is confusion among consumers as to a meaning for the term ''natural,'' the term should also be prohibited from appearing in statements of composition for flavored malt beverages and distilled spirits specialty products.

One commenter who expressed opposition to the proposed regulations questioned the methodology used with respect to ATF's consumer survey and the validity of the results of the survey. Based, in part, on the consumer survey, ATF concluded that current statements of composition on labels of flavored wines that include varietal or semi-generic names do not provide consumers with adequate information as to the identity and quality of the product and are likely to mislead consumers to believe that flavored wine products are the same as wines that meet the requirements for a varietal or semi-generic designation. In contrast, the commenter refers to the results of its own consumer survey that ''clearly shows that consumers are neither confused nor deceived by Flavored Wines labeled in accordance with BATF's current regulations.'' ATF maintains that statements of composition on flavored wines that include a varietal or semi-generic name are likely to mislead consumers and do not provide consumers with adequate information as to the identity and quality of the product. ATF further believes that its consumer survey, the consumer survey conducted by the petitioner, and the comments received in response to the notice of proposed rulemaking support this conclusion.

VIII. Amended Definition of ''Brand Label''

Thirty comments addressed our proposal to amend the definition of ''brand label'' for wine. The commenters expressed several concerns with respect to the proposed definition that we believe warrant further study and analysis. However, we do not wish to delay a final decision concerning the labeling of flavored wine products. Therefore, we will address the ''brand label'' issue separately in the near future.

IX. Final Rule

Based on the comments received in response to Notice No. 890, we have re-examined the proposed regulations concerning the labeling of flavored wines and other wine specialty products. It is clear that most commenters agree with our conclusion that current statements of composition on flavored wines that include a varietal or semi-generic name are likely to mislead consumers and do not provide consumers with adequate information as to the identity and quality of the product. It is equally clear that most commenters do not believe ATF's proposal to create a new class designation is the best solution to the problem.

ATF is particularly concerned about the financial burden that would be placed on the industry, both domestic and foreign, if the proposed regulations were to be adopted as final. As pointed out in the comments, the proposed regulations would affect all wine specialty products, including those that have been in the marketplace for a long time and do not use a varietal or semi-generic name in the statement of composition. In addition, under the proposed regulations, flavored wines and other wine specialty products would still be able to use varietal and semi-generic names in the statements of composition, provided minimum percentage requirements are met. Based on the comments, we are concerned that consumers seeing these designations on such products may perceive these products to be standard grape wines even if the products were labeled as we proposed.

The purpose of the labeling provisions of the FAA Act is to prevent deception of the consumer and to provide the consumer with adequate information as to the identity and quality of the product. In prescribing regulations, ATF has the responsibility to ensure that the statutory goals are met. However, ATF does not believe that the regulations should be more restrictive than is necessary to meet the statutory goal. On the contrary, ATF believes that we should regulate only where necessary and to the extent required to avoid consumer deception or provide the consumer with adequate information about the product.

Accordingly, ATF is not adopting the regulations as proposed in Notice No. 890. We are, however, amending the regulations in section 4.34(a) to prohibit the use of any varietal designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation in statements of composition for flavored wines and other wine specialty products. This amendment is similar to that proposed in the CAWG petition.

In Notice No. 890, we proposed that in addition to the statement of composition portion of the mandatory designation for a flavored wine product, additional statements regarding the components of such a product could appear on a back or side label, but not the brand label. Such statements would have to reference all components listed in the mandatory statement of composition and must include the percentage of each component totaling 100 percent. Furthermore, such

additional statements must be truthful, accurate and specific, within the meaning of section 4.38(f). Many commenters disagreed with our proposal, maintaining that varietal and semi-generic names should only be used on products that are 100 percent standard grape wine. For example, one commenter stated the following:

[T]here should be no provision for showing a varietal designation or a semi generic designation (and related appellation of origin) in any way, including in a statement of composition, anywhere on a label of any wine product that is not a standard grape wine. That includes, of course, any other-than-standard wine, substandard wine and/or flavored wine product.

Another commenter stated that ''[v]arietal, semi-generic names and appellations of origin should only be used on Class I, Class II and Class III wines. They should not be used on any other class of wine, nor on any 'wine specialty products.' '' Another comment, representing three Washington State wine organizations, maintained that ''[p]ermitting the use of varietal or semi-generic names on products that are not in fact 100% [standard grape] wine will simply add to consumer confusion.''

Accordingly, we are amending the regulations to provide that wine labels may not contain any varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation in the brand name, product name, or distinctive or fanciful name, unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 (i.e., grape wine, sparkling grape wine, or carbonated grape wine). Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading. This amendment is similar to one proposed by the Wine Institute in its comment on the proposed regulations. The Wine Institute represents over 500 California winery and associate members. We believe this amendment is necessary to ensure that consumers are adequately informed as to the identity and quality of the wine, and to prevent consumer deception.

X. Applications for and Certification of Label Approval

Upon the effective date of this Treasury decision, i.e., January 1, 2001, applications for certificates of label approval must be in compliance with the regulations. In accordance with the provisions of 27 CFR 13.51 and 13.72(a)(2), upon the effective date of this Treasury decision, certificates of label approval that are not in compliance with the regulations will be revoked by operation of regulation. Certificate holders must voluntarily surrender all certificates that are no longer in compliance and submit applications for new certificates that are in compliance with the new requirements.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

B. 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 government jurisdictions. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. Since producers routinely make changes to their labels, we do not believe that the final regulation will result in any additional burdens on the industry. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205.

Par. 2. Section 4.34(a) is amended by adding a sentence after the seventh sentence to read as follows:

§ 4.34 Class and type.

(a) * * * The statement of composition will not include any reference to a varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation. * * *

* * * * *

Par. 3. Section 4.39 is amended by adding a new paragraph (n) to read as follows:

§ 4.39 Prohibited practices.

(n) *Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.* Labels that contain in the brand name, product name, or distinctive or fanciful name, any varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation, are misleading unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 of § 4.21. Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading.

Signed: August 4, 2000.

Bradley A. Buckles,

Director.

Approved: September 5, 2000.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 00–25706 Filed 10–5–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[BOP–1083–F]

RIN 1120–AA78

Inmate Discipline: Prohibited Acts

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: In this document the Bureau of Prisons amends its regulations on inmate discipline regarding violations of the telephone and smoking policies. The amendment establishes a greatest severity category prohibited act for use of the telephone to further criminal activity and a high severity and moderate category prohibited act for use of the telephone for abuses other than criminal activity. Other minor telephone infractions remain covered by the existing low moderate severity level category prohibited act. The amendment also elevates violations of the smoking policy to a moderate category prohibited act. The amendment is intended to address the seriousness of certain types of telephone abuse and deter criminal activity and protect the security and good order of the institution. The amendment is also intended to promote a clean air environment and to protect the health and safety of staff and inmates.

EFFECTIVE DATE: November 6, 2000.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 739, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) finalizes this amendment to its regulations in 28 CFR part 541, subpart B on inmate discipline regarding misuse of the telephone and smoking where prohibited. We published the proposed rule in the **Federal Register** on February 25, 1999 (64 FR 9432). We received comments from five respondents, all current federal inmates.

One commenter believes the current severity level for smoking where prohibited is adequate and does not believe elevating the severity level is necessary. The commenter believes the Bureau did not provide an adequate explanation supporting an increase in the severity level for smoking where prohibited. This commenter also states that nicotine addiction should be recognized as a serious medical condition requiring treatment and therapy and that smoking cessation programs and nicotine patches should be offered to assist those inmates who wish to quit smoking instead of elevating the severity level of the offense.

In a separate rulemaking, we proposed revisions to its policy on smoking which limits smoking in Bureau facilities to visibly designated outdoor locations, unless an indoor area has been designated as a smoking area to be used exclusively for authorized religious activity. The proposed revisions also permit the Warden, with the concurrence of the Regional Director, not to designate smoking areas for general use. We believe that elevating the severity level for smoking where prohibited will assist in emphasizing the importance of limiting exposure to tobacco smoke to the designated areas. To assist those who wish to quit smoking, we plan to expand smoking cessation programs available to inmates and to make nicotine patches available at inmate expense through commissary purchase.

Two commenters state the Bureau currently has the ability to detect improper use of the telephone, with one commenter stating that any criminal activity taking place on the telephone should be punished in the court system. The purpose of the amendment is to address the seriousness of inmate use of the telephone to further criminal activity and other serious abuses of the telephone privilege which could threaten the security of the institution or public. Upgrading administrative sanctions for various forms of telephone abuse does not preclude subsequent criminal prosecution.

Two commenters believe that the current severity level for misuse of the telephone is sufficient in that an inmate may be charged in terms of greater severity according to the nature of the unauthorized use. The existing low moderate severity level prohibited act concerning unauthorized use of the telephone does not adequately address the more serious problem of inmates engaging in or continuing criminal activity and other serious abuses of their telephone privileges. Since the current policy was implemented, there have been significant technological advances in telephone communication capability which afford inmates with the opportunity to circumvent telephone regulations without staff knowledge. Also, the sanctions available under the existing low severity prohibited act are simply too low to deter inmates from abusing their telephone privileges. Establishing a greatest severity category and high severity category for criminal use of the telephone and other serious abuses of telephone privileges offers staff more significant sanctions which the Bureau believes will act as a deterrent. The Bureau's goal is to ensure that inmates, once incarcerated, do not use telephones to continue criminal activity. As noted below, the Bureau has chosen to add a moderate category prohibited act covering some of the abuses listed in the high category prohibited act in order to give staff flexibility in assessing the seriousness of the violations.

Four commenters challenge the raising in severity level for three-way calls, call forwarding, and emergency telephone calls via another inmate's PIN number. One commenter states that because there is no ''criminal intent'' these types of calls should only be classified as minor offenses. Third-party calling, conference calling, possession and/or use of another inmate's PIN number are methods used by inmates to attempt to avoid the Bureau's telephone monitoring detection devices and can be a means to engage in further criminal activity and other more serious abuses of the telephone. Current telephone regulations prohibit an inmate from possessing another inmate's telephone access code number. Third party billing and electronic transfer of a call to a third party are also prohibited. We acknowledge that there may be differences in the seriousness of these violations. Accordingly, in this final rule, we add a moderate category prohibited act for such abuses in order to give staff flexibility in assessing the seriousness of the violations.

Two of these commenters suggest that inmates resort to conference calls and third-party calls in order to reach family members who have been taken to a hospital or in order to reach attorneys or court officials. The telephone regulations provide that the Warden may allow a call to be made under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency. Unit staff are available to assist an inmate in making a telephone call during an emergency. Inmates may also communicate with family and friends through normal correspondence procedures. Requests for unmonitored telephone calls to attorneys are always handled separately through staff in order to confirm the legal nature of the telephone call.

The current low moderate severity level prohibited act remains for minor telephone infractions such as talking beyond the 15-minute time period and using the telephone in an unauthorized area. For administrative management reasons, the Bureau is separating unauthorized use of mail from unauthorized use of the telephone in its low moderate severity level. Unauthorized use of mail remains in Code 406 while unauthorized use of the telephone is now in new Code 497.

We also received a tort claim from one inmate alleging the regulations are

vague. While this claim is being processed under the procedures for tort claims, we are also treating it as a comment on the proposed regulation. This commenter claims, among other things, that the prohibited act of ''Killing'' (Code 100) is ''unconstitutionally vague, ambiguous and imprecise, because the rule provides no definition of what behavior and conduct constitutes ''Killing.'' A person could be charged with a violation of the rule arbitrarily for simply killing time.'' The commenter, however, does not specifically address the proposed changes to the telephone and smoking prohibited acts. We are concerned with the clarity of our regulations and believe the wording of the prohibited acts is sufficiently clear. Even so, in keeping with plain language initiatives, we intend to issue a complete ''Plain Language'' revision of the discipline policy for public comment.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534, 202–514–6655.

Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

List of Subjects in 28 CFR Part 541

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), we amend part 541 in subchapter C of 28 CFR, chapter V as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.13 [Amended]

2. In § 541.13, Table 3 is amended by:

A. Adding a new code 197 under the greatest category prohibited act,

B. Adding a new code 297 under the high category prohibited act,

C. Adding new codes 332 and 397 under the moderate category prohibited act,

D. Revising the word ''belong'' in code 400 as ''belonging'', and

E. Revising codes 403 and 406 and adding code 497 under the low moderate category prohibited act.

§ 541.13 Prohibited acts and disciplinary severity scale.

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

Code	Prohibited acts	Sanctions
	GREATEST CATEGORY	
*	*	*
197	Use of the telephone to further criminal activity.	
*	*	*
	HIGH CATEGORY	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

Code	Prohibited acts	Sanctions
*	* * * * *	* *
297	Use of the telephone for abuses other than criminal activity (*e.g.,* circumventing telephone monitoring procedures, possession and/or use of another inmate's PIN number; third-party calling; third-party billing; using credit card numbers to place telephone calls, conference calling; talking in code).	
*	* * * * *	* *
	MODERATE CATEGORY	
*	* * * * *	* *
332	Smoking where prohibited.	
*	* * * * *	* *
397	Use of the telephone for abuses other than criminal activity (*e.g.,* conference calling, possession and/or use of another inmate's PIN number, three-way calling, providing false information for preparation of a telephone list).	
*	* * * * *	* *
	LOW MODERATE CATEGORY	
*	* * * * *	* *
403	(Not to be used).	
*	* * * * *	* *
406	Unauthorized use of mail (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; *e.g.,* the mail is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as a Code 101 Assault).	
*	* * * * *	* *
497	Use of the telephone for abuses other than criminal activity (*e.g.,* exceeding the 15-minute time limit for telephone calls; using the telephone in an unauthorized area; placing of an unauthorized individual on the telephone list).	
*	* * * * *	* *

[FR Doc. 00–25729 Filed 10–5–00; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA088–5051a; FRL–6880–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised 15% Plan for Northern Virginia Portion of the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is converting its conditional interim approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (the ''Commonwealth'') to a full approval. This revision satisfies the 15 percent rate of progress (ROP) plan (the 15% plan) requirements of the Clean Air Act (the Act) for the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (the Washington area). The intended effect of this action is to convert the conditional interim approval to a full approval because the Commonwealth has fulfilled the conditions listed in EPA's conditional interim approval of the original 15% plan for the Northern Virginia portion of the Washington area.

DATES: This direct final rule is effective on November 20, 2000 without further notice, unless EPA receives adverse comment by November 6, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency—Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103;

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and

Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the

EPA Region III address above, or by e-mail at lewis.janice@epa.gov. Please note that while questions may be submitted via e-mail, any comments on the rulemaking action must be submitted, in writing, to the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

On April 14, 1998, the Virginia Department of the Environmental Quality (DEQ) submitted a revision to its SIP for the Washington area. The revision consists of an amended plan to achieve a 15% reduction from 1990 base year levels in volatile organic compound (VOC) emissions. On June 24, 1997 (62 FR 33999), EPA granted conditional interim approval of Virginia's original 15% plan for the Northern Virginia portion of the Washington area. Virginia's revisions to its 15% plan were made to satisfy the conditions imposed by EPA in the June 24, 1997 conditional interim approval. The interim part of the June 24, 1997 (62 FR 33999) conditional interim approval was related to the implementation of Virginia's Enhanced I/M program. On September 1, 1999 (64 FR 47670), EPA published a direct final rule converting its May 15, 1997 (62 FR 26745) final conditional interim approval of the Virginia Enhanced I/M program to a full approval, thus removing the interim status. This was done because EPA determined that all of the conditions of its May 15, 1997 conditional interim approval of the Enhanced I/M SIP had been satisfied by the Commonwealth.

The Metropolitan Washington D.C. ozone nonattainment area consists of the District of Columbia, five counties in Maryland, and in Northern Virginia, the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford and the cities of Alexandria, Falls Church, Manassas, Manassas Park and Fairfax.

The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated 15% plan for the entire Washington area (regional 15% plan). This was done under the auspices of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and with the assistance of the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning. Although the plan was developed by a regional approach, each jurisdiction is required to submit the 15% plan to EPA for approval as a revision to its SIP. Because the reasonable further progress requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been heavily involved in air quality planning in the Washington area.

As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required to meet the 15% reasonable further progress requirement for the entire Washington area. Maryland, Virginia and the District agreed to apportion this total amount of required creditable reductions among the three jurisdictions. EPA is taking action today only on Virginia's revised 15% plan submittal for the Washington area, having already granted full approvals of both the District's and Maryland's 15% plans for their portions of the Washington area on August 5, 1999 (64 FR 42600) and July 19, 2000 (65 FR 44686), respectively. This rulemaking is being taken to convert the June 24, 1997 conditional interim approval of Virginia's 15% plan for the Washington area to a full approval based upon EPA's determination that the Commonwealth has fulfilled the conditions imposed in that conditional interim approval.

A. Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15% planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source categories: stationary point, area, on-road mobile sources, and off-road mobile sources. The base year inventory includes emissions of all sources within the nonattainment area and certain large point sources within twenty-five miles of the boundary. A subset of the 1990 base year inventory is the 1990 rate-of-progress (ROP) inventory which includes only anthropogenic (man-made) emissions actually within the nonattainment area boundaries. EPA approved this base year inventory SIP revision for the entire Washington area on July 8, 1998 (63 FR 36854).

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% reasonable further progress requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in VOC emissions, in addition to a 15% reduction of VOC emissions. A detailed description of the growth methodologies used by the Commonwealth is provided in EPA's conditional interim approval of Virginia's 15% plan (62 FR 33999, June 24, 1997) and in the Technical Support Document (TSD) prepared for that action.

The one area of concern relating to growth projections in the original 15% plan was related to the point source inventory. Condition 1 of the June 24, 1997 (62 FR 33999) conditional interim approval required that Virginia revise its plan to properly account for growth in point sources between 1990 and 1996. EPA's analysis of the revised 15% plan supports removal of this condition, since Virginia used the appropriate methodology in reappraising its point source inventory growth between 1990 and 1996. EPA here notes that the revised 15% plan has a point source inventory number that differs from Virginia's SIP approved inventory—8.1 tons per day (tpd) in the revised 15% plan submittal versus 8.3 tpd in the approved inventory. EPA is not revising the SIP approved inventory by this action. The 8.1 tpd number is acceptable for use in the revised 15% plan, as the discrepancy serves to lower the 15% plan's target level, thus making the plan's VOC reductions more restrictive than required if one were to use the approved inventory numbers. EPA is approving the Commonwealth of Virginia's 1990–1996 emissions growth projections in its revised 15% plan.

C. Enhanced Vehicle Inspection and Maintenance (I/M) Program

Condition 2 of EPA's conditional interim approval of the original 15% plan required the Commonwealth to meet the conditions EPA imposed in its May 15, 1997 conditional interim approval of Virginia's enhanced motor vehicle inspection and maintenance (I/M) program. Virginia was also required to remodel the I/M benefits claimed in the 15% plan using the following two EPA guidance memoranda: *Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,* from John Seitz and Margo Oge dated August 13, 1996, and *Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance,* from Gay MacGregor and Sally Shaver dated December 23, 1996.

The Commonwealth has remedied condition 2 imposed in the conditional interim approval of its original 15% plan. On September 1, 1999 (64 FR 47670), EPA published a direct final

rule converting its May 15, 1997 (62 FR 26745) final conditional interim approval of the Virginia enhanced I/M SIP revision to a full approval. This was done because EPA determined that all of the conditions of the May 15, 1997 conditional interim approval of the enhanced I/M SIP had been satisfied by the Commonwealth. Further, EPA has determined that Virginia appropriately remodeled the I/M benefits of the program, and that there are no adverse affects on the 15% plan due to this remodeling.

D. Target Level Emissions/Emission Reductions Needs

As part of the conditional interim approval of its original 15% plan, Virginia was also required to remodel to determine affirmatively the creditable reductions from reformulated gasoline (RFG) and the Tier 1 Federal Motor Vehicle Control Program (FMVCP) in accordance with EPA guidance. Virginia was required to remodel the benefits of enhanced I/M, RFG and Tier 1 under the revised plan to compare the mobile source target level in 1999 versus the target level for mobile sources which was determined for the original plan.

EPA concurs with the remodeling demonstration submitted as part of the revised 15% plan, and with the revised mobile source target level calculation. Virginia's portion of the corrected target level is 163.8 tpd.

The regional 15% plan calculates a target level of emissions to meet the 15% reasonable further progress requirement over the entire nonattainment area. The regional 15% plan contains a projection of emissions growth from 1990 to 1996 and, in effect, apportions among Virginia, Maryland and the District of Columbia (the three jurisdictions) the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOC emissions net of growth. Each jurisdiction then adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get a 15% reduction accounting for any growth. The regional plan calculated the ''target level'' of 1996 VOC emissions, in accordance with applicable EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions in VOC emissions that would have occurred from the pre-1990 FMVCP and Reed Vapor Pressure (RVP) programs. To meet EPA's applicable guidance on this requirement, the regional plan contains a calculation of the reductions occurring between 1990 and 1996 from the pre-1990 Tier 0 FMVCP and RVP programs and the result of subtracting these reductions from the 1990 ROP inventory. The net result of this calculation yielded the ''1990 base year inventory adjusted to 1996''.

Virginia's 15% plan relies upon reductions from its revised enhanced I/M program to achieve the required 15% level as soon after November 15, 1996 as practicable, but not later than 1999. Under EPA's applicable guidance for 15% plans that rely upon reductions from enhanced I/M after 1996, the target level must also take into account the effects of the pre-1990 Tier 0 FMVCP on 1990 emissions due to turnover in vehicles between 1996 and 1999. Therefore, to meet EPA's applicable guidance for this requirement, Virginia's 15% plan contains a calculation of the non-creditable reductions from the pre-1990 Tier 0 FMVCP and RVP programs between 1990 and 1999 and the result of subtracting these reductions from the 1990 ROP inventory. The result of this calculation yielded the ''1990 base year inventory adjusted to 1999.'' Virginia's 15% plan clearly identifies the difference between the ''1990 base year inventory adjusted to 1996'' and ''1990 base year inventory adjusted to 1999'' as the ''fleet turnover correction'' (FTC) necessary to meet EPA's guidance.

In its plan, Virginia calculates a ''base'' 1996 VOC target level as 85% of the ''1990 adjusted base year inventory for 1996.'' In accordance with EPA's guidance, as discussed above, Virginia subtracts the FTC from the ''base'' 1996 VOC target level to yield a ''final'' 1996 VOC target level for the 15% plan. In Table 1 below, we have provided a summary of the calculations for the 1996 VOC target level for the entire Washington area.

TABLE 1.—REQUIRED REDUCTIONS FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA 15% PLAN

[Tons per day]

Metropolitan Washington, DC nonattainment area target level calculation					
	Item	District of Columbia	Maryland	Virginia	Washington D.C. Area Totals
1	1990 ROP Inventory	60.3	241.7	226.5	528.5
2	1990 Adjusted Base Year Inventory adjusted to 1996	51.2	215.1	196.8	463.1
3	1990 Adjusted Base Year Inventory adjusted to 1999	49.9	210.9	193.3	454.1
4	FTC Adjustment (Line 2 minus Line 3)	1.3	4.2	3.5	9.0
5	Base 1996 target Level = 85% of Line 2 (0.85 × Line 2)	43.5	182.8	167.3	393.6
6	Final 1996 Regional Target Level (Line 5 minus Line 4)	42.2	178.6	163.8	384.6
7	Projected 1996 Uncontrolled Emissions	48.5	234.7	219.4	502.4
8	Required Regional Emission Reductions (Line 8 minus Line 7)*	.....	.....	.....	117.8
9	Apportioned State Emission Reductions*	8.5	57.5	51.8	117.8

*The small discrepancy between values is due to rounding the apportioned emission reductions to the nearest tenth.

The emission reductions required to meet the 15% reasonable further progress requirement equals the difference between the projected 1996 emissions under the current control strategy (the 1996 uncontrolled emissions) and the target level. This amount of emission reductions reflects a 15% reduction from the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996. The Washington area's regional VOC target level is 384.6 tpd. EPA has determined that this regional target level and the emission reduction needed for the Washington area have been properly calculated in accordance with EPA guidance.

The three Washington area jurisdictions agreed to apportion the amount of emission reductions needed for the entire area to achieve the 15% reduction among themselves. This

apportionment is also shown in Table 1 above. Virginia's share is 51.8 tpd.

E. Reasonable Further Progress

The final condition for full approval of the 15% plan was for Virginia to demonstrate, using appropriate documentation methodologies and credit calculations, that it had satisfied the 15% plan requirement for the Washington area. As part of the revised 15% plan, recalculations to the inventory, target level and 15% reduction amounts were adjusted. Under the new plan, Virginia's portion of the 15% plan requirement decreased from 54.5 tpd to 51.8 tpd.

EPA agrees with the credit calculation methodology used in the revised plan to justify this number. As demonstrated in Chapter 5 of the revised plan SIP submittal, appropriate assumptions and calculation methodologies were employed, as per EPA guidance, in calculating the new figures. EPA therefore concurs that Virginia must achieve at least 51.8 tpd in creditable emission reductions to demonstrate that Virginia has met its 15% VOC reduction requirement for the Washington, DC area.

EPA believes that in its revised 15% plan the Commonwealth has made all the necessary corrections to establish the creditability of sufficient control measures to met the 15% VOC reduction requirement. Virginia has demonstrated there are sufficient creditable measures in the revised 15% plan to achieve at least 54.85 tpd of reductions. This 54.85 tpd reduction results from either rules promulgated by EPA or measures contained in the approved Virginia SIP. Table 2 below summarizes the creditable measures from Virginia's 15% plan for the Washington area.

TABLE 2.—CREDITABLE VOC REDUCTIONS IN VIRGINIA'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA

[Tons per day]

Creditable reductions	
Enhanced Inspection and Maintenance	19.50
Tier 1 FMVCP	6.10
Landfill Controls	0.27
Stage II Recovery Nozzles	6.80
Reformulated Gasoline (on/off road)	9.10
Auto Refinishing	2.51
AIM—Reformulated Surface Coating	5.30
Reformulated Consumer/Commercial Products	1.80
Stage I Enhancement	0.30
VOC RACT > 50 tpy Sources	0.40
Point Sources Controls > 25 tpy Sources	0.03
Seasonal Open Burning Ban	2.60
Total Fully Creditable Reductions	54.85

F. Transportation Conformity Budgets

As is the case with any ROP plan, Virginia's 15% plan for the Washington, DC area contains a mobile budget for VOC emissions. By approving Virginia's 15% plan, EPA is granting a de facto approval of the budget in this plan. However, EPA wishes to clarify that the budget in Virginia's 15% plan will not be the applicable budget for any future conformity determinations because there are mobile budgets for both VOC and nitrogen oxides (NO_X) that have been found adequate for the Washington, DC area that apply in 1999 and all subsequent years. To verify which budgets apply in the Washington, DC area, please contact the EPA Regional office listed in the **ADDRESSES** section or consult EPA's ''Adequacy Review of SIP Submissions for Conformity'' web page at http://www.epa.gov/oms/transp/conform/adequacy.htm.

EPA's review of this material indicates that Virginia's revised 15% plan SIP revision meets the requirements of the Act and applicable EPA guidance. EPA is therefore converting its conditional interim approval of Virginia's 15% plan to a full approval.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege''' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations.

Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * * '' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty.

The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.'' Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements.

EPA is converting its conditional interim approval of Virginia's 15% plan to a full approval by this rule without prior proposal because the Agency views this as a noncontroversial amendment 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 convert the conditional interim approval to a full approval should adverse or critical comments be filed. This rule will be effective November 20, 2000 without further notice unless the Agency receives adverse comments by November 6, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on this action converting the conditional approval of the Commonwealth's 15% plan to a full approval should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 20, 2000 and no further action will be taken on the proposed rule.

II. Final Action

EPA is converting its conditional interim approval of Virginia's 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area to a full approval based upon the evaluation of the SIP revision submittal made by Virginia on April 14, 1998 consisting of the revised 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 2000. 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 converting EPA's conditional interim approval of Virginia's 15% plan for Metropolitan Washington, D.C. ozone nonattainment area to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

2. Section 52.2428 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2428 Control strategy: Carbon monoxide and ozone.

(a) * * *

(b) EPA approves the Commonwealth's 15 Percent Rate of Progress Plan for the Virginia portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by

the Acting Director of the Virginia Department of the Environmental Quality on April 14, 1998.

§ 52.2450 [Amended]

3. Section 52.2450 is amended by removing and reserving paragraph (e).

[FR Doc. 00–25470 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–6881–9]

Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submission From the State of New York, and Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (*i.e.,* March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submission of the State of New York. EPA's final action consists of approving those elements of the State's submission that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply in the portion of New York State within the Great Lakes System where the State either failed to adopt required elements or adopted elements that are inconsistent with the Guidance.

EFFECTIVE DATE: November 6, 2000.

ADDRESSES: The public docket for EPA's final actions with respect to the Guidance submission of the State of New York is available for inspection and copying at U.S. EPA Region 2, 290 Broadway, New York, N.Y. 10007 by appointment only. Appointments may be made by calling Wayne Jackson (telephone 212–637–3807).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (202–260–0312); or Wayne Jackson, U.S. EPA Region 2, 290 Broadway, New York, N.Y. 10007 (212–637–3807).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Potentially Affected Entities

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System in the State of New York. Potentially affected categories and entities include:

Category	Examples of Potentially Affected Entities
Industry	Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in New York State.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2. in New York State.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding regulated entities likely to be affected by these final actions. This table lists the types of regulated entities that EPA believes could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this final action, you should examine the definition of ''Great Lakes System'' in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On March 23, 1995, EPA published the Guidance. *See* 60 FR 15366; 40 CFR part 132. The Guidance establishes minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The Guidance also contains minimum implementation procedures and an antidegradation policy.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance. *American Iron and Steel Institute, et al.* v. *EPA (AISI),* 115 F.3d 979 (D.C. Cir. 1997). The Court vacated the human health criterion for polychlorinated biphenyls (PCBs) and the acute aquatic life criterion for selenium, and the provisions of the Guidance ''insofar as it would eliminate mixing zones for (bioaccumulative chemicals of concern (BCCs)) and impose (water quality-based effluent limitations (WQBELs)) upon internal facility waste streams.'' 115 F.3d at 985. On October 9, 1997, EPA published a document revoking the PCB human health criteria pursuant to the Court's decision. 62 FR 52922. On April 23, 1998, EPA published a second notice amending the 1995 Guidance to remove the BCC mixing zone provisions from 40 CFR part 132 (found in procedure 3.C. of appendix F) and to remove language in the Pollutant Minimization Program provisions (procedure 8.D. of appendix F) that might imply that permitting authorities are required to impose WQBELs on internal waste streams or to specify control measures to meet WQBELs. 63 FR 20107. On June 2, 2000, EPA published a third document withdrawing the acute criteria for selenium. 65 FR 35283.

40 CFR 132.4 requires the Great Lakes States to adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the Guidance or be subject to EPA promulgation. 40 CFR 132.5(d) provides that, where a State makes no submission to EPA, the Guidance shall apply to discharges to waters in that State upon EPA's publication of a final rule indicating the effective date of the part 132 requirements in that jurisdiction.

On July 1, 1997, the National Wildlife Federation filed suit alleging that EPA had a non-discretionary duty to promulgate the Guidance for any State that failed to adopt standards, policies and procedures consistent with the Guidance. *National Wildlife Federation* v. *Browner,* Civ. No. 97–1504–HHK (D.D.C.). EPA negotiated a consent decree providing that the EPA Administrator must sign, by February 27, 1998, a **Federal Register** document making part 132 effective in any State in

the Great Lakes Basin that failed to make a submission to EPA by that date under 40 CFR part 132. However, all of the Great Lakes States made complete submissions to EPA on or before the February deadline. On March 2, April 14, April 20 and April 28, 1998, EPA published in the **Federal Register** documents of its receipt of each of the States' Great Lakes Guidance submissions and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portions of those submissions. 63 FR 10221; 63 FR 18195; 63 FR 19490; 63 FR 23285.

40 CFR 132.5(f) provides that, once EPA completes its review of a State's submission, it must either publish notice of approval of the State's submission in the **Federal Register** or issue a letter notifying the State that EPA has determined that all or part of its submission is inconsistent with the CWA or the Guidance, and identify any changes needed to obtain EPA approval. If EPA issues a letter to the State making findings of inconsistencies, the State then has 90 days to make the necessary changes. If the State fails to make the necessary changes, EPA must publish a document in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that will apply to discharges within the State.

On November 15, 1999, the National Wildlife Federation and the Lake Michigan Federation filed suit alleging that EPA had a non-discretionary duty to take action on the Great Lakes States' Guidance submissions. *National Wildlife Federation* v. *Browner,* Civ. No. 99–3025–HHK (D.D.C.). EPA negotiated a consent decree providing that EPA must sign a **Federal Register** Notice by July 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Pennsylvania; and **Federal Register** Notices by September 29, and October 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of New York and Wisconsin, respectively. Today's **Federal Register** Notice fulfills EPA's obligations under that Consent Decree with respect to the State of New York. EPA has completed its final actions with respect to the States of Michigan, Ohio, Indiana, Illinois, Minnesota, and Pennsylvania, and will separately take final action with respect to Wisconsin. EPA notes that the States' Guidance submissions may contain provisions that revise its NPDES program or water quality standards in areas or with respect to regulated entities not covered by the Guidance. EPA is not taking action at this time to either approve or disapprove any such provisions.

EPA has conducted its review of the State of New York's submission in accordance with the requirements of section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are ''consistent with'' the Guidance. EPA has interpreted the statutory term ''consistent with'' to mean ''as protective as'' the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State's standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

Where EPA has promulgated a final rule that identifies a provision of the Guidance that shall apply in New York, EPA explains below its reasons for concluding that New York failed to adopt requirements that are consistent with the Guidance. Additional explanation of EPA's conclusions are contained in EPA's correspondence with New York State (identified in relevant sections below) where EPA initially identified inconsistencies in the State's submission. Notice of the availability of this letter was published in the **Federal Register** and EPA has considered all public comments received regarding any conclusions as to whether New York State had adopted provisions consistent with the Guidance.

In this proceeding, EPA has reviewed the State's submission to determine its consistency with 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to those elements of the State submission being approved by EPA, EPA is approving those provisions as amendments to New York State's NPDES permitting program under section 402 of the CWA and as revisions to New York State's water quality standards under section 303 of the CWA. Today's notice identifies those approved elements. Additional explanations of EPA's review of and conclusions regarding New York State's submission, including the specific State provisions that EPA is approving, are contained in the administrative record for today's actions in documents prepared for New York State entitled, ''New York State Provisions Being Approved as Being Consistent With the Guidance,'' ''Analysis of Whether New York State Has Adopted Requirements Consistent With the Guidance'' and ''Analysis of Steps Taken By New York State in Response to EPA's 90-Day Letter.''

A. Today's Final Action

On April 11, 2000, EPA issued a letter notifying the New York State Department of Environmental Conservation (NYSDEC) that, while the State of New York had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the standards, policies and procedures adopted by the State were not consistent with corresponding provisions of the Guidance. On April 28, 2000, EPA published in the **Federal Register** a notice of and solicitation of public comment on its April 11, 2000 letter. 65 FR 24957. EPA has completed its review of all public comments on the April 11, 2000, letter and has determined that, with two exceptions described below, New York State has adopted requirements consistent with all aspects of the Guidance. Specifically, New York State has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to: The definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of part 132, with two exceptions as described below; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in appendices B–D; the antidegradation policy in Appendix E; and the implementation procedures in appendix F. As explained more fully below, New York State has not adopted requirements consistent with (1) the chronic numeric aquatic life criteria in Table 2 of part 132 for Class D waters in the Great Lakes Basin, and (2) the wildlife criterion for mercury in Table 4 of part 132.

EPA's April 11, 2000, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but

provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. To provide this assurance, EPA and NYSDEC have worked together to develop an amendment to the National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement (MOA) between EPA Region II and NYSDEC. By this amendment NYSDEC has committed to always exercise its discretion under the MOA provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. This MOA has demonstrated to EPA that the State will implement the approved provisions consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled ''New York State Provisions Approved as Being Consistent With the Guidance,'' ''Analysis of Whether New York State Has Adopted Requirements Consistent With the Guidance'' and ''Analysis of Steps Taken By New York State in Response to EPA's 90-Day Letter'' included in the record for this action.

EPA has determined that the failure of New York State to apply the chronic aquatic life criteria in section 703.5 of Title 6 of the New York State Codes, Rules and Regulations (NYCRR) to waters in the Great Lakes Basin classified as ''Class D'' surface waters under 6NYCRR 701.9 is inconsistent with 40 CFR 132.3(b) and 132.4(d)(2). These provisions of the Guidance require States to adopt and apply both acute and chronic numeric aquatic life criteria to all waters in the Great Lakes System. In the past, NYSDEC's classification system for the 3,312 waterbody segments contained in the New York State portion of the Great Lakes System has been based on the use of a single aquatic life-based criterion for all classified waters in the State: (1) Classes A–C, waters designated for fish propagation, were assigned chronic criteria only; and, (2) Class D, waters designated for fish survival, were assigned acute criteria only.

NYSDEC has added acute criteria to all Class A–C waters in the State. However, the State has not included chronic criteria for Class D waters. Rather, New York is in the process of completing a statewide reclassification effort which will result in the upgrade of the vast majority of segments in the Great Lakes System to classifications which include both acute and chronic aquatic life criteria. For the remaining Class D waters, use attainability analyses (UAAs) will be completed, consistent with the site-specific modification procedure described in the Guidance, to justify a decision to impose no chronic criteria at a site where it is shown that there is no reason to apply such criteria—that no organisms ''occur at the site'' for time periods long enough to suffer chronic effects.

While the State is currently in the process of completing its reclassification effort, there are 940 waterbody segments in the New York State portion of the Great Lakes System which have not yet been addressed through the State's process and currently lack chronic water quality criteria to protect aquatic life. Consequently, EPA finds that New York State's failure to apply chronic aquatic life criteria to these waters is not consistent with 40 CFR 132.3(b) and 132.4(d)(2). EPA, therefore, disapproves 6NYCRR 703.5 and 701.9 insofar as these provisions fail to apply chronic water quality criteria for the protection of aquatic life to ''Class D'' waters and has determined that 40 CFR 132.4(d)(2) shall apply to waters which are currently classified as ''Class D'' in the Great Lakes System in the State of New York.

40 CFR 132.4(d) states: ''The water quality criteria and values adopted or developed pursuant to [the Guidance criteria methodologies] shall apply as follows: * * * (2) The chronic water quality criteria and values for the protection of aquatic life or site-specific modifications thereof shall apply to all waters of the Great Lakes System.'' By making this section applicable to ''Class D'' waters in the Great Lakes System in New York, today's rule has the effect of making the chronic aquatic life criteria or values adopted or developed by New York contained in 6NYCRR 703.5, or site-specific modifications of the criteria, applicable to such waters. As explained in the record for today's action, EPA has concluded that the chronic aquatic life criteria adopted by New York, the State's methodologies for developing aquatic life criteria and values, and the State's procedure for site-specific modifications to such criteria, are all consistent with the Guidance. Under today's rule, those criteria, as well as any new criteria, values and site-specific criteria adopted or developed by the State pursuant to its approved methodologies and procedures, and approved by EPA, will also apply to Class D waters.

EPA understands that New York State is in the process of completing the necessary rulemaking to revise its regulations to upgrade the vast majority of segments in the Great Lakes System to classifications which include both acute and chronic aquatic life criteria, or to perform the necessary UAAs (consistent with the State's approved site-specific criteria methodology) to show that chronic aquatic life criteria for certain Class D waters are not needed. EPA will work closely with NYSDEC to insure that its revised regulations will be consistent with the Guidance. NYSDEC will then submit its UAAs and revised regulations to EPA for review pursuant to section 303(c) of the Clean Water Act as a revision to its water quality standards regulations. Because today's rule only applies to Class D waters in the Great Lakes System in the State, a water segment that is upgraded to a higher classification (to which the State's chronic criteria apply under the State's standards) will remove the water segment from the coverage of today's rule. Also, under today's rule, if the State submits, and EPA approves, an analysis that demonstrates, consistent with the State's procedure for site-specific modifications to criteria, that application of the chronic criteria is not needed, such a site-specific modification to the criteria will apply to that water segment.

EPA has also determined that New York State's mercury criterion for the protection of wildlife in the waters of the Great Lakes System at 6NYCRR 703.5 is inconsistent with 40 CFR 132.3(d), and Table 4 of 40 CFR part 132. States are required to adopt criteria for the protection of wildlife which are as protective as the numeric criteria included in Table 4 of 40 CFR part 132. NYSDEC has adopted a wildlife criterion for mercury, which is expressed as the dissolved form of the metal. This criterion has been calculated based upon the use of an alternative percent of methyl mercury using New York State-specific data. The State's wildlife criterion is 2.6 ng/L (dissolved); EPA's criterion is 1.3 ng/L (total recoverable). New York State used EPA's conversion factor of 0.85 in its derivation of the dissolved-based wildlife criterion. Based on the application of EPA's conversion factor of 0.85, New York State's dissolved-based wildlife criterion for mercury equates to 3.06 ng/L total recoverable for wildlife (compared to the Guidance wildlife criterion of 1.3 ng/L). Based upon the comparison of State's wildlife criterion to the wildlife criterion in the Guidance on a total recoverable basis, EPA has determined that the New York State wildlife criterion for mercury is

not as protective as the wildlife criterion in the Guidance.

Based upon the above, EPA finds that New York State has failed to adopt a wildlife criterion for mercury that is consistent with Table 4 of part 132, as required by 40 CFR 132.3(c). EPA, therefore, disapproves the State's wildlife criterion for mercury in the waters of the Great Lakes System at 6NYCRR 703.5, and has determined that the wildlife criterion for mercury contained in Table 4 to 40 CFR part 132 shall apply to the waters of the Great Lakes System in the State of New York. As discussed above, NYSDEC has adopted human health and aquatic life criteria for mercury that are as protective as the mercury criteria in Tables 2 and 3 of part 132. EPA notes that under certain conditions New York State's human health criterion as implemented may be as protective of wildlife as the mercury wildlife criterion in the Guidance in Table 4, however, this is not always the case.

EPA understands that New York State is in the process of completing the necessary rulemaking to adopt the Guidance wildlife criterion of 1.3 ng/L (total recoverable) for mercury, which will be applicable to the waters of the Great Lakes System in the State of New York. EPA will work closely with NYSDEC to insure that this criterion will be consistent with the Guidance. NYSDEC will then submit its criterion to EPA for review pursuant to section 303(c) of the Clean Water Act, and, if EPA approves those revisions, EPA will revise its regulations so that the mercury wildlife criterion in Table 4 of 40 CFR part 132 will no longer apply to the waters within the Great Lakes System in the State of New York.

A. Public Comments

EPA received two comments in response to its **Federal Register** document of its receipt of the substantial NPDES program modification component of the State's Guidance submission. These commenters stated general support for approval of the State's submission. EPA received one comment on the **Federal Register** notice of the availability of EPA's April 11, 2000 letter to the State of New York. EPA has responded to that commenter in a document entitled ''Response to Comments Received on EPA's April 11, 2000 Letter to the New York State Department of Environmental Conservation (NYSDEC) on New York State's Great Lakes Initiative Submission'' that has been included as part of the record in this matter. The following is a summary of EPA's responses to the significant points of these comments.

Comment: The commenter asserted that EPA's regulatory determinations are being made without affected parties having any chance to review the Agency's reasoning or to raise issues as to the validity of that reasoning, in violation of the Administrative Procedure Act and EPA's public participation regulations at 40 CFR part 25.

Response: The final rule being promulgated today makes certain provisions of 40 CFR part 132 applicable to discharges in New York State within the Great Lakes System. Those provisions were adopted after publication of a proposed rule for public comment. See 58 FR 20802 (April 16, 1993). EPA is not modifying those provisions, but merely making them effective in accordance with 40 CFR 132.5(f)(2). Therefore, the public had a full opportunity to comment on the contents of today's rule. Moreover, public comment was also received regarding EPA's review of the New York State submission. EPA provided public notice of the availability of, and solicited comment on, the NPDES portions of the New York State Guidance submission in a **Federal Register** document (63 FR 19490) dated April 20, 1998. In a **Federal Register** document (65 FR 24957) dated April 28, 2000, EPA subsequently provided notice of the availability of a letter to the State of New York in which EPA provided (a) detailed explanations of the bases for its findings that the State had not adopted provisions consistent with certain provisions of the Great Lakes Guidance and (b) its preliminary conclusions that, with the exception of those findings, the State had adopted provisions consistent with the Guidance. EPA also solicited comment on all aspects of this letter, and has considered and responded to all comments received before taking today's final action. Consequently, EPA has complied with all applicable public participation requirements.

Comment: The commenter has indicated that both EPA and New York State must commit to holding public comment periods on the draft of the addendum to the NPDES Memorandum of Agreement (MOA) that the agencies intend to enter into for the purpose of implementing certain Great Lakes Initiative (GLI) requirements in New York.

Response: Under 40 CFR 123.62(b)(2) and 132.5(e), whenever EPA determines that a proposed revision to a State NPDES program is substantial, EPA must provide notice and allow public comment on the proposed revisions. On April 20, 1998, EPA published notice in the **Federal Register** (63 FR 19490) ''Notice of Proposed Revisions to the Approved Program to Administer the National Pollutant Discharge Elimination System Permitting Program in New York Resulting In Part From Adoption of the Water Quality Guidance for the Great Lakes System.'' In that document EPA sought public comment concerning whether EPA should approve the GLI-related revisions to New York's NPDES program because, as stated in the document, EPA believes that it is appropriate to consider the NPDES component of New York's submission to be a substantial program modification. The only comments received in response to the notice were two recommendations in support of the EPA approving these revisions.

On April 28, 2000, the public was provided with a second opportunity to comment on EPA's review of the GLI-related provisions of New York's NPDES program when EPA published a **Federal Register** document (65 FR 24957) soliciting public comment on its April 11, 2000, letter (i.e., 90-day letter) to NYSDEC commenting on New York's GLI submission. The 90-day letter provided a detailed explanation of EPA's views regarding New York's revisions to its NPDES program. The commenter seems to imply that, not only is EPA required to solicit public comment on the substantial program modification submitted by New York, but that EPA must also solicit public comment because the revisions to the NPDES MOA itself constitutes a substantial program modification. EPA disagrees. The revisions to the MOA do not substantially modify New York's NPDES program for they do not enact any new authorities, or substantially modify the State's program submitted by the State to EPA in February 1998 and made available for public comment at that time. Rather, the revisions to the MOA simply clarify the manner in which New York intends to implement its existing authorities to address the concerns raised in EPA's 90-day letter, which itself was also subject to notice and comment. The revisions to the MOA ensure that New York will administer its existing NPDES program consistent with the requirements of the Guidance and simply set forth how New York's existing authorities for administering the NPDES program will be implemented in the context of the Guidance. Therefore, the MOA is not itself a substantial program modification requiring public comment.

Comment: The commenter states that EPA's analysis regarding many of these provisions focuses on whether New

York's GLI rules are written in a substantially similar way as the Federal GLI guidance. However, the proper focus on whether New York's GLI rules are consistent with (as protective as) the Federal GLI rules should be on environmental results. As such, EPA's evaluation should be based on whether the State rules achieve or exceed the level of protection provided in the Federal guidance, and should not involve a strict accounting of whether the language of the Federal GLI rules was incorporated into the State rules.

Response: EPA agrees with the commenter's characterization of the nature of EPA's evaluation. The Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making these evaluations, EPA is also mindful that a major goal of the Guidance and section 118(c) of the CWA was to achieve more consistency in the level of protection across the entire Great Lakes Basin. To achieve this goal requires not only a comparable level of protection as defined by the water quality standards, but also implementation procedures that are as protective as each corresponding procedure in the Guidance. EPA has carefully reviewed New York State's water quality standards, antidegradation policies and implementation procedures for consistency with the Guidance, taking into account this flexibility, and has not required the State to incorporate the Guidance as written, provided the State's procedures can be expected to achieve the same level of protection as the Guidance. With two exceptions, EPA has found New York State's submission to be consistent with 40 CFR part 132. EPA's review was not based upon a verbatim comparison of New York's submission with the Guidance. In most instances EPA has concluded that New York State's water quality standards, antidegradation policies and implementation procedures are as protective as the Guidance's requirements. In addition, where appropriate EPA and New York State have agreed to facilitate the approval process by entering into an Amendment to their Memorandum of Agreement regarding the State's approved NPDES program by which New York commits to exercise its discretion consistent with the Guidance.

Comment: The commenter states that in explaining its disapproval of New York's wildlife water quality criterion for mercury, EPA stated that 40 CFR 132.4(d) requires that States adopt aquatic life, human health, and wildlife criteria, and that each type of criteria must be as protective as the corresponding Federal criteria. The commenter states that he believes that EPA's interpretation of this provision of the Federal GLI rule is incorrect. 40 CFR 132.4(d) requires States to apply criteria adopted pursuant to the methodologies or site-specific modification procedures for aquatic life, human health, and wildlife, to all waters of the Great Lakes System. The commenter argues that New York State has complied with this requirement, as its wildlife criterion for mercury does apply to all State waters within the Great Lakes System. The commenter further states that this provision does not require States to adopt all types of criteria, of which each type must be at least as stringent as the criteria in Tables 1 through 4 of 40 CFR part 132.

The commenter also states that because New York's human health criterion for mercury is more protective than EPA's wildlife criterion for mercury, EPA should not require New York to adopt EPA's wildlife criterion for mercury.

Response: EPA disagrees with the commenter's position regarding the requirements in the Guidance, which address State adoption of aquatic life, human health, and wildlife criteria. While, as the commenter states, 40 CFR 132.4(d) requires States to apply criteria adopted pursuant to the methodologies or site-specific modification procedures for aquatic life, human health, and wildlife, to all waters of the Great Lakes System, 40 CFR 132.5(g)(1) requires that for pollutants in Tables 1, 2, 3 and 4 of this part, States must adopt numeric criteria which are as protective as ''*each*'' of the numeric criteria in Tables 1, 2, 3 and 4 of this part taking into account any site-specific modifications in accordance with Procedure 1 of Appendix F of the Guidance. New York State's wildlife criterion for mercury of 2.6 ng/L (dissolved) is less stringent than the criterion of 1.3 ng/L (total recoverable) found in Table 4 of the Guidance. Using EPA's conversion factor of 0.85 to convert New York State's dissolved-based wildlife criterion for mercury to a total recoverable criterion results in total recoverable-based wildlife criterion for mercury of 3.06 ng/L compared to the Guidance wildlife criterion of 1.3 ng/L. Based upon the above comparison of the State's wildlife criterion to the wildlife criterion in the Guidance on a total recoverable basis, EPA has determined that the New York State wildlife criterion for mercury is not as protective as the wildlife criterion in Table 4 of the Guidance. Therefore, EPA found that New York State's wildlife criterion for mercury was not consistent with the requirements of 40 CFR 132.5(g)(1). As such, EPA disapproves of New York State's wildlife criterion for mercury at 6NYCRR 703.5, and has determined that the wildlife criterion for mercury contained in Table 4 to 40 CFR part 132 shall apply for discharges into the Great Lakes System in the State of New York.

EPA disagrees that the State's adoption of a human health criterion for mercury obviates the requirement for the State to adopt a wildlife criterion as protective as the Guidance. While, under some circumstances, the State's human health criterion for mercury may result in controls on permitted discharges that are as stringent as would be developed using EPA's wildlife criterion, EPA has concluded that this would not necessarily be true in all cases, depending on site-specific conditions, in particular the amount of total suspended solids in the receiving water. Moreover, to approve the State's mercury human health criteria as consistent with EPA's wildlife criterion, EPA would have to assume that the State would always implement its human health criteria in such a way as to ensure protection of wildlife as well. Because exposure scenarios for human health and wildlife differ, however, States have flexibility to adopt differing approaches in implementing these two types of criteria. See, *e.g.,* 40 CFR part 132, appendix F, procedure 3.E.1 (describing different stream design assumptions for different kinds of criteria). Moreover, while New York's human health criteria currently apply to all waters, the State has flexibility under the Guidance to apply less stringent criteria to specific waters where justified by local rates of fish-consumption and bioaccumulation factors (see 40 CFR part 132, appendix F, procedure 1.A.4.b.). EPA believes that applying the Federal mercury wildlife criterion to waters in the Great Lakes System will ensure the protection of wildlife without inappropriately limiting the State's discretion as to how it implements its human health criteria or burdening EPA with overseeing the State's application of its human health criteria to ensure that wildlife will be protected as well.

Comment: In the case of several State implementation procedures for which EPA had identified concerns in the April 11, 2000 letter, the commenter stated that EPA should approve these State implementation procedures as being as protective as the Federal procedures.

Response: The State of New York has entered into an amendment to the MOA with EPA regarding the State's National Pollutant Discharge Elimination System program. This MOA addresses each of EPA's concerns regarding the State's implementation procedures. Therefore, EPA is approving the State's implementation procedures.

EPA has responded to the specific comments on each of the individual State implementation procedures in a document entitled ''Response to Comments Received on EPA's April 11, 2000 Letter to the New York State Department of Environmental Conservation (NYSDEC) on New York State's Great Lakes Initiative Submission'' that has been included as part of the record in this matter.

B. Consequences of Today's Action

As a result of today's action, the Guidance provisions specified in today's rule apply in the Great Lakes System in New York State until such time as the State adopts requirements consistent with the specific Guidance provisions at issue, and EPA approves those State requirements and revises the rule so that the provisions no longer apply in New York State.

II. ''Good Cause'' Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA finds it unnecessary and contrary to the public interest. Today's rule does not promulgate any new regulatory provisions. Rather, in accordance with the procedures in 40 CFR 132.5(f), today's rule identifies the provisions of part 132 promulgated previously by EPA that shall apply to discharges in New York State within the Great Lakes System. Those provisions have already been subject to a notice of proposed rulemaking, and publication of a new proposed rule is therefore unnecessary. See 58 FR 20802 (April 16, 1993). In addition, while EPA's approval/disapproval decisions described in this notice do not constitute rulemaking, EPA has nonetheless received substantial public comment on these decisions. See 63 FR 19490 (April 20, 1998) (notice of receipt of State Guidance submission and request for comment); 65 FR 24957 (April 28, 2000) (notice of letter identifying inconsistencies and request for comment). EPA also believes the public interest is best served by fulfilling the CWA's requirements without further delay and publication of a notice of proposed rulemaking therefore would be contrary to the public interest. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, as described in section II, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, because this action does not promulgate any new requirements, but only makes certain existing provisions of 40 CFR part 132 effective in New York State, it does not impose any new costs. The costs of part 132 were considered by EPA when it promulgated that regulation. Therefore, today's rule does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA, or significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective November 6, 2000.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 29, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 132 as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 132.6 is amended by adding paragraphs (d) and (e) to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

* * * * *

(d) Effective November 6, 2000, § 132.4(d)(2) shall apply to waters designated as ''Class D'' under section 701.9 of Title 6 of the New York State Codes, Rules and Regulations within the

Great Lakes System in the State of New York. For purposes of this paragraph, chronic water quality criteria and values for the protection of aquatic life adopted or developed pursuant to § 132.4(a) through (c) are the criteria and values adopted or developed by New York State Department of Environmental Conservation (see section 703.5 of Title 6 of the New York State Codes, Rules and Regulations) and approved by EPA under section 303(c) of the Clean Water Act.

(e) Effective November 6, 2000, the criteria for mercury contained in Table 4 of this Part shall apply to waters within the Great Lakes System in the State of New York.

[FR Doc. 00–25747 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL–6882–9]

Community XL (XLC) Site-Specific Rulemaking for Steele County, MN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) will implement a project under the Project XLC program for certain facilities in Steele County, Minnesota. The terms of the project are defined in a Final Project Agreement (FPA) which was made available for public review and comment through a **Federal Register** notice on December 29, 1999 (64 FR 73047) and signed on May 31, 2000. In addition, EPA is promulgating a site-specific rule, applicable only to the Steele County Sponsors who are Participating Industrial Users, to facilitate implementation of the project. This site-specific rule provides regulatory changes under the Clean Water Act (CWA or the Act) to implement the Community XL project, which will result in superior environmental performance. The site-specific rule changes some of the requirements which apply to the Sponsors who are Participating Industrial Users to promote a reduction in the discharge of four priority metals, a reduction in water usage, and the development of an Environmental Management System. An incentive-based monitoring approach will be implemented, such that as discharge reduction goals are met, monitoring frequency may be reduced, mass-based limits will replace certain concentration limits, and an alternative Significant Noncompliance (SNC) publication approach will be tested. Monitoring reductions for pollutants determined not to be present in an industry's wastestream will also be authorized.

DATES: This final rule is effective October 6, 2000. For judicial review purposes, this rule is promulgated as of 1 p.m. (Eastern Daylight Time) on October 6, 2000.

ADDRESSES: A docket containing the rule, Final Project Agreement, and supporting materials is available for public inspection and copying at U.S. EPA, Region V, Water Division, Room Number 15046, 77 West Jackson Boulevard, Chicago, IL 60604–3507. The Office is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning Abeer Hashem at (312) 886–1331. Refer to the Docket for the Steele County Site-Specific Rulemaking. The public may copy a maximum of 100 pages at no charge. Additional copies cost 15 cents per page. Project materials are also available on the World Wide Web at: http://www.epa.gov/projectxl/.

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 445, West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Ms. Kristina Heinemann in advance by telephoning (202) 260–5355. In addition supporting materials are available at the Owatonna, MN Public Library, 105 Elm Avenue, North, Owatonna, MN 55060. The phone number for the library is 507–444–2460, TDD 507–444–2480.

FOR FURTHER INFORMATION CONTACT: Ms. Abeer Hashem or Mr. Matthew Gluckman, U.S. Environmental Protection Agency, Region V, Water Division, WC–15J or WN–16J, 77 West Jackson Boulevard, Chicago, IL 60604–3507. Ms. Hashem can be reached at (312) 886–1331 and Mr. Gluckman can be reached at (312) 886–6089. Further information on today's action may also be obtained on the world wide web at: http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION: On May 8, 2000, the Environmental Protection Agency proposed a site-specific rule (65 FR 26550) that set forth the mechanism through which the Sponsors will attempt to reach discharge reduction goals for chromium, copper, nickel, and zinc; reach water use reduction goals; and commit to arrange and participate in training for the development of an Environmental Management System (EMS), as outlined in the Steele County Project XLC FPA (the document that embodies the parties' intent to implement this project). Today's final rule promulgates regulations that are identical to the proposed rule and that include the final group of Participating Industrial Users among those named in the May 8, 2000 proposal. Today's rule will facilitate implementation of the FPA that has been developed by the Steele County Project Sponsors, EPA, the Steele County Community Advisory Committee (CAC), the Minnesota Pollution Control Agency (MPCA), the Owatonna Waste Water Treatment Facility (OWWTF), the Blooming Prairie Waste Water Treatment Facility (BPWWTF), and other stakeholders. The FPA is available in the docket for today's action and on the world wide web at http://www.epa.gov/projectxl/. The FPA addresses the nine Project XLC criteria, and the expectation of EPA that this XLC project will meet those criteria. Those criteria are: (1) Environmental results superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) economic opportunity; (3) stakeholder involvement, support and capacity for community participation; (4) test of innovative, multi-media, pollution prevention strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application (transferability); (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden); and (9) community planning. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

Today's rule will implement the provisions of this Project XLC initiative that require regulatory changes. However, Minnesota has had an approved State National Pollutant Discharge Elimination System (NPDES) program since June 30, 1974, and an approved State pretreatment program since July 16, 1979. Therefore, the requirements outlined in today's rule will not take effect until Minnesota revises the Owatonna pretreatment program as incorporated in the Owatonna NPDES permit. EPA will not be the primary regulatory agency responsible for implementing the

requirements of this rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding State and local law and corresponding NPDES and Industrial User permits by which the remaining implementation of this XL project will be achieved.

Outline of Today's Document

The information presented in this preamble is organized as follows:

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I. Authority

EPA is promulgating this regulation under the authority of sections 307, 308, and 501 of the CWA, 33 U.S.C. 1317, 1318, 1361.

II. Background

A. Overview of Project XL and XLC

Each Project XL pilot— ''eXcellence and Leadership'' is described in a Final Project Agreement (FPA). For this Project XL for Communities (XLC), the FPA sets forth the intentions of EPA, the Minnesota Pollution Control Agency (MPCA) and the Steele County Community with regard to a project developed under Project XLC, an EPA initiative to allow regulated entities to achieve better environmental results using common sense, cost effective strategies. This regulation will enable implementation of the project. Project XL was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to that which would be achieved through compliance with current and future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. Project XLC, excellence and leadership for communities, was developed to focus on communities and local governments or regional organizations that are interested in creating an XL project. See 60 FR 55569 (November 1, 1995). Project XLC encourages potential sponsors to come forward with new approaches to demonstrate community-designed and directed strategies for achieving greater environmental quality consistent with community economic goals. To participate in Project XLC, applicants must develop alternative pollution reduction strategies pursuant to nine criteria: superior environmental results; stakeholder involvement, support, and capacity for community participation; economic opportunity; test of an innovative multi-media strategy; transferability; feasibility; community planning; identification of monitoring, reporting and evaluation methods; and equitable distribution of environmental risks. Projects must have the full support of affected federal, state and tribal agencies to be selected.

For more information about the XL and XLC criteria, readers should refer to the three descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995; 60 FR 55569, November 1, 1995; and 62 FR 19872, April 23, 1997). For further discussion as to how the Steele County XL Communities project addresses the XLC criteria, readers should refer to the Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or State-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute. Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or State-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the

discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, *e.g.,* section 104 of the CWA (33 U.S.C. 1254).

B. Overview of the Steele County XLC Project

1. Description of the Steele County Community XL Project Community-Based Environmental Regulation

The Steele County XLC pilot project will test the effectiveness of a community-based approach to industrial regulated wastewater effluent reductions and water use reduction controls designed to: (1) Result in pollution prevention; (2) meet the objectives of the CWA regulatory program; and (3) be at least as protective of human health and the environment as the current system. This project will pilot a community-based approach to environmental regulation with the goal of achieving a reduction in the discharge of certain metals to the OWWTF, and Biological Oxygen Demand (BOD), Total Suspended Solids (TSS) and Total Kjeldahl Nitrogen (TKN) to the BPWWTF. Other aspects of the pilot program will include water usage reduction, the development and implementation of a storm water and sewer water separation and education plan, and the development of a training and assessment program of an Environmental Management System. If this first phase of the project is considered by the parties to be successful, a Phase II, consisting in general outline of a multi-media approach to environmental permitting based on overall community performance in the areas of air emissions, solid waste, hazardous waste, chemical storage, and community sustainability may be considered. Today's rule does not cover or commit to a second phase of this project.

For the purposes of today's rule the group of Owatonna Sponsors who are Participating Industrial Users, includes the following Industrial Users (IUs) in the City of Owatonna: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Josten's Inc.-Southtown Facility; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company. Two facilities included in the Owatonna Sponsor group, Viracon-Marcon, Inc. and the Wenger Corporation and one Sponsor located in Blooming Prairie, Minnesota, ATOFINA Chemicals, Inc. (formerly Elf Atochem), are not receiving regulatory flexibility under today's rule and are therefore not included as Participating Industrial Users.

To achieve the objectives of Phase 1 of the Project, part of this project will pilot an incentive-based approach to reduced monitoring requirements. As the Owatonna Sponsors who are Participating Industrial Users, as a group meet certain discharge reduction goals, the City may reduce the required frequency of monitoring for any of the Participating Industrial Users. Other aspects of this pilot program include: (1) Pollutant monitoring may be eliminated where a pollutant is not discharged; (2) in order to encourage water use reduction compliance with a concentration-based Pretreatment Standard may be demonstrated by compliance with an equivalent mass-based limit (as discussed in section III. A.1. of this preamble); and (3) an alternative publication process for Significant Noncompliance (SNC) may be put in place. Finally, Sponsors may seek ''No Exposure Certification for Exclusion from NPDES Storm Water Permitting'', which is available under existing regulations (40 CFR 122.26(g), pursuant to a change in the regulations found at 64 FR 68722 (December 8, 1999)), and does not require flexibility under today's rule. Each of the elements of the pilot program that require regulatory flexibility are explained in the following sections of this preamble.

To achieve the objectives of this project the Participating Industrial Users have committed to utilize their best efforts to reach certain discharge reduction goals. Only if these goals are met will regulatory flexibility regarding lesser monitoring requirements than currently required under 40 CFR 403.12(e)(1) be granted. Specifically, the Participating Industrial Users located in Owatonna (or the ''City'') commit to a 20% reduction goal in the amount of nickel, chromium, copper, and zinc (by mass) they discharge to the OWWTF. These reduction goals are for each individual pollutant. If the first 20% reduction goal is met, a further 20% reduction goal may be set for the remaining project term. If the initial 20% reduction goal is met for all pollutants, the City may, at its discretion, reduce the self-monitoring frequency of Owatonna Sponsors who are Participating Industrial Users to once per year. If a second metal reduction goal is set, it need not be achieved in order for the minimum monitoring frequency to remain at once per year and no additional regulatory relief is available upon meeting this second goal; accordingly, today's rule does not address this second goal. In exercising the discretion provided in today's rule, the OWWTF will be required to consider the Participating Industrial User's previous three years of compliance data, and may not reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

This project focuses on the four metals slated for 20% release reductions because they are the metals determined to be discharged at the highest levels to the Owatonna wastewater treatment system relative to applicable water quality and biosolids criteria. In addition, the participants are regulated for these pollutants under categorical Pretreatment Standards and influence the loading of these pollutants to the Owatonna wastewater treatment system. Specific reductions of other categorically-regulated metals are not being pursued under this project because they are released in small quantities relative to applicable environmental criteria. Because certain of these other metals may be present at some of the participant facilities, these metals may not qualify for the elimination of monitoring due to no releases. In such cases, the Publically-Owned Treatment Works (POTW) will need to require continued monitoring of these metals. Through this rule the POTW will be given the discretion to reduce monitoring frequencies for the other categorically-regulated metals to the same extent it is being authorized to consider reduced monitoring for the four metals subject to the 20% reduction goals.

This project will also authorize the City to allow a Sponsor Participating Industrial User subject to categorical Pretreatment Standards to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply. For such pollutants, the OWWTF will only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User will still be subject to the categorical Pretreatment Standards for pollutants determined not to be present, and will need to resume monitoring if sampling indicates that a pollutant is present at above-background levels, or at any time at the discretion of the OWWTF.

If the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the IU's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The Participating Industrial User permit will

also require the User to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase of the pollutant in its wastewater due to its activities. The POTW will sample the Participating Industrial User's effluent for all pollutants in the applicable categorical Pretreatment Standard at least once during the term of the IU's permit.

One of the goals of this pilot project will be to facilitate water conservation measures at the Sponsors' facilities. The total flow to the OWWTF from the six Owatonna Sponsors who are Participating Industrial Users is 415,000 gallons per day. The Owatonna Sponsors commit to a goal in the FPA of reducing this flow by 10%. To facilitate meeting this goal this rule allows the OWWTF to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. Under the proposed rule entitled ''Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution'' (Pretreatment Streamlining Proposal), which was published on July 22, 1999 (64 FR 39564), Control Authorities would be allowed to establish alternative mass limits if an Industrial User has installed Best Available Technology Economically Achievable (BAT), or equivalent to BAT treatment, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use (Control Authority is defined at 40 CFR 403.12 (a) and is a broad term that can mean a POTW with an approved pretreatment program or the Approval Authority (defined at 40 CFR 403.3 (c)) where the POTW does not have an approved pretreatment program. The City of Owatonna has an approved pretreatment program.). While all of the conditions for receiving mass limits laid out in EPA's Streamlining Proposal are not being required for this site-specific rule (see discussion regarding Today's Rule in Equivalent Mass Limits for Concentration Limits section of III.A), EPA is interested in determining whether providing mass limits prior to full adoption of water conservation practices will encourage more widespread adoption of such practices. To ensure the continued appropriateness of the specific mass limits, Sponsor industries who are Participating Industrial Users will also be required to notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limits. The Participating Industrial Users will be required to continue operation of at least the same level of treatment as at the outset of the project. Upon notification of a revised production rate, the City will reassess the appropriateness of the mass limit. Sponsor ATOFINA Chemicals discharges 16,900 gallons per day to the BPWWTF and commits in the FPA to a reduction goal of 10% of this amount. Because ATOFINA Chemicals is currently required to comply with mass-based limits, no change to its limits are required to facilitate water conservation measures.

EPA is today promulgating a site-specific alternative procedure for publishing Significant Noncompliance for Participating Industrial Users. SNC is defined in 40 CFR 403.8(f)(2)(vii) as including violations by an Industrial User which meet one or more of eight specific criteria. Currently, POTWs are required to publish in the largest daily newspaper in the municipality in which the POTW is located a list of Industrial Users who have been in SNC at any time during the previous twelve months. The SNC publication requirement serves at least two important functions: (1) A deterrent effect on Industrial Users to avoid noncompliance generally, and SNC specifically, and (2) notice to the public of Significant Noncompliance. One result of this approach is that, if the POTW publishes the notice for a particular SNC violation after the end of the twelve month period, the publication may not occur close in time to the violation, resulting in a delay between the violation and the notice to the public.

The intent of the alternative procedure promulgated today is to require website notice of all SNC violations, and reserve additional newspaper publication for cases where this format is needed for its potentially greater effect. The Sponsors also intend to promote prompt and appropriate assistance for identifying and correcting violations through a unique community-based approach. Pursuant to the Steele County FPA, an Owatonna Peer Review Committee will be established. This Committee will consist of at least two Owatonna Sponsors not connected to the noncompliance event being reviewed and any stakeholders that wish to participate. The Peer Review Committee will investigate all instances of noncompliance by an Owatonna Sponsor who is a Participating Industrial User and provide recommendations and assistance to expedite a return to compliance. The Peer Review Committee will make recommendations to the City regarding whether or not publication in a newspaper should occur, in addition to the website publication described below. All recommendations by the Peer Review Committee will be non-binding on the City, and the City must continue to implement its State-approved Enforcement Response Plan. Under the Steele County FPA, the Sponsors will take steps to conduct public outreach on the information available regarding Significant and other noncompliance by the Sponsors, including a description of the Peer Review Committee and its functions, a Committee contact person and telephone number, and notice of Peer Review Committee meetings. Such outreach will include, but not be limited to, periodic (at least annual) mailings to the identified Steele County XL community stakeholders, and notice in the public library.

Any violation which is not corrected within thirty (30) calendar days or which results in pass through (as defined at 40 CFR 403.3(n)) or interference (as defined at 40 CFR 403.3(i)) will continue to be published in a newspaper as currently required in Part 403. All SNC violations, whether published in a newspaper or not, will be published as soon as is practicable on the MPCA web site. The website must contain an explanation of how SNC is determined. A contact name and phone number for information regarding all other violations must also be listed on the MPCA website.

2. What Are the Environmental Benefits of the Project?

This XLC project is expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by encouraging the Sponsors to work together in a coordinated manner to efficiently reduce their discharges to the OWWTF. As has been described, the Owatonna Sponsors who are Participating Industrial Users have committed to 20% discharge reduction goals for nickel, chromium, copper, and zinc. Although not receiving regulatory flexibility under today's proposal, ATOFINA Chemicals has committed to analogous discharge reduction goals for BOD, TSS, and TKN to the BPWWTF. The Participating Industrial Users and the Blooming Prairie Sponsor have additionally committed to a goal of at least a 10% reduction in water usage. Besides the direct environmental benefits of these reductions, the Sponsors have agreed to conduct an Environmental Management System (EMS) assessment within eighteen

months of the effective date of the project. In the first year of the project, the Sponsors commit to arrange and participate in training for the development of the EMS. The Sponsors will utilize the information from the EMS assessment to reach the discharge reduction goals as well as to examine their facilities for other possible environmental improvements. The Sponsors have agreed to report to EPA and the MPCA the results of the assessment and the suggestions which have been adopted by each facility. Additionally, the City has identified storm water infiltration into the collection system during wet weather events as a major problem. The Owatonna Sponsors have agreed to work with the City to help alleviate this problem through the development of educational materials which will be distributed to Sponsor employees as well as to the community at large. The Owatonna Sponsors have also committed in the FPA to develop a plan to minimize storm water infiltration into the sewer system at each participating facility.

One unique aspect of this pilot project is the desire of the Sponsor facilities to work together to reach common goals. It is hoped that this cooperation will go beyond the specific goals of this project and result in presently unforseen environmental benefits.

3. What Are the Economic Benefits and Paperwork Reduction Deriving From the Project?

This XLC Project will encourage the Sponsors to reduce water consumption at their facilities. This may result in reduced water costs for the facilities, without diminishing the level of environmental protection. Assuming the Sponsors discharge lower levels of pollutants to the OWWTF and the BPWWTF, these POTWs may benefit from lower treatment costs. To the extent monitoring and reporting frequencies are reduced under this project, reduced expenditures may result. The EMS assessments may identify further environmental and economic benefits.

4. Stakeholder Involvement

Stakeholder involvement and participation is vital to the success of the Steele County XLC project. The participants have worked through a Community Advisory Committee, established by the Steele County Project Sponsors, to ensure that the general public has had an opportunity to be involved throughout the development of this project. The participants will continue to work to foster full and open communication between the general public and the project Sponsors.

In addition, the Peer Review Committee will continue to provide opportunities for input from the community on important compliance issues. For example, if a Sponsor is in noncompliance, the Peer Review Committee will provide input to bring the Sponsor back into compliance. Sponsors will continue outreach work with all stakeholders using the strategies and tactics contained in their Proposed Stakeholder Involvement Plan (June 1999). MPCA, the Steele County Sponsors, Owatonna, Blooming Prairie, and EPA have been involved in the development of this project, and support it. From the beginning of the Steele County XLC process, there has been a high priority on providing opportunity for diverse stakeholder input and review. Public meetings were held in the city of Owatonna on June 9, July 27, and September 23, 1999.

5. What Is the Project Duration and Completion Date?

As with all XL projects testing alternative environmental protection strategies, the term of the Steele County Community XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be five (5) years from October 6, 2000 or until October 6, 2005. However, the project may be terminated or suspended at any time for failure to comply with any of the requirements of the rule. If the parties renew the Steele County Community XL Final Project Agreement beyond its initial five year period, then it may be necessary to extend this site-specific rule for an additional period of time.

6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Rule?

If EPA determines that it is appropriate to terminate Project participation of one or more Sponsors who are Participating Industrial Users, so that they will no longer be eligible to receive the regulatory flexibility provided in today's rule, EPA will coordinate with the POTW and State to make the necessary changes to the Participating Industrial User's permit. EPA retains its enforcement authority under the CWA to enforce Pretreatment Standards whether or not the POTW or State make such changes to the Participating Industrial User's permit.

7. How May the Project Be Terminated?

When the State modifies Owatonna's NPDES permit to incorporate the flexibility in today's rule, it has agreed to include a reopener provision enabling the State to eliminate this flexibility. The State has agreed to use this reopener provision if the Project is terminated. In the event of early Project termination, EPA will also eliminate the provisions of proposed section 403.19 in advance of its October 6, 2005 expiration date.

III. Rule Description

A. Clean Water Act Requirements, Pretreatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project

Equivalent Mass Limits for Concentration Limits (40 CFR 403.19(b))

1. Existing Requirements (40 CFR 403.6(c)). National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by facilities in specific industrial categories. The Pretreatment Standards establish pollutant limitations in different ways for different categories. EPA has established categorical Pretreatment Standards that are: (1) Concentration-based standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration standard multiplied by a facility's process wastewater flow. The current regulations do not allow a mass limit to substitute for a concentration limit when the applicable standard is expressed in terms of concentration. While 40 CFR 403.6(d) allows the Control Authority to develop equivalent mass limits for concentration-based standards in order to prevent dilution, the equivalent limit applies in addition to the concentration limit. Today's rule allows a Participating Industrial User who qualifies for flexibility under the rule to demonstrate compliance with the categorical Pretreatment Standard by demonstrating compliance with an equivalent mass-based limit alone.

2. The Pretreatment Streamlining Proposal. In its proposed rule entitled Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution (64 FR 39564, July 22, 1999) (Pretreatment Streamlining Proposal), EPA proposed to allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an Industrial User has installed model treatment technology or a treatment technology that yields optimum removal efficiencies, and the Industrial User is employing water conservation methods

and technologies that substantially reduce water use. The Agency, however, solicited comments on whether mass limits would be appropriate in other situations. EPA proposed that 40 CFR 403.6(c) be revised to clarify that equivalent mass limits may be authorized by the Control Authority in lieu of concentration-based limits for Industrial Users. The Control Authority would be required to document how the mass limits were derived and make this information publicly available.

The July 22, 1999, proposed rule also specifically referenced the Steele County XL Community Project and indicated that, if this project were ready to proceed before EPA finalized the complete Pretreatment Streamlining proposal, EPA may promulgate, based on that proposal and comments received, a separate site-specific rule to allow the industries involved in the Steele County XLC project to use, at the discretion of the Control Authority, the change proposed for 40 CFR 403.6(c).

3. Today's Rule. To facilitate water use reduction by industries involved in the Steele County XLC Project, EPA is allowing the City of Owatonna, which is the Control Authority for the Owatonna Sponsor industries, the Participating Industrial Users, to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. For this site-specific rule, EPA will not require Approval Authority review of equivalent mass-based limits in addition to POTW approval because EPA believes that existing Approval Authority oversight is sufficient to ensure that equivalent mass-limits are properly calculated and applied. EPA expects that the experience with Steele County on this element of today's rule may well inform whether Approval Authority review should be required in the Pretreatment Streamlining Proposal. Mass limits must be established by multiplying the five year, long term average process flows of the Participating Industrial Users (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical Pretreatment Standards. In general, flows used to establish mass-based limits must be appropriate in relation to current production or known future production, and will be determined based on consultation between the industry and the City of Owatonna. EPA's ''Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula'', EPA833–B–85–201, September 1985 provides additional guidance on establishing appropriate long-term average flows.

Importantly, today's rule will not affect the applicability of categorical Pretreatment Standards. Section 307(d) of the Clean Water Act prohibits the owner or operator of any source from operating in violation of any Pretreatment Standard. See 33 U.S.C. 1317(d). Today's rule will simply allow a Participating Industrial User to demonstrate compliance with a concentration-based Pretreatment Standard by meeting a properly-calculated, mass-based equivalent. Today's rule does not affect the underlying categorical Pretreatment Standard and, therefore, does not improperly transfer standard-setting authority to the City of Owatonna. Compliance with a mass-based limit may be used to demonstrate compliance with a categorical Pretreatment Standard only to the extent that the mass-based equivalent is properly calculated. In any event, EPA retains its authority to oversee POTW implementation of categorical Pretreatment Standards, including the authority to ensure that equivalent mass-based limits correctly interpret and apply concentration-based Pretreatment Standards. EPA notes that these provisions are similar to the existing authority to allocate equivalent mass limits or concentration limits for production-based standards. See 40 CFR 403.6(c)(2).

In return for this flexibility, the Sponsor industries, the Participating Industrial Users, are committing as a group to reduce water usage by 10 percent over the initial five-year project period. In this site-specific rule EPA is not conditioning the availability of mass-based limits on the use of water conservation methods and technologies (as it would in the Pretreatment Streamlining Rule) because EPA wishes to determine whether the structure of today's rule would result in the desired reduction in water use without imposing preconditions that may limit more widespread participation. For the same reason, EPA is not requiring that Participating Industrial Users generate complex technical studies to demonstrate the necessity of equivalent mass-based limits. In addition, this rule will not require that Participating Industrial Users utilize model treatment technologies that serve as the basis for the applicable Pretreatment Standards. Instead, EPA is interested in determining whether or not it would be sufficient to prevent facilities from complying with the applicable Standards, in the event of production decreases, by requiring that the facility maintain at least the same level of treatment as at the time an equivalent mass limit is established. To ensure the continued appropriateness of the specific mass limits, the Participating Industrial Users will also be required to notify the City in the event production rates are expected to vary by more than 20 percent from the previous year's average. Upon notification, the City will reassess the appropriateness of the mass limit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise IU permits issued to Participating Industrial Users to enable it to establish alternative mass limits. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Sampling for Pollutants Not Present (40 CFR 403.19(c))

1. Existing Requirements (40 CFR 403.12(e), 403.8(f)(2)(v)). Currently, 40 CFR 403.12(e)(1) requires Industrial Users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice a year, indicating the nature and concentration of all pollutants in their effluent that are limited by the Standards. 40 CFR 403.8(f)(2)(v) requires Control Authorities to sample these Industrial Users at least annually. Sampling is currently required for all pollutants limited by a categorical Pretreatment Standard, even if certain pollutants regulated by the Standard are not reasonably expected to be present.

2. The Pretreatment Streamlining Proposal. The July 22, 1999 Pretreatment Streamlining proposal would authorize a Control Authority to allow an Industrial User subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. The Agency also proposed a reduced sampling requirement for the POTW, to once per permit term, once it had determined that a pollutant was not expected to be present.

The Pretreatment Streamlining proposal would require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. EPA did not propose that a specific amount of

sampling data be required but solicited comment on that issue.

3. Today's Rule. For purposes of this project, and as specified in Attachment C of the FPA, the City will be authorized to allow a Sponsor Participating Industrial User subject to categorical Pretreatment Standards to reduce the required sampling to less than twice per year, or to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply, with no increase in the pollutant due to the regulated process. For such pollutants, the POTW will only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User will still be subject to the categorical Pretreatment Standards for pollutants determined not to be present, and will be in violation of the limit and will need to resume the required sampling if existing sampling indicates the User has violated the limit.

Consistent with the Pretreatment Streamlining Proposal, for purposes of this project, determinations by the City of Owatonna to either waive or reduce Participating Industrial User sampling to less than twice per year will be based on both sampling and other technical data, such as raw material usage, industrial processes, and potential by-products. Existing data on pollutant concentrations of the local public water supply will be used to characterize background concentrations; where a Participating Industrial User uses an alternative water supply, representative influent sampling will need to be provided. At least three years of Participating Industrial User effluent data will then be compared to the background data in making the determination that a given pollutant is not expected to be present. In addition, the city will need to make its determination based on its knowledge of the raw materials used and the facility's processes and potential by-products, but will not consider capability and efficiency of the User's pretreatment system. Where it believes it is necessary to make a determination, the City may require a Participating Industrial User to provide representative data on its untreated effluent.

Once the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the Participating Industrial User's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The IU permit must also require the Participating Industrial User to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase in the pollutant in its wastewater due to its activities. The POTW must sample the Participating Industrial User's effluent for all pollutants in the applicable categorical Pretreatment Standard at least once during the term of the Participating Industrial User's permit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to enable it to eliminate monitoring for pollutants not present. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Monitoring Frequency Reductions (40 CFR 403.19(e))

1. Existing Requirements (40 CFR 403.12(e)). As discussed above, 40 CFR 403.12(e)(1) currently requires Industrial Users subject to categorical Pretreatment Standards to submit reports to the Control Authority twice a year, or more frequently if required by the Pretreatment Standard or the POTW, indicating the nature and concentration of all pollutants in their effluent that are limited by the Pretreatment Standards. The City of Owatonna generally requires its significant IUs to monitor and report on a quarterly basis.

2. Today's Rule. Upon initiation of this project, the City will evaluate the recent performance of Sponsor Participating Industrial Users, and may reduce monitoring requirements to twice per year for facilities with satisfactory compliance records. After the first metal reduction goal of 20% is met, the City will be authorized, at its discretion, to reduce the self-monitoring frequency of Participating Industrial Users for any regulated pollutant to once per year. EPA believes that this mechanism will provide an incentive for Participating Industrial Users to reduce their contribution of the specified metals. In exercising this discretion, the OWWTF will be required to consider the Participating Industrial User's previous three years of compliance data, and cannot reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

The loading values that were specified in the proposed rule have been adjusted in today's rule based on a 20 percent reduction from the baseline loadings from the final group of Owatonna Participating Industrial Users.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to reduce monitoring frequencies for regulated pollutants. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Significant Noncompliance Criteria (40 CFR 403.19(f))

1. Existing Requirements (40 CFR 403.8(f)(2)(vii)). ''Significant Noncompliance'' (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report Noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among Control Authorities for publishing their

lists of Industrial Users in Noncompliance. Under this provision, Control Authorities are required to annually publish a list of Industrial Users in SNC at any time during the previous twelve months. The Control Authority must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, Control Authorities are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the Control Authority respond with some type of formal enforcement action such as an enforceable order (''Guidance for Developing Control Authority Enforcement Response Plans,'' EPA 832–B–89–102, September 1989.)

2. The Pretreatment Streamlining Proposal. EPA did not propose to amend the entire provision on SNC, or even seek comment on all of it. Instead, the Agency proposed limited changes and sought comment on a number of options for a few specific provisions. With respect to publication, the primary purposes of which are to notify the public of violations and provide a disincentive for violating, EPA proposed to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. EPA also proposed to amend the SNC criteria so that they must only be applied to Significant Industrial Users, and to address more than just daily maximum and monthly average limits. The Agency also sought comments on whether to revise the Technical Review Criteria, whether to revise the SNC criteria for late reports, and whether to codify the rolling quarters approach to determining SNC or adopt some other approach.

3. Today's Rule. Under today's site-specific rule, the City will have the discretion to not publish certain instances of SNC by Sponsor Participating Industrial Users in a newspaper. EPA believes that this change will provide faster public notice of SNC and will reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. The City will continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. All SNC violations, whether published in a newspaper or not will be published as soon as is practicable, on the MPCA web site. The web site will contain an explanation of how SNC is determined, as well as a contact name and phone number for information regarding all other violations. The Owatonna Peer Review Committee system contemplated in the Steele County FPA will not be specified expressly in the rule, but rather is a voluntary agreement on the part of the Sponsors.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

B. Changes to the Proposed Rule

EPA received no public comments on the proposed rule. EPA has made only one change to the proposed rule. The final rule includes the final list of Participating Industrial Users and adjusts the average daily loadings for chromium, copper, nickel and zinc in § 403.19(e) of the proposal to reflect participation of the final group of Participating Industrial Users.

IV. Response to Significant Public Comments

EPA received no public comments on the proposed rule.

V. What Is the Effective Date of This Rule?

Pursuant to 5 U.S.C. 553(d)(1), EPA is making this rule effective immediately upon publication because it relieves a restriction in that it reduces monitoring requirements and as such has the effect of reducing regulatory requirements for the Participating Industrial Users. In addition, pursuant to 5 U.S.C. 553(d)(3), EPA finds that good cause exists to make this rule effective immediately. The Owatonna Wastewater Treatment Plant and six Participating Industrial User facilities are the only regulated entities affected by this rule. The Owatonna Wastewater Treatment Facility and the Participating Industrial Users have had full notice of this site-specific rule. Making the rule immediately effective will allow the MPCA to issue a revised NPDES permit to the Owatonna Wastewater Treatment Facility sooner.

VI. Additional Information

A. How Does This Rule Comply With Executive Order 12866?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order and because this rule affects only six specific private sector facilities and a single Publically-Owned Treatment Works (POTW), it is not a rule of general applicability or a ''significant regulatory action'' and therefore not subject to OMB review and Executive Order 12866.

Further today's rule does not affect the POTW or the facilities unless they choose on a voluntary basis to participate in the XL project. Finally, OMB has agreed that review of site-specific rules under Project XL is not necessary.

B. Is a Regulatory Flexibility Analysis Required?

Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a Regulatory Flexibility Analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a Regulatory Flexibility Analysis. Pursuant to section 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities for the reasons explained below.

Consequently, EPA has not prepared a Regulatory Flexibility Analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule amends EPA's General Pretreatment Regulations to modify on a site-specific basis the requirements for pretreatment programs. The rule authorizes the Owatonna, Minnesota Waste Water Treatment Facility, in its discretion, to reduce the required frequency of monitoring for Participating Industrial Users. Only one POTW is subject to this rule and grant of the relief authorized by the rule will reduce costs to the Owatonna Wastewater Treatment Facility's Participating Industrial Users, including any Industrial User that is a small business. Under these circumstances, EPA has concluded that the rule will not have a significant economic impact on a substantial number of small entities.

C. Is EPA Required To Submit a Rule Report Under the 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 the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability, rules relating to agency management or personnel, and rules of agency organization, procedure, or practice that do not substantially effect the rights or obligations of non-agency parties. 5 U.S.C. 804 (3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability affecting just six private sector facilities and one POTW.

D. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?

This action applies to six companies and a single POTW and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why the 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.

As noted above, this rule is limited to the OWWTF and certain sponsoring industries. This rule will create no federal mandate because EPA is imposing no new enforceable duties. EPA has also 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. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this rule, EPA worked closely with MPCA and the OWWTF and received meaningful and timely input in the development of this rule.

F. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This rule does not impose any new or amended standards for discharged wastewater resulting from treatment by a POTW. With respect to the effects on children, the collection, treatment and disposal of wastewater occurs in a restricted system (*e.g.,* buried sewer lines and fenced wastewater treatment plants) that children are unlikely to come in contact with on a routine basis. This rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the regulatory changes will not disproportionately affect children. This rulemaking is thus in compliance with the intent and requirements of the Executive Order.

G. How Does This Rule Comply With Executive Order 13132 on Federalism?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's rule will not take effect unless Minnesota chooses to adopt equivalent requirements through revisions to Owatonna's NPDES permit and Owatonna chooses to take the steps to implement the rule and make revisions to any local law and Industrial User permits. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

H. How Does This Rule Comply With 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 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 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. There are no communities of Indian tribal governments located in the vicinity of Steele County. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Does This Rule Comply With the National Technology Transfer and Advancement Act of 1995 ''NTTAA'')?

Section 12(d) of 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This rulemaking sets equivalent means of expressing the same technical standards, and of determining compliance with those standards. It also uses voluntary goals to achieve pollutant reductions beyond those required by the technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 403

Environmental protection, Confidential business, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 29, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.19 is added to read as follows:

§ 403.19 Provisions of specific applicability to the Owatonna Waste Water Treatment Facility.

(a) For the purposes of this section, the term ''Participating Industrial Users'' includes the following Industrial Users in the City of Owatonna, Minnesota: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Josten's Inc.—Southtown Facility; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company.

(b) For a Participating Industrial User discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota, when a categorical Pretreatment Standard is expressed in terms of pollutant concentration the City of Owatonna may convert the limit to a mass limit by multiplying the five-year, long-term average process flows of the Participating Industrial User (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical Pretreatment Standard. Participating Industrial Users must notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limit. To remain eligible to receive equivalent mass limits the Participating Industrial User must maintain at least the same level of treatment as at the time the equivalent mass limit is established. Upon notification of a revised production rate from a Participating Industrial User, the City will reassess the appropriateness of the mass limit. Owatonna shall reestablish the concentration-based limit if a Participating Industrial User does not

maintain at least the same level of treatment as when the equivalent mass limit was established.

(c) If a categorical Participating Industrial User of the Owatonna Waste Water Treatment Facility has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that pollutants regulated through categorical Pretreatment Standards, other than 40 CFR part 414, are not expected to be present in quantities greater than the background influent concentration to the industrial process, the City of Owatonna may reduce the sampling frequency specified in § 403.8(f)(2)(v) to once during the term of the categorical Participating Industrial User's permit.

(d) If a Participating Industrial User is discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota and is subject to a categorical Pretreatment Standard other than one codified at 40 CFR part 414, the City of Owatonna may authorize the Participating Industrial User to forego sampling of a pollutant if the Participating Industrial User has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Participating Industrial User certifies on each report, with the following statement, that there has been no increase in the pollutant in its wastestream due to activities of the Participating Industrial User. The following statement is to be included as a comment to the periodic reports required by § 403.12(e):

''Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR _____, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e).''

(e) If the average daily loading from the Participating Industrial Users to the Owatonna Waste Water Treatment Facility is equal to or less than 0.68 pounds per day of chromium, 0.25 pounds per day of copper, 1.17 pounds per day of nickel, and 1.01 pounds per day of zinc, Owatonna may authorize a categorical Participating Industrial User to satisfy the reporting requirements of § 403.12(e) with an annual report provided on a date specified by Owatonna, provided that the Participating Industrial User has no reasonable potential to violate a Pretreatment Standard for any pollutant for which reduced monitoring is being allowed, and has not been in Significant Noncompliance within the previous three years.

(f) The Owatonna Waste Water Treatment Facility in Owatonna, Minnesota shall post public notice of all Significant Noncompliance subject to the publication requirement in § 403.8(f)(2)(vii) at the Minnesota Pollution Control Agency website for a period of one year, as soon as practicable upon identifying the violations. In addition, the Owatonna Waste Water Treatment Facility shall post an explanation of how Significant Noncompliance is determined, and a contact name and phone number for information regarding other, non-Significant Noncompliance violations. If a violation is not corrected within thirty (30) calendar days or results in pass through or interference at the Owatonna Waste Water Treatment Facility, publication must also be made in the format specified in § 403.8(f)(2)(vii).

(g) The provisions of this section shall expire on October 6, 2005.

[FR Doc. 00–25746 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413 and 489

[HCFA–1005–CN2]

RIN 0938–AI56

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay of Effective Date

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction.

SUMMARY: This document corrects several typographical errors that appeared in the notice of delay of effective date for the final rule with comment period published in the **Federal Register** on June 30, 2000, entitled ''Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay of Effective Date.''

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Wellham, (410) 786–4510.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 00–16586 of June 30, 2000 (65 FR 40535), there were several typographical errors. The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on June 30, 2000.

Correction of Errors

In FR Doc. 00–16586 on June 30, 2000, make the following corrections:

1. On page 40535, column three, in the **DATES** section, ''§ 412.24'' is corrected to read ''§ 413.24'', and § 489.24(h) is corrected to read ''§ 489.24.''

2. On page 40537, column one, the third full paragraph, line two, ''§ 412.24'' is corrected to read ''§ 413.24'', and ''§ 489.24(h)'' is corrected to read ''§ 489.24.''

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 21, 2000.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 00–25498 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 422

[HCFA–1030–CN2]

RIN 0938–AI29

Medicare Program; Establishment of the Medicare+Choice Program; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period; Correction.

SUMMARY: On June 29, 2000, we published in the **Federal Register**, at 65 FR 40170, a final rule with comment period that responded to comments on the June 26, 1998 interim final rule that implemented the Medicare+Choice (M+C) program and made revisions to those regulations where warranted. We also made revisions to the regulations that were necessary to reflect the changes to the M+C program resulting from the Balanced Budget Refinement Act of 1999. This document corrects omissions made in the June 29, 2000 document regarding deeming status.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Trisha Kurtz, (410) 786–4670.

SUPPLEMENTARY INFORMATION: In our final rule published June 29, 2000 (65 FR 40170), on page 40232 of the preamble, we responded to public comments that addressed our authority under § 422.156 (Compliance deemed on the basis of accreditation), paragraph (e)(1), to remove deemed status on the basis of a review of accreditation results. In the preamble, we clarified that we do not intend to overrule an accreditation organization's survey decision without conducting our own investigation. We also noted that if our own investigation reveals that a condition is not met, we reserve the right to remove the MCO's deemed status even when the accreditation organization has not removed accreditation with respect to that condition. In order to clarify the distinction between: (1) A removal of deemed status by HCFA, based on HCFA's own survey; and (2) a removal based on a determination of noncompliance by an accreditation organization as a result of its accreditation survey, we stated that we would revise § 422.156(e)(1). However, we inadvertently omitted making this change in the regulations text. This document corrects that omission by revising § 422.156(e)(1).

In addition, on pages 40233 through 40234 of the preamble, we responded to a commenter's concern regarding removal of an accreditation organization's approval, regardless of the ''rate of disparity'' between certification by the accreditation organization and certification by HCFA or our agent, by adding another reporting requirement in § 422.157 (Accreditation organizations), paragraph (c)(6). This change requires that accreditation organizations provide us annually with summary data relating to their accreditation activities and observed trends. These data will assist us in making a comprehensive assessment of accreditation organizations' performance, and will help ensure that our oversight decisions are well-informed and appropriate. However, this change was inadvertently omitted in the final regulations text. This document corrects that omission by adding § 422.157(c)(6).

Correction of Errors

Regulations Text

§ 422.156 [Corrected]

1. On page 40323, in column 2, amendatory instruction number 29 is corrected to read ''Revise paragraphs (a), (b), and (e)(1) in § 422.156 to read as follows:'' and corrected paragraph (e)(1) is added:

§ 422.156 Compliance deemed on the basis of accreditation.

* * * * *

(e) * * *

(1) HCFA determines, on the basis of its own investigation, that the M+C organization does not meet the Medicare requirements for which deemed status was granted.

* * * * *

§ 422.157 [Corrected]

1. On page 40323, in column 3, amendatory instruction number 30 is corrected to read ''Section 422.157 is amended by republishing the introductory text for paragraph (a), revising paragraphs (a)(3) and (b)(1), and adding new paragraph (c)(6) to read as follows:'' and new paragraph (c)(6) is added:

§ 422.157 Accreditation organizations.

* * * * *

(c) * * *

(6) Provide, on an annual basis, summary data specified by HCFA that relate to the past year's accreditation activities and trends.

* * * * *

(Authority: Sections 1851 through 1859 of the Social Security Act (42 U.S.C. 1395w–21 through 1395w–28))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93–774, Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 2000.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 00–25499 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00–91; FCC 00–340]

Availability of Intelsat Space Segment Capacity

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has determined that users and service providers do not have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements. The Commission also has required Comsat to enter into commercial negotiations with direct access customers to attempt to resolve satellite capacity allocation issues.

DATES: Effective October 6, 2000 written comments by the public on the new information collections are due December 5, 2000.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC, 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption proceeding, however, commenters must transmit one copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form@your e-mail address.'' A sample form and directions will be sent in reply.

A copy of any comments on the information collection requirements should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC, 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: James Ball, International Bureau, (202) 418–0427; Steven Spaeth, Satellite Policy Branch, Satellite and Radiocommunication Division, International Bureau, (202) 418–1539. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted September 13, 2000, and released September 19, 2000. The full text of this Commission decision is available for inspection and copying

during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th St., SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th St., NW, Washington, DC 20036.

The Commission is required to conduct this rulemaking pursuant to the recently enacted Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act). Section 641(b) of the Communications Satellite Act of 1962, as amended by the ORBIT Act, requires the Commission to determine whether ''sufficient opportunity'' exists for users and service providers ''to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements.'' If the Commission finds that ''sufficient opportunity'' does not exist, the Commission is required to ''take appropriate action to facilitate direct access,'' and otherwise ''to take such steps as may be necessary to prevent circumvention of the intent'' of this section. Section 641(c) states that ''nothing in this section shall be construed to permit the modification or abrogation of any contract.''

In 1999, the Commission permitted users and service providers in the United States to obtain Level 3 direct access to INTELSAT space segment capacity. Direct Access to the INTELSAT System, Report and Order, 64 FR 54561 (October 7, 1999). Level 3 direct access permits non-Signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories. The subsequently enacted ORBIT Act mandates that users and providers of telecommunications services shall be permitted to obtain Level 3 direct access to INTELSAT and requires the Commission to conduct this rulemaking.

The Commission issued a Notice of Proposed Rulemaking in this proceeding. Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, Notice of Proposed Rulemaking, 65 FR 35312 (June 2, 2000). The Commission concludes that users and service providers currently do not have sufficient opportunity for direct access. This is because most of INTELSAT's current U.S.-accessible capacity is subject to Comsat control, or is committed to other INTELSAT Signatories. In addition, a significant portion of INTELSAT's uncommitted capacity is fragmented into small amounts of bandwidth, and therefore may not be useful for many purposes.

Although INTELSAT plans to launch new satellites and to redeploy existing satellites to make more capacity available by 2003, the Commission cannot determine whether there will be sufficient opportunity for direct access in the future. Most of the new capacity will be concentrated at three orbital locations. It is not clear from the record in this proceeding whether capacity at those locations will meet the needs of direct access users. Furthermore, Comsat can renew the contracts covering the capacity currently under its control, so that there is no way to determine how much of that capacity will become available for direct access in the future.

The Commission also concludes that the ''appropriate action'' the Commission should adopt is a ''commercial solution.'' In other words, the Commission requires the parties to attempt to negotiate mutually agreeable arrangements, and to report back by March 13, 2001 on the progress of those negotiations. Finally, the Commission concludes that the Commission may adopt a ''regulatory solution'' if ''commercial solutions'' are unavailable. The draft does not foreclose any regulatory option at this time.

This Report & Order contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This Report and Order contains new information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 5, 2000. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden 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.

OMB Control Number: 3060–XXXX (new collection).

Title: Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time per Response: Two hours.

Frequency of Response: One time only.

Total Annual Burden: 20 hours.

Total Annual Costs: $3000.

Needs and Uses: This data collection is necessary to enable the Commission to evaluate the decisions made in this Report and Order.

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act (RFA), [1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice. The Commission then sought written public comment in that proceeding, including comments on the IRFA. No party filed comments in response to the IRFA. Further, this Report and Order promulgates no new rules and our action here does not affect the previous analysis in the Notice.

Ordering Clauses

Accordingly, pursuant to Sections 102(c), 210(c)(2), 201(c)(11), and 641 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c), 741(c)(2), 741(c)(11), 765, and Sections 1, 2, 4(c), 201, 202, 214, 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(c), 201, 202, 214, 301, 303, 307, 308, and 309, that the requirements and policies are adopted.

Comsat Corporation shall file the report discussed in this Order on or before March 13, 2001.

Authority is delegated to the Chief, International Bureau, as specified herein, to effect the decisions set forth above.

The Motion for Extension of Time filed by Comsat Corporation on July 24, 2000, is granted.

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–25740 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–267; FCC 00–291]

Implementation of the AM Expanded Band Allotment Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule; on remand from U.S. Court of Appeals for D.C. Circuit; record supplemented.

SUMMARY: After undertaking a hypothetical computer re-analysis of the allotment plan for the migration of AM radio stations to the expanded band, *i.e.,* 1605–1705 kHz, deleting protections for federal Traveler Information Service (''TIS''), the Federal Communications Commission (''FCC'') concluded that WGNY(AM), Newburgh, New York, would not have been granted an AM expanded band allotment even if TIS station protection was deleted. This action was taken in response to WGNY's argument that it would have been granted an expanded band allotment if the expanded band plan did not include TIS protections. The FCC also declined to consider WGNY's objections to several fundamental aspects of the allotment methodology which were resolved earlier in this proceeding but about which WGNY did not object previously.

DATES: Effective August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle, Audio Services Division, Mass Media Bureau (202) 418–2789.

SUPPLEMENTARY INFORMATION: In Implementation of the AM Expanded Band Allotment Plan, MM Bureau Docket No. 87–267, FCC 00–291, adopted August 3, 2000, released August 10, 2000 (''Memorandum Opinion and Order''), on remand from the U.S. Court of Appeals for the District of Columbia Circuit (the ''Court''), the Federal Communications Commission concluded that a computer reanalysis performed by the FCC staff establishes that Station WGNY(AM), Newburgh, New York, would not receive an AM expanded band allotment even if the FCC were to adopt the technical change to the allotment methodology that the licensee of WGNY(AM) advocated. On June 25, 1997, Sunrise Broadcasting of New York, Inc., sought review by the Court of the FCC's March 17, 1997 Order in Implementation of the AM Expanded Band Allotment Plan, FCC 97–68, 12 FCC Rcd 3361, 62 FR 23176 (Apr. 29, 1997) (''Order''), which had denied, *inter alia,* Sunrise's Petition for Reconsideration of Non-Inclusion in Expanded AM Band Allotment Plan. Note: 62 FR 23176 inadvertently omitted the Final Regulatory Flexibility Analysis for the Order, FCC 97–68; that analysis is located at 62 FR 28369 (May 23, 1997). Also on March 17, 1997, the Mass Media Bureau issued a Public Notice, Mass Media Bureau Announces Revised AM Expanded Band Allotment Plan and Filing Window for Eligible Stations, 12 FCC Rcd 3185 (MM Bureau 1997) (''Third Allotment Plan'') which did not include an expanded band allotment for WGNY. Sunrise argued to the Court of Appeals that the staff's granting certain Traveler Information Service (''TIS'') stations co-primary status (thus according them some interference protection) was an unexplained change of agency policy and resulted in WGNY being precluded from obtaining an expanded band allotment. The Mass Media Bureau responded to the Court with a computer analysis that eliminated TIS Station consideration but still resulted in WGNY not having an allotment. After the Court remanded the matter to the FCC on this point, on March 31, 1998, the Mass Media Bureau supplemented the record with the computer re-analysis. On October 19, 1998, Sunrise conceded this point, but in Comments filed with the FCC it sought consideration, for the first time, of issues not previously raised in this proceeding. Specifically, Sunrise objected to the 1995 FCC decision to change the co-channel distance separation requirements for AM expanded band stations from 400 to 800 kilometers (see Reconsideration of Implementation of the AM Expanded Band Allotment Plan, 10 FCC Rcd 12143, 12149 (1995)), and to the calculation of the improvement factors for two of the 710 potential expanded band stations listed in a 1996 Mass Media Bureau Public Notice (see Public Notice, Mass Media Bureau Announces Revised Experimental AM Broadcast Band Implementation Factors and Allotment Plan, 11 FCC Rcd 11419 (MMB 1996). In the Memorandum Opinion and Order, the FCC denied as untimely Sunrise's request to reexamine any aspects of the AM expanded band proceeding other than those relating directly to the interference protection afforded TIS stations, and ordered that the Mass Media Bureau's computer re-analysis be made a part of the record in this proceeding. The full text of the Memorandum Opinion and Order issued in Implementation of the AM Expanded Band Allotment Plan, FCC 00–291, adopted August 3, 2000 and released on August 10, 2000 is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th Street, SW, Washington, D.C. The complete text of this MO&O may also be purchased from the FCC's copy contractor, International Transcription Services (202) 857–3800, 1231 20th Street, NW, Washington, D.C.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–25734 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2148; MM Docket No. 99–75; RM–9446]

Radio Broadcasting Services; Grants, Milan, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Don Davis, former licensee of Station KQEO(FM), now Station KXXQ(FM), Grants, New Mexico, reallots Channel 264A from Grants to Milan, New Mexico as the community's second local aural transmisson service. *See* 64 FR 14423 (March 25, 1999). Channel 264A at Grants was downgraded from 264C2 by one-step application (File No. BMPH–19960226IB) granted on June 13, 1996. Channel 264A can be allotted to Milan in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's site 5.7 kilometers (3.6 miles) south, at coordinates 35–07–09 North Latitude and 107–54–08 West Longitude.

DATES: Effective November 6, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–75, adopted September 13, 2000, and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

2. Section 73.202(b) the FM Table of Allotments under New Mexico is amended by removing Channel 264C2 at Grants and adding Milan, Channel 264A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–25735 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347-9347; I.D. 092800C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the limited entry and open access trip limits in the Pacific coast groundfish fishery. This document also announces the last cumulative trip limit period in 2000 for the ''B'' platoon, those limited entry trawl vessels designated to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP,) are intended to help the fisheries achieve optimum yield (OY) while still protecting overfished and depleted stocks.

DATES: Changes to management measures are effective 0001 hours (local time) October 2, 2000, unless modified, superseded, or rescinded. These changes are effective until the effective date of the 2001 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through October 23, 2000.

ADDRESSES: Submit comments to Donna Darm, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS) 206-526-6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council,) in consultation with the States of Washington, Oregon, and California, at its September 11-15, 2000, meeting in Sacramento, CA. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the 2000 annual specifications and management measures for the groundfish fishery (65 FR 221, January 4, 2000, as amended at 65 FR 4169, January 26, 2000; 65 FR 17805, April 5, 2000; 65 FR 25881, May 4, 2000; 65 FR 31283, May 17, 2000; 65 FR 33423, May 23, 2000; and 65 FR 45308, July 21, 2000).

Yellowtail Rockfish Taken in Limited Entry Trawl Fisheries for Flatfish; Yellowtail Rockfish, Arrowtooth Flounder, and Other Flatfish in Limited Entry Trawl Fisheries

During the winter months, yellowtail rockfish tend to move to rockier habitats and are not as closely associated with flatfish as they are during the summer months. To make yellowtail rockfish and flatfish management more consistent with natural catch association patterns, and to reduce discards of yellowtail rockfish taken with small footrope bottom trawl gear by vessels fishing for flatfish, per-trip limits for yellowtail rockfish taken with small footrope bottom trawl gear were introduced in July (65 FR 45308, July 21, 2000). At its September meeting, the Council recommended maintaining a per-trip limit for yellowtail rockfish taken with small footrope bottom trawl gear through the November to December period. The per-trip limit during the July to October period is equivalent to the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder, not to exceed 7,500 lb (3,402 kg). During the November to December cumulative trip limit period, the flatfish fishery is concentrated in depths that have less association with yellowtail rockfish; therefore, the Council recommended decreasing the per-trip limit to the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder, not to exceed 2,500 lb (1,134 kg).

Through August 31, 2000, only 21.1 percent of the OY for yellowtail rockfish set aside for the limited entry fishery north of Cape Mendocino (40° 10' N. lat.) had been landed. To allow fishers access to these stocks without exceeding 2000 OYs, the Council recommended increasing the yellowtail rockfish 2-month cumulative limit for the November to December period from the previously established 10,000 lb (4,536 kg) to 30,000 lb (13,608 kg). Yellowtail rockfish taken in the flatfish fisheries and subject to the 2,500 lb per-trip limit would also be subject to the 2-month cumulative limit.

The Council also recommended increasing the per-trip limit for arrowtooth flounder taken with large or small footrope bottom trawl from the prior recommended 10,000 lb (4,536 kg) to 20,000 lb (9,072 kg) per trip. Because arrowtooth flounder are not a high-value species, this limit is not expected to increase targeted effort on that species.

To allow fishers access to ''other flatfish'' without exceeding 2000 OYs, the Council recommended increasing the limit for other flatfish taken with large footrope bottom trawl from 400 lb (181 kg) per trip to 1,000 lb (454 kg) per trip for the November-December period. Other flatfish means all flatfish listed at 50 CFR 660.302 except those with species-specific trip limits and rex sole.

Limited Entry Trawl and Fixed Gear, and Open Access Minor Slope Rockfish South of 40°10' N. lat.

Throughout 2000, minor slope rockfish landings south of 40°10' N. lat.

have been slow. The best available information at the September Council meeting indicated that limited entry fisheries south of 40°10' N. lat. had landed 11.6 percent of slope rockfish set aside for those fisheries in 2000, and that open access fisheries had landed only 4.4 percent of its minor slope rockfish allocation, through the end of August 2000. Given these low landings rates, the Council recommended increasing cumulative landings limits to levels that would allow higher landings without jeopardizing overfished and depleted stocks. The Council recommended increasing the limited entry minor slope rockfish 2-month cumulative landings limit for both trawl and fixed gear south of 40°10' N. lat. from 7,000 lb (3,175 kg) to 20,000 lb (9,072 kg) for the September to October trip limit period. For the November to December period the Council recommended setting the limited entry cumulative limit previously announced for minor slope rockfish south of 40°10' N. lat. from 1,500 lb per month (680 kg) to 10,000 per month (4,536 kg) for the trawl fishery and from 1,500 lb (680 kg) per month to 20,000 lb (9,072 kg) 2-month period for the fixed gear fleet. The open access, minor slope rockfish 2-month cumulative limit south of 40°10' N. lat. are increased from 1,000 lb (454 kg) (454 kg) to 3,000 lb (1,361 kg) for the September to October period and from 500 lb (227 kg) to 3,000 lb (1,361 kg) for the November to December period.

Limited Entry Trawl Fishery for Sablefish; Limited Entry, Fixed Gear and Open Access Daily Trip Limit Fisheries for Sablefish North of 36° N. lat.

The best available information through August 31, 2000, indicates that the landings of sablefish in the limited entry trawl fishery were at 42.0 percent of the 2000 allocation for that fishery. To allow limited entry trawl fishers access to sablefish without exceeding 2000 OYs, the Council recommended increasing the 2-month cumulative limit from 10,000 lb (4,536 kg) (4,536 kg) to 12,000 lb (5,443 kg) for the September to October period and increasing the previously announced 1-month limit of 3,500 lb (1,588 kg) to 6,000 lb (2,722 kg) for the November to December period.

Sablefish in the southern areas tend to be smaller than those in the northern areas. To reduce the discard of small fish that are otherwise marketable, fishers requested that the Council remove the per-trip limit of 500 lb (227 kg) for sablefish smaller that 22 inches (56 cm). In response to this request, the council recommended removing the length requirement for the remainder of 2000.

Similarly, daily trip limit sablefish landings in both the 2000 limited entry fixed gear and open access fisheries have been relatively low through the spring and summer months. The best available information at the September Council meeting indicated that limited entry fixed gear fisheries through July, had landed 21.1 percent of the sablefish set aside for daily landings, and that the open access fisheries through August, had landed 14.5 percent of their sablefish allocation. The limited entry and open access daily trip limit fisheries for sablefish north of 36° N. lat. are restricted by a 300-lb (136-kg) per day limit in combination with a 2-month cumulative limit. For the limited entry fixed gear fishery, the Council recommended increasing the daily limit from 300 lb (136 kg) per day to 400 lb (181 kg) per day and adding an option which allows fishers instead to opt to make one landing per week above 400 lb (181 kg) and not to exceed 1,000 lb (454 kg). Under either option the fishery is not to exceed the 2-month cumulative limit. The 2-month cumulative limit was increased from 3,330 lb (1,497 kg) to 8,000 lb (3,629 kg) for the September to October period and increased from the prior recommended 2,400 lb 2-month limit to 8,000 lb (3,629 kg) for the November to December period. As announced in the annual specifications and management measures (65 FR 221, January 4, 2000), 1 week means 7 consecutive days, Sunday through Saturday.

For the open access fixed gear fishery, the Council recommended keeping the daily limit at 300 lb (136 kg) per day, but also included an option which allows fishers to make one weekly landing above 300 lb (136 kg), but not to exceed 1,200 lb (544 kg). To allow the open access fishery a chance to harvest their sablefish allocation without exceeding 2000 OYs, the Council recommended removing the cumulative limits for the remainder of 2000.

Limited Entry Fixed Gear and Open Access Fisheries for Minor Nearshore Rockfish North and South

Minor nearshore rockfish landings in the limited entry and open access fisheries have been low throughout 2000. The best available information at the September Council meeting indicated that limited entry fisheries had landed 10.3 percent of the allocation for that fishery north of 40°10' N. lat., and 8.8 percent of the allocation for that fishery south of 40°10' N. lat., through August 31, 2000. Similarly, the best available information at that meeting indicated that open access fisheries had landed 36.9 percent of the allocation for that fishery north of 40°10' N. lat., and 16.3 percent of the allocation for that fishery south of 40°10' N. lat. To allow fishers access to these stocks without exceeding 2000 OYs, the Council recommended significant increases to the minor nearshore rockfish landings limits for both the limited entry fixed gear and open access fisheries.

North of 40°10' N. lat. and starting October 2, 2000, the Council recommended increasing the limited entry minor nearshore rockfish fixed gear limit for the September to October period from 5,000 lb (2,268 kg) to 10,000 lb (4,536 kg) per 2-month period, with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from 1,800 lb(816 kg) to 4,000 lb (1,814 kg) per 2-month period. The previously recommended 3,000 lb (1,361 kg) per 2-month period for the November to December period will also be increased to 10,000 lb (4,536 kg) with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from the previously recommended 1,400 lb(635 kg) to 4,000 lb (1,814 kg) per 2-month period.

The 2-month cumulative limit for the open access fishery of minor nearshore rockfish north of 40°10' N. lat. starting October 2, 2000, increases from 3,000 lb (1,361 kg) to 6,000 lb (2,722 kg)), with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from 900 lb (408 kg) to 2,000 lb (907 kg). For the November to December period the 2-month cumulative limit increases from the previously recommended 1,000 lb (454 kg) to 6,000 lb (2,722 kg), with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from the previously recommended 500 lb (227 kg) to 2,000 lb (907 kg).

Lingcod and rockfish are taken in the recreational fishery in waters (0-3 nm) managed by the State of California. To ensure the pre-season estimates for overfished species off California (bocaccio, lingcod, canary rockfish, cowcod) are not exceeded, the State may take actions to prohibit recreational landings in State waters. Recreational fishery closures south of Point Conception (34°27' N. lat.) are likely to occur in late 2000. The State of California Fish and Game Commission is scheduled to meet in October, during which time they will review the best available landings data and make recommendations on recreational fishery management in California

waters. The Council asked NMFS to coordinate with the State of California to implement consistent changes in Federal waters (3-200 nm offshore) to prevent OYs of rockfish and lingcod from being exceeded.

Actions that may be taken by the State of California, and recommended by NMFS, to prevent excess harvest may include prohibiting further taking, retaining, possessing or landing of minor nearshore rockfish in the limited entry and open access fixed gear fisheries south of 34°27' N. lat. during the November to December period. Any such actions will be published in the **Federal Register**. To allow commercial harvest in the nearshore rockfish fisheries, with the least impact on overfished species, the Council recommended establishing separate cumulative trip limits for the area between 40°10' N. lat. and 34°27' N. lat., and the area south of 34°27' N. lat. Beginning, October 2, 2000, in the limited entry fixed gear fishery for minor nearshore rockfish between 40°10' N. lat. and 34°7' N. lat., the 2-month cumulative trip limit for increases from 2,000 lb (907 kg)) to 6,000 lb (2,722 kg), continuing through December replacing the previously recommend 2-month limit of 1,300 (590 kg) for the November to December period. The open access minor nearshore rockfish 2-month cumulative limit for the fishery between of 40°10' N. lat. and 34° 27' N. lat. increases from 1,600 lb (726 kg) to 4,000 lb (1,814 kg) per 2-month period beginning October 1, and continues through December. This replaces the previously recommend 2-month limit of 800 lb (363 kg) for the November to December period.

The limited entry fixed gear minor nearshore rockfish 2-month cumulative limit for the fishery south of 34°27' N. lat. will be increased from 2,000 lb (907 kg) to 9,000 lb (4,082 kg) for the September to October period, and from 1,300 lb (590 kg) to 3,000 lb (1,361 kg) for the November to December period. The open access (fixed gear) minor nearshore rockfish 2-month cumulative limit for the area south of 34°27' N. lat. will be increased from 1,600 lb (726 kg) to 6,000 lb (2,722 kg) for the September to October period, and from 800 lb (363 kg) to 2,000 lb (907 kg) for the November to December period.

Final Period for the ''B'' Platoon

NMFS also announces the last cumulative trip limit period in 2000 for the ''B'' platoon i.e., those limited entry trawl vessels designated (on their limited entry permit) to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. For vessels in the ''B'' platoon, the final cumulative trip limit period will be from November 16, 2000, through December 31, 2000. At any time during this period, each vessel in the ''B'' platoon is allowed to take and retain, possess, or land the equivalent of two 1-month cumulative limits (the November and December cumulative trip limits). For species for which there are 2-month cumulative limits, the vessels in the ''B'' platoon must take the final 2-month cumulative limit during the final period from November 16, 2000, through December 31, 2000.

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2000 annual management measures (65 FR 221, January 4, 2000, as amended at 65 FR 4169, January 26, 2000; 65 FR 17805, April 5, 2000; 65 FR 25881, May 4, 2000; 65 FR 31283, May 17, 2000; 65 FR 33423, May 23, 2000; and at 65 FR 45308, July 21, 2000) as follows:

In Section IV, under B. Limited Entry Fishery, Tables 3 and 4 are revised, and under C. Trip Limits in the Open Access Fishery, Table 5 is revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

BILLING CODE 3510–22–S

Table 3. 2000 Trip Limits 1/ and Gear Requirements 2/ for Limited Entry Trawl Gear

Read Section IV. A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	3,000 lb / 2 months		5,000 lb / 2 months			1,500 lb / month
3	South	3,000 lb / 2 months		May-Jun, 5,000 lb / 2 months	Jul-Aug, 7,000 lb / 2 months	Sep-Oct, 20,000 lb / 2 months	10,000 lb / month
4	**Splitnose**-South	8,500 lb / 2 months		14,000 lb / 2 months			4,000 lb / month
5	**POP**-North	500 / month		2,500 lb / month			500 lb / month
6	**Sablefish**	7,000 lb / 2 months; 22-inch size limit 3/		May-Aug, 10,000 lb / 2 months; 22-inch size limit 3/; Sep-Oct 12,000 lb/2 months no size limit			6,000 lb / month no size limit
7	**Longspine thornyhead**	12,000 lb / 2 months		4,000 lb / 2 months			6,000 lb / month
8	**Shortspine thornyhead**	3,000 lb / 2 months		1,000 lb / 2 months			1,500 lb / month
9	**Dover sole**	55,000 lb / 2 months		20,000 lb / 2 months			20,000 lb/ month
10	**Arrowtooth flounder**	10,000 lb / trip		Small footrope: May-Oct, no pound limit 2/; Large footrope: May-Jun, in "other flatfish" limit; Jul-Oct, 5,000 lb/trip			20,000 lb / trip
11	**Petrale sole**	No restriction	Small footrope required	Small footrope--No pound limit; Large footrope--included in "other flatfish" trip limit 2/			No restriction
12	**Rex sole**	No limit					
13	**Other flatfish 4/**	Jan- Dec, Small footrope--No pound limit; Jan-Oct, Large footrope--400 lb per trip; Nov-Dec Large footrope--1,000 lb per trip 2/					
14	**Whiting shoreside 5/**	20,000 lb / trip		Primary season			20,000 lb / trip
15		before primary season					after primary season
16	**Use of small footrope bottom trawl or midwater trawl required for landing all the following species: 6/**						
17	**Minor Shelf rockfish**						
18	North	300 lb / month		1,000 lb / month			300 lb / month
19	South	500 lb / month		May-Jul, 1,000 lb / month; Aug-Oct, 500 lb / month			500 lb / month
20	**Canary rockfish**	100 lb / month		300 lb / month			100 lb / month
21	**Widow rockfish**						
22	mid-water trawl	30,000 lb / 2 months		30,000 lb / 2 months			30,000 lb / 2 months
23	small footrope trawl	1,000 lb / month		1,000 lb / month			1,000 lb / month
24	**Yellowtail**-North 7/						
25	mid-water trawl	10,000 lb / 2 months		30,000 lb / 2 months			30,000 lb / 2 months
26	small footrope trawl	1,500 lb / month		May-Jun, 1,500 lb / month. Jul-Oct, per trip limit is sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder; not to exceed 7,500 lb/trip, and 30,000 lb/2 months. Yellowtail rockfish may not be landed without flatfish.			Per trip limit is sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder; not to exceed 2,500 lb/trip, and 30,000 lb/2 months. Yellowtail rockfish may not be landed without flatfish.
27	**Bocaccio**-South 7/	300 lb / month		500 lb / month			300 lb / month
28	**Chilipepper**-South 7/						
29	mid-water trawl	25,000 lb / 2 months		25,000 lb / 2 months			25,000 lb / 2 months
30	small footrope trawl	7,500 lb / 2 months		7,500 lb / 2 months			7,500 lb / 2 months
31	**Cowcod** - South 7/	1 fish per landing		1 fish per landing			1 fish per landing
32	**Minor Nearshore rockfish**						
33	North and South	200 lb / month		200 lb / month			200 lb / month
34	**Lingcod**	CLOSED		400 lb / month; 24-inch size limit 8/			CLOSED

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N.lat. to the US-Canada border. "South" means 40°10' N.lat. to the US-Mexico border. 40°10' N.lat. is about 20 nm south of Cape Mendocino CA.

2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14).

3/ No more than 500 lb/trip of sablefish smaller than 22 inches (56 cm) total length, which counts toward cumulative limit.

4/ Other flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit (excludes rex sole and arrowtooth flounder.)

5/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb / trip throughout the year (See IV.B.(3)(c)).

6/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. Midwater gear also may be used; the footrope must be bare. See paragraph IV.A.(14).

7/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

8/ Lingcod must be greater than or equal to 24 inches (61 cm) total length. See IV.A.(6).

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. 2000 Trip Limits 1/ for Limited Entry Fixed Gear

Read Section IV. A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JULY-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	3,000 lb / 2 months		5,000 lb / 2 months			1,500 lb / month
3	South	3,000 lb / 2 months		May-Jun, 5,000 lb / 2 months;	Jul-Aug, 7,000 lb / 2 months;	Sep-Oct, 20,000 lb / 2 months	20,000 lb / 2 months
4	**Splitnose-South**	8,500 lb / 2 mo.		14,000 lb / 2 months			4,000 lb / month
5	**POP-North**	500 lb / month		2,500 lb / month			500 lb / month
6	**Sablefish** (daily trip limit fishery) 2/						
7	North of 36° N. lat.	300 lb/day, 2,100 lb/2 mo OR 1 landing between 300 lb and 600 lb/ week, less than 1,800 lb/2 mo		May-Jun, 300 lb / day, 2,400 lb / 2 mo;	Jul-Aug, 300 lb / day, 3,300 lb / 2 mo;	Sep-Oct, 400 lb / day or 1,000 lb per week, with less than 8,000 lb / 2 months	400 lb/day or 1,000 lb per week, with less than 8,000 lb / 2 months
8	South of 36° N. lat.	350 lb/day or 1 landing above 350 lb/week, up to 1,050 lb					
9	**Longspine thornyhead**	12,000 lb / 2 months		4,000 lb / 2 months			6,000 lb / month
10	**Shortspine thornyhead**	1,000 lb / month		1,000 lb / month			1,000 lb / month
11	**Dover sole**	55,000 lb / 2 months		20,000 lb / 2 months			20,000 / month
12	**Arrowtooth flounder**	10,000 lb / trip		No restriction			10,000 lb / trip
13	**Petrale sole**	No restriction		No restriction			No restriction
14	**Rex sole**	No restriction		No restriction			No restriction
15	**Other flatfish 3/**	No restriction		No restriction			No restriction
16	**Shoreside whiting 4/**	20,000 lb / trip		Open			20,000 lb / trip
17	**Minor shelf rockfish**						
18	North	300 lb / month		1,000 lb / month			300 lb / month
19	South	500 lb / month 5/		May-Jul, 1,000 lb/month; Aug-Oct, 500 lb/month			500 lb / month
20	**Canary-Coastwide**						
21	North	100 lb / month		300 lb / month			100 lb / month
22	South	100 lb / month 5/		300 lb / month			100 lb / month
23	**Widow rockfish-Coastwide:**						
24	North	3,000 lb / month		3,000 lb / month			3,000 lb / month
25	South	3,000 lb/month 5/		3,000 lb / month			3,000 lb / month
26	**Yellowtail-North 6/**	1,500 lb / month		1,500 lb / month			1,500 lb / month
27	**Bocaccio-South 6/**	300 lb/ month 5/		500 lb / month			300 lb / month
28	**Chilipepper-South 6/**	2,000 lb /month 5/		2,000 lb / month			2,000 lb / month
29	**Cowcod - South 6/**	1 fish per landing 5/					
30	**Minor nearshore rockfish**						
31	North 7/ 8/	2,400 lb/2 months, of which no more than 1,200 lb may be species other than black or blue rockfish'		May-Jun, 3,000 lb/2 months, of which no more than 1,400 lb may be species other than black or blue rockfish;	Jul- Aug, 5,000 lb/2 months of which no more than 1,800 lb may be species other than black or blue rockfish;	Sep-Oct, 10,000 lb/2 months of which no more than 4,000 lb may be species other than black or blue rockfish	10,000 lb/2 months, of which no more than 4,000 lb may be species other than black or blue rockfish
32	South	1,000 lb / 2 months 5/		May-Jun, 1,300 lb/2 months	Jul-Aug, 2,000 lb / 2 months	Sep-Oct, 6,000 lb / 2 months from 40° 10' N.lat. to 34° 27' N.lat. 9,000 lb / 2 months south of 34° 27' N.lat.	6,000 lb / 2 months from 40° 10' N.lat. to 34° 27'; 3,000 lb / 2 months south o 34° 27' N.lat.
33							
34	**Lingcod 8/**	CLOSED		400 lb / month			CLOSED

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N.lat. to the US-Canada border. South means 40 10' N. lat. to the US-Mexico border.

2/ The sablefish size limit applies only during the "regular" and "mop-up" seasons north of 36° N. lat. See IV.B.(2).

3/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 4 with a trip limit.

4/ The whiting "per trip" limit in the Eureka area for catch inside 100 fathoms is 10,000 lb / trip throughout the year.

5/ South of 40°10' N. lat., minor shelf and minor nearshore rockfish, as well as canary, widow, bocaccio, chilipepper, and cowcod were managed with area closures in Jan-Apr. In Jan-Feb, limited entry fixed gear fisheries for these species were closed south of 36° N. lat., yet open with limits shown between 40°10' N. lat. and 36° N. lat. In Mar-Apr, these fisheries were closed between 40°10' N. lat and 36° N. lat., yet open with limits shown in waters south of 36° N. lat. "Closed" means it is prohibited to take and retain, possess, or land the designated species in the time or area indicated (see IV.A.(7)).

6/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in trip limits for minor shelf rockfish (Table 2).

7/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).

8/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

C. Trip Limits in the Open Access Fishery

Table 5. 2000 Trip Limits 1/ for All Open Access Gear except Exempted Trawl Gear Engaged in Fishing for Pink Shrimp

Read Section IV. A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JULY-AUG	SEP-OCT	NOV	DEC
1	**Minor slope rockfish**							
2	North	500 lb / 2 months		500 lb / 2 months			500 lb / 2 months	
3	South	500 lb / 2 months		May-Jun, 500 lb / 2 months	Jul-Aug, 1,000 lb / 2 months	Sep-Oct, 3,000 lb / 2 months	3,000 lb / 2 months	
4	**Splitnose**-South	200 lb / month		200 lb / month			200 lb / month	
5	POP--North	100 lb / month		100 lb / month			100 lb / month	
6	**Sablefish 2/**							
7 8	North of 36 °	300 lb / day, but no more than 2,100 lb / 2 months		May-Jun, 300 lb / day, 2,400 lb 2 months;	Jul-Aug, 300 lb / day, 3,300 lb / 2 months;	Sep-Oct, 300 lb perday, or 1,200 lb per week, no cumulative limit	300 lb / day or 1,200 lb / week, no cumulative limit	
9	South of 36 °	350 lb / day		350 lb / day			350 lb / day	
10	**Thornyheads (longspine and shortspine combined)**							
11	North of Pt. Conception	CLOSED 3/		CLOSED			CLOSED	
12	South of Pt. Conception	50 lb / day		50 lb / day			50 lb / day	
13	Arrowtooth	200 lb / month		200 lb / month			200 lb / month	
14	**Dover sole**	(included in "other" flatfish limit)						
15	**Petrale sole**	(included in "other" flatfish limit)						
16	**Nearshore flatfish**	(included in "other" flatfish limit)						
17	**"Other" flatfish 4/**	300 lb / month		300 lb / month			300 lb / month	
18	**Shoreside whiting**	300 lb / month		300 lb / month			300 lb / month	
19	**Minor shelf rockfish**							
20	North	100 lb / month		100 lb / month			100 lb / month	
21	South	200 lb/ month 5/		200 lb / month			200 lb / month	
22	**Canary**							
23	North	50 lb / month		50 lb / month			50 lb / month	
24	South	50 lb / month 5/		50 lb / month			50 lb / month	
25	**Widow**							
26	North	3,000 lb / month		3,000 lb / month			3,000 lb / month	
27	South	3,000 lb / month 5/		3,000 lb / month			3,000 lb / month	
28	Yellowtail-North 6/	100 lb / month		100 lb / month			100 lb / month	
29	Bocaccio - South 6/	200 lb / month 5/		200 lb / month			200 lb / month	
30	Chilipepper-South 6/	2,000 lb / month 5/		2,000 lb / month			2,000 lb / month	
31	Cowcod - South 6/	1 fish per landing 5/		1 fish per landing			1 fish per landing	
32	**Minor nearshore rockfish**							
33	North 7/8/	1,000 lb / 2 months, of which no more than 500 lb may be species other thanblack or blue rockfish		May-Jun, 1,500 lb / 2 mo, of which no more than 700 lb may be species other than black or blue rockfish; 2,500 lb/2 mo;	Jul-Aug, 3,000 lb / 2 mo, of which no more than 900 lb may be species other than black or blue rockfish;	Sep-Oct, 6,000 lb / 2 mo, of which no more than 2,000 lb may be species other than black or blue rockfish	6,000 lb / 2 mo, of which no more than 2,000 lb may be species other than black or blue rockfish	
34 35	South	550 lb / 2 months 5/		May-Jun, 800 lb/2 months	Jul-Aug, 1,600 lb / 2 months	Sep-Oct, 4,000 lb/2 month from 40° 10' N. lat. to 34° 27' N. lat 6,000 lb / 2 months south of 34° 27' N. lat	4,000 lb / 2 months from 40° 10' N. lat. to 34° 27' N. lat.; 2,000 lb/ 2 months south of 34° 27' N. lat.	
36	**Lingcod 9/**	CLOSED		May-Jul, 400 lb/month; Aug-Oct, CLOSED.			CLOSED	

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N. lat. to the US-Canada border. "South" means 40°10' N. lat. to the US-Mexico border.
2/ There is no size limit for sablefish taken and retained with nontrawl gear in the open access fishery. See IV.B.2.
3/ Closed means it is prohibited to take and retain, possess, or land the species in the time or area indicated (see IV.A.(7)).
4/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 5 with a trip limit.
5/ South of 40° 10' N. lat., minor shelf and nearshore rockfish, as well as canary, widow, bocaccio, chilipepper, and cowcod were managed with area closures in Jan-Apr. In Jan/Feb, open access fisheries for these species were closed south of 36° N. lat., yet open with limits shown between 40° 10' N. lat. and 36° N. lat. In Mar/Apr these fisheries were closed between 40° 10' N. lat. and 36° N. lat., and open with limits shown in waters south of 36° N. lat. (see IV.A.(7)).
6/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
7/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).
8/ Provisions for landing groundfish in Pacific City, OR are found at paragraph IV.C.(4).
9/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length (May through July.)
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures and emergency rule published at 65 FR 221 (January 4, 2000) and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries NOAA (AA) finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B) because providing prior notice and opportunity for comment would be impracticable. It

would be impracticable because the current 2-month cumulative limit period began on September 1, 2000, and affording additional advance notice and opportunity for public comment would drastically reduce the amount of time the fishers have to take the increased September to October limit. The increases to trip limits relieve burdens on the public as the trip limits provide for an increase in fishing opportunities. In addition, the affected public had the opportunity to comment on these actions at the September 11-15, 2000, Council meeting. This action should be implemented as soon as possible to provide fishers the opportunity to achieve the increased trip limits.

Since this action increases trip limits, it relieves a restriction and therefore, the AA find, under 5 U.S.C. 553(d)(1), it is unnecessary to delay for 30 days the effective date of this action.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

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

Dated: October 2, 2000.

Clarence Pautzke,

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

[FR Doc. 00–25631 Filed 10–2–00; 4:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 100200C]

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

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 State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New Jersey 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 New Jersey.

DATES: Effective 0001 hours, October 10, 2000, through 2400 hours, December 31, 2000.

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 on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,858,346 lb (842,931 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 1999, a total of 1,897,952 lb (860,897 kg) were landed in New Jersey, creating a 44,026 lb (19,970 kg) overage that was deducted from the amount allocated for landings in the State during 2000 (65 FR 33486, May 24, 2000). The resulting 2000 quota for New Jersey is 1,814,320 lb (822,962 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 a 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 New Jersey has attained its quota for 2000.

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, October 10, 2000, further landings of summer flounder in New Jersey by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, October 10, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New Jersey 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 Executive Order 12866.

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

Dated: October 2, 2000.

Richard W. Surdi,

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

[FR Doc. 00–25776 Filed 10–5–00; 8:45 am]

BILLING CODE 3210–22–F

Proposed Rules

Federal Register
Vol. 65, No. 195
Friday, October 6, 2000

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

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF79

Contract Violations and Diminution in Payments: Fruits and Vegetable Planting Payment Reduction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) prohibited, with exceptions, the planting of fruits or vegetables on land enrolled in a Production Flexibility Contract (PFC). If a producer planted fruits or vegetables on acreage covered by a PFC and one of the exceptions in the 1996 Act did not apply, the producer violated the PFC. If the degree of the violation did not warrant termination of the contract, future PFC payments were reduced in accordance with the respective regulations. The Commodity Credit Corporation (CCC) published an advance notice of proposed rulemaking in May of 1999, seeking public comment on this issue. This proposed rule seeks additional public comment on the payment reductions applicable to a PFC when there has been a violation due to the planting of fruits or vegetables.

DATES: Comments must be received by November 6, 2000 to be assured consideration.

ADDRESSES: Submit comments to: Rebecca Davis, Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), USDA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–9882, e-mail Rebecca_Davis @wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Rebecca Davis at (202) 720–9882.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that Regulatory Flexibility Act is not applicable to this proposed rule because FSA is not required by 5 U.S.C. 553 or any other provisions of the law to publish a notice of proposed rule making.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Information collected in this rule has been approved by OMB and assigned OMB Control Number 0560–0092. This rule does not contain any new information collection requirements.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Proposed Rule

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into a Production Flexibility Contract (PFC) but generally prohibited the planting of fruits or vegetables on PFC acreage except as provided by three specific exceptions in the Statute. See 7 U.S.C. 7218. Two of the exceptions in the 1996 Act require that the PFC payment applicable to an acre to be reduced for each acre on which fruits or vegetables were planted.

When the exceptions do not apply, the planting of a fruit or vegetable on PFC acreage is a violation of the PFC. In such cases, the 1996 Act provides that the PFC shall be terminated on each farm in which that producer has an interest, except that if the Secretary, through designated representatives, determines that termination of the contract is not warranted, reductions in PFC payments may be applied in lieu of termination. Regulations addressing those reductions are found at 7 CFR 1412.401.

Under the current regulations, if the Farm Service Agency (FSA) county committee determines that a planting violation involving fruits or vegetables does not warrant termination of the PFC, a reduction may be made in the current or future PFC payments equal to the market value of the fruits or vegetables planted on contract acreage. This reduction is in addition to an acre-for-acre payment reduction for each acre of fruits or vegetables planted on contract acres. Acre-for-acre reductions are calculated starting with the contract commodity with the lowest contract payment rate per acre and proceeding to the contract commodity with the next lowest contract payment rate per acre until the PFC payment has been reduced for each acre of fruits or vegetables planted on contract acres. The planting violation payment reduction is applied

to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

A producer who violates this provision can simply, instead, accept the termination remedy, in which case the producer must refund with interest all payments otherwise payable at the time of the violation and forfeit all future payments. Nonetheless, the non-termination and payment reduction now allowed is viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. In the past, some producers have accepted the payment reduction in lieu of termination, while others have chosen to terminate their PFC.

In the interim, a conference report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277), addressed this issue and ''urged [the Secretary] to exercise reasonable treatment of producers to avoid harmful consequences.'' 144 Cong. Rec. H 11301 (daily ed. Oct. 19, 1998).

Because of this concern and in order to provide a full discussion of this issue, advance notices of proposed rule making were published in the **Federal Register** on May 5, 1999 (64 FR 24091), and June 25, 1999 (64 FR 34154), seeking comments on the fruits and vegetables payment reduction provisions. More than 100 responses were received within the comment periods. Based on a review of the comments received, CCC has decided to proceed with the proposed rule set out in this notice and to seek additional public comment. This proposed rule, if adopted, would amend 7 CFR 1412.401 to change the payment reduction for both prior and future violations. Under the proposed rule, where termination is determined not to be warranted, in addition to the acre-for-acre payment reduction, the reduction for the planting violation would be calculated as follows: (1) For the initial offense for the producer, twice the payment rate for each acre on which the violation occurred, not to exceed the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage; and (2) For subsequent violations, the expected market value of the fruits or vegetables planted on each contract acre. Generally, the result for first-time violators is that the payment reduction will be three times the lowest payment rates applicable to the number of acres in violation. The result for subsequent violations is that the payment reduction will be the loss of the lowest payment rates applicable to the number of acres in violation and the expected market value of the fruit or vegetable planted in violation of the contract. The rationale for this provision is that in all cases where a producer plants fruits or vegetables on contract acreage, the contract acreage should not earn a contract payment. The 1996 Act provides that in permissive cases of planting fruits or vegetables there is an acre-for-acre payment reduction, such that, at a minimum, contract violators should have the acre-for-acre payment reduction apply in all circumstances so as to not end up in a better position than permissive planters. Because some producers qualify for PFC payments based on different historical rates, the acres with the lowest payment rates will be used in determining the payment reduction.

This rule should, for first offenses involving fruits or vegetables, result in a lower payment reduction because the total impact of the violation on the producer would now be no greater than three times the applicable per-acre PFC payment rate, whereas under the current rule the loss can be equal to the per-acre payment plus the total expected value of the crop. This will allow for a uniform and less onerous payment reduction. At the same time, the payment reduction will be significant enough to avoid the possibility that the leniency would be an invitation to attempt to circumvent the policy of the PFC to the detriment of traditional producers of fruits or vegetables whose interests are protected by the limitation.

Producers have an obligation to make themselves aware of program restrictions and to abide by those restrictions. For second offenses, and additional offenses that might occur, where the seriousness of the matter would be beyond doubt and where a misunderstanding would not appear plausible, the sanction under the proposed rule would be the same as it is now—namely, the full value of the crop would be taken into account, as well as eliminating a payment amount on the land equal to the payment rate for the lowest contract commodity.

In order to provide even greater uniformity in the administration of the sanctions, the proposed rule would allow refunds, or claim reductions, to those producers who on their first offenses had the current payment reduction applied. To the extent that a refund will be paid, however, no interest will be paid on such sums as the original charge was valid (given that the producer was, in fact, in violation of the contract). Any payments earned due to this recalculation are not payments for a past-due debt, but simply reflect a change in policy.

Likewise, the rule only addresses changes in the monetary implications for fruit and vegetables violations. Farmers with prior violations who chose to terminate the contract will not be allowed to re-enroll the land in the program. Compliance cannot be performed retroactively and, as to future performance, re-enrollment of the property is contrary to the very limited enrollment window allowed by the 1996 Act. Furthermore, while those farmers who did opt for termination might have, in some cases, been influenced by the size of the alternative payment reduction sanction for their violation, determining the significance of that factor would be very difficult. In any event, those producers choose to cease participation in this program in which their production would have been limited over the life of the full PFC period. Accordingly, those producers did achieve a flexibility which those that remained in PFC did not have and which is not consistent with the long-term commitments except for continued benefits under the program.

Refunds made under the rule, if adopted, would not count against the producer's payment limitations for the current year, but will be applied to the program year for which the original payment was reduced. These payments, moreover, will have only a limited effect on current payments to other producers as the amounts involved are small; moreover, those reductions that were made in payments in prior years for fruit or vegetable violations were added into the PFC payments made in subsequent years to other producers. Accordingly, overall, there is no net effect on other farmers involved with the PFC program though the results with individual producers could be impacted in a very minor way.

List of Subjects in 7 CFR Part 1412

Contract acreage, Contract payments, Cotton, Feed grains, Price support programs, Rice, Wheat.

PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON.

1. The authority citation for part l412 continues to read as follows:

Authority: 7 U.S.C. 7201 *et seq*; 15 U.S.C. 714b, 714c; Sec. 734, Pub. L. 105–86; Pub. L. 105–228; Sec 727, Pub. L. 105–277; Secs. 727, 811, Pub. L. 106–78, 113 Stat. 1181.

2. Revise § 1412.401 to read as follows:

§ 1412.401 Contract violations.

(a) Except as provided further in this section, if a producer subject to a contract violates a requirement of the contract the Deputy Administrator shall terminate the contract with respect to the producer on each farm in which the producer has an interest. Upon such termination, the producer shall forfeit all rights to receive future contract payments on each farm in which the producer has an interest and shall refund all contract payments received by the producer during the period of violation, plus interest with respect to the contract payments as determined in accordance with part 1403 of this chapter.

(b) Except for violations of § 1412.206, if the county committee determines that a violation is not serious enough to warrant termination of the contract, the county committee may in lieu of termination allow the contract to continue subject to a reduction in contract payments for the period of the violation.

(c) If there is a violation of § 1412.206, and the county committee determines that the violation is not serious enough to warrant termination of the contract the County Committee may in lieu of termination allow the contract to continue but reduce the contract payments as set forth below.

(1) For the initial violation for the producer, the contract payment will be reduced by an amount that is twice the payment rate on the acre or acres found to be in violation, but not to exceed the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage, as determined by the State committee.

(2) For subsequent violations for the producer, the contract payment will be reduced by an amount that is equal to the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage, as determined by the State committee.

(d) The standard rule applicable to acreage planted to fruits or vegetables which provides for an acre-for-acre reduction will apply in addition to the payment reductions in paragraph (c) of this section.

(e) If the county committee determines not to terminate the contract, the producer shall be required as a condition of contract continuance to refund to CCC that part of the contract payment received by the producer during the period of the violation, plus interest determined in accordance with part 1403 of this chapter.

(f) Payment reductions will be applied in ascending order beginning with the acreage with the lowest contract payment rate.

(g) For producers who violated § 1412.206 in 1997, 1998, 1999, or 2000, and had their payments reduced under § 1412.401(b) in effect on January 1, 2000, payment reductions will be calculated under the new formula now provided in § 1412.401. Refunds will be issued to those producers as appropriate but without the payment of interest or other fees. Acreage affected by any contract termination cannot be re-enrolled in the program.

(h) Refunds made under the rule would not count against the producer's payment limitations for the current year, but rather will be applied to the program year for which the original payment was reduced.

(i) Producers who do not plant a crop on contract acreage must protect any such land from weeds and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision by a producer will result in a reduction in the producer's payment for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the payment for the farm for that fiscal year. The second violation of this provision will result in a reduction in the payment for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the payment for the farm for that fiscal year.

Signed at Washington, D.C., on October 2, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00–25665 Filed 10–5–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM/STD–00–550]

RIN 1904–AB08

Energy Conservation Standards for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop and availability of the Framework Document for Distribution Transformer Efficiency Standards.

SUMMARY: The Department of Energy (DOE or Department) will hold an informal public workshop to discuss and receive comments on issues it will address and the process it will follow in considering the adoption of energy conservation standards for electric distribution transformers. The Department also encourages written comments on these subjects. To facilitate this process, the Department prepared a Framework Document, a draft of which was made available on October 2, 2000.

DATES: The public workshop will be held on Wednesday, November 1, 2000, from 9:00 a.m. to 5:00 p.m. Written comments should be submitted by December 1, 2000.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

On October 2, 2000, the draft Framework Document was placed on the DOE website at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/dist_transformer.html.

Written comments are welcome, especially following the workshop. Please submit written comments to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Conservation Program for Consumer Products: Energy Conservation Standards for Distribution Transformers, Docket No. EE–RM/STD–00–550'', EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents, and submit them for DOE receipt by December 1, 2000. Please submit one signed copy and a computer diskette (WordPerfect 8) or 10 copies (no telefacsimiles). The Department will also accept electronically-mailed comments, e-mail to Brenda.Edwards-Jones@ee.doe.gov,

but you must supplement such comments with a signed hard copy.

Copies of the transcript of the public workshop, public comments received, the Framework Document, and this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9142, email: carl.adams@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, email: Edward.Levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On October 22, 1997, the Secretary determined, based on the best information currently available, that it appears energy conservation standards for electric distribution transformers would be technologically feasible and economically justified, and would result in a significant energy savings. This determination initiated the process of establishing, by notice and comment rulemaking, test procedures and energy conservation standards for this product. Today's notice and the subject Framework Document and workshop mark the initial steps in the process for considering the energy conservation standards.

The Department has prepared the Framework Document to explain and discuss the process, analyses, and issues concerning the development of such standards. For many of the issues and analyses, the Framework Document sets forth approaches that the Department is considering.

The main focus of the workshop will be to discuss the analyses and issues contained in Sections 3 and 4 of the Framework Document. For each item listed, the Department will make a presentation with a discussion to follow. In addition, the Department will also make a brief presentation on the rulemaking process for distribution transformers contained in Section 2. The Department encourages those who wish to participate in the workshop to obtain the Framework Document and be prepared to discuss the contents. However, workshop participants need not limit their discussions to these topics. The Department is also interested in receiving views concerning other issues that participants believe would affect energy conservation standards for distribution transformers. The Department also welcomes all interested parties, whether or not they participate in the workshop, to submit in writing by December 1, 2000, comments and information on the matters addressed in the Framework Document and on other matters relevant to consideration of standards for distribution transformers.

The workshop will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law.

After the workshop and expiration of the period for submitting written statements, the Department will begin collecting data and conducting the analyses as discussed at the workshop and in consideration of the comments received.

If you would like to participate in the workshop, receive workshop materials, or be added to the DOE mailing list to receive future notices and information regarding distribution transformers, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on October 2, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 00–25770 Filed 10–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–24]

Proposed Modification of Class E Airspace; Youngstown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Youngstown, OH. An VHF Omnidirectional Range–A (VOR–A) Standard Instrument Approach Procedure (SIAP) has been developed for Youngstown-Warren Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action would increase the width of the northerly extension and increase the radius of the existing Class E airspace for Youngstown, OH.

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–24, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–24.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon

Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Youngstown, OH, by increasing the width of the northerly extension and increasing the radius of the existing Class E airspace for Youngstown-Warren Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AGL OH E5 Youngstown-Warren Regional Airport, OH [Revised]

Youngstown-Warren Regional Airport
(Lat. 41°15′39″ N, long. 80°40′45″ W)
Youngstown, Lansdowne Airport, OH
(Lat. 41°07′50″ N, long. 80°37′10″ W)
Youngstown VORTAC
(Lat. 41°19′52″ N, long. 80°40′29″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Youngstown-Warren Regional Airport, and within 3.6 miles each side of the Youngstown VORTAC 360° radial extending from the 6.9-mile radius to 10.0 miles north of the VORTAC, and within a 6.2-mile radius of the Lansdowne Airport.

* * * * *

Dated: September 21, 2000.

Douglas F. Powers,

Acting Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 00–25636 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–25]

Proposed Modification of Class E Airspace; Hazen, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Hazen, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 14, and an RNAV SIAP to Rwy 32, have been developed for Mercer County Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing these approaches. This action would increases the size of the existing Class E airspace for Hazen, ND.

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–25, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the

airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Hazen, ND, by increasing the size of the existing Class E airspace for Mercer County Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AGL ND E5 Haze, ND [Revised]

Hazen, Mercer County Regional Airport
(Lat. 47°17′24″ N, long. 101°34′51″ W)
Dickinson VORTAC
(Lat. 46°51′36″ N, long. 102°46′25″ W)
Williston VORTAC
(Lat. 48°15′12″ N, long. 103°45′02″ W)

That airspace extending upward from 700 feet above the surface within a 10.0-mile radius of the Mercer County Regional Airport, and that airspace extending upward from 1200 feet above the surface bounded on the northwest by a line beginning at V439, thence counterclockwise along the Williston VORTAC 60.0-mile radius to V71, thence northwest along V71 to the Williston VORTAC 39.2-mile radius, thence counterclockwise along the Williston VORTAC 39.2-mile radius to the 48°00′00″ N. latitude, on the north by the lat. 48°00′00″ N., on the east by the long. 100°44′ 02″W., on the southeast by V169, on the south by lat. 46°10′ 00″ N., on the southwest by a line from 46°10′00″ N., long. 102°34′00″ W. to lat. 46°20′00″ N., long. 102°44′ 00″ W., on the west by V491, thence east along V2 to the Dickinson VORTAC 25.2-mile radius, thence counterclockwise along the Dickinson VORTAC 25.2-mile radius to V439, thence to the point of beginning, excluding that airspace within the Minot AFB, ND, Dickinson, ND, and Bismarck, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on September 21, 2000.

Douglas F. Powers,

Acting Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 00–25637 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–23]

Proposed Modification of Class E Airspace; Cleveland, OH; Modification of Class E Airspace; Medina, OH; and Revocation of Class E Airspace; Elyria, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Cleveland, OH; modify Class E airspace at Medina, OH; and remove Class E airspace at Elyria, OH. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28 has been developed for Cleveland-Hopkins International Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action would increase the existing Class E airspace for Cleveland-Hopkins International Airport and at the same time simplify the extremely complicated existing Class E airspace legal description. Redefining the Class E airspace for Cleveland, OH, would then include the Class E airspace for Elyria, OH. This action would remove the existing Class E airspace for Elyria, OH. Finally, this

action would modify the Class E airspace legal description for Medina, OH.

DATES: Comments must be received on or before November 20, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Cleveland, OH, modify Class E airspace at Medina, OH, and remove Class E airspace at Elyria, OH. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

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

* * * * *

AGL OH E5 Cleveland, OH [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°25′00″ N, long. 82°23′00″ W; to lat. 41°56′00″ N, long. 81°22′00; to lat. 41°48″00'' N, long. 81°02′00″ W; to lat. 41°32′00″ N, long. 81°03′00″ W; to lat. 41°11′00″ N, long. 81°48′00″ W; to lat. 41°11″00'' N, long. 82°21′00″ W; thennce to the point of beginning.

* * * * *

AGL OH E5 Medina, OH [Revised]

Medina Municipal Airport
(Lat. 41°07′53″ N, long. 81°45″54'' W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Medina Municipal Airport, excluding that airspace within the Cleveland, OH, Class E airspace area.

* * * * *

AGL OH E5 Elyria, OH [Removed]

* * * * *

Issued in Des Plaines, Illinois on September 21, 2000.

Douglas F. Powers,

Acting Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 00–25638 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 313

Privacy of Customer Financial Information—Security

AGENCY: Federal Trade Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') has extended the time for submitting comments on developing the information safeguards rule that the Commission must issue under section 501(b) of the Gramm-Leach-Bliley Act (the ''G–L–B Act'' or ''Act'').

DATES: Comments must be received on or before October 24, 2000.

ADDRESSES: Written comments should be addressed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. Comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ computer disk, with a disk label stating the name of the commenter and the name version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII format.) Alternatively, the Commission will accept comments submitted to the following e-mail address: *GLB501Rule@ftc.gov.* Those commenters submitting comments by e-mail are advised to confirm receipt by consulting the postings on the Commission's website at www.ftc.gov. In addition, commenters submitting comments by e-mail are requested to indicate whether they are also providing their comments in other formats. Individuals needs not submit multiple copies or comments in electronic form. All submissions should be captioned ''G–L–B Act Privacy Safeguards Rule Comment.''

FOR FURTHER INFORMATION CONTACT: Laura Berger, Attorney, Division of Financial Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION: On September 7, 2000, the FTC sought comment on developing the rule that Section 501(b) of the G–L–B Act requires it to establish for financial institutions subject to its jurisdiction. The Rule will establish standards pertaining to administrative, technical, and physical safeguards for nonpublic customer records and information. (''Safeguard Rule''). 65 FR 54186. As required by the G–L–B Act, the Safeguards Rule will seek to bolster the security and confidentiality of customer records and information, to protect against any anticipated threats or hazards to their security or integrity, and to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. The comment period is currently scheduled to close on October 10, 2000.

The National Association for Attorneys General has asked that the comment period be extended to enable the Association to consult its members and complete a comment on the Safeguards Rule. The Commission is mindful of the need to develop a proposed Safeguards Rule expeditiously. However, the Commission also is aware that the issues raised are complex and believes that the additional comments that may result justify a short extension of the comment period.

Accordingly, the Commission has decided to extend the comment period to October 24, 2000.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–25660 Filed 10–5–00; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43401; File No. S7–18–00]

RIN 3235–AH94

Processing Requirements for Cancelled Security Certificates

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment proposed rules to improve the processing of securities certificates by transfer agents. Proposed Rule 17Ad–19 under the Securities Exchange Act of 1934 would require every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, and destruction of securities certificates. The rule would also require transfer agents to: Mark each cancelled securities certificate with the word ''cancelled''; maintain a secure storage area for cancelled certificates; have specific procedures for the destruction of cancelled certificates, and maintain an electronic database of all of its cancelled certificates. Additionally, the Commission proposes to codify that Rules 17f–1 (the lost and stolen securities rule) and 17Ad–12 (the transfer agent safekeeping rule) apply to cancelled certificates.

DATES: Comments should be received on or before December 5, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comment letters should refer to File No. S7–18–00. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Comments also may be submitted electronically at the following E-mail address: *rule_comments@sec.gov.* All comment letters should refer to File Number S7–18–00, this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Thomas C. Etter, Jr., Special Counsel, at (202) 942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION

I. Introduction

In this release, we propose rules to require transfer agents to establish written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Additionally, we propose to require the tracking of securities in transit between reporting institutions; to set a time frame for making inquiries about possible lost, stolen, missing, or counterfeit securities certificates; and to define related terms in the transfer agent rules. The amendments would clarify that cancelled certificates fall within the Commission's Lost and Stolen Securities Program and that they must be safeguarded.[1]

[1] In a separate release, we have proposed to allow registered transfer agents to use electronic media and microfiche for recordkeeping purposes. By providing more flexibility for the storage of cancelled certificates, transfer agents could destroy certificates at the time they are cancelled thereby

These proposals promote several fundamental Commission goals: (1) Improving the safety and efficiency of securities processing and transfer; (2) reducing the physical movement of securities certificates; and (3) reducing the potential for fraudulent use of cancelled securities certificates. The proposals primarily relate to problems and costs associated with cancelled securities certificates. In particular, we address the problem that, until properly destroyed, cancelled securities certificates can resurface in the market place and can be used to defraud members of the public or financial institutions. Better procedures for processing and destroying cancelled certificates would reduce this potential for harm.

II. Background

When a security certificate is retired, such as when a bond is redeemed or ownership of stock is transferred, it is cancelled by the transfer agent. Cancellation normally involves both an accounting entry on the books of the transfer agent and an alteration of the certificate itself. Any registered cancelled certificate must then be stored for not less than six years under the record retention rules [2] of the Securities Exchange Act of 1934 (''Exchange Act'').[3] Thereafter, the certificate may be destroyed.[4] In recent years, many corporate bond issues have been called for redemption decades before their maturities.[5] These bond redemptions and an active stock market have generated vast amounts of cancelled securities certificates that must be shipped, stored, safeguarded, and tracked.

Certificate processing can involve significant warehousing costs and risks. The following examples illustrate some of these risks.

In a 1992 case, approximately $111 billion face amount of cancelled bond certificates disappeared after being delivered from a transfer agent's warehouse to a certificate destruction vendor. The certificates, representing many well-known public companies, later began to resurface worldwide. A number of banks and brokers as well as individuals were defrauded through sales of the cancelled certificates for cash or through use of the cancelled certificates as loan collateral. The bulk of these cancelled certificates still remain unaccounted for and continue to resurface in the marketplace.[6]

In a similar 1994 case, approximately $6 billion face amount of cancelled bond certificates disappeared after being delivered from a transfer agent's record center to two certificate destruction vendors. The cancelled certificates, which represented well-known companies, later began to circulate worldwide. Again, the bulk of these cancelled certificates remain unaccounted for and continue to resurface in the marketplace.[7]

In another instance, cancelled certificates were stolen from a transfer agent's shipping bags while in transit. The transfer agent regularly shipped cancelled certificates from the West Coast to a New York bank for processing. The transfer agent, however, did not record the contents of its shipments and, in effect, relied on its processing agent to do its bookkeeping. When the shipping bags were stolen, neither the transfer agent nor its processing agent realized that the certificates were missing. A number of the certificates resurfaced more than a month after the theft in off-market sales.[8]

Other instances have involved bulk thefts of cancelled certificates from warehouses. In some cases, the records of the certificate numbers also were stolen because they were stored with the certificates. Even in cases where certificate records for stolen securities were available, they generally were of limited value in identifying the stolen securities because the records were manual, rather than electronic, and they were organized chronologically by cancellation dates rather than by certificate numbers. As a result, the necessary information was not easily retrievable from the records.

In many cases, the stolen certificates reentered the marketplace either through sales or as collateral for loans, resulting in substantial fraud on public investors, public companies, creditors, broker-dealers, and transfer agents. Not only do situations such as these present potential liability for the transfer agents responsible, but they consume the resources of regulatory and criminal law enforcement agencies.

A common transfer agent practice contributed to this problem. In physically cancelling certificates, many transfer agents marked the certificates only with pin-hole sized perforations. These tiny perforations were used to avoid defacing the certificates and impairing their usefulness as records. The pinholes, however, which usually formed the cancellation date and the initials of the transfer agent, often were barely noticeable. In some cases, they have been mistaken for notary or authentication markings. Even more problematic was the practice by some transfer agents of not marking certificates at all to indicate that the certificates had been cancelled.

Although neither the text nor the legislative history of Sections 17(f) and

reducing costs and the potential for theft and misuse. Securities Exchange Act Release No. 41442 (May 25, 1999), 64 FR 29608.

[2] 17 CFR 240.17Ad–6(c) and 240.17Ad–7(d). The term ''registered '' as used in 17 CFR 240.17Ad.6(c) with reference to cancelled certificates means certificates registered in the name of an owner, as distinct from bearer certificates which were in wide circulation when this rule was promulgated in 1997.

[3] 48 Stat. 881 (1934), 15 U.S.C. 78a *et seq.*

[4] It has been suggested that the Commission mandate the destruction of cancelled certificates within thirty days of their cancellation. While current practices are changing and some transfer agents may select alternative means to satisfy the recordkeeping requirements for cancelled certificates (*see supra* note 5), many transfer agents satisfy these recordkeeping requirements by maintaining the physical certificates themselves. In this regard, issuers and transfer agents are often called upon by courts and investors to produce records that validate transfer instructions, transfer authorizations, and for other evidence best available from cancelled certificates or acceptable images or copies thereof. Accordingly, we do not believe that a uniform destruction requirement is necessary or appropriate at this time. Commenters are invited to address this issue.

[5] Among the reasons for these bond redemptions has been the decline in long-term interest rates since the early 1980s.

[6] In 1992, the commission brought an action against a transfer agent for its failure to report stolen certificates pursuant to Rule 17f–1, 17 CFR 240.17f–1, and for its failure to safeguard securities in its possession pursuant to Rule 17Ad–12, 17 CFR 240.17Ad–12. The transfer agent agreed to pay a civil penalty of $750,000 and to cease and desist from future violations of sections 17(f)(1) and 17A of the Exchange Act and Rules 17f–1 and 17Ad–12 thereunder. *See SEC* v. *Citibank, N.A.,* Civil Action No. 92–2833 (USDC, DC, 1992). Securities Exchange Act Release No. 31612 (December 17, 1992), 53 SEC Docket 224.

[7] In 1994, the Commission and the Comptroller of the Currency brought a joint action against a transfer agent for its failure to report stolen cancelled certificates pursuant to Rule 17f–1 and its failure to safeguard securities in its possession pursuant to Rule 17Ad–12. The transfer agent agreed to pay a civil penalty of $100,000 and to cease and desist from future violation of sections 17(f)(1) and 17A of the Exchange Act and Rules 17f–1 and 17Ad–12 thereunder. As remedial measures, the transfer agent also agreed to make cancelled certificates with the word ''cancelled'' and to adopt other safeguards. *See The Chase Manhattan Bank,* Administrative Proceeding No. 3–8518. Securities Exchange Act Release No. 34784 (October 4, 1994), 57 SEC Docket 2195.

[8] In 1994, the Commission and the Office of the Comptroller of the Currency brought a joint enforcement action against a transfer agent and found that the transfer agent had violated section 17(f)(1) of the Exchange Act and Rule 17f–1 thereunder for failing to report the missing securities to the Commission's Lost and Stolen Securities Program. The transfer agent agreed to cease and desist from any further violations of section 17(f)(1) and Rule 17f–1 thereunder and agreed to pay a $75,000 civil penalty. *See Seattle-First National Bank,* Securities Exchange Act Release No. 34293 (July 1, 1994), 57 SEC Docket 146.

17A of the Exchange Act[9] expressly discusses cancelled certificates, these provisions provide the Commission with ample authority and responsibility to protect investors and securities industry participants from the dangers associated with the fraudulent use of cancelled certificates. Section 17(f)(1),[10] in fact, is designed to curtail the profitability of and the unlawful trafficking in lost and stolen securities certificates.[11] Moreover, section 17A, among other things, requires adequate safeguarding of funds and securities within a transfer agent's custody or control or for which it is responsible.[12] The Commission has broad discretion in carrying out this mandate.[13]

We believe that most situations where cancelled securities certificates resurfaced in the market place have resulted from a lack of good internal control systems for the processing, storage, transportation, or destruction of the certificates. The rules that we propose today are intended to provide for more efficient and secure certificate processing, particularly of cancelled certificates. Moreover, the proposed amendments would promote several fundamental Commission mandates: (1) Improving the safety and efficiency of securities transfers; (2) reducing the physical movement of securities certificates; and (3) reducing the potential for fraudulent use of cancelled securities certificates.[14]

III. Proposed Rules

A. Proposed Rule 17Ad–19: Processing of Cancelled Certificates

The processing of cancelled certificates is largely governed by trade practices. For example, in 1994, the Securities Transfer Association (''STA''), the largest transfer agent trade association, adopted guidelines for its members which, among other things, call for marking cancelled certificates with the word ''cancelled'' and for greater security measures in certificate storage and destruction.[15] Because cancellation is the critical first step in the processing of retired securities certificates, we believe that rulemaking is necessary to strengthen and standardize this process.[16]

Proposed Rule 17Ad–19[17] would require each transfer agent to: (1) Have a written statement setting forth its procedures for the cancellation, storage, transportation, and destruction of securities certificates; (2) clearly apply to the face of each cancelled certificate the word ''cancelled'' unless the transfer agent's procedures will cause the certificate to be destroyed in accordance with other Commission rules within 72 hours of its cancellation; (3) transport cancelled certificates in a secure manner with a record of the certificates in transit; (4) witness and document the destruction of certificates; and (5) keep a retrievable electronic record of each cancelled certificate with identifying data.[18] The rule would authorize the Commission to provide exemptions from these provisions in appropriate cases upon written request or upon its own motion, such as where a transfer agent lacks any automated capability or where a transfer agent uses electronic storage media to image certificates and then immediately destroys the certificates pursuant to Exchange Act rules.[19] Under Rule 17Ad–7(i), as amended, transfer agents would have to maintain records to demonstrate compliance with these requirements of Rule 17Ad–19 for not less than three years, the first year in an easily accessible place.[20]

We believe that if the word ''cancelled'' were clearly imprinted onto or perforated into each cancelled certificate, it would help protect the public and industry participants from certain forms of securities fraud. Therefore, we have included such a requirement in the proposed rule. We welcome comments on whether we should prescribe standards for this requirement, such as the size of the word ''cancelled'' and where it should be placed on a certificate.

B. Rule 17f–1: Lost and Stolen Securities Program

1. Background

Section 17(f)(1) of the Exchange Act requires the Commission to operate a Lost and Stolen Securities Program (''LSSP'' or ''Program''). Congress directed the establishment of the Program in 1975 to curtail trafficking in lost, stolen, missing, and counterfeit securities certificates.

Rule 17f–1 under the Exchange Act governs LSSP. The Program consists mainly of a data base for securities that are reported lost, stolen, missing, or counterfeit. Operationally, the Program has two essential parts: ''reports'' and ''inquiries.'' Most financial institutions (including banks, brokers, and transfer agents) are required to participate in the Program and must ''report'' any certificates that they discover to be lost, stolen, missing, or counterfeit.[21] Financial institutions also must ''inquire'' about any securities certificate valued at $10,000 or more that comes into their possession or keeping.[22] Additionally, these financial institutions may, on a permissive basis, report or inquire about other certificates.[23] The Program was designed with the belief that economic realities would cause financial institutions to inquire in a timely manner in connection with any securities certificates in substantial amounts that came into their possession.[24]

The Program is operated under contract with the Commission by the Securities Information Center, located in Boston, Massachusetts. As of December 31, 1999, the Program's data base contained reported securities with a value of approximately $385 billion. Subscribing institutions participating in

[9] 48 Stat. 881 (1934), 15 U.S.C. 78q(f) and 78q–1.

[10] 15 U.S.C. 78q(f)(1).

[11] *See* Lost and Stolen Securities Program, Hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, 93d Cong., 1st Ses. (1973), 2d Sess. (1974). S.249, which became the Securities Acts Amendments of 1975, was amended on the floor of the Senate to add legislation concerning lost, stolen, missing, and counterfeit securities. 121 Cong. Rec. 6186 (April 17, 1975). *See also* Conference Report to Accompany S.249, 94th Cong., 1st Sess. 103–104 (1975).

[12] *See* Securities Acts Amendments of 1975, Comm. on Banking, Housing and Urban Affairs, Sen. Rep. No. 75 to Accompany S. 249, 56–58 (1975).

[13] ''The Commission is empowered with broad rulemaking authority over all aspects of a transfer agent's activities as a transfer agent.'' Id. at 56–57. For example, cancelled securities certificates already are expressly covered by the Exchange Act's recordkeeping rules that apply to transfer agents. Rule 17Ad–6(c), 17 CFR 240.17Ad–6(c).

[14] *See,* generally, Exchange Act, section 17A(a), (e), and (f).

[15] Rules of the STA, Section 1.26 (Recommended Procedures for Cancelled Securities).

[16] STA has over 400 members, the majority of whom are registered transfer agents. For STA's website, *see* www.stai.org. There is no self-regulatory organization for transfer agents.

[17] 17 CFR 240.17Ad–19.

[18] Required certificate detail would be: CUSIP number, certificate number including prefix or suffix, denomination, registration, issue date, and cancellation date. *Cf.,* Exchange Act Rules 17Ad–9(a) and 17f–1(c)(6), 17 CFR 240.17Ad–9(a) and 240.17f–1(c)(6).

[19] *See* Securities Exchange Act Rule 0–12, 17 CFR 240.0–12 regarding existing exemption provisions.

[20] This recordkeeping requirement for Rule 17Ad–19 would have no effect on the recordkeeping requirements of Rule 17Ad–6(c) which applies to certificates themselves.

[21] Rule 17f–1(c) and (d), 17 CFR 240.17f–1(c) and (d).

[22] *See* Rule 17f–1(d)(iv), 17 CFR 240.17f–1(d)(iv). The inquiry requirement applies to any securities certificate received as part of a transaction whose aggregate value (face value in the case of debt or market value in the case of stocks) exceeds $10,000. Required inquiries under existing Rule 17f–1(d) would not be changed by this rule proposal.

[23] *E.g.,* inquiries on securities certificates valued at less than $10,000. *See* Paragraph (e) of Exchange Act Rule 17f–1, 17 CFR 240.17f–1(e).

[24] *See* ''Inquiry Requirements,'' Securities Exchange Act Release No. 13832 (August 5, 1977), 42 FR 41022.

the Program totalled 25,569, consisting of 13,982 banks, 10,664 securities organizations,[25] and 923 non-bank transfer agents. During 1999, reports were made on 1,438,305 certificates (an average of 5,708 certificates per business day); inquiries were made on 7,993,148 certificates (an average of 31,719 certificates per business day); and matches or ''hits'' resulting from inquiries were made on 301,420 certificates, which had a value of approximately $6.9 billion.[26] The hits essentially warned the inquirers that reports had been filed with the Program against the certificates inquired about. This meant that the certificates had been reported as lost, stolen, missing, or counterfeit, and that they were not eligible for transfer.

2. Rule 17f–1 Definitions

a. ''*Securities Certificate*''. We propose to amend Rule 17f–1(a) to add a definition of ''securities certificate'' to clarify that the scope of Rule 17f–1 covers a certificate from the time it is printed by the issuer or the issuer's agents until the time it is destroyed. Accordingly, it would cover: certificates that have been printed but never issued, certificates that have been issued and remain outstanding, certificates that are held by the issuer as treasury securities or held by the issuer or its agents in any other capacity, and certificates that have been cancelled.

b. ''*Missing'' Securities Certificates.* The term ''missing'' is used in section 17(f)(1) of the Exchange Act and in Rule 17f–1 thereunder, but it is not defined.[27] The term missing has been used to describe certificates that cannot be located, such as certificates that are not found during a count or audit, but that are thought to be misfiled rather than lost or stolen.[28]

There are other circumstances, however, where a transfer agent believes it knows what happened to a cancelled certificate but cannot be certain. For example, if cancelled certificates are stored by a transfer agent in a warehouse that is destroyed by a fire, the transfer agent may believe but cannot necessarily be confident (*i.e.,* to the point of providing a guarantee) that all of the stored certificates were destroyed.[29] In such a situation, a risk exists that some of the certificates will resurface in the marketplace. These certificates might be described as lost but also could be described as missing.

The Commission believes it would be in the public interest to define the term ''missing'' for purposes of Rule 17f–1 to mean: (1) Any certificate that cannot be located but which is not believed to be lost or stolen; and (2) any certificate that the transfer agent believes was destroyed, but was not destroyed according to the certificate destruction procedures required by proposed Rule 17Ad–19(c). Transfer agents would be required to report these types of missing certificates to LSSP. Then, if the certificates resurfaced, there would be a high degree of likelihood that they would be identified through LSSP.

3. Rule 17f–1: LSSP Reporting

Rule 17f–1 governs the operations of LSSP, including that Program's data base for securities certificates that are lost, stolen, missing, or counterfeit. The Commission has brought enforcement actions for violations of Rules 17f–1 where cancelled securities certificates that were lost or stolen were not reported to LSSP.[30] Nevertheless, there appears to be uncertainty about whether this rule applies to cancelled certificates.[31]

In our view, cancelled certificates come within the meaning and purpose of Rules 17f–1. Like counterfeit certificates, cancelled certificates have no intrinsic value, but they can be used to defraud the public.[32] Therefore, in the interest of safety and soundness in certificate processing, we propose to amend Rule 17f–1 by adding to the rule subparagraph (a)(6) which would define ''securities certificates'' as expressly including cancelled certificates.

4. Rule 17f–1(d)(3): LSSP Inquiries

In Rule 17f–1, paragraph (c) governs ''reports'' about lost, stolen, missing, and counterfeit securities, and paragraph (d) governs ''inquiries'' about lost, stolen, missing, and counterfeit securities. While the rule currently specifies time frames for making reports, it specifies no time frames for making inquiries. Proposed Rule 17f–1(d)(3) would address time frames for inquiries under LSSP.[33]

In 1976, when the rule was adopted, the absence of a time frame for making inquiries was meant to accommodate various business practices and to avoid commercial disruptions.[34] However, since the 1970s business conditions have changed substantially, in large part due to improvements in automation and communications. Inquiries by financial institutions to LSSP have become quite routine and systematic; a standard for inquiries can no longer be viewed as potentially disruptive to commerce. Second, we note that the lack of any time limit for making required inquiries has made compliance with the rule difficult to monitor.[35] Accordingly, we propose to add paragraph (d)(3) to Rule 17f–1 providing that inquiries must be made by the end of the fifth business day after a certificate comes into the possession or keeping of a reporting institution, provided that such inquiries shall be made before the certificate is

[27] While parallel terms (lost, stolen, and counterfeit) also are not defined by the statute or the rule, we believe that their meanings are clear from the context.

[28] *See, e.g.,* Rule 17f–1(c)(2)(ii) concerning certificates considered ''missing'' as the result of a securities count or verification during, for example, an internal audit.

[29] On March 19, 1997, a major warehouse fire apparently destroyed a large number of cancelled securities certificates held in storage by a transfer agent, and the fire reportedly was caused by arson. *See* ''A Burning Question: How Safe Are Your Records,'' *Business Week,* June 23, 1997, at page 130E4.

[30] *See, e.g, SEC* v. *Citibank, N.A., supra* note 9.

[29] On March 19, 1997, a major warehouse fire apparently destroyed a large number of cancelled securities certificates held in storage by a transfer agent, and the fire reportedly was caused by arson. *See* ''A Burning Question: How Safe Are Your Records,'' *Business Week,* June 23, 1997, at page 130E4.

[30] *See, e.g, SEC* v. *Citibank, N.A., supra* note 9.

[31] For example, one court has found that because ''cancelled securities'' are not expressly included in Rule 17f–1, they are not subject to the reporting requirements of that rule. *A.G. Edwards & Sons, Inc.* v. *Centocor, Inc.,* Civil Action No. 91–6133 (E.D. PA, 1992).

[32] In *United States* v. *Jackson,* 576 F.2d. 749, 757 (8th Cir. 1978), the court recognized that stolen blank stock certificates have no intrinsic value as investments but that they have a ''thieves' market value'' as demonstrated by an FBI undercover operation, which was part of the case, where the certificates were purchased at 40% of their apparent market value.

[33] For description of ''inquiries,'' *see supra* notes 23–28 and accompanying text.

[34] When enacting the underlying statute, Congress stated that the Commission should carefully weigh the benefits of mandating inquiries against the costs and effects on efficient business practices. Conference Report on S. 249, Securities Acts Amendments of 1975, 94th Cong., 1st Sess. 104 (1975). In 1976, the Commission observed that the system for inquiries should avoid undue disruptions to commercial transactions and chose not to set time limits for inquiries. *See* Securities Exchange Act Release No. 12030 (January 20, 1976), 41 FR 04834. In 1979, when the Commission asked for comments from the industry, reporting institutions said they favored a policy of leaving to their own business judgment the time frames for valuing and inquiring of LSSP about securities that came into their possession. The Commission accepted that position. *See* ''inquiry Time Frames,'' Securities Exchange Act Release No. 15683 (March 29, 1979), 44 FR 20614

[35] The Seventh Circuit Court of Appeals observed that the addition of a precise time frame for making required inquiries would improve the operation of the rule. *First National Bank of Cicero* v. *Lewco Securities Corp.,* 860 F.2d 1407, 1416, n. 14 (7th Cir. 1988). The court also said that whether an institution meets the test of ''good faith'' required for bona fide purchaser status with respect to securities certificates may depend on whether it has met the inquiry requirements of Rule 17f–1. *Id.* at 1413–1415. *See also* Yadley and Ilkson, ''Bona Fide Purchasers of Lost and Stolen Securities: Meeting the 'Good Faith;' and 'Notice' Requirements,'' 5 George Mason U.L. Rev. 101, 127–133 (1982).

sold, used as collateral, or sent to another reporting institution.

5. Rule 17f–1(c)(2): Securities Shipments

We are proposing to add to Rule 17f–1(c)(2)(i) language that would require transfer agents to track shipments of securities certificates, including cancelled certificates, between reporting institutions.[36] When such a shipment becomes unaccounted for (for example, where the delivering institution fails to receive notice of its receipt), the delivering institution would be required to timely investigate and take reasonable steps to determine the facts. If the certificates cannot be located, the delivering institution must report to LSSP that the certificates are missing, stolen, or lost and must do so within a reasonable time not exceeding ten business days after the shipment was sent.

C. Rule 17Ad–12: Safeguarding of Funds and Securities

Rule 17Ad–12 governs the safekeeping of funds and securities by transfer agents. It requires that securities be handled in a manner that is reasonably free from the risk of destruction, theft, or other loss. The proposed amendment to Rule 17Ad–12 is intended to generally improve safety and soundness in certificate processing and, specifically, to clarify that cancelled certificates come within the meaning and purpose of Rule 17Ad–12. As we observed earlier, a cancelled certificate has no intrinsic value, but like a counterfeit certificate, it can be used to defraud the public. Moreover, we have brought enforcement actions for violations of Rule 17Ad–12 that involved cancelled securities certificates.[37] Therefore, we propose to amend Rule 17Ad–12 to state that it applies to ''securities certificates,'' a term that we have proposed to define to include cancelled certificates.[38]

IV. Request for Public Comment

Any person wishing to submit comments on the above proposals or related matters is invited to do so. We specifically solicit comments on whether the proposed procedures for the cancellation, storage, and destruction of securities certificates would help prevent the theft and fraudulent resale or collateralization of cancelled securities. If the proposed rules do not appear to do so, commenters are requested to suggest other provisions that would ensure the safekeeping of cancelled securities and avoid the risks that cancelled certificates currently pose to the marketplace.

We also are requesting cost data for implementation of the proposals requiring procedures for the cancellation, storage, transportation, and destruction of securities certificates. We are soliciting comments on the proposed time frame for inquiries under Rule 17f–1 and about any undue burdens to commerce that might result from the proposed rules.

We welcome comments on whether proposed Rule 17Ad–19 should apply to all of approximately 1,050 registered transfer agents or only to the approximately 825 registered transfer agents that maintain security holder records for one or more securities issues. The difference of approximately 225 includes ''named transfer agents,'' which refer their transfer agent business to transfer agent service companies,[39] and includes other transfer agents that conduct a specialty business or are inactive.

Members of the securities industry have advised the Commission about a practice of using hand stamps on securities certificates that state ''cancelled in error'' or similar language to avoid the expense of destroying certificates that are marked ''cancelled'' by mistake. They have recommended that the Commission prohibit this practice and require that certificates that are mistakenly marked ''cancelled'' be destroyed. Do you believe we should adopt such a rule? We welcome any comments on this matter.

We welcome comments on how much ''certificate data'' should be retained and indexed for cancelled certificates, destroyed certificates, and certificates that are in transit.[40] Finally, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views.

V. Costs and Benefits of Proposed Amendments

The Commission is considering the costs and benefits of proposed Rule 17Ad–19 and the proposed amendments to Rules 17f–1 and 17Ad–12. The Commission has identified certain costs and benefits relating to the proposals, which are discussed below, and we encourage commenters to discuss any additional costs or benefits. In particular, we request comment on the potential costs for any necessary modifications to information gathering, management, and record-keeping systems or procedures, as well as any potential benefits resulting from the proposals for issuers, transfer agents, banks, brokers, regulators, or others. Commenters should provide analysis and data to support their views on the cost and benefits associated with the proposals.

A. Benefits

The proposals should provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. These benefits are not readily quantifiable in terms of dollar value. Nevertheless, the proposals are designed to reduce the fraudulent use of securities certificates, particularly cancelled certificates, by requiring improved safeguarding and recordkeeping by transfer agents. In recent years, the fraudulent resale and fraudulent collateralization of cancelled certificates (certificates with no investment value) have cost private individuals and financial institutions many millions of dollars. Such costs could be substantially reduced or even eliminated by adequate safeguarding and recordkeeping of these certificates by transfer agents. Moreover, the proposals should provide the added benefit of increasing compliance with securities certificate recordkeeping and safeguarding rules (by, among other things, clarifying that cancelled certificates are subject to these rules), while decreasing instances of fraud on investors.

The Commission does not have data to quantify the value of the benefits described above. We are seeking comment on how we may quantify these benefits and any other benefits, not already identified, that may result from the adoption of the proposed amendments.

B. Costs

The proposals require transfer agents to have written procedures for the cancellation, storage, transportation, and destruction of securities certificates; to mark cancelled securities certificates as ''cancelled''; to witness and document the destruction of certificates; and to keep a retrievable electronic record of each cancelled certificate. The preparation of these written procedures

[36] The term ''reporting institution'' would have the meaning set forth in 17 CFR 240.17f–1(a)(1).

[37] *See, e.g., SEC* v. *Citibank, N.A., supra* at note 9.

[38] *See, supra,* Section III.B.2.a. for discussion of definition of securities certificate.

[39] *See* Rule 17Ad–9(j) and (k), 17 CFR 240.17Ad–9(j) and (k).

[40] For the term ''certificate data,'' *see supra* note 20.

requested by the new rules would be a cost to transfer agents.

Regarding the proposed use of the word ''cancelled'' on cancelled certificates, we understand that, with the encouragement of the Securities Transfer Association's published guidelines,[41] most transfer agents already are marking their cancelled certificates with the word ''cancelled'' to designate their cancelled status.[42] We believe that the proposed requirement to use the word ''cancelled'' would to a large extent codify good business practices with little additional cost to the industry.

The proposed requirements to witness and record the destruction of certificates and to keep retrievable electronic records of the cancelled certificate would mean additional costs to many transfer agents. However, existing Exchange Act rules already require transfer agents to maintain ''appropriate certificate detail,'' and this includes records of cancelled certificates,[43] and these requirements would apply only on a going forward basis, *i.e.*, transfer agents will not have to create electronic records for old cancelled certificates. Moreover, the proposed recordkeeping requirements, to a substantial degree, would clarify requirements and encode recordkeeping practices already in place, and we are unable to quantify the extent of such incremental costs. We would welcome the submission of detailed information on the subject.

VI. Effects on Competition, Efficiency, and Capital Formation

In adopting rules under the Exchange Act, section 23(a)(2) requires the Commission to consider the impact any rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, and when considering the public interest, to consider whether the action would promote efficiency, competition, and capital formation.

The proposed amendments should improve market efficiency by reducing a source of fraud and its associated costs and inefficiencies (*i.e.,* the fraudulent introduction of cancelled and worthless securities into the marketplace). In addition, the proposed amendments should have no material anticompetitive effects because they would apply equally to all transfer agents and should have no material effect on capital formation.

To evaluate more fully the effects on competition of the proposed amendments, we are requesting commenters to provide their views and specific empirical data as to any effects their adoption would have on competition. We also request comments on what effect the proposals, if adopted, would have on efficiency and capital formation.

VII. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act,[44] regarding proposed Rule 17Ad–19 and the amendments to Rules 17f–1 and 17Ad–12 under the Exchange Act. The IRFA states that the purpose of the proposal is to establish uniform procedures for the cancellation, storage, and destruction of securities certificates.

The IRFA sets forth the statutory authority for the proposal. The IRFA also discusses the effect of the proposal on transfer agents that are small entities pursuant to Rule 0–10 under the Exchange Act.[45] A transfer agent is a small entity if it: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10. Approximately 470 registered transfer agents qualify as ''small entities'' for purposes of the RFA and would be subject to the requirements of proposed Rule 17Ad–19.

Proposed Rule 17Ad–19 would require all transfer agents to establish and implement written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Such written procedures and the implementation thereof shall be subject to examination by the transfer agent's appropriate regulatory agency. Additionally, amendments to Rules 17f–1 and 17Ad–12 would clarify that these two rules apply broadly to securities certificates, including cancelled securities certificates.

The IRFA states that the Commission considered whether viable alternatives to the proposed rulemaking exist that accomplish the stated objectives of applicable statutes that minimize any significant economic impact of proposed rules on small entities. More specifically, the Commission considered the following alternatives: (1) The establishment of different procedures that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules insofar as they affect small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

As explained further in the IRFA, the Commission has considered significant alternatives to the proposed rules that would adequately address the problem posed by cancelled securities certificates. The Commission believes that the establishment of different requirements for small entities is neither necessary nor practical because the proposal is designed to provide general standards that would protect the public and members of the financial community from certain types of securities fraud, and the proposal would include an exemption procedure that would be available to small entities on a case by case basis. Moreover, the IRFA concludes that the Commission believes that the proposal, if adopted, would not adversely affect small entities. Finally, the IRFA addresses each of the other requirements set forth under 5 U.S.C. 603.

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Those comments should specify costs of compliance with the proposed rule, and suggest alternatives that would accomplish the objective of proposed Rule 17Ad–19. A copy of the IRFA may be obtained by contacting Thomas C. Etter, Jr., Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001, telephone no. (202) 942–4895.

[41] *See supra*, note 18.

[42] We believe that most transfer agents are properly marking their retired certificates with the word ''cancelled,'' as STA has recommended. However, because doing so is not a Commission requirement, it is not a part of the Commission's examination module for transfer agents. Thus, our data on the subject is anecdotal, rather than systematic.

[43] *See* Securities Exchange Act Rules 17Ad–6(c) and 17Ad–9(a); 17 CFR 17Ad–6(c) and 17Ad–9(a).

[44] 5 U.S.C. 603.

[45] 17 CFR 240.0–10.

VIII. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[46] and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Record Retention Requirements for Registered Transfer Agents.'' The OMB control number for the current collection of information is 3235–0136. The collection requirements are necessary to ensure the integrity of transfer agents' records and the safeguarding of securities certificates.

Proposed Rule 17Ad–19 contains collection of information requirements that are intended to ensure the integrity and completeness of transfer agents' records regarding physical securities certificates, in particular cancelled securities certificates. Rule 17Ad–19 would require each registered transfer agent to: (1) Have a written statement setting forth its procedures for the cancellation, storage, transportation, and destruction of securities certificates; (2) mark each cancelled certificate with the word ''cancelled'' on the face of the certificate; (3) witness and document the destruction of certificates; and (4) keep a retrievable electronic record of each cancelled certificate with identifying certificate data. The proposed amendments to Rules 17f–1 and 17Ad–12 would involve no additional paperwork requirements.

Proposed Rule 17Ad–19 would incorporate the three year record retention requirement of Rule 17Ad–7(i), but the proposed amendments to Rules 17f–1 and 17Ad–12 would add not any retention periods for recordkeeping requirements. The maintenance of written procedures by transfer agents under Rule 17Ad–19 would be mandatory. The written procedures would be confidential and not available to the public, although they would be subject to examination by the Commission or other appropriate regulatory agencies. We note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Approximately 1,100 transfer agents are registered with the Commission. The Commission estimates that the average amount of time per transfer agent needed to comply with the collection of information requirements of proposed Rule 17Ad–19 would be 40 hours per transfer agent for developing the written procedures. The Commission further estimates that the average amount of time per transfer agent per year to comply with the collection of information associated with recording and tracking cancelled securities certificates would be 50 hours per transfer agent per year, a figure that would vary greatly depending on the size of an entity and the volume of its business. Thus, assuming 1,100 registered transfer agents, the start-up collection of information requirements would require about 44,000 hours (40 × 1,100), and the annual collection of information requirements would be about 55,000 hours (50 × 1,100). Thus, the combined total during the first year would be about 99,000 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Person desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–18–00. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, should refer to File No. S7–18–00, and be submitted to the Securities and Exchange Commission, Office of Filings and Information. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IX. Statutory Basis and Text of Proposed Amendments

Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a), 17A(d), and 23(a) thereof, 15 U.S.C. 78q–1(d) and 78w(a), the Commission proposes to adopt § 240.17Ad–19 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of Proposed Rules

In accordance with the foregoing, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17f–1 is amended by:

a. Adding paragraphs (a)(6), (a)(7) and (a)(8);

b. Revising the phrase ''lost in transit'' to read ''lost, missing, or stolen while in transit'' in paragraph (c)(2)(i);

c. Redesignating paragraphs (c)(2)(ii) and (c)(2)(iii) as paragraphs (c)(2)(iii) and (c)(2)(iv);

d. Adding new paragraph (c)(2)(ii); and

e. Adding paragraph (d)(3) to read as follows:

§ 240.17f–1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

(a) * * *

(6) The term *securities certificate* means any physical instrument that represents or purports to represent ownership in a security that was printed by or on behalf of the issuer thereof and shall include any such instrument that is or was:

(i) Printed but not issued;

(ii) Issued and outstanding including treasury securities;

(iii) Cancelled, which for this purpose means either or both of the procedures set forth in § 240.17Ad–19(a)(1); or

[46] 44 U.S.C. 3501 *et seq.*

(iv) Counterfeit or reasonably believed to be counterfeit.

(7) The term *issuer* shall include an issuer's:

(i) Transfer agent(s), paying agent(s), tender agent(s), and person(s) providing similar services; and

(ii) Corporate predecessor(s) and successor(s).

(8) The term *missing* shall include any securities certificate that:

(i) Cannot be located or accounted for, but is not believed to be lost or stolen; or

(ii) A transfer agent claims or believes was destroyed in any manner other than by the transfer agent's own certificate destruction procedures as provided in §§ 240.17Ad–19(b) and (c).

* * * * *

(c) * * *

(2) * * *

(ii) Where a shipment of securities certificates is in transit between any transfer agents, banks, brokers, dealers, or other reporting institutions, relationship between such entities, and the delivering institution fails to receive notice of receipt or non-receipt of the certificates, the delivering institution shall act to determine the facts. In the event of non-delivery where the certificates are not recovered by the delivering institution, the delivering institution shall report the certificates as lost, stolen, or missing to the Commission or its designee within a reasonable time under the circumstances but in any event within ten business days from the date of shipment.

* * * * *

(d) * * *

(3) A reporting institution shall make required inquiries by the end of the fifth business day after a securities certificate comes into its possession or keeping, provided that such inquiries shall be made before the certificate is sold, used as collateral, or sent to another reporting institution.

* * * * *

3. Section 240.17Ad–7, paragraph (i), is amended by revising the phrase ''§ 240.17Ad–17(c)'' to read ''§§ 240.17Ad–17(c) and 240.17Ad–19(c)''.

4. Amend § 240.17Ad–12, paragraph (a)(1), by revising the phrase ''risk of destruction, theft or other loss;'' to read ''risk of theft, loss or destruction (other than by a transfer agent's certificate destruction procedures pursuant to § 240.17Ad–19);'' and adding paragraph (b) to read as follows:

§ 240.17Ad–12 Safeguarding of funds and securities.

* * * * *

(b) For purposes of this section, the term securities shall include the term *securities certificate* as defined in § 240.17f–1(a)(6).

5. Section 240.17Ad–19 is added to read as follows:

§ 240.17Ad–19 Requirements for cancellation, storage, and destruction of securities certificates.

(a) *Definitions.* For purposes of this section:

(1) The terms *cancelled* or *cancellation* means the process in which a securities certificate:

(i) Is physically marked to clearly indicate that it no longer represents a claim against the issuer; and

(ii) Is voided on the records of the transfer agent.

(2) The term *cancelled certificate facility* means any location where securities certificates are cancelled, stored, or destroyed.

(3) The term *certificate number* means a unique identification or serial number that is assigned and affixed by an issuer or transfer agent to each securities certificate.

(4) The term *controlled access* means the practice of permitting the entry of only authorized personnel to areas where cancelled securities certificates are processed, stored, or destroyed.

(5) The term *CUSIP number* means the unique identification number that is assigned to each securities issue. The same CUSIP number appears on the face of each securities certificate of the same securities issue.

(6) The term *destruction* means the physical ruination of a securities certificate by a transfer agent as part of the certificate destruction procedures that make the reconstruction of the certificate impossible.

(7) The term *securities certificate* has the same meaning that it has in § 240.17f–1(a)(6).

(b) *Required procedures for the cancellation, storage, transportation, and destruction of securities certificates.*

Every transfer agent involved in the keeping, handling, or processing of securities certificates shall establish and implement written procedures that describe the transfer agent's procedures for the cancellation, storage, transportation, and destruction of such securities certificates. This requirement applies to any agent that the transfer agent uses to perform any of these activities.

(c) *Written procedures.* The written procedures required by paragraph (b) of this section at a minimum, shall:

(1) Provide controlled access to any cancelled certificate facility;

(2) Unless existing procedures will cause the destruction of cancelled certificates within 72 hours of their cancellation, provide that each cancelled certificate is clearly marked with the word ''CANCELLED'' by stamp or perforation on the face of the certificate;

(3) Require a retrievable electronic record containing the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date of each cancelled certificate within the transfer agent's possession or control;

(4) Require, pursuant to a certificate destruction procedure, a retrievable electronic record of each destroyed securities certificate; the records must contain for each destroyed certificate the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date;

(5) Require that the physical transportation of cancelled certificates be made in a secure manner and that the transfer agent maintain a record of the CUSIP number and certificate number of each certificate in transit;

(6) Require, pursuant to a certificate destruction procedure, that authorized personnel of the transfer agent or its designee supervise and witness the intentional destruction of any cancelled certificate and retain copies of all records relating to certificates which were destroyed; and

(7) Provide for the reporting to the Lost and Stolen Securities Program in a timely and complete manner, pursuant to § 240.17f–1, any cancelled certificate that is lost, stolen, missing, or counterfeit.

(d) *Recordkeeping.* Every transfer agent subject to this section shall maintain records which demonstrate compliance with the requirements set forth in this section and which describe the transfer agent's methodology for complying with this section.

(e) *Exemptive authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specific terms and conditions, to any transfer agent or any class of transfer agents and to any securities certificate or any class of securities certificates.

By the Commission.

Dated: October 2, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–25773 Filed 10–5–00; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114697–00]

RIN 1545–AY36

Nondiscrimination Requirements for Certain Defined Contribution Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would prescribe conditions under which certain defined contribution retirement plans (sometimes referred to as ''new comparability'' plans) are permitted to demonstrate compliance with applicable nondiscrimination requirements based on plan benefits rather than plan contributions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for January 25, 2001, at 10 a.m., must be received by January 5, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–114697–00) room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–114697–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax_regs/reglist.html. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, John T. Ricotta, 202–622–6060 or Linda S. F. Marshall, 202–622–6090; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 401(a)(4) of the Internal Revenue Code of 1986 (Code).

Section 401(a)(4) provides that a plan or trust forming part of a stock bonus, pension or profit-sharing plan of an employer shall not constitute a qualified plan under section 401(a) of the Code unless the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (HCEs) (within the meaning of section 414(q)). Whether a plan satisfies this requirement depends on the form of the plan and its effect in operation.

Section 415(b)(6)(A) provides that the computation of benefits under a defined contribution plan, for purposes of section 401(a)(4), shall not be made on a basis inconsistent with regulations prescribed by the Secretary. The legislative history of this provision explains that, in the case of target benefit and other defined contribution plans, ''regulations may establish reasonable earnings assumptions and other factors for these plans to prevent discrimination.'' Conf. Rep. No. 1280, 93d Cong., 2d Sess. 277 (1974).

Under the section 401(a)(4) regulations, a plan can demonstrate that either the contributions or the benefits provided under the plan are nondiscriminatory in amount. Defined contribution plans generally satisfy the regulations by demonstrating that contributions are nondiscriminatory in amount, through certain safe harbors provided for under the regulations or through general testing.

A defined contribution plan (other than an ESOP) may, however, satisfy the regulations on the basis of benefits by using ''cross-testing'' pursuant to rules provided in § 1.401(a)(4)–8 of the regulations. Under this cross-testing method, contributions are converted to equivalent benefits payable at normal retirement age and tested on the basis of these equivalent benefits. The conversion is done by making an actuarial projection of the benefits payable at normal retirement age that are attributable to the contributions. Thus, this cross-testing method effectively permits nonelective employer contributions under a defined contribution plan to be tested on the basis of the benefits attributable to those contributions, in a manner similar to the testing of employer-provided benefits under a defined benefit plan.

In Notice 2000–14 (2000–10 I.R.B. 737), released February 24, 2000, the IRS and the Treasury Department initiated a review of issues related to use of the cross-testing method by so-called ''new comparability plans'' and requested public comments on this plan design from plan sponsors, plan participants and other interested parties. In general, new comparability plans are defined contribution plans that have built-in disparities between the allocation rates for classifications of participants consisting entirely or predominately of HCEs and the allocation rates for other employees.

In a typical new comparability plan, HCEs receive high allocation rates, while nonhighly compensated employees (NHCEs), regardless of their age or years of service, receive comparatively low allocation rates. For example, HCEs in such a plan might receive allocations of 18 or 20% of compensation, while NHCEs might receive allocations of 3% of compensation. A similar plan design, sometimes known as a ''super-integrated'' plan, provides for an additional allocation rate that applies only to compensation in excess of a specified threshold, but the specified threshold (*e.g.,* $100,000) or the additional allocation rate (*e.g.,* 10%) is higher than the maximum threshold and rate allowed under the permitted disparity rules of section 401(l).

These new comparability and similar plans rely on the cross-testing method to demonstrate compliance with the nondiscrimination rules by comparing the actuarially projected value of the employer contributions for the younger NHCEs with the actuarial projections of the larger contributions (as a percentage of compensation) for the older HCEs. As a result, these plans are able generally to provide higher rates of employer contributions to HCEs, while NHCEs are not allowed to earn the higher allocation rates as they work additional years for the employer or grow older. Notwithstanding the analytical underpinnings of cross-testing, the IRS and the Treasury Department are concerned whether new comparability and similar plans are consistent with the basic purpose of the nondiscrimination rules under section 401(a)(4).

A variety of public comments were submitted in response to Notice 2000–14. Some comments expressed the view that changes in the application of the nondiscrimination rules to new comparability plans are unnecessary. These comments noted that in some cases such plans are adopted by employers that previously had no retirement plan for their employees. At the same time, many of these comments advanced suggestions as to the types of

conditions that might be imposed on new comparability plans if changes in the rules are in fact proposed.

Other comments expressed the view that the rules need to be changed to increase the contributions made for NHCEs in new comparability plans and similar tax-qualified plan designs. These comments suggested various methods for ensuring that NHCEs receive larger allocations of employer contributions under new comparability plans, including imposing a maximum ratio of the allocation rates for HCEs to those for NHCEs or requiring a minimum allocation rate for the NHCEs.

Still other comments questioned the policy justification for permitting new comparability plans under the nondiscrimination rules governing tax-qualified plans because new comparability plan designs often provide such an overwhelming percentage of total plan allocations to HCEs, with only a modest percentage of the plan allocations going to the NHCEs. Some of these comments expressed concern that new comparability plans in some instances have been marketed as a technique for limiting most employees to lower allocation rates than they would receive under other defined contribution plan designs (such as salary ratio or age-weighted) and allocating the difference to one or more HCEs. They noted that, in some cases, the percentage of total plan allocations provided to the HCEs can exceed 90%.

After consideration of the comments received, the IRS and Treasury are issuing these proposed regulations, which would prescribe conditions that new comparability and similar plans must satisfy if they are to use the cross-testing method. The proposed regulations preserve the existing cross-testing rules of the section 401(a)(4) regulations, and would not affect cross-tested defined contribution plans that provide broadly available allocation rates, as defined in the proposed regulations. The definition of broadly available allocation rates includes plans that base allocations or allocation rates on age or service. In contrast to new comparability plans, these plans provide an opportunity for participants to ''grow into'' higher allocation rates as they age or accumulate additional service.

These proposed regulations would continue to permit new comparability plans. As suggested in various comments, the proposed regulations would set forth a minimum allocation ''gateway'' that would constrain the plan designs with the greatest disparity in favor of HCEs, while leaving many new comparability plan designs unchanged. A new comparability plan that satisfies the minimum allocation gateway could continue to use the existing cross-testing rules of the section 401(a)(4) regulations.

The proposed regulations also would prevent circumvention of the minimum allocation gateway by aggregating (for purposes of satisfying the nondiscrimination rules) a new comparability defined contribution plan with a defined benefit plan that provides only minimal benefits or covers only a relatively small number of the employees, or by aggregating a defined contribution plan with a defined benefit plan that benefits primarily HCEs. However, an aggregated defined contribution and defined benefit plan that is primarily defined benefit in character (as defined in the proposed regulations) could test for nondiscrimination on the basis of benefits in the same manner as under current law. Similarly, the ability to test for nondiscrimination on a benefits basis as under current law would be unrestricted if each of the defined contribution and defined benefit portions of the aggregated plan is a broadly available separate plan (as defined in the proposed regulations).

The proposed regulations would not affect defined benefit plans except where a defined contribution plan is aggregated with a defined benefit plan for nondiscrimination purposes and thus is a part of a DB/DC plan (as defined in § 1.401(a)(4)–9). The proposed regulations would not apply merely because a plan sponsor maintains both a defined contribution plan and a defined benefit plan. The proposed regulations would not require aggregation of a defined contribution plan with a defined benefit plan or otherwise modify the existing rules regarding when plans are required or permitted to be aggregated.

Explanation of Provisions

A. Overview

The basic structure of the proposed regulations permits defined contribution plans with broadly available allocation rates to test on a benefits basis (''cross-test'') in the same manner as under current law, and permits other defined contribution plans to cross-test once they pass a gateway that prescribes minimum allocation rates for NHCEs. Similarly, the proposed regulations permit a DB/DC plan to test on a benefits basis in the same manner as under current law if the DB/DC plan either is primarily defined benefit in character or consists of broadly available separate plans. Other DB/DC plans are permitted to test on a benefits basis once they pass a corresponding gateway prescribing minimum aggregate normal allocation rates for NHCEs.

B. Gateway for Cross-Testing of New Comparability and Similar Plans

The proposed regulations would require that a defined contribution plan that does not provide broadly available allocation rates (as defined in these proposed regulations) satisfy a gateway in order to be eligible to use the cross-testing rules to meet the nondiscrimination requirements of section 401(a)(4). A plan would satisfy this minimum allocation gateway if each NHCE in the plan has an allocation rate that is at least one third of the allocation rate of the HCE with the highest allocation rate; [1] however, a plan would be deemed to satisfy this minimum allocation gateway if each NHCE received an allocation of at least 5% of the NHCE's compensation (within the meaning of section 415(c)(3)).

The proposed regulations would not change the general rule prohibiting aggregation of a 401(k) plan or 401(m) plan with a plan providing nonelective contributions. Accordingly, elective contributions and matching contributions would not be taken into account for purposes of the gateway. If an employer also provides a 401(k) plan, however, then to the extent the HCEs are electing contributions under that plan, the highest HCE allocation rate may be lower than it otherwise would be, which, in turn would lower the minimum required allocation for the NHCEs under the gateway. Further, if the employer sponsors a safe harbor 401(k) plan that provides for 3% nonelective contributions, then, as noted in Notice 98–52 (1998–2 C.B. 634), those nonelective contributions may be taken into account in determining the allocation rates for the NHCEs under section 401(a)(4), including the minimum allocation gateway.

C. Plans With Broadly Available Allocation Rates

As suggested in Notice 2000–14, a plan that has broadly available allocation rates would not need to satisfy the minimum allocation gateway and may continue to be tested for nondiscrimination on the basis of benefits as under current law. In order to be broadly available, each allocation rate under the plan must be currently available to a group of employees that

[1] For example, if any HCE had an allocation of 12% of compensation, all NHCEs in the plan would be required to have an allocation of at least 4% of compensation.

satisfies section 410(b) (without regard to the average benefit percentage test). Thus, for example, if within one plan an employer provides different allocation rates for nondiscriminatory groups of employees at different locations or different profit centers, the plan would not need to satisfy the minimum allocation gateway in order to use cross testing.

In addition, a plan that provides allocation rates that increase as an employee ages or accumulates additional service would be treated as having broadly available allocation rates, if the schedule of allocation rates satisfies certain conditions that permit participants to ''grow into'' higher allocation rates. The conditions are that the same schedule of allocation rates is available to all employees in the plan and that the schedule provides for smoothly increasing allocation rates at regular intervals of age or service.

The proposed regulation would provide that in order for a schedule of allocation rates to increase smoothly, the allocation rate for each age or service band cannot be more than 5 percentage points higher than the allocation rate for the immediately preceding band and cannot be more than twice that allocation rate. For example, if the allocation rate for an age or service band were 6%, the allocation rate for the next higher age or service band could not exceed 11% (*i.e.,* the lesser of 11% (6% plus 5%) and 12% (2 times 6%)).

Further, in order for a schedule of allocation rates to be considered to be increasing smoothly, the ratio of the allocation rate for any age or service band to the allocation rate for the immediately preceding band cannot exceed the ratio of the allocation rates between the two immediately preceding bands. The proposed regulations would provide that the intervals for the age or service bands are regular if they are all of the same length (although this requirement generally would not apply to the first and last bands).

The definition of broadly available allocation rates is designed to be sufficiently flexible to accommodate a wide variety of age- and service-based plans (including age-weighted profit-sharing plans that provide for allocations that result in the same equivalent accrual rate for all employees).

The conditions described above relating to a plan's schedule of age-based or service-based allocation rates are intended to exempt from the minimum allocation gateway those plans in which NHCEs actually receive the benefit of higher rates as they attain higher ages or complete additional years of service. Without conditions such as these, plans can be designed to backload allocation rates excessively, providing for lengthy plateau periods in which rates increase little if at all, followed by sharp increases.

Comments are invited on whether there are plans using schedules of allocation rates (such as schedules of rates based on points or otherwise combining age and service) that would fall outside the definition of broadly available allocation rates but that do afford sufficient opportunity for NHCEs to ''grow into'' higher allocation rates.

D. Application to Defined Contribution Plans That Are Combined With Defined Benefit Plans

The proposed regulations would prescribe rules for testing defined contribution plans that are aggregated with defined benefit plans for purposes of sections 401(a)(4) and 410(b). These rules would apply in situations in which the employer aggregates the plans because one of the plans does not satisfy sections 401(a)(4) and 410(b) standing alone.

1. Gateway for Benefits Testing of Combined Plans

Under the proposed regulations, the combination of a defined contribution plan and a defined benefit plan may demonstrate nondiscrimination on the basis of benefits if the combined plan is primarily defined benefit in character, consists of broadly available separate plans (as these terms are defined in the proposed regulations), or satisfies a gateway requirement. This minimum aggregate allocation gateway is generally similar to the minimum allocation gateway for defined contribution plans that are not combined with a defined benefit plan. To apply this minimum aggregate allocation gateway, the employee's aggregate normal allocation rate is determined by adding the employee's allocation under the defined contribution plan to the employee's equivalent allocation under the defined benefit plan. The use of aggregation would allow an employer that provides both a defined contribution and a defined benefit plan to the NHCEs to take both plans into account in determining whether the minimum aggregate allocation gateway is met.

Under the gateway, if the aggregate normal allocation rate of the HCE with the highest aggregate normal allocation rate under the plan (HCE rate) is less than 15%, the aggregate normal allocation rate for all NHCEs must be at least ⅓ of the HCE rate. If the HCE rate is between 15% and 25%, the aggregate normal allocation rate for all NHCEs must be at least 5%. If the HCE rate exceeds 25%, then the aggregate normal allocation rate for each NHCE must be at least 5% plus one percentage point for each 5-percentage-point increment (or portion thereof) by which the HCE rate exceeds 25% (e.g., the NHCE minimum is 6% for an HCE rate that exceeds 25% but not 30%, and 7% for an HCE rate that exceeds 30% but not 35%, etc.).

In addition, in determining the equivalent allocation rate for an NHCE under a defined benefit plan, a plan is permitted to treat each NHCE who benefits under the defined benefit plan as having an equivalent allocation rate equal to the average of the equivalent allocation rates under the defined benefit plan for all NHCEs benefitting under that plan. This averaging rule recognizes the ''grow-in'' feature inherent in traditional defined benefit plans (i.e., the defined benefit plan provides higher equivalent allocation rates at higher ages).

Comments are invited on possible special situations involving DB/DC plans, such as situations arising as a result of a merger or acquisition or a situation in which some HCEs in a DB/DC plan have unusually high equivalent normal allocation rates for reasons other than the design of the plan. Comments are invited as to whether the regulations should address such special circumstances and, if so, how (*e.g.,* through a maximum required rate for NHCEs under a DB/DC plan or other approaches).

2. Primarily Defined Benefit in Character

A combined plan that is primarily defined benefit in character would not be subject to the gateway requirement and may continue to be tested for nondiscrimination on the basis of benefits as under current law. A combined plan would be primarily defined benefit in character if, for more than 50% of the NHCEs benefitting under the plan, the normal accrual rate attributable to benefits provided under defined benefit plans for the NHCE exceeds the equivalent accrual rate attributable to contributions under defined contribution plans for the NHCE. For example, a DB/DC plan would be primarily defined benefit in character where the defined contribution plan covers only salaried employees, the defined benefit plan covers only hourly employees, and more than half of the NHCEs participating in the DB/DC plan are hourly employees participating only in the defined benefit plan.

3. Broadly Available Separate Plans

A combined plan that consists of broadly available separate plans would not be subject to the gateway requirement and may continue to be tested for nondiscrimination on the basis of benefits as under current law. A DB/DC plan consists of broadly available separate plans if the defined contribution plan and the defined benefit plan each would satisfy the requirements of section 410(b) and the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) if each plan were tested separately, assuming satisfaction of the average benefit percentage test of § 1.410(b)–5. Thus, the defined contribution plan must separately satisfy the nondiscrimination requirements (taking into account these proposed regulations as applicable), but for this purpose assuming satisfaction of the average benefit percentage test. Similarly, the defined benefit plan must separately satisfy the nondiscrimination requirements, assuming for this purpose satisfaction of the average benefit percentage test. In conducting the required separate testing, all plans of a single type (defined contribution or defined benefit) within the DB/DC plan are aggregated, but those plans are tested without regard to plans of the other type.

This alternative would be useful, for example, where an employer maintains a defined contribution plan that provides a uniform allocation rate for all covered employees at one business unit and a safe harbor defined benefit plan for all covered employees at another unit, where the group of employees covered by each plan is a group that satisfies the nondiscriminatory classification requirement of section 410(b). Because the employer provides broadly available separate plans, it may continue to aggregate the plans and test for nondiscrimination on the basis of benefits, as an alternative to using the qualified separate line of business rules or demonstrating satisfaction of the average benefit percentage test.

E. Use of Component Plans and Permitted Disparity

Component plans under the restructuring rules cannot be used for the determination of whether a defined contribution plan provides broadly available allocation rates or satisfies the minimum allocation gateway, or the determination of whether a DB/DC plan satisfies the minimum aggregate allocation gateway, is primarily defined benefit in character, or consists of broadly available separate plans. For purposes of the two gateways and determining whether a DB/DC plan is primarily defined benefit in character, allocation rates and equivalent allocation rates are determined without the use of permitted disparity. For purposes of determining whether a DB/DC plan consists of broadly available separate plans, permitted disparity may be used in the defined contribution plan or the defined benefit plan but not in both plans with respect to each employee who participates in both.

Proposed Effective Date

The regulations are proposed to be applicable for plan years beginning on or after January 1, 2002.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 25, 2001, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 5, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are John T. Ricotta and Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.401(a)(4)–8, paragraph (b)(1) is revised to read as follows:

§ 1.401(a)(4)–8 Cross-testing.

* * * * *

(b) *Nondiscrimination in amount of benefits provided under a defined contribution plan*—(1) *General rule and gateway*—(i) *General rule.* Equivalent benefits under a defined contribution plan (other than an ESOP) are nondiscriminatory in amount for a plan year if—

(A) The plan would satisfy § 1.401(a)(4)–2(c)(1) for the plan year if an equivalent accrual rate, as determined under paragraph (b)(2) of this section, were substituted for each employee's allocation rate in the determination of rate groups; and

(B) For plan years beginning on or after January 1, 2002, if the plan does not have broadly available allocation rates (within the meaning of paragraph (b)(1)(iii) of this section) for the plan year, the plan satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section for the plan year.

(ii) *Allocations after testing age.* A plan does not fail to satisfy paragraph (b)(1)(i)(A) of this section merely because allocations are made at the same rate for employees who are older than their testing age (determined without regard to the current-age rule in paragraph (4) of the definition of *testing age* in § 1.401(a)(4)–12), as they are made for employees who are at that age.

(iii) *Broadly available allocation rates*—(A) *In general.* A plan has broadly available allocation rates for the plan year if each allocation rate under the plan is currently available during the plan year (within the meaning of § 1.401(a)(4)–4(b)(2)), to a group of employees that satisfies section 410(b) (without regard to the average benefit percentage test of § 1.410(b)–5). For this purpose, the disregard of age and service conditions described in § 1.401(a)(4)–4(b)(2)(ii)(A) applies only if the plan provides an allocation formula under which the allocation rates for all employees benefitting under the plan are determined using a single schedule of rates that are based solely on either age or service, and only if the allocation rates under the schedule increase smoothly at regular intervals, within the meaning of paragraphs (b)(1)(iii)(B) and (C) of this section. A plan does not fail to provide broadly available allocation rates merely because it provides the minimum benefit described in section 416(c)(2).

(B) *Smoothly increasing schedule of allocation rates.* A plan uses a single schedule of allocation rates that are based solely on age or service if it uses a single schedule of allocation rates that consists of a series of either age or service bands under which the same allocation rate applies to all employees whose age is within each age band or whose years of service are within each service band. A schedule of allocation rates increases smoothly if the allocation rate for each age or service band within the schedule is greater than the allocation rate for the immediately preceding band (*i.e.*, the age or service band with the next lower number of years of age or service) but by no more than 5 percentage points. However, a schedule of allocation rates will not be treated as increasing smoothly if the ratio of the allocation rate for any age or service band to the rate for the immediately preceding band is more than 2.0 or if it exceeds the ratio of allocation rates between the two immediately preceding bands.

(C) *Regular intervals.* A schedule of allocation rates has regular intervals of age or service if each age or service band, other than the band associated with the highest age or years of service, is the same length. For this purpose, if the schedule is based on age, the first age band will be deemed to be of the same length as the other bands if it ends at or before age 25. If the first age band ends after age 25, then, in determining whether the length of the first band is the same as the length of other bands, the starting age for the first age band is permitted to be treated as age 25 or any age earlier than 25.

(iv) *Minimum allocation gateway.* A plan satisfies the minimum allocation gateway of this paragraph (b)(1)(iv) if each NHCE has an allocation rate that is at least one third of the allocation rate of the HCE with the highest allocation rate. However, a plan is deemed to satisfy this minimum allocation gateway if each NHCE receives an allocation of at least 5% of the NHCE's compensation within the meaning of section 415(c)(3).

(v) *Determination of allocation rates.* For purposes of this paragraph (b)(1), allocations and allocation rates are determined under § 1.401(a)(4)–2(c)(2), but without taking into account the imputation of permitted disparity under § 1.401(a)(4)–7 in applying the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

(vi) *Examples.* The following examples illustrate the rules in this paragraph (b)(1):

Example 1. (i) Plan M is a defined contribution plan that provides an allocation formula under which allocations are provided to all employees according to the following schedule:

Years of service	Allocation rate (percent)	Ratio of allocation rate for band to allocation rate for immediately preceding band
0–5	3.0	N/A
6–10	4.5	1.50
11–15	6.5	1.44
16–20	8.5	1.31
21–25	10.0	1.18
26 or more	11.5	1.15

(ii) Because Plan M provides that allocation rates for all employees are determined using a single schedule based solely on service, the plan is permitted to disregard the service requirement in determining whether the allocation rates are broadly available (within the meaning of paragraph (b)(1)(iii) of this section), if the allocation rates under the schedule increase smoothly at regular intervals.

(iii) The schedule of allocation rates under Plan M does not increase by more than 5 percentage points between adjacent bands and the ratio of the allocation rate for any band to the allocation rate for the immediately preceding band is never more than 2.0 and does not increase. Therefore, the allocation rates increase smoothly. In addition, the bands (other than the highest band) are all 5 years long, so the increases occur at regular intervals. Accordingly, the service requirement is disregarded and each allocation rate is broadly available within the meaning of paragraph (b)(1)(iii) of this section, as each allocation rate is currently available to all employees in the Plan.

(iv) Under paragraph (b)(1)(i) of this section, Plan M satisfies the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section, regardless of whether it satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

Example 2. (i) Plan N is a defined contribution plan that provides an allocation formula under which allocations are provided to all employees according to the following schedule:

Age	Allocation rate (percent)	Ratio of allocation rate for band to allocation rate for immediately preceding band
under 25	3.0	N/A
25–34	6.0	2.00
35–44	9.0	1.50
45–54	12.0	1.33
55–64	16.0	1.33
65 or older	21.0	1.31

(ii) Because Plan N provides that allocation rates for all employees are determined using a single schedule based solely on age, the plan is permitted to disregard the age requirement in determining whether the allocation rates are broadly available (within the meaning of paragraph (b)(1)(iii) of this section), if the allocation rates under the schedule increase smoothly at regular intervals.

(iii) The schedule of allocation rates under Plan N does not increase by more than 5 percentage points between adjacent bands and the ratio of the allocation rate for any band to the allocation rate for the immediately preceding band is never more than 2.0 and does not increase. Therefore, the allocation rates increase smoothly. In addition, the bands are all 10 years long (other than the highest band and the first band, which is deemed to be the same length as the other bands because it ends prior to age 25), so the increases occur at regular intervals. Accordingly, the age requirement is disregarded and each allocation rate is broadly available within the meaning of paragraph (b)(1)(iii) of this section, as each

allocation rate is currently available to all employees in the Plan.

(iv) Under paragraph (b)(1)(i) of this section, Plan N satisfies the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section, regardless of whether it satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

Example 3. (i) Plan O is a profit-sharing plan maintained by Employer A that covers all of Employer A's employees, consisting of two HCEs, X and Y, and 7 NHCEs. Employee X's compensation is $170,000 and Employee Y's compensation is $150,000. The allocation for Employees X and Y is $30,000 each, resulting in an allocation rate of 17.6% for Employee X and 20% for Employee Y. Under Plan O, each NHCE receives an allocation of 5% of compensation within the meaning of section 415(c)(3).

(ii) Because the allocation rate for X is not currently available to any NHCE, Plan O does not have broadly available allocation rates and must satisfy the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

(iii) The highest allocation rate for any HCE under Plan O is 20%. Accordingly, Plan O would satisfy the minimum allocation gateway of paragraph (b)(1)(iv) of this section if all NHCEs have an allocation rate of at least 6.67%, or if all NHCEs receive an allocation of at least 5% of compensation within the meaning of section 415(c)(3).

(iv) Under Plan O, each NHCE receives an allocation of 5% of compensation within the meaning of section 415(c)(3). Accordingly, Plan O satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

(v) Under paragraph (b)(1)(i) of this section, Plan O satisfies the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section.

* * * * *

Par. 3. Section 1.401(a)(4)–9 is amended by adding paragraph (b)(2)(v) and revising paragraph (c)(3)(ii) to read as follows:

§ 1.401(a)(4)–9 Plan aggregation and restructuring.

* * * * *

(b) * * *

(2) * * *

(v) *Eligibility for testing on a benefits basis*—(A) *General rule.* For plan years beginning on or after January 1, 2002, unless, for the plan year, a DB/DC plan is primarily defined benefit in character (within the meaning of paragraph (b)(2)(v)(B) of this section) or consists of broadly available separate plans (within the meaning of paragraph (b)(2)(v)(C) of this section), the DB/DC plan must satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section for the plan year in order to be permitted to demonstrate satisfaction of the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits.

(B) *Primarily defined benefit in character.* A DB/DC plan is primarily defined benefit in character if, for more than 50% of the NHCEs benefitting under the plan, the normal accrual rate for the NHCE attributable to benefits provided under defined benefit plans that are part of the DB/DC plan exceeds the equivalent accrual rate for the NHCE attributable to contributions under defined contribution plans that are part of the DB/DC plan.

(C) *Broadly available separate plans.* A DB/DC plan consists of broadly available separate plans if the defined contribution plan and the defined benefit plan that are part of the DB/DC plan each would satisfy the requirements of section 410(b) and the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) if each plan were tested separately and assuming that the average benefit percentage test of § 1.410(b)–5 were satisfied. For this purpose, all defined contribution plans that are part of the DB/DC plan are treated as a single defined contribution plan and all defined benefit plans that are part of the DB/DC plan are treated as a single defined benefit plan. In addition, if permitted disparity is used for an employee for purposes of satisfying the separate testing requirement of this paragraph (b)(2)(v)(C) for plans of one type, it may not be used in satisfying the separate testing requirement for plans of the other type for the employee.

(D) *Minimum aggregate allocation gateway.* A DB/DC plan satisfies the minimum aggregate allocation gateway of this paragraph (b)(2)(v)(D) if each NHCE has an aggregate normal allocation rate that is at least one third of the aggregate normal allocation rate of the HCE with the highest such rate (HCE rate), or, if less, 5% of the NHCE's compensation, provided that the HCE rate does not exceed 25% of compensation. If the HCE rate exceeds 25% of compensation, then the aggregate normal allocation rate for each NHCE must be 5% increased by one percentage point for each 5-percentage-point increment (or portion thereof) by which the HCE rate exceeds 25% (*e.g.,* the NHCE minimum is 6% for an HCE rate that exceeds 25% but not 30%, and 7% for an HCE rate that exceeds 30% but not 35%). For purposes of this paragraph (b)(2)(v)(D), a plan is permitted to treat each NHCE who benefits under the defined benefit plan as having an equivalent normal allocation rate equal to the average of the equivalent normal allocation rates under the defined benefit plan for all NHCEs benefitting under that plan.

(E) *Determination of rates.* For purposes of this paragraph (b)(2)(v), the normal accrual rate and the equivalent normal allocation rate attributable to defined benefit plans, the equivalent accrual rate attributable to defined contribution plans and the aggregate normal allocation rate are determined under paragraph (b)(2)(ii) of this section, but without taking into account the imputation of permitted disparity under § 1.401(a)(4)–7, except as otherwise permitted under paragraph (b)(2)(v)(C) of this section.

(F) *Examples.* The following examples illustrate the application of this paragraph (b)(2)(v):

Example 1. (i) Employer A maintains Plan M, a defined benefit plan, and Plan N, a defined contribution plan. All HCEs of Employer A are covered by Plan M (at a 1% accrual rate), but not covered by Plan N. All NHCEs of Employer A are covered by Plan N (at a 3% allocation rate), but not covered by Plan M. Because Plan M does not satisfy section 410(b) standing alone, Plans M and N are aggregated for purposes of satisfying sections 410(b) and 401(a)(4).

(ii) Because none of the NHCEs participate in the defined benefit plan, the aggregated DB/DC plan is not primarily defined benefit in character within the meaning of paragraph (b)(2)(v)(B) of this section nor does it consist of broadly available separate plans within the meaning of paragraph (b)(2)(v)(C) of this section. Accordingly, the aggregated Plan M and Plan N must satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section in order to satisfy the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits.

Example 2. (i) Employer B maintains Plan O, a defined benefit plan, and Plan P, a defined contribution plan. All of the six employees of Employer B are covered under both Plan O and Plan P. Under Plan O, all employees have a uniform normal accrual rate of 1% of compensation. Under Plan P, Employees A and B, who are HCEs, receive an allocation rate of 15%, and participants C, D, E and F, who are NHCEs, receive an allocation rate of 3%. Employer B aggregates Plans O and P for purposes of satisfying sections 410(b) and 401(a)(4). The equivalent normal allocation and normal accrual rates under Plans O and P are as follows:

Employee	Equivalent normal allocation rates for the 1% accrual under Plan O (defined benefit plan) percent	Equivalent normal accrual rates for the 15%/3% allocations under Plan P (defined contribution plan) percent
HCE A (age 55)	3.93	3.82
HCE B (age 50)	2.61	5.74

Employee	Equivalent normal allocation rates for the 1% accrual under Plan O (defined benefit plan) percent	Equivalent normal accrual rates for the 15%/3% allocations under Plan P (defined contribution plan) percent
C (age 60)	5.91	.51
D (age 45)	1.73	1.73
E (age 35)	.77	3.90
F (age 25)	.34	8.82

(ii) Although all of the NHCEs benefit under the Plan O (the defined benefit plan), the aggregated DB/DC plan is not primarily defined benefit in character because the normal accrual rate attributable to defined benefit plans (which is 1% for all the NHCEs) is greater than the equivalent accrual rate under defined contribution plans only for Employee C. In addition, because the 15% allocation rate is only available to HCEs, the defined contribution plan cannot satisfy the requirements of § 1.401(a)(4)–2 and does not have broadly available allocation rates within the meaning of § 1.401(a)(4)–8(b)(1)(iii). Further, the defined contribution plan does not satisfy the minimum allocation gateway of § 1.401(a)(4)–8(b)(1)(iv) (3% is less than ⅓ of the 15% HCE rate). Therefore, the defined contribution plan within the DB/DC plan cannot separately satisfy § 1.401(a)(4)–1(b)(2) and does not constitute a broadly available separate plan within the meaning of paragraph (b)(2)(v)(C) of this section. Accordingly, the aggregated plans can satisfy the nondiscrimination in amounts requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits only if the aggregated plans satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

(iii) Employee A has an aggregate normal allocation rate of 18.93% under the aggregated plans (3.93% from Plan O plus 15% from Plan P), which is the highest aggregate normal allocation rate for any HCE under the plans. Employee F has an aggregate normal allocation rate of 3.34% under the aggregated plans (.34% from Plan O plus 3% from Plan P) which is less than the 5% aggregate normal allocation rate that Employee F would be required to have to satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

(iv) However, for purposes of satisfying the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section, Employer B is permitted to treat each NHCE who benefits under the Plan O (the defined benefit plan) as having an equivalent allocation rate equal to the average of the equivalent allocation rates under Plan O for all NHCEs benefitting under that plan. The average of the equivalent allocation rates for all the NHCEs under Plan O is 2.19% (the sum of 5.91%, 1.73%, .77%, and .34%, divided by 4). Accordingly, Employer B is permitted to treat all the NHCEs as having an equivalent allocation rate attributable to Plan O equal to 2.19%. Thus, all NHCEs can be treated as having an aggregate normal allocation rate of 5.19% for this purpose (3% from the defined contribution plan and 2.19% from the defined benefit plan) and the aggregated DB/DC plan satisfies the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) *Restructuring not available for certain testing purposes.* The safe harbor in § 1.401(a)(4)–2(b)(3) for plans with uniform points allocation formulas is not available in testing (and thus cannot be satisfied by) contributions under a component plan. Similarly, component plans cannot be used for purposes of determining whether a plan provides broadly available allocation rates (as defined in § 1.401(a)(4)–8(b)(1)(iii)), or determining whether a plan is primarily defined benefit in character or consists of broadly available separate plans (as defined in paragraphs (b)(2)(v)(B) and (C) of this section). In addition, the minimum allocation gateway of § 1.401(a)(4)–8(b)(1)(iv) and the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section cannot be satisfied on the basis of component plans. See §§ 1.401(k)–1(b)(3)(iii) and 1.401(m)–1(b)(3)(iii) for rules regarding the inapplicability of restructuring to section 401(k) plans and section 401(m) plans.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 00–25652 Filed 10–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–193]

RIN 2115–AE47

Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations for the Carlton (U.S. 1) highway-railroad bridge, at mile 14.0, across the Kennebec River between Bath and Woolwich, Maine. This proposed rule will remove unnecessary operating restrictions from the regulations and provide relief to the bridge owner from the requirement to crew the bridge during periods when there have been few requests to open the bridge.

DATES: Comments must reach the Coast Guard on or before December 5, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–193), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Carlton (U.S. 1) highway-railroad bridge, at mile 14.0, across the Kennebec River has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.525. Vehicular traffic no longer travels over the Carlton Bridge because a new fixed highway bridge has been constructed upstream. The bridge will

continue to operate as a railroad bridge only.

The bridge owner, Maine Department of Transportation (MDOT), asked the Coast Guard to remove the unnecessary restrictions from the regulations and to add several time periods during which the bridge will open on an on call basis. The bridge presently is allowed to remain closed to navigation from 6 a.m. to 7:30 a.m. and from 3:15 p.m. to 5:30 p.m., Monday through Friday, excluding holidays. These closed periods were added to the regulations to prevent vehicular traffic congestion in Bath during the shift changes at the Bath Iron Works. These closed periods are no longer necessary and will be removed by this rule.

The bridge owner has also requested relief from crewing the bridge from 5 p.m. to 8 a.m., daily, and all day on Saturdays and Sundays from October 1 through May 14. The bridge opening log data submitted by MDOT indicates a relatively low number of requests to open the bridge during the time periods the bridge owner has requested that the bridge shall operate on an on call basis. The greater amount of bridge openings in 1999, are attributed to construction vessel traffic during the building of the new highway bridge upstream from the Carlton Bridge.

BRIDGE OPENINGS BETWEEN 5 P.M. AND 8 A.M.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1997	0	0	0	0	9	6	7	13	5	12	0	0
1998	0	2	1	2	1	6	4	6	3	10	7	6
1999	2	7	2	4	21	24	36	5	10	20	29	12
2000	0	0	4	0	12							

BRIDGE OPENINGS SATURDAYS/SUNDAYS, OCTOBER 1 THROUGH MAY 14

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
1997	9	0	0	0	0	0	0	2
1998	10	7	3	0	2	0	0	0
1999	11	13	4	1	5	2	2	1
2000				0	0	3	0	0

The Coast Guard believes that operating the Carlton Bridge on an advance notice basis from 5 p.m. to 8 a.m., daily, and all day on Saturdays and Sundays, from October 1 through May 14, is reasonable and will still meet the needs of navigation. This conclusion is based upon the low number of opening requests received over the past several years and the fact that the bridge will still open on signal after the advance notice is given.

Discussion of Proposal

The Coast Guard proposes to revise the operating regulations listed at 33 CFR 117.525 for the Carlton (U.S. 1) highway-railroad bridge.

The bridge will no longer be called the Carlton (U.S. 1) highway-railroad bridge in the regulations. It will simply be called the Carlton Bridge.

Paragraph (a)(1), which requires the bridge to open for emergency situations, will be removed because it is now listed at 33 CFR 117.31.

Paragraph (a)(2) will be removed because the bridge no longer carries vehicular traffic.

Paragraph (a)(3) will be removed because train traffic is so infrequent that regulation to prevent conflicts between vessel and train traffic is no longer necessary.

Paragraphs (a)(4) through (a)(7) will be removed and replaced as simply paragraph (a)(1) through (a)(2) indicating the new operating regulations for the Carlton Bridge.

Paragraph (b) for the Route 197 Bridge, mile 27.1, between Richmond and Dresden, Maine, will remain unchanged.

The proposed new operating hours for the Carlton Bridge would require that from May 15 through September 30, the draw would open on signal; except that, from 5 p.m. to 8 a.m., the draw would open on signal if at least a two-hour advance notice is given.

From October 1 through May 14, the draw would open on signal; except that, from 5 p.m. to 8 a.m., the draw would open on signal after a twenty-four hours advance notice is given and from 8 a.m. to 5 p.m., on Saturday and Sunday, the draw would open on signal after an eight-hour notice is given.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will still open for marine traffic at all times provided the advance notice is given.

Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridge will still open for all vessel traffic at all times after the advance notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.525(a) is revised to read as follows:

§ 117.525 Kennebec River

(a) The draw of the Carlton Bridge, mile 14.0, between Bath and Woolwich shall operate as follows:

(1) From May 15 through September 30 the draw shall open on signal; except that, from 5 p.m. to 8 a.m., the draw shall open on signal if a two-hour notice is given by calling the number posted at the bridge.

(2) From October 1 through May 14 the draw shall open on signal; except that, from 5 p.m. to 8 a.m., the draw shall open on signal after a twenty-four hour advance notice is given and on Saturdays and Sundays from 8 a.m. to 5 p.m. the draw shall open on signal after an eight-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: September 13, 2000.

G.N. Naccara,

U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–25755 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA088–5051b; FRL–6880–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; 15 Percent Plan for Northern Virginia Portion of the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional interim approval of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the Northern Virginia portion of the Metropolitan Washington, D.C. ozone nonattainment area to achieve a 15 percent reduction in volatile organic compound emissions (the 15% plan) to a full approval. In the ''Rules and Regulations'' section of this **Federal Register**, we are converting our conditional interim approval of Virginia's 15% plan SIP revision to a full approval as a direct final rule because we view this as a noncontroversial amendment and because we anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments, we will not undertake further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in providing comments on this action should do so at this time.

DATES: Comments must be received in writing by November 6, 2000.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at lewis.janice@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final rule, with the same title, located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 25, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–25471 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6881–8]

RIN 2060–AJ33

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing to allocate essential-use allowances for stratospheric ozone depleting substances for the year 2001 control period. EPA allocates essential use allowances to an applicant for exempted production or import of a specific quantity of class I ozone depleting substances (ODS) solely for the designated essential purpose. Essential use allowances permit a person to obtain controlled ODS as an exemption to the January 1, 1996 regulatory phase-out of production and import of these substances. Today, EPA is proposing essential-use allowances (EUAs) for the production and/or import of ODSs for use in medical devices and for use in the Space Shuttle Rockets and Titan Rockets for calendar year 2001. EPA is also proposing a regulatory change which would allow EUAs for CFCs to be transferred among essential use recipients.

DATES: Written comments on this proposed rule must be received on or before November 6, 2000, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on October 16, 2000. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

ADDRESSES: Comments on this rulemaking should be submitted to: Erin Birgfeld, Essential Use Program Manager, U.S. Environmental Protection Agency (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. All comments will be filed in EPA Air docket number A–93–39. Comments that contain business confidential information should be submitted in two versions, one clearly marked ''Public'' to be filed in the docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only.

Materials relevant to this rulemaking are contained in Docket No. A–93–39. The Docket is located in Waterside Mall Room M–1500, 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at 1–800–296–1996 or Erin Birgfeld, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 1200 Pennsylvania Avenue, Washington, DC 20460; 202–564–9079.

SUPPLEMENTARY INFORMATION:

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II. Allocation Process for CFCs for Use in Medical Devices for the Year 2001
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V. Administrative Requirements

I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate production and consumption of all stratospheric ozone depleting substances. (''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol.) The elimination of production and consumption is accomplished through adherence to phase-out schedules for the production and consumption of specific ODSs including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons, and methyl bromide. As of January 1996, production and import of class I ODSs were phased out in all developed countries, including the United States. However, the Protocol and the Clean Air Act (CAA or Act) provide exemptions which allow for the continued import and/or production of class I ODS for specific uses. Under the Montreal Protocol, exemptions are granted for uses that are determined by the Parties to be ''essential.'' Decision IV/25, taken in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use as set forth in Decision IV/25 are the following:

''(1) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(2) that production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances.''

The procedure set out by Decision IV/25 first calls for individual Parties to nominate essential uses. The Protocol's Technology and Economic Assessment Panel (TEAP or the Panel) evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on essential use nominations at their annual meeting.

The CAA provides exemptions to the phase-out of class I ODSs for which these controlled substances may continue to be produced and/or imported. EPA is responsible for allocating essential use allowances at the domestic level through rulemaking in accordance with provisions in the CAA. Today's action proposes to allocate essential use allowances for the use of CFCs in metered dose inhalers (MDIs), and methyl chloroform for use in the Space Shuttle and Titan Rocket solid rocket motor assemblies for calendar year 2001. Today's action also proposes changes to regulations at 40 CFR 82.12 which would allow transfer of CFC allowances among MDI manufacturers that hold EUAs.

What Was the International Procedure for Approving Essential Use Exemptions for the Year 2001?

The international process for nominating and approving essential use allowances for the year 2001 occurred in the same way as in prior years. The companies in Table III submitted

applications either on their own or as a part of the International Pharmaceutical Aerosol Consortium (IPAC) requesting class I controlled substances for essential uses in response to the August 10,1998 **Federal Register** notice (63 FR 42629). Their applications requested exemptions for the production and import of specific quantities of certain class I controlled substances after the phase-out, and provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the ''1997 Handbook on Essential Use Nominations.'' EPA reviewed the applications and nominated these uses to the Protocol Secretariat for consideration by the Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs). MDI producers requested a total of 3,101 metric tons of CFCs for use in 2001. The Parties to the Montreal Protocol approved this amount as essential for the U.S. for 2001 at the Eleventh Meeting in 1999 (Decision XI/14). On September 15, 1999, EPA issued another notice requesting applications for essential use allowances for the year 2001 and beyond (64 FR 50083). No company requested a supplemental amount of CFCs for the year 2001 at that time.

How Does the Clean Air Act Authorize Essential Use Allowances?

The CAA provides standing exemptions to the phase-out of class I ODSs found at section 604(d) of the Act. With today's action, EPA is proposing to implement the exemption at 604(d)(2) of the Act which states that notwithstanding the phase-out, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I ODSs for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary for use in medical devices. The term ''medical device'' is defined in section 601(8) of the Clean Air Act as follows:

[A]ny device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of FDA]; and

(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of FDA] in consultation with the Administrator [of EPA].

The preamble to FDA's September 1, 1999, notice of proposed rulemaking on essential use determinations (64 FR 47735) discusses FDA's approach to determining whether ''safe and effective alternative[s]'' have been developed. It states that ''A non-CFC product simply having the same active moiety as a CFC product is only one factor to be considered. Other factors, such as whether the non-CFC product has the same route of administration, the same indication, and can be used with approximately the same level of convenience, are important considerations. Additionally, FDA must consider whether patients who medically need the CFC product are adequately served by the non-CFC product. FDA's approval of a non-CFC product is a determination that the product is safe and effective, but it is not a determination that the product is a safe and effective alternative for any other product. That requires a separate and distinct analysis.'' Although FDA has approved one CFC-free MDI for market, it has not yet determined that any non-CFC product is a safe and effective alternative to any CFC MDI. Accordingly, part (A) of the definition of medical device has not affected today's proposed allocation.

With respect to part (B) of the definition of medical device (section 601(8)(B)), and in particular the use of the word ''essential'' in that part of the definition, EPA is relying on current FDA regulations (21 CFR 2.125) which contain a list of categories of CFC-containing medical devices, as that term is used in the CAA, that FDA, in consultation with EPA, has found to be essential. This list includes, among others, metered-dose steroids, metered-dose adrenergic bronchodilators, metered-dose cromolyn sodium, metered-dose ipratropium bromide, and metered-dose nedocromil sodium; all drugs for oral inhalation in humans for the treatment of asthma and chronic obstructive pulmonary disease. The companies for which EPA is proposing to grant essential use allowances produce CFC MDIs that fall within one of these categories. Thus, the products for which EPA is proposing to grant essential use allowances are ''determined to be essential'' by FDA.

Also with respect to part (B) of the definition of ''medical device'', EPA and FDA considered how to interpret the language regarding approval by FDA of the ''device, product, drug, or drug delivery system.'' The complete phrase reads as follows: ''if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.'' EPA and FDA determined that in light of the surrounding language, this phrase refers to FDA's approval of an essential use, and not the approval of the specific product in question through approval of the New Drug Application (NDA) or Abbreviated New Drug Application (ANDA) for that product. Since approval of an NDA or ANDA under the Food, Drug, and Cosmetic Act (FDCA) involves unilateral action by FDA without notice-and-comment rulemaking or consultation with EPA, it is reasonable to conclude that section 601(8)(B) does not refer to approval of an NDA or ANDA under the FDCA. Therefore, FDA and EPA read section 601(8)(B) to refer to FDA's approval of an essential use which does require notice-and comment rulemaking in consultation with EPA. This means that an MDI is ''approved and determined to be essential'' if the MDI is included within the list of categories of CFC-MDIs on FDA's essential use list. All of the MDIs for which we are proposing to allocate CFCs today meet this qualification.

With this action EPA is also proposing to allocate methyl chloroform (MCF) for use in solid rocket motor assemblies. Because the original phase-out date of methyl chloroform is 2002, EPA is not required to implement the exemption at 604(d)(1) until that time. Instead, EPA is proposing to allocate methyl chloroform under the authority of the original phase-out schedule at section 604(a) which provides that MCF may be produced at up to 20 percent of the baseline. EPA is proposing to allocate a total of 60.1 metric tons of MCF, an amount well below 20% of the MCF baseline production allowance of 315,169 metric tons (defined at 40 CFR 82.6).

II. Allocation Process for CFCs for Use in Medical Devices for the Year 2001

How Were the Essential Use Allowances for Medical Devices Determined for the Year 2001?

As explained above, section 604(d)(2) of the Act provides that EPA shall authorize production and import of limited quantities of class I substances for use in medical devices if FDA, in consultation with EPA, determines such authorization to be necessary. The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices under the Act.

1. EPA worked closely with FDA to define what information would be

required from companies in order that FDA in consultation with EPA could make a determination on the amount of CFCs necessary for use in MDIs. EPA and FDA determined that the following data were needed to make a decision on the amount of CFCs necessary for use in MDIs for 2001:

- The specific MDI products to be produced in 2001
- The number of units each product produced each year since 1996
- Number of units produced in the first quarter of 2000
- Number of units anticipated to be produced in 2001
- Gross target fill weight per unit (grams)
- Total amount of CFC to be contained in product for 2001 (metric tons)
- Additional amounts of CFCs necessary for production of MDIs
- Total CFC request per product for 2001

2. On May 24, 2000, EPA sent letters to MDI manufacturers requesting the information outlined in paragraph 1. EPA also requested information on the amount of CFCs held in inventory as of January 1, 2000. The letters that EPA sent each company are available for review in the docket. The company's responses however, are considered confidential business information and are not publicly available. Tables I and II are reproductions of the reporting forms EPA asked companies to fill out in response to our letters requesting information under section 114 of the Act (114 letters).

TABLE I.—YEAR 2001 ESSENTIAL USE ALLOCATION: CFC REPORTING FORM

A Product	B Number of Units produced from 1/1/96 to 12/31/96	C Number of Units produced from 1/1/97 to 12/31/97	D Number of Units produced from 1/1/98 to 12/31/98	E Number of Units produced from 1/1/99 to 12/31/99	F Number of Units produced from 1/1/00 to 3/31/00	G Number of Units anticipated to be produced in 2001	H Gross Target fill weight per unit (grams) [1]	I Total CFC to be contained in product for 2001 (metric tons) [2]	J Additional amount necessary for production [3]	K Total request per product for 2001 [4]
Example Product	1,112,569	1,010,526	1,215,452	1,327,456	352,101	1,500,000	22	30.42	5.20	35.62

[1] If significant numbers of different canister sizes are produced, this target fill number should either be the weighted average for that product (i.e., the sum of the gross target fill times the percentage of canisters produced in that size divided by the total number of canisters) or each size may be contained in a separate row of the report.
[2] Column I= (Column G) (Column H).
[3] Provide details regarding your additional amount needed, e.g., canisters produced but not distributed, CFCs lost in processing, CFCs remaining at end of batch run, CFCs used in line cleaning.
[4] Total request per product for 2001 (metric tons) = Sum of Columns I+J.

Note: The data presented in columns B through E will be compared to data provided in annual reports to FDA. Any significant differences in these numbers should be explained in detail.

TABLE II.—YEAR 2000 CFC STOCKPILE ANALYSIS

Chemical	On 1/1/2000: Quantity (in metric tons) of chemical stored at your facility	On 1/1/2000: Total quantity (in metric tons) of chemical available to your company [5]	On January 1, 2000: Amount of chemical produced prior to January 1, 1996 [6] available to your company	Total quantity of chemical acquired using 1999 essential use allowances
CFC–11 CFC–12 CFC–114				

[5] This includes amounts stored at your facility, other facilities, or an order with the chemical manufacturers.
[6] This amount refers to your company's stockpile (on 1/1/2000) of CFCs produced prior to the 1996 ban on import and production.

3. In a letter to FDA, dated August 3, 2000, Paul Stolpman, Director of EPA's Office of Atmospheric Programs, requested that FDA provide EPA with a determination regarding the amount of CFCs necessary for use in MDIs for calendar year 2001. We attached the information provided in response to 114 letters from MDI manufacturers for FDA's review. FDA verified the data against the annual reports companies file with FDA, and used the information from the companies' response to our section 114 letters as a basis for their determination.

4. On September 6, 2000, FDA Commissioner Jane Henney sent a letter to EPA with the FDA determination on the amount of CFCs necessary for use in MDIs for calendar year 2001. The quantity of CFCs to be allocated for production of MDIs in this proposed rule reflect FDA's determination made in consultation with EPA.

5. In accordance with the determinations made by FDA, in consultation with EPA, specified in their letter of September 6, 2000, today's proposal would allocate a total of 3098.67 metric tons of CFCs for use in MDIs for calendar year 2001.

6. EPA plans to issue a final allocation rule by the end of the calendar year to provide adequate time for companies to replenish their supply of CFCs for MDI production in the year 2001.

How Were the Decisions on the Amounts of EUAs for CFCs for Each Company Made?

FDA states in their letter to EPA that "* * * we have examined the information you obtained from individual sponsors regarding their historical and intended use of CFCs in specific products. We compared this information to the information filed with us by sponsors in previous annual reports. In listing the amounts we believe to be necessary for use in medical devices, we referred to this information, eliminated any double-counting we found, considered changes in the prevalence of asthma and COPD, and eliminated allocations for uses not

considered essential by the parties to the Montreal Protocol, even if those uses are currently listed in our regulation at 21 CFR 2.125(e).''

In response to EPA's request for information under section 114 of the Act, two companies stated that they required CFCs to produce the same products leading to double counting and an inflated request of CFCs to manufacture these particular MDI products. This is because one company is a New Drug Application (NDA) holder who produces some of its own products, and the other is a contract filler for the NDA holder who produces the remainder of the NDA holder's products. At the time we gathered information via 114 letters, the companies had not reached an agreement on the amount of MDIs to be produced by the contract filler and the amount to be produced by the NDA holder. With this action, EPA is proposing to allocate CFCs to these two companies in the amount requested by the NDA holder. Because we are also proposing to allow EUAs to be transferrable, the NDA holder will have the opportunity to transfer some of its EUAs to the contract filler if necessary. This transfer can be accomplished by adhering to the requirements in the regulations at 40 CFR 82.12 which will be explained in detail in section IV. In the event that the change to 40 CFR 82.12 proposed in this rule which allow the transfer of EUAs is not finalized, EPA and FDA will consult with the both contract filler and the NDA holder to determine the proper allocation. Please note that EPA and FDA took into account that the contract filler also manufactures products for yet another company along with its own brand of MDIs and allocated the entire amount requested to manufacture these other MDI products.

Can the Allocation Listed in This Proposed Rulemaking Be Changed in the Final Rule?

The allocation amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the allocations are either too high or too low. Commenters requesting increases or decreases of EUAs should provide detailed information supporting their claim for additional or fewer CFCs. Any company that determines that they no longer need the full amount allocated under this proposal should notify EPA of the actual amount needed. Please note that EPA is only authorized to allocate a total of 3,101 metric tons of CFC, the amount requested by U.S. pharmaceutical companies and subsequently approved by the Parties to the Montreal Protocol for 2001.

III. Allocation of Essential Use Allowances for Calendar Year 2001

What Is EPA's Proposed Essential Use Allocation for Calendar Year 2001?

EPA is proposing to allocate essential use allowances for the year 2001 control period to entities listed in Table III for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential use. The proposed allocation of CFCs for use in MDIs reflects the determination on the amount of CFCs ''necessary'' as specified under section 604(d)(2) of the Act.

TABLE III.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2000

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease (in metric tons)		
Medeva, Armstrong Pharmaceuticals Inc.	CFC–11 or CFC–12 or CFC–114	189.00
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	258.00
Glaxo Wellcome Inc.	CFC–11 or CFC–12 or CFC–114	858.10
Aventis Pharmaceuticals (formerly RPR)	CFC–11 or CFC–12 or CFC–114	190.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	384.87
Sidmak Laboratories/Medisol Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114	192.20
Schering Corporation	CFC–11 or CFC–12 or CFC–114	1025.20
Sciarra Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114	1.30
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

Why Is EPA Allocating CFC–11, CFC–12, and CFC–114 in the Aggregate to Each Company?

EPA is allocating essential-use allowances for CFC–11, CFC–12, and CFC–114 in the aggregate in accordance with Decision X/6 of the Parties to the Montreal Protocol which states that ''the quantities approved under paragraph 2 above and all future approvals are for total CFC volumes with flexibility between CFCs within each group.'' Allocating CFCs for MDI manufacture in the aggregate instead of on a compound-by-compound basis adds flexibility to the regulation without causing additional damage to the stratospheric ozone layer since CFC–11, CFC–12 and CFC–114 all have the same ozone depleting potential of 1.0.

Why Is EPA No Longer Allocating EUAs to the International Pharmaceutical Aerosol Consortium (IPAC) as a Whole, But Instead Allocating on a Company-by-Company Basis?

In the past, EPA allocated EUAs to IPAC as a whole and then sent letters to each of its member companies notifying them of their particular allocation. This inevitably resulted in minor delays in informing IPAC member companies of their allocations. This year, EPA is allocating EUAs on a company-by-company basis in order to inform the IPAC member companies directly of their specific allocations. Thus it will be clear to each company, including the IPAC members, the quantities that are being proposed for each company allowing all companies opportunity to comment on their individual allocations.

What Is EPA's Method for Allocating Methyl Chloroform (MCF) for Use in Solid Rocket Motors?

With this action, EPA is proposing to allocate 60.1 metric tons of MCF for use in solid rocket motors, the same amount allocated in the years 1999 and 2000. Please note that with this action EPA is proposing to allocate MCF in an amount

lower than would be consistent with Decision X/6 taken at the Tenth meeting of the Parties to the Protocol because EPA believes that doing so would allocate MCF in excess of the necessary amount.

Decision X/6 states that '' * * * the remaining quantity of methyl chloroform authorized for the United States at previous meetings of the Parties be made available for use in manufacturing solid rocket motors until such time as the 1999–2001 quantity of 176.4 tons (17.6 ODP-weighted tons) allowance is depleted, or until such time as safe alternatives are implemented for remaining essential uses.'' According to the EPA tracking system, the total amount of MCF produced or imported by U.S. essential use recipients in 1999 was just 12 metric tons indicating that the transition away from MCF is progressing faster than anticipated, and that allocating the unused portion of MCF in its entirety would be excessive. EPA believes that allocating the same amount allocated in 2000, 60.1 metric tons of MCF, provides a sufficient amount for use in solid rocket motors for the year 2001. Please note that in future allocations essential use allowance holders for MCF will still have access to MCF until the 1999–2001 quantity of 176.4 metric tons is depleted or until this use is no longer considered essential.

In the event that commenters provide sufficient reasons as to why EPA should allocate MCF in an amount consistent with Decision X/6, for example, EPA would allocate MCF according to the following equation:

The amount of MCF approved by the Parties for essential uses for 1999–2001 $-2\times$ The amount of MCF imported or produced by U.S. essential use holders in 1999=Allocation for 2001 (*i.e.,* 176.4 metric tons -2×12 metric tons=152.4 metric tons).

Since the amount of MCF acquired in the year 2000 is not yet known, the equation assumes that essential use holders will acquire the same amount of MCF in 2000 as they had in 1999 and provides the best possible approximation of the quantity of MCF that should be allocated if EPA is persuaded to allocate MCF in the amount consistent with Decision X/6.

What Reporting Requirements Relate to the Essential Uses of Ozone Depleting Substances?

Any person obtaining class I controlled substances after the phase-out under the essential use exemptions in today's action is subject to all the restrictions and requirements in other sections of 40 CFR part 82, subpart A. Holders of essential-use allowances or persons obtaining class I controlled substances under the essential-use exemptions must comply with the record keeping and reporting requirements in 40 CFR 82.13. Instructions and forms for reporting are found in the Guidance Document for the Stratospheric Ozone Protection Program after January 1, 1996. This document can be obtained by contacting the Stratospheric Ozone Protection Hotline at (800) 296–1996 between 10:00 am and 4:00 pm Eastern Standard Time.

It should be noted that under 40 CFR 82.3 and 82.4 (63 FR 41626, August 4, 1998), entities receiving essential-use allowances must be the importer of record for quantities of CFCs brought into the United States. This requires that the essential-use allowance holder be listed as the importer of record on Customs Form 7501. As a result, the essential-use allowance holder who imports quantities of class I controlled substances is responsible for submitting both an Importer Quarterly Report and an Essential-Use Holder Quarterly Report.

IV. Proposed Changes to 82.12 Allowing Transfer of EUAs for CFCs Among Essential Use Allowance Holders

With this document EPA is proposing to add essential use allowances to the list of allowances that can be transferred under 40 CFR 82.12. This change will enable essential use holders to transfer EUAs for CFCs to other essential use holders for the production of essential MDIs. EPA believes that allowing EUAs to be transferred among essential use allowance holders incorporates flexibility into the current regulations without increasing the amount of ODSs allocated.

Why Is EPA Proposing To Allow EUAs To Be Transferred Among EUA Holders?

Each year EPA requests applications from pharmaceutical companies for essential use allowances for use in MDIs. EPA analyzes these applications and uses them as the basis for the U.S. nomination for essential use allowances at the Meeting of the Parties to the Montreal Protocol which occurs two years prior to the year in which EUAs are allocated to companies. Because it can be difficult to forecast the amount of CFCs required for MDI production two years in advance, the Parties provide an opportunity for countries to request a supplemental amount of essential use allowances in the year following the initial request. This system allows companies two opportunities to request essential use allowances for the same year, ensuring that if the initial request is not sufficient, there is a mechanism to increase the allocation for that year. Essential use applicants had the option of requesting supplemental CFCs for 2001 in September 15, 1999, in response to the EPA document (64 FR 50083). No applicant elected to supplement their request for the year 2001 at that time.

Even in the absence of applications for supplemental CFCs from pharmaceutical companies, EPA and FDA consulted in March of this year to determine whether the total allocation of 3,101 metric tons would be sufficient to produce MDIs for the U.S. market. EPA and FDA determined, based on the amount of CFCs used for MDI production in previous years, that 3,101 metric tons would be sufficient to supply the MDI market as a whole while accounting for the projected increase in demand for MDIs. However, EPA and FDA noted that individual companies may have increased market growth compared to others and would therefore need additional CFCs. Because of the inherent uncertainty in allocating specific amounts of CFCs to individual companies engaged in a dynamic market, EPA is proposing that EUAs for CFCs become transferable among EUA holders. This will ensure that companies have the opportunity to access CFCs beyond the amount allocated to them in the year 2001 and beyond, and can better respond to market shifts that may occur.

Will I Be Able To Transfer EUAs for CFCs to Anyone I Want?

No, EUAs for CFCs would only be transferable among those companies that have applied for and received EUAs for the year 2001. In addition, companies must certify in writing to EPA that the EUAs will only be used in the production of essential medical devices as defined in the Food, Drug and Cosmetic Act at 21 CFR 2.125 and considered essential by the Parties to the Protocol.

If EUAs for CFCs Are Transferable, Can They Be Transferred From Year to Year?

No, EUAs would not be transferable from year to year. Any EUAs for CFCs not expended in 2001 will expire at the end of 2001.

Is There a Penalty for Transferring EUAs?

Yes. The CAA at section 607(a) states that rules governing transfer of allowances for the production of class I and class II substances '' * * * shall insure that the transactions under the

authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.'' In compliance with this section, current regulations at 40 CFR 82.12 governing transfers of production and consumption allowances require one percent of the traded amount to be deducted from the transferor's unexpended allowances. EPA is proposing to amend the regulation so that in the case of EUA transfers, one tenth of one percent of the amount traded would be deducted from the transferor's account. EPA believes that given the relatively small amount of EUAs available for use in MDIs, and that providing sufficient EUAs for MDIs is critically important for protecting public health, deducting one percent of the amount of EUAs to be traded would be too high a penalty and may create a barrier against transferring EUAs freely. EPA believes that reducing the amount deducted from the transferor's account, would overcome this potential barrier. Therefore, with today's action EPA is proposing changes to regulations at § 82.12 to require that in the case of transferring EUAs, one tenth of one percent in excess of the amount traded would be deducted from the transferor's account.

How Can I Transfer EUAs From My Company to Another?

In order to complete a transfer of EUAs for CFCs from one essential use allowance holder to another, the transferor would have to submit to the Administrator a letter with the information requested in 40 CFR 82.12(a)(1). Under the regulations at 40 CFR 82.12 the transferor must submit to the Administrator a transfer claim with the following information:

1. The identities and addresses of the transferor and transferee.
2. The names and telephone numbers of contact persons for both the transferor and transferee.
3. The type of allowances being transferred, which in this case would always be essential use allowances.
4. The group of controlled substances being transferred, which would always be Group I.
5. The amount of allowances being transferred in kilograms.
6. The control period for which the allowances are being transferred (*e.g.* calendar year 2001).
7. The amount of unexpended essential use allowances for the current control period.
8. The amount of the 0.1% offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance.

Guidance documents and a sample letter which outlines the necessary information that a transferor must submit to EPA will be available through the Stratospheric Ozone Hotline at 1–800–296–1996.

As outlined in § 82.12, EPA will determine according to records maintained by the EPA ODS tracking system whether the transferor possesses as of the date of the transfer claim, unexpended allowances sufficient to cover the transfer claim (*i.e.,* the amount to be transferred plus one tenth of one percent of that amount). Within three working days of receiving a complete transfer claim, EPA will notify the transferor and transferee if the transferor has sufficient unexpended allowances to confer the transfer claim, and will issue a notice indicating that EPA does not object to the transfer. EPA will then reduce the transferor's balance of essential use allowances by the amount to be transferred plus one tenth of one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer.

If EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, EPA will issue a notice disallowing the transfer. Within 10 working days after receipt of notifications, either party may file a notice of appeal, with supporting reasons, to EPA, in which case EPA may either affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day. (The transferor and transferee will be held liable in accordance with Title I, section 113 of the Act for any violations that occur as a result of an improper transfer.) In the event that EPA does not respond to a transfer claim within three working days of receipt of the completed claim, the transferor and transferee may proceed with the transfer and EPA will reduce the transferor's balance accordingly.

V. Administrative Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Executive Order 12866

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

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined by OMB and EPA that this action is not a Significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden as defined by the PRA. The Office of Management and Budget's (OMB's) draft guidance on PRA states that a rule is exempt from OMB review if it ''explicitly applies to nine or fewer persons''. Since the reporting requirements in this rule are not of general applicability, and apply only to the eight entities receiving EUAs for CFCs only if a company decides to transfer EUAs to another essential use holder, we believe that this rule is exempt from the requirement of submitting an Information Collection Request and undergoing OMB review.

However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 82.12 which set forth the process for inter-company transfers of consumption allowances under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170 (EPA ICR No.1432.17). Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. Include the ICR and/or OMB number in any correspondence.

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

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

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 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 Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility

After considering the economic impacts of today's proposed rule on small entities, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. EPA has also determined that this action will not have a significant economic impact on a substantial number of small entities. This rule does not have a significant impact on a substantial number of small entities. The only entities that are directly affected by this allocation are those to which CFCs and other ODSs are being allocated. There are only ten entities which are affected by this rulemaking (see table 1 above). This rule does not have an adverse economic impact on any entity because it grants exceptions to a pre-existing ban.

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

Executive Order 13045: ''Protection of Children from Environmental Health risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in this regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 432255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and theat preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule will affect only the ability of private entities and the national government to request production of controlled ozone-depleting substances. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: September 29, 2000.

Carol M. Browner,

Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by revising the table in paragraph (t)(2) to read as follows:

§ 82.4 Prohibitions.

* * * * *

(t) * * *

(2) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2000

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease (in metric tons)		
Medeva Americas, Inc.	CFC–11 or CFC–12 or CFC–114	189.00
Boehringer Ingelheim	CFC–11 or CFC–12 or CFC–114	258.00
Glaxo Wellcome	CFC–11 or CFC–12 or CFC–114	858.10
Aventis	CFC–11 or CFC–12 or CFC–114	190.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	384.87
Sidmak Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114	192.20
Schering Corporation	CFC–11 or CFC–12 or CFC–114	1025.20
Sciarra Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114	1.3
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

§ 82.12 [Amended]

* * * * *

3. Section 82.12 is amended by revising paragraphs (a) (1) introductory text, (a)(1)(i)(H), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(iii) to read as follows:

§ 82.12 Transfers.

(a) * * *

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2001, for Group VI, any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's consumption allowances or production allowances, and effective

January 1, 1995, for all class I controlled substances any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's Article 5 allowances, and after January 1, 2001 any essential use allowance holder (''transferor'') may transfer essential use allowances for CFCs to any other essential use allowance holder for CFCs (''transferee'') solely for the production of essential products (defined at 21 CFR 2.125) as follows:

(i) * * *

(H) The amount of the one percent offset applied to the unweighted amount traded that will be deducted from the transferor's production or consumption allowance balance (except for trades from transformers and destroyers to producers or importers for the purpose of allowance reimbursement) In the case of transferring essential use allowances, the amount of one tenth of one percent of the amount traded will be deducted from the transferor's allowance balance.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, allowable imports and exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances sufficient to cover the transfer claim (*i.e.,* the amount to be transferred plus, in the case of transferors of essential use allowances, one tenth of one percent of that amount, and in the case of transferors of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount, or in the case of transfers of essential use allowances, one tenth of one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

* * * * *

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount, or in the case of essential use allowances, one tenth of one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

* * * * *

[FR Doc. 00–25745 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL–6883–1]

RIN 2090–AA16

Pretreatment Program Reinvention Pilot Projects Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today EPA is proposing changes to the National Pretreatment Program regulations to allow Publicly Owned Treatment Works (POTWs) that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local Pretreatment Programs. These POTWs would be allowed to modify their programs following the procedures in 40 CFR 403.18, and implement the new local programs as described in their FPAs.

In today's proposed rule, EPA recognizes that many POTWs with approved Pretreatment Programs have mastered the administrative and procedural requirements of the National Pretreatment regulations (40 CFR Part 403). Several of these POTWs want the opportunity to implement local pretreatment programs with effectiveness measured against environmental results rather than strict adherence to programmatic and administrative measures. These POTWs have expressed an interest in Project XL to test new pilot ideas that focus resources on activities that they believe would provide greater environmental benefits than are achieved by complying with current regulatory requirements. This rule is intended to provide the regulatory flexibility that will enable these test programs to move forward. Currently, five POTWs are actively involved in this Project XL process.

DATES: Public Comments: All public comments on the proposed rule must be received on or before November 6, 2000. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) November 6, 2000.

ADDRESSES: Comments should be addressed to ''Project XL/CWA Pretreatment,'' Water Docket MC–4101; United States Environmental Protection Agency, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 445 West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Mr. Chad Carbone in advance by telephoning (202) 260–4296.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Frazer, (202) 260–0101, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania

Avenue, NW., (MC 4203), Washington, DC 20460.

The information presented in this preamble is organized as follows:

I. Authority
II. Background
A. What is Project XL?
A. What is EPA Proposing?
C. Stakeholder Involvement in the XL Process
D. What is the National Pretreatment Program?
E. What are the Current Pretreatment Program Requirements?
F. How Do the Current Requirements Relate to Environmental Objectives?
G. Why is EPA Considering Allowing POTW Local Pilot Pretreatment Programs at this Time?
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C. Paperwork Reduction Act
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E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
F. Executive Order 13132: Federalism
G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
H. National Technology Transfer and Advancement Act

I. Authority

This regulation is being proposed under the authority of sections 307, 402 and 501 of the CWA.

II. Background

A. What Is Project XL?

Project XL, which stands for ''eXcellence and Leadership,'' is a national pilot program that tests innovative ways of achieving better and more cost-effective public health and environmental protection through site-specific agreements with project sponsors. Project XL was announced on March 16, 1995, as a central part of the National Performance Review and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995). The intent of Project XL is to allow EPA and regulated entities to experiment with pragmatic, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects are intended to allow EPA to collect more data on a more focused basis prior to national rulemaking. Today's proposed regulation would enable implementation of specific XL projects. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

B. What Is EPA Proposing?

In the June 23, 1998, **Federal Register** (63 FR 6113–6), EPA requested proposals for XL projects from POTWs based on environmental performance measures for the pretreatment program. The process for reviewing and choosing acceptable pilot program candidates included input from POTWs, State and EPA Regional Pretreatment Coordinators, as well as opportunity for public participation. As discussed in more detail below, five POTWs have advanced to the final steps of the Project XL process. In today's proposal, EPA announces proposed revisions to the national pretreatment regulations at 40 CFR part 403 that would allow the selected Local Pilot Pretreatment Programs to be implemented. These POTWs will then need to submit revised pretreatment programs for approval and obtain modified permits to authorize the POTW to implement its pilot program instead of its current Approved POTW Pretreatment Program. In addition, the affected states may first need to revise their own regulations or statutes to authorize the pilot programs for pretreatment XL project sponsors before this rule can be implemented in their jurisdictions.

C. Stakeholder Involvement in the XL Process

EPA believes stakeholder involvement in developing Local Pilot Pretreatment Programs is crucial to the success of the programs, therefore, as part of the Project XL proposal, a POTW must clearly explain its process for involving stakeholders in the design of the pilot program. This process should be based upon the guidance set out in the April 23, 1997, **Federal Register** notice. The support of parties that have a stake in the program is very important. Once EPA has accepted a candidate based on its detailed proposal, the POTW, EPA, the State and local stakeholders typically finalize a Final Project Agreement (FPA). The FPA is a non-binding agreement that describes the intentions and commitments of the implementing parties. Stakeholders may include communities near the project, local or state governments, businesses, environmental and other public interest groups, or other similar entities. Stakeholders will also have formal opportunities to comment on provisions of the FPA that are incorporated in the POTW's revised pretreatment program under the procedures established at 40 CFR 403.18 and this proposal.

D. What Is the National Pretreatment Program?

The National Pretreatment Program is part of the Clean Water Act's (CWA's) water pollution control program. The program is a joint regulatory effort by local, State, and federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called ''publicly owned treatment works'' or ''POTWs''). Control of pollutants prior to discharge of wastewater to the municipal sewer system minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

E. What Are the Current Pretreatment Program Requirements?

The minimum requirements for an Approved POTW Pretreatment Program currently are published at 40 CFR 403.8(f). POTWs with Approved Pretreatment Programs must maintain adequate legal authority, identify industrial users, designate which industrial users (IUs) are ''Significant Industrial Users'' (SIUs) (under 40 CFR 403.3(t)) and perform required monitoring, permitting and enforcement. Other sections of part 403 require POTWs with Approved Pretreatment Programs to sample and apply nationally applicable pretreatment standards to the industrial users discharging pollutants to the POTW collection system. POTWs are also required to develop local limits in accordance with 40 CFR 403.5. As proposed today, EPA would allow Approval Authorities to require a POTW to meet requirements in an environmental performance-based pilot program instead of certain administrative programmatic requirements currently required in a POTW's Approved Pretreatment Program under 40 CFR part 403.

F. How Do the Current Requirements Relate to Environmental Objectives?

As described in 40 CFR 403.2, the general pretreatment regulations promote three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of POTWs, including interference with the use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

These objectives require local programs to be designed so they are preventative in nature, and therefore, any pilot program also would need to maintain this preventative approach. The specific requirements for an Approved POTW Pretreatment Program are intended to achieve these objectives. Individual pretreatment programs, however, are not routinely required to report on the achievement of environmental measures.

The 1991 National Pretreatment Program Report to Congress provides extensive data related to the sources and amounts of pollutants discharged to POTWs, the removal of pollutants by secondary treatment technology, and the general effectiveness of the pretreatment program. The 1991 Report did, however, point to a serious lack of comprehensive environmental data with which to fully assess the effectiveness of both the national and local pretreatment programs. These project XL pilots would help to provide data for this purpose.

G. Why Is EPA Considering Allowing POTW Local Pilot Pretreatment Programs at this Time?

Some POTWs have mastered the administrative aspects of the pretreatment program (identifying industrial users, permitting, monitoring, *etc.*) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in focusing their resources on activities that they believe would provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefitting the environment and toward activities that may achieve measurable improvements in the environment.

EPA developed the Project XL program to provide regulated entities the flexibility to conduct innovative pilot projects. Today's proposed rule represents an attempt to spur innovation in the pretreatment program to increase environmental benefits and, in conjunction with the streamlining proposal, (see 64 FR 39564) to determine if further streamlining of the program is needed, how streamlining can achieve environmental improvements and in what direction those future streamlining efforts should be directed.

H. Are There Any POTWs Currently Going Through Project XL Approval Process?

In order to implement the pretreatment XL projects, EPA is proposing a rule that would provide regulatory flexibility under the Clean Water Act. Currently, five (5) POTWs have requested flexibility through the Project XL FPA approval process. The POTWs are: The Narragansett Bay Commission (NBC) in Rhode Island; the Jeffersontown Wastewater Treatment Plant (WWTP), owned and operated by the Louisville and Jefferson County Metropolitan Sewer District (MSD) in Kentucky; the Metropolitan Water Reclamation District of Greater Chicago (Chicago) in Illinois; the City of Albuquerque (Albuquerque), New Mexico; and the City of Denton (Denton), Texas. The FPA for NBC lays out the following flexibilities: (1) Reduced self-monitoring requirements for ten (10) categorical industrial users (CIUs) for tier 1 facilities, (2) reduced inspection frequency for ten (10) CIUs tier 1 facilities from once every year to once every two years and, (3) allow participating CIUs tier 1 facilities to not sample for pollutants not expected to be present. Under the FPA for MSD, the POTW is requesting flexibility to (1) use an alternative definition for significant industrial user (SIU), (2) allow participating CIUs to not sample for pollutants not expected to be present and (3) use an alternative definition of significant noncompliance (SNC). The Chicago FPA describes flexibility that includes (1) use of an alternative (in relation to the pretreatment streamlining proposal) definition for de minimis categorical industrial user (CIU) and (2) reduced self-monitoring and self-reporting requirements for participating CIUs and (3) use alternative monitoring methods. The Albuquerque FPA lays out flexibility to (1) use an alternative definition of SIU, (2) use an alternative definition of SNC, (3) reduce permitting requirements for participating IUs, (4) use alternative monitoring methods and (5) reduce reporting requirements for participating IUs. The Denton FPA lays out flexibility to (1) reduce its monitoring of participating IUs and (2) reduce its inspection of participating IUs. In exchange for these flexibilities, each individual POTW would need to commit to produce certain proportional amounts of superior environment performance as laid out in the FPA and maintain all legal and preventative environmental health and safety standards. Complete project site-specific descriptions can be found on the web at: http://www.epa.gov/projectxl/.

I. What Are the Environmental Benefits Anticipated Through Project XL?

These XL projects are expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by allowing local agencies the ability to identify environmental goals and allocate the necessary resources on a site specific local basis. Specifically, these projects are expected to produce additional benefits by (i) reducing pollutant loadings to the environment or some other environmental benefit beyond that currently achieved through the existing pretreatment program (including collecting environmental performance data and data related to environmental impacts in order to measure the environmental benefit), (ii) reduced or optimized costs related to implementation of the pretreatment program with the savings used to attain environmental benefits elsewhere in the watershed in any media, and (iii) providing EPA with information on how the pretreatment program might be better oriented towards the achievement of measures of environmental performance. These objectives are consistent with the principles of the National Performance Review.

EPA's intent is to allow Local Pilot Pretreatment Programs to be administered by those POTWs that best further those objectives. Each pilot program's method of achieving the environmental benefit should be transferable so that other programs may be able to implement the method and also achieve increased environmental benefits.

J. What Is the Project Duration and Completion Date?

Under Project XL, local Pilot Pretreatment Programs may be approved to operate for the term expressed in the FPA. Prior to the end of the FPA approval period (at least 180 days), the POTW may apply for a renewal or extension of the project period in accordance with the terms of the FPA. If a POTW is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Pretreatment Approval Authority (either EPA or the authorized State) could allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program would be met. The revised Local Pilot Pretreatment Program would need to be approved in accordance with the FPA and the procedures in 40 CFR 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority would direct the POTW to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment program. The Pretreatment Approval Authority would need to ensure that the POTW's NPDES permit includes a reopener clause to implement this procedure.

The results of the pilots, including recommendations in POTW reports, may be used to determine the direction of future Pretreatment Program streamlining and/or reinvention.

K. How Could the Project Be Terminated?

Either the Approval Authority or the POTW may terminate a project earlier than the final project agreement's (FPA) anticipated end date. Parties will follow procedures set out in the FPA. The implementing permits will also reflect the possibility of early termination. When the NPDES permitting agency modifies the POTW's NPDES permit to incorporate the flexibility allowed by today's rule, it must include a 'reopener' provision that requires the POTW to return to compliance with current pretreatment requirements at the expiration or termination of the FPA, including an interim compliance period, if needed. Additional details are available in the site-specific FPAs.

III. Rule Description

Today's proposed rule will modify 40 CFR part 403 to allow Pretreatment Approval Authorities (EPA or State) to grant regulatory flexibility to selected Project XL POTWs with approved FPAs. The regulatory flexibility would allow these specific POTWs to implement Pretreatment Programs that include legal authorities and requirements that are different than the administrative requirements in 40 CFR part 403. The POTW would need to submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The approved modified program would need to be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority would approve or disapprove the pilot program using the procedures in 40 CFR 403.18.

For example, the POTW would work through the Project XL process as described above. The POTW either would or has already developed the necessary FPA with stakeholder participation (local interest groups, State representatives, EPA, any other interested parties). The POTW would use the FPA as the blueprint when developing a revision of the POTW's approved local pretreatment program. The POTW would submit the revised program to its Approval Authority (State or EPA region) requesting a substantial program modification using the procedures outlined in 40 CFR 403.18. The Approval Authority would review the program modification request to determine that it contains the provisions of the blue-print FPA and makes a determination to approve or deny the request. The proposal for modification is publicly noticed following the procedures in 40 CFR 403.11 and 40 CFR 403.18. After the close of the public comment period, the Approval Authority will consider and respond to public comments and revise the POTW's pretreatment program accordingly. Then the POTWs NPDES permit will be modified by adding the modified pretreatment program as an enforceable part of the permit.

IV. Request for Public Comments

The Agency requests public comments on today's Rule.

V. Additional Information

A. 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 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 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 entitlement, grants, user fees, or loan programs of 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.

Because the annualized cost of this final rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. In consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the proposed Final Project Agreements subject to today's rule, EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

B. Regulatory Flexibility Act

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 governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because the modifications to the pretreatment regulations EPA is allowing would reduce the regulatory costs to POTWs and industrial users of complying with the pretreatment requirements and affect a small number of dischargers. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

An Information Collection Request (ICR) document is currently being prepared by EPA.The ICR will be

submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The proposed rule provides regulatory flexibility to participating sponsors. The changes in information collection requirements as a consequence of the rule allow participating facilities to satisfy the reporting requirements with a single yearly report and provide certification in lieu of not sampling for pollutants not present if certain conditions are met. Also, this regulatory change can result in decreased reporting and recordkeeping burdens for participating facilities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, because this rule contains no regulatory requirements that might significantly or uniquely affect small governments, it is not subject to UMRA section 203.

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

The Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA may also not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with the State and local officials early in the process of developing the regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with the affected state and local officials in developing this rule.

G. 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. 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, 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 affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of the affected facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

Dated: September 29, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for Part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.20 is added to read as follows:

§ 403.20 Pretreatment Program Reinvention Pilot Projects Under Project XL.

The Approval Authority may allow any publicly owned treatment works (POTW) that has a final ''Project XL'' agreement to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in § 403.18. The approved modified program must be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program if the primary objectives of the Local Pilot Pretreatment Program are not met or the ''Project XL'' agreement expires or is otherwise terminated.

[FR Doc. 00–25750 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P '

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2215, MM Docket No. 00–184, RM–9955]

Digital Television Broadcast Service; Sheridan, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Duhamel Broadcasting Enterprises, licensee of Station KSGW–TV, NTSC Channel 12, Sheridan, Wyoming, proposing the substitution of DTV Channel 13 for Station KSGW–TV's assigned DTV Channel 21. DTV Channel 21 can be allotted to Sheridan, Wyoming, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (44–37–20 N. and 107–06–57 W.). As requested, we propose to allot DTV Channel 13 to Sheridan with a power of 50 and a height above average terrain (HAAT) of 372 meters.

DATES: Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Colette M. Capretz, Shaw Pittman, 2300 N Street, NW, Washington, DC 20037–1128 (Counsel for Duhamel Broadcasting Enterprises).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–184, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., 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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25736 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2213, MM Docket No. 00–182, RM–9957]

Digital Television Broadcast Service; Sumter, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by McLaughlin Broadcasting, Inc., licensee of Station WQHG–TV, NTSC Channel 63, Sumter, South Carolina, proposing the substitution of DTV Channel 39 for Station WQHB–TV's assigned DTV Channel 38. DTV Channel 39 can be allotted to Sumter, South Carolina, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (34–06–33N. and 80–44–35 W.). As requested, we propose to allot DTV Channel 39 to Sumter with a power of 500 and a height above average terrain (HAAT) of 269 meters.

DATES: Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gene A. Bechtel, Bechtel and Cole, Chartered, Suite 250, 1901 L Street, NW, Washington, DC 20036 (Counsel for McLaughlin Broadcasting, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–182, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, 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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25737 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2212, MM Docket No. 00–181, RM–9933]

Digital Television Broadcast Service; Henderson, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KVVU Broadcasting Corporation, licensee of station KVVU–TV, NTSC Channel 5, Henderson, Nevada, requesting the substitution of DTV Channel 9 for station KVVU–TV's assigned DTV Channel 24. DTV Channel 9 can be allotted to Henderson, Nevada, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (36–00–28 N. and 115–00–24 W.). As requested, we propose to allot DTV Channel 9 to Henderson with a power of 85.6 and a height above average terrain (HAAT) of 407 meters.

DATES: Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Wells Kings, Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (Counsel for KVVU Broadcasting Corporation).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–181, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., 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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25738 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2214, MM Docket No. 00–183, RM–9959]

Digital Television Broadcast Service; Albany, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hubbard Broadcasting, Inc., licensee of WNYT(TV), NTSC Channel 13, Albany, New York, proposing the substitution of DTV Channel 12 for Station WNYT(TV)'s assigned DTV Channel 15. DTV Channel 12 can be allotted to Albany, New York, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (42–37–37 N. and 74–00–49 W.). However, since the community of Albany is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel 12 to Albany with a power of 10 and a height above average terrain (HAAT) of 421 meters.

DATES: Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin Rosenberg, David A. O'Connor, Holland & Knight, LLP, 2100 Pennsylvania Avenue, NW., Suite 400 Washington, DC 20037–3202 (Counsel for Hubbard Broadcasting, Inc.).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–183, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., 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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25739 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AG38

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spruce-fir Moss Spider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the spruce-fir moss spider (*Microhexura montivaga*) under the Endangered Species Act of 1973, as amended (Act). The proposed designation of critical habitat for the spruce-fir moss spider includes—(1) Areas at and above 1,646 meters (m) (5,400 feet (ft)) in elevation in the Great Smoky Mountains National Park (GSMNP) on and/or in the vicinity of Mount LeConte in Sevier County, Tennessee, and Mount Collins, Clingmans Dome, and Mount Buckley in Swain County, North Carolina, and Sevier County, Tennessee; (2) areas at and above 1,646 m (5,400 ft) in elevation at Grandfather Mountain in Avery, Caldwell, and Watauga Counties, North Carolina; and (3) portions at and above 1,646 m (5,400 ft) in elevation at Roan Mountain, Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee. All of the areas on or in the vicinity of Mount LeConte, Mount Collins, Clingmans Dome, and Mount Buckley that are proposed for critical habitat designation are within the boundaries of the GSMNP; all of the areas of Roan Mountain that are proposed for critical habitat designation are within the boundaries of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee; and the areas of Grandfather Mountain that are proposed for critical habitat designation are privately owned.

If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory impact of critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address comments and other information received during the comment period.

DATES: We will consider comments received by December 5, 2000. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 20, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address or fax your comments to 828/258–5330.

3. You may send comments by electronic mail (e-mail) to john_fridell@fws.gov. For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John A. Fridell, Fish and Wildlife Biologist (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Taxonomy and Description

The spruce-fir moss spider *Microhexura montivaga*) was originally described by Crosby and Bishop (1925) based on collections made in 1923 from Mount Mitchell in western North Carolina, the highest point in eastern North America. Only a few specimens were taken, and little was known about the species until its ''rediscovery'' on Mount Mitchell, approximately 50 years later by Dr. Frederick Coyle (Western Carolina University) and Dr. William Shear (Hampden-Sydney College) (Coyle 1981). The subsequent work (Coyle 1981, 1985, 1997, 1999; Harp 1991, 1992) represents the bulk of what is presently known of the biology, habitat, behavior, range of, and threats to, the spider.

The spruce-fir moss spider belongs to the genus *Microhexura* in the family Dipluridae. Diplurids are in the primitive spider suborder Mygalomorphae, which are often referred to as ''tarantulas'' due to the inclusion of the large, hairy spiders of the family Theraphosidae. Only two genera of Dipluridae, *Euagrus* and *Microhexura,* are found in the United States. Species in the genus *Euagrus* are medium to large spiders that build their silk sheets and funnels in rocky situations in the arid Southwest. The genus *Microhexura* is the northernmost representative of the family Dipluridae, and contains only two species—the spruce-fir moss spider (*M. montivaga*) and one with no common name (*M. idahoana*) (Chamberlin and Ivie). The two are distinguished by geographic distribution and by features of the male genitalia (Coyle 1981). Otherwise, they appear to be similar in both appearance and habits (Service 1998). *Microhexura idahoana* is found in conifer forests in the Pacific Northwest (Coyle 1981). The spruce-fir moss spider (*M. montivaga*) is known only from conifer forests in the mountains of North Carolina and Tennessee (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1995, 1998).

The spruce-fir moss spider is the smallest of the mygalomorph spiders, with adults measuring only 2.5 to 3.8 millimeters (0.10 to 0.15 inch) in length

(Coyle 1981, Service 1995). The species' coloration ranges from light brown to a darker reddish brown, and there are no markings on the abdomen (Harp 1992). The carapace (hard covering over the front part of the body) is generally yellowish brown (Harp 1992). The most reliable field identification characteristics for the species are chelicerae (fangs) that project forward well beyond the anterior (front) edge of the carapace, a pair of very long posterior spinnerets (organ for producing threads of silk), and the presence of a second pair of book lungs that appear as light patches posterior to the genital furrow (Harp 1992; Coyle, *in litt.* 1994; Service 1995).

Distribution, Habitat, and Life History

Microhexura montivaga is known from only the highest mountain peaks (at and above 1,646 m (5,400 ft) in elevation) in the Southern Appalachian Mountains of North Carolina and Tennessee. It has been recorded from Mount Mitchell, Yancey County, North Carolina; Grandfather Mountain, Watauga, Avery, and Caldwell Counties, North Carolina; Mount Collins, Swain County, North Carolina; Clingmans Dome, Swain County, North Carolina; Roan Mountain, Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee; Mount Buckley, Sevier County, Tennessee; and Mount LeConte, Sevier County, Tennessee.

Recent and ongoing surveys funded by the National Park Service (NPS), U.S. Forest Service (USFS), and us indicate that reproducing populations of the spruce-fir moss spider still survive on Grandfather Mountain in North Carolina (Harp 1992; pers. observation 1995; Jane Thompson, The Nature Conservancy, pers. comm. 1997); Mount LeConte in Tennessee (Coyle 1997); and Mount Buckley (Coyle, pers. comm. 2000) and Roan Mountain in North Carolina and Tennessee (Coyle 1999). The Mount Mitchell population is believed to be extirpated (Harp 1992), and both the Mount Collins and Clingmans Dome populations, if still present, are extremely small, with only one spruce-fir moss spider having been found at each of these two sites in recent years (Harp 1991, 1992). The occurrences of the species on Mount LeConte, Mount Collins, Clingmans Dome, and Mount Buckley are all within the boundaries of the GSMNP, administered by the NPS. The sites supporting the species on Roan Mountain are within the boundaries of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, and are managed by the USFS. The area on Grandfather Mountain that still supports the spruce-fir moss spider is privately owned and is managed by The Nature Conservancy through an agreement with the landowner.

Recent work by Coyle (1997) indicates that Mount LeConte currently supports the healthiest of the surviving populations of the spruce-fir moss spider. In his study of the species on Mount LeConte, Coyle (1997) recorded the species from four small, separate areas of rock outcrop (approximately 0.10 hectare [0.25 acre], 0.15 hectare [0.38 acre], 0.25 hectare [0.63 acre], and 0.50 hectare [1.25 acres] in size) and estimated that the largest three of these areas support a population of approximately 5,000 individuals. He estimated that the 0.25-hectare site provided a total of approximately 12 square meters (m^2) (roughly 133 square feet) of suitable microhabitat, and the 0.15-hectare site provided approximately 7 m^2 (78 square feet) of suitable microhabitat for the spruce-fir moss spider. Measurements of likely suitable microhabitat have not yet been made at the other two sites on Mount LeConte.

The typical microhabitat of the spruce-fir moss spider appears to be associated with moderately thick and humid, but well-drained, moss and liverwort mats growing in sheltered spots on surfaces of rock outcrops and boulders in mature high-elevation forests dominated by Fraser fir (*Abies fraseri*) (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). The portions of the moss mats supporting the spruce-fir moss spider are generally from 1 to 4 centimeters (cm) thick (roughly 0.5 to 1.25 inches) and are well-shaded (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). They cannot be too dry, because the spider is quite sensitive to desiccation (drying out), nor can they be too wet (Coyle 1997, 1998; Harp 1991, 1992). The humidity levels required by the spruce-fir moss spider have yet to be determined. In a study of the spruce-fir moss spider on the Roan Mountain, Coyle (1999) reported that the moss/liverwort mats in which spruce-fir moss spiders were found were—(1) sheltered from the sun and the rain; (2) typically not far above either the ground or a horizontal ledge with accumulated soil; (3) included a thin layer of humid soil and/or humus (decayed vegetation and other organic material) between the moss and rock surface; (4) moderately thick (1 to 3 centimeters (0.5 to 1 inch); and (5) humid but not wet. He reported that, clearly, most rock outcrop surfaces, even those covered by bryophytes (mosses, liverworts, etc.), do not meet these microhabitat requirements and do not support the spruce-fir moss spider.

Population and microhabitat estimates are not available for the Grandfather Mountain, Mount Buckley, or Roan Mountain populations of the spruce-fir moss spider. However, existing data indicate that the Grandfather Mountain population is restricted to small patches of suitable microhabitat occurring on a single rock outcrop and a nearby boulder (Harp 1992; pers. observation 1995). The Mount Buckley population is restricted to scattered patches of suitable microhabitat on separate rock outcrop sites within an area roughly 0.20 hectare (0.5 acre) in size. On Roan Mountain, Coyle (1999) recorded scattered occurrences of the spruce-fir moss spider at 12 small, separate rock outcrop sites but found more than two spiders living in the same discrete patch of moss/liverwort on only three occasions. He found four spiders in an 800 square centimeters (sq cm) (approximately 1.0 square feet (sq ft)) patch of liverwort at one site, five spiders in a 900 sq cm (1.2 sq ft) patch of moss at another site, and four spiders in a 900 sq cm (1.2 sq ft) patch of moss at the third site. He reported that, at none of these three sites, nor at any other sites on Roan Mountain where he found the spider, were they able to find additional spiders with ease and that the spruce-fir moss spider population densities on Roan Mountain were clearly not as high as those observed at some of the sites on Mount LeConte. As stated above, individual spruce-fir moss spiders (one each) have been observed in recent years on Mount Collins and on Clingmans Dome, indicating extremely low population levels. Coyle (*in litt.* 1991) reported that the spruce-fir moss spider was common at a site on Clingmans Dome as late as 1983 but was extremely rare by 1988, which he suspected was largely due to deterioration of the forest canopy at the site.

The moss species associated with occurrences of the spruce-fir moss spider have been identified by David K. Smith, Botany Department, University of Tennessee at Knoxville, as *Polytrichum pallidesetum* Funck (Harp 1991, 1992), *Dicranodontium denudatum* (Brid.) E. G. Britt ex Williams (Harp 1992; Coyle 1997, 1999), and *D. asperulum* (Mitt.) Broth. (Coyle 1997, 1999). In addition, Coyle (1999) reported finding the spruce-fir moss spider on two occasions in liverwort mats (species was not identified) on rock outcrops. However, on both Mount LeConte and Roan Mountain, Coyle (1997, 1999 respectively) found the spruce-fir moss spider most often in

association with mosses in the genus *Dicranodontium.* Though Harp (1991, 1992) reported finding the spruce-fir moss spider on Mount LeConte in mosses identified as *Polytrichum pallidesetum,* Coyle was unable to find the spider on either Mount LeConte or Roan Mountain in mosses in this genus. The association between the spruce-fir moss spider and mosses in the genus *Dicranodontium* is noteworthy, because mosses in this genus are much less common than many other rock surface mosses (Coyle 1999).

While humid, well-drained moss/liverwort mats on inclined, well-shaded surfaces of rock outcrops and boulders appear to be the optimal microhabitat for the spruce-fir moss spider, it has also, on occasion, been found: (1) Under moss and litter mats at the base of rock outcrops (Coyle 1981); (2) under moss on loose rock at the base of rock outcrops; (3) in litter/humus under flat rocks lying on the ground in well-shaded situations in the vicinity of rock outcrops; and (4) on well-drained, well-shaded ground in or under needle and/or heath litter and moss in the vicinity of rock outcrops (Coyle 1997).

The species has also rarely been found in moss mats on tree trunks (Coyle 1981) and moss mats on logs (Harp 1992), though Coyle has been unable to find the species in either of these habitat types in his recent surveys for the species (Coyle, 1997, 1999; pers. comm. 2000).

An ongoing study of spiders of the GSMNP by Coyle and recent surveys of the spruce-fir moss spider on Mount LeConte (Coyle 1997) and Roan Mountain (Coyle 1999) support earlier findings (Coyle 1981; Harp 1991, 1992) that the microhabitat of the spruce-fir moss spider is virtually restricted to certain areas of rock outcrops and boulders in Fraser fir and/or fir-dominated spruce-fir forests. The Fraser fir is the only species of fir native to the Southeastern United States (Burns and Honkala 1990). In his study of the population of the spruce-fir moss spider on Mount LeConte, Coyle (1997) reported finding the species ''only in stands containing many old (well over 25 years of age) fir trees and in areas where patches of fir containing old fir trees interface with heath communities.'' In both situations he found the species only on or in the vicinity of rock outcrops. In his work on Roan Mountain, Coyle (1999) found the species only on rock outcrops in fir forests or fir-dominated areas of spruce-fir forests. Searches for the spruce-fir moss spider in other habitat types have failed to locate occurrences of the species (Coyle, *in litt.,* 1991; Coyle 1997, 1999).

Coyle (1981, 1997) describes the webs of the spruce-fir moss spider as silk tubes sandwiched between the interface of the moss mat and boulder surface. The tubes are thin-walled and are typically broad and flattened, with short side branches. Some of the tubes occasionally extend into crevices in the rock or litter (Coyle 1997) or the vegetative interior of the moss mat (Harp 1991, 1992).

The spruce-fir moss spider has not been observed taking prey in the wild, nor is there any record of prey having been found in spruce-fir moss spider webs. The abundant springtails (small wingless insects in the order Collembola) found in moss mats with the spiders provide the most likely source of food. The spiders have been observed to take springtails in captivity (David Hodge, Louisville Zoological Park, pers. comm. 1992).

Mating behavior has been described in detail (Coyle 1985). Females of the spruce-fir moss spider are known to lay eggs in June (Coyle 1981). The egg sac of the species is thin-walled, nearly transparent, and generally contains only 7 to 9 eggs (Coyle 1981). The female remains with the egg sac and, when disturbed, will carry the sac with her fangs. Coyle (1997) hypothesized that the ability of the female to move the egg sac may be useful not only in protecting the eggs from predators but also in repositioning the egg sac to protect it from microhabitat changes within the web. Development and evaporative water loss by early instar (a stage between molts) spiderlings within the egg sac are likely dependent on temperature and humidity levels. The spiderlings emerge during September (Coyle 1981). It has been estimated that it may take at least two to three years for spruce-fir moss spiders to reach maturity (Coyle 1985). The life span of the spruce-fir moss spider is currently unknown. Many species of spiders live for only one season. But, like other ''tarantulas,'' spruce-fir moss spiders molt (shed their skin) continuously through life, which means they can keep growing and can live for several years.

Modes of dispersal of spiderlings from the parental moss mats are unknown. Ballooning is a possibility since males of *M. idahoana* have been collected as ''windblown fallout'' on snow fields on Mt. Rainier (Coyle 1981). Ballooning spiders use a sheet of silk played out into a wind current as a kite to carry them into the air. Ballooning spruce-fir moss spiders have not been collected. If they do balloon, they would be capable of an effective mode of dispersal over long distances. Even short-range dispersal between moss mats has not been documented for this species. Pit fall trap and Berlese funnel sampling done in the area of the Mount LeConte population did not yield any specimens of the spruce-fir moss spider (Lambden *et al.* 1994).

Possible predators and competitors of the spruce-fir moss spider include pseudoscorpions, centipedes, carabid beetles, and other spiders. A number of other species of spiders are commonly found in the same moss as the spruce-fir moss spider (Service 1998).

Threats

The majority of the high-elevation spruce-fir forests of the Southeast have suffered extensive changes and declines in size and/or vigor during the past century, likely as a result of a number of factors, including storm damage, site deterioration due to the logging and burning practices of early 1900s (Peart *et al.* 1992), atmospheric pollution (Johnson *et al.* 1992), exposure shock (Nicholas *et al.* 1992), climate changes, and other factors not yet fully understood. However, the primary threat to, and reason for, the recent decline of the spruce-fir moss spider at all of the sites from which it has been recorded appears to be associated with the loss of suitable moss habitat, due primarily to the loss of mature Fraser firs (Coyle, *in litt.,* 1991, 1999; Harp 1991, 1992; Service 1998). The spruce-fir moss spider appears to be very sensitive to desiccation and requires situations of high and constant humidity. The loss of mature Fraser firs, the dominate canopy species in the forest stands where the spider has been found, leading to increased light and temperature and decreased moisture on the forest floor (resulting in drying out of the moss mats), appears to be the major cause for the loss of the spruce-fir moss spider on Mount Mitchell and the recent decline of the Mount Collins, Clingmans Dome, and a portion of the Mount LeConte populations (Harp 1991, 1992). It is also likely the major factor limiting the species' distribution on Roan Mountain, Grandfather Mountain, and Mount Buckley. Mature Fraser firs on all of these mountains have suffered extensive mortality in the last few decades, primarily due to infestation by the balsam wooly adelgid (*Adelges picea* (Ratzeburg) (Homoptera, Adelgidae)). The balsam wooly adelgid is a nonnative insect pest believed to have been introduced into the Northeastern United States from Europe around 1900 (Kotinsky 1916, Eagar 1984). The adelgid was first detected in North Carolina on Mount Mitchell (the

type locality for the spruce-fir moss spider) in 1957 (Speers 1958), though it was likely established at that site as early 1940. From Mount Mitchell, the adelgid spread to the Fraser fir stands throughout the Southern Appalachians (Eagar 1984). All ages of fir trees are attacked by the adelgid, but damage is generally minimal until the trees reach maturity, at around 30 years of age (Hoffard *et al.* 1990). Most mature Fraser firs are easily killed by the adelgid (Amman and Speers 1965), with death occurring within 2 to 7 years of the initial infestation (Eagar 1984). The death of the fir trees and the resultant opening of the forest canopy causes the remaining trees to be more susceptible to wind and other storm damage. The adelgid is transported and spread primarily by the wind but may also be spread by contaminated nursery stock; on the fur or feathers of animals; or by humans on contaminated clothes, equipment, or vehicles (Eagar 1984). All efforts to control the spread of the adelgid have failed thus far.

All existing data (Coyle 1981, 1997, 1999; Harp 1991, 1992) indicate that suitable habitat for the spruce-fir moss spider is extremely limited and restricted to small areas of rock outcrops occurring in forest stands dominated by fir trees, providing the shelter and organic substrata required by the spider. This restricted range of each of the surviving populations of the spruce-fir moss spider also makes it extremely vulnerable to extirpation from a single event or activity, such as a severe storm, wildfire, land-clearing or timber operation, pesticide/herbicide application, etc. In addition, the spider and the moss mats it inhabits are very fragile and easily destroyed by human trampling or other disturbance. Many of the high-elevation areas where the spider occurs are frequented by tens of thousands of visitors each year. Coyle (1999) suggested that boulder climbing by visitors may have been one of the factors contributing to the scarcity of suitable moss habitat for the spider in areas on Roan Mountain. Because of their small size, disturbance of the moss mats or damage to the surrounding vegetation shading the mats could result in the extirpation of entire spruce-fir moss spider populations and/or population fragments.

Previous Federal Actions

On December 31, 1992, we notified (in writing) appropriate Federal, State, and local government agencies, landowners, and individuals knowledgeable about this or similar species that a status review was being conducted and that the species might be proposed for Federal listing. We received ten written comments. The NPS, the North Carolina Division of Parks and Recreation, and three private individuals (including the owner of the site containing the Avery/Caldwell County, North Carolina, population) expressed strong support for the potential listing of the spruce-fir moss spider as an endangered species. The U.S. Soil Conservation Service, Tennessee Wildlife Resources Agency, Tennessee Department of Environment and Conservation, Tennessee Valley Authority, and the North Carolina Department of Agriculture stated that they had no new or additional information on the species or threats to its continued existence. We received no comments opposing the potential listing of the spruce-fir moss spider.

On August 30, 1993, we classified the spruce-fir moss spider as a category 1 candidate based on the results of status surveys, funded by the NPS and us, documenting significant habitat loss and increased threats to the species throughout its range (Harp 1991, 1992). At that time, category 1 represented those species for which we had substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species.

On January 27, 1994, we published in the **Federal Register** (59 FR 3825) a proposal to list the spruce-fir moss spider as an endangered species without designating critical habitat. The proposal provided information on the species' range, biology, status, and threats to its continued existence and a proposed determination that designation of critical habitat was not prudent for the species because such designation would not be beneficial and could further threaten the spruce-fir moss spider. Through associated notifications, we invited comments on the proposal and factual reports or information that might contribute to the development of a final rule. We contacted and requested comments from appropriate Federal and State agencies, county governments, scientific organizations, individuals knowledgeable about the species or its habitat, and other interested parties. We published a legal notice, which invited general public comment, in the following newspapers: The *Avery Journal,* Newland, North Carolina, February 10, 1994; the *News-Topic,* Lenoir, North Carolina, February 10, 1994; the *Watauga Democrat,* Boone, North Carolina, February 16, 1994; the *Smoky Mountain Times,* Bryson City, North Carolina, February 10, 1994; and the *Mountain Press,* Sevierville, Tennessee, February 11, 1994. We received ten written comments. Six of them expressed strong support for the findings presented in the proposed rule and listing of the species as proposed; three either expressed concurrence with the data presented in the proposed rule and/or provided additional information but expressed neither support for nor opposition to the listing; and one comment opposed the listing, stating that the ''scientific community, and the Service in particular, needs to recognize that extinction has always been a continuing process and will continue to be so.''

Following our review of all the comments and information received throughout the listing process, by final rule (60 FR 6968) dated February 6, 1995, we listed the spruce-fir moss spider as endangered. We addressed all the comments received throughout the listing process and/or incorporated changes into the final rule as appropriate. That decision included a determination that the designation of critical habitat was not prudent for the spruce-fir moss spider because, after a review of all the available information, we determined that such designation would not be beneficial to the species and that designation of critical habitat could further threaten the spider (see ''Prudency Determination'' section).

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging the not prudent critical habitat determinations for four species in North Carolina—the spruce-fir moss spider, Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and submit to the **Federal Register**, by October 1, 2000, if appropriate, withdrawal of the existing not prudent determination, together with a new proposed critical habitat determination. If, upon consideration of all available information and comments, we determine that designating critical habitat is not prudent for the spruce-fir moss spider, we have agreed to submit a notice of that finding to the **Federal Register** by April 1, 2001. If we determine that designation of critical habitat is prudent for the spruce-fir moss spider, we have agreed to send a

final rule of this finding to the **Federal Register** by July 1, 2001.

This proposal is the product of our reexamination of our prudency determination for the spruce-fir moss spider and reflects our interpretation of the recent judicial opinions on critical habitat designation and the standards placed on us for making a ''not prudent'' determination. If additional information becomes available on the species' biology and distribution and threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our February 6, 1995, final rule, we determined that both situations applied to the spruce-fir moss spider.

A critical habitat designation has no effect on situations where a Federal agency is not involved. The regulations that provide protection for critical habitat come into play through section 7 of the Act. Requirements under section 7 of the Act apply only to Federal actions and activities. They require Federal agencies to ensure, in consultation with us, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. Regulations for the implementation of section 7 of the Act (50 CFR 402.2) provide for both a ''jeopardy'' standard and an ''adverse modification or destruction of critical habitat'' standard. 50 CFR 402.2 defines ''jeopardize the continued existence of'' as meaning to engage in an action that would reasonably be expected, directly or indirectly, to appreciably reduce the likelihood of both the ''survival and recovery'' of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. ''Destruction or adverse modification'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the ''survival and recovery'' of a listed species. These regulations require that the adverse modification or destruction of critical habitat analysis, like the jeopardy analysis, consider the detrimental effects of a proposed Federal action to both the survival and recovery of the listed species. Because of the extremely restricted range and limited amount of suitable habitat available to the spruce-fir moss spider, we determined in the February 6, 1995, final rule that any action that would likely result in the destruction or adverse modification of the species' habitat would also likely jeopardize the species' continued existence. Since Federal actions resulting in jeopardy are also prohibited by section 7, we determined that designation of critical habitat would not provide any additional protection benefitting the species beyond that provided by the jeopardy standard.

Further, although we had no documented evidence of collecting or other human disturbance (prior to publication of the proposed rule to list this tiny tarantula as endangered, the species was largely unknown to the general public), we were concerned that the rarity and uniqueness of this spider could generate interest in the species. The low numbers, slow reproductive rate, and restricted range of the spruce-fir moss spider make it unlikely that its populations could withstand even moderate collecting pressure (adapted from Harp 1992) or the habitat disturbance that would result from people visiting its habitat. Accordingly, in the 1995 final rule, we determined that the designation of critical habitat, and the associated publication of maps and descriptions of critical habitat, could increase the vulnerability of the species to collecting or other disturbance.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For instance, in *Conservation Council for Hawaii* v. *Babbitt,* the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue 2 F. Supp. 2d 1280 (D. Hawaii 1998)). And in *Natural Resources Defense Council* v. *U.S. Department of the Interior,* the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the ''increased threat rationale,'' the threat against the benefit to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

We continue to be concerned that the spruce-fir moss spider is extremely vulnerable to unrestricted collection or disturbance of its habitat and that these threats might be increased by the publication of critical habitat maps and further dissemination of location and habitat information. However, at this time we do not have specific evidence of taking, collection, trade, or other unauthorized human disturbance of the spruce-fir moss spider or any similarly situated species. Furthermore, we acknowledge that some educational or informational benefit may derive from designation. Consequently, we hereby propose to withdraw our previous determination that the identification of critical habitat can be expected to increase the degree of threat to the species.

Courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection besides designation, even if it offers potentially greater protection to the species, does not justify a not prudent finding *Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280. Accordingly, we withdraw our previous determination that designation of critical habitat will not benefit the spruce-fir moss spider. It is true that we are already working with the NPS, USFS, the owner of Grandfather Mountain, and others in carrying out research and conservation activities for the spruce-fir moss spider, and these entities are fully aware of the species' location and habitat requirements, as currently known. However, as stated above, some educational or informational benefit may result from designating critical habitat. Therefore, we propose that designation of critical habitat is prudent for the spruce-fir moss spider.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas

are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. ''Conservation'' is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations (50 CFR 424.02 (j)) define ''special management considerations or protection'' to mean any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

Section 4(b)(2) of the Act requires that we base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

Methods

The proposed areas of critical habitat described below constitute our best assessment of the areas needed for the conservation and recovery of the spruce-fir moss spider in accordance with the goals outlined in our recovery plan for the species (Service 1998), and are based on the best scientific and commercial information currently available to us concerning the species' known present and historic range, habitat, biology, and threats. All of the areas we propose to designate as critical habitat are within what we believe to be the geographic area occupied by the spruce-fir moss spider and include all known surviving occurrences of the species. Despite extensive surveys and ongoing research, we currently are not aware of any areas outside the geographical area occupied by the spruce-fir moss spider that are essential for the conservation of the spider. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available that indicates that other areas within the spruce-fir moss spider's historic range that are essential to the conservation of the species, we will revise the proposed critical habitat or designated critical habitat for the spruce-fir moss spider accordingly.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering areas for designation as critical habitat, we are required to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12(b)). Although additional information is needed to better define the habitat requirements of the species, particularly the microhabitat requirements, based on the best available information, the primary constituent elements essential for the conservation of the spruce-fir moss spider are:

1. Fraser fir or fir-dominated spruce-fir forests at and above 1,646 m (5,400 ft) in elevation.

2. Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium,* and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

As a result of the massive Fraser fir die-offs and associated loss of moss habitat for the spruce-fir moss spider, the remaining areas of suitable habitat for the spider exist only in scattered patches, ranging from a single rock outcrop to scattered rock outcrop sites (see ''Background'' section). Due to the patchiness and small size of the areas providing suitable habitat for the spruce-fir moss spider, we have elected to propose an inclusive area on each of the mountain peaks still providing habitat for the species as critical habitat rather than attempt to identify each individual site separately.

Regulations at 50 CFR 424.12(c) require that we define the specific limits of critical habitat by using reference points and lines as found on standard topographic maps of the area(s). Because of the small size and limited number of suitable habitat patches and for ease of reference, we did not map critical habitat in sufficient detail to exclude lands unlikely to contain all of the primary constituent elements essential for conservation of the spruce-fir moss spider. Consequently, the areas we are proposing as critical habitat include areas of unsuitable habitat, for example, fir or fir-dominated forests without rock outcrops, rock outcrops without suitable moss or liverwort mats, spruce or hardwood forests with or without rock outcrops, areas dominated by early herbaceous vegetation, and other habitat types that do not provide the habitat or microhabitat required by the spider. Federal actions limited to these other habitat types, therefore, would not trigger a section 7 consultation. Please note, however, that any activity authorized, funded, or carried out by a Federal agency that has a potential to affect the constituent elements of designated critical habitat or to destroy or adversely modify areas proposed as critical habitat, regardless of the activity's location in relation to designated or proposed critical habitat, will require a consultation or conference, respectively, with us, as required under the provisions of section 7 of the Act (see ''Effects of Critical Habitat Designation'' section).

Proposed Critical Habitat Designation

Proposed critical habitat includes spruce-fir moss spider habitat throughout the species' existing range in the United States. Lands proposed are under private and Federal ownership. Lands proposed as critical habitat have been divided into four critical habitat units. Areas proposed for designation as critical habitat and their ownership are described below.

Unit 1: Swain County, North Carolina, and Sevier County, Tennessee

Unit 1 encompasses all portions of the GSMNP bounded to the north and to the south of the North Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The

Narrows and west of Jenkins Knob, North Carolina, and Tennessee.

Unit 2: Sevier County, Tennessee

Unit 2 encompasses all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the 1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.

Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee

Unit 3 encompasses all portions of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, bounded to the north and to the south of the North Carolina/Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the 1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.

Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina.

Unit 4 encompasses all areas of privately owned Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat on Grandfather Mountain will not have any regulatory effect on private or State activities in these areas unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. ''Destruction or adverse modification'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species for which critical habitat was designated. These conferences, which consist of informal discussions, are intended to assist responsible agencies and the applicant, if applicable, in identifying and resolving potential conflicts. Conference reports resulting from these discussions provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat are prepared according to 50 CFR 402.14 as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If this proposal is finalized, activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect designated critical habitat of the spruce-fir moss spider will require consultation under section 7 of the Act. However, section 7 of the Act also requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species and to consult with us on any action that may affect a listed species. Activities that jeopardize listed species are defined as actions that ''directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species. Where critical habitat is designated, section 7 requires Federal agencies also to ensure that activities they authorize, fund, or carry out do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that ''appreciably diminish the value of critical habitat for both the survival and recovery of the species'' (50 CFR 402.02). Common to the definitions of both ''jeopardy'' and ''destruction or adverse modification of critical habitat'' is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of the small size of surviving populations of the spruce-fir moss spider, the species' restricted range, and the limited amount of suitable habitat available to the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the spruce-fir moss spider, this designation would not be likely to change the outcome of section 7 consultations.

Section 4(b)(8) of the Act requires us to briefly evaluate, in any proposed or final regulation that designates critical habitat, those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the spruce-fir moss spider is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to, the carrying out or issuance of permits for construction, recreation, and development; pesticide/herbicide applications for the control of noxious insects or weeds; controlled burns; timber activities; and other activities that could result in the removal or damage of high-elevation fir forest canopy that is sheltering moss mats or damage to the moss mats themselves.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, or questions regarding whether specific activities

will constitute adverse modification of critical habitat, may be addressed to the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas identified above as critical habitat prior to a final determination. When a draft of the economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we are required to assess the effects of critical habitat designations on tribal land and tribal trust resources. We did not propose any tribal land for designation as critical habitat, and we do not anticipate any effects on tribal trust resources if this proposal is made final.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

2. Specific information on the numbers and distribution of the spruce-fir moss spider and what habitat is essential to the conservation of the species and why;

3. Information on specific characteristics of habitat essential to the conservation of the spruce-fir moss spider;

4. Land use practices and current or planned activities in the subject areas and their possible effects on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

6. Economic and other values associated with designating critical habitat for the spruce-fir moss spider, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, bird watching, enhanced watershed protection, improved air quality, ''existence values,'' and reductions in administrative costs); and

7. Potential adverse effects to the spruce-fir moss spider and/or its habitat associated with designating critical habitat for the species; *e.g.*, increased risk to species from collecting or the destruction of its habitat.

Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Asheville Field Office (see ''Addresses'' section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the State Supervisor, Asheville Field Office (see Addresses section). Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this document easier to understand, including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the document contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) This rule will not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The spruce-fir moss spider was listed as an endangered species in 1995. Since that time, we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the spruce-fir moss spider.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' to the species under the Act.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range occupied by the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species).

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the spruce-fir moss spider since the listing in 1995. As shown in Table 1 (below), no additional effects on agency actions are anticipated to result from critical habitat designation. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

TABLE 1.—IMPACTS OF SPRUCE-FIR MOSS SPIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3]	Activities such as carrying out, or issuing permits, authorization or funding for, utility construction; construction of recreational facilities; development activities; pesticide/herbicide applications; logging activities; or other activities that could result in damage to the moss mats or removal or damage to the high-elevation fir forest canopy that is sheltering moss mats providing habitat for the species.	None.
Private and other non-Federal Activities Potentially Affected [4]	Activities occurring on Federal lands or that require a Federal action (permit, authorization, or funding) and that involve such activities as damaging or destroying spruce-fir spider habitat, whether by mechanical or other means (scientific or other collecting, timber harvest, right-of-way access across Federal land, etc.).	None.

[1] This column represents the activities potentially affected by listing the spruce-fir moss spider as an endangered species (February 6, 1995; 60 FR 6968) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies currently are required to ensure that their activities do not jeopardize the continued existence of the species and we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of proposed critical habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the draft economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of proposed critical habitat.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat within the geographical range occupied by the species.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal

governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not ''take'' private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by critical habitat designation; however, we expect no regulatory effect from this designation since all proposed areas are considered to be within the geographical range occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

The rule will not increase or decrease the current restrictions on private property concerning taking of the spruce-fir moss spider as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the spruce-fir moss spider.

Federalism

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State resources agencies in North Carolina and Tennessee. We will continue to coordinate any future designation of critical habitat for the spruce-fir moss spider with the appropriate State agencies. The designation of critical habitat for the spruce-fir moss spider imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John Fridell (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.11(h) revise the entry for the ''Spider, spruce-fir moss'' under ''ARACHNIDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
ARACHNIDS							
*	*	*	*	*	*		*
Spider, spruce-fir moss.	*Microhexura montivaga.*	U.S.A. (NC, TN)	NA	E	576	17.95 (g)	NA
*	*	*	*	*	*		*

3. Amend § 17.95 by adding paragraph (g) to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(g) *Arachnids.*

Spruce-fir moss spider (*Microhexura montivaga*)

1. Critical habitat units proposed for designation as critical habitat and their ownership are described below and depicted in the following maps.

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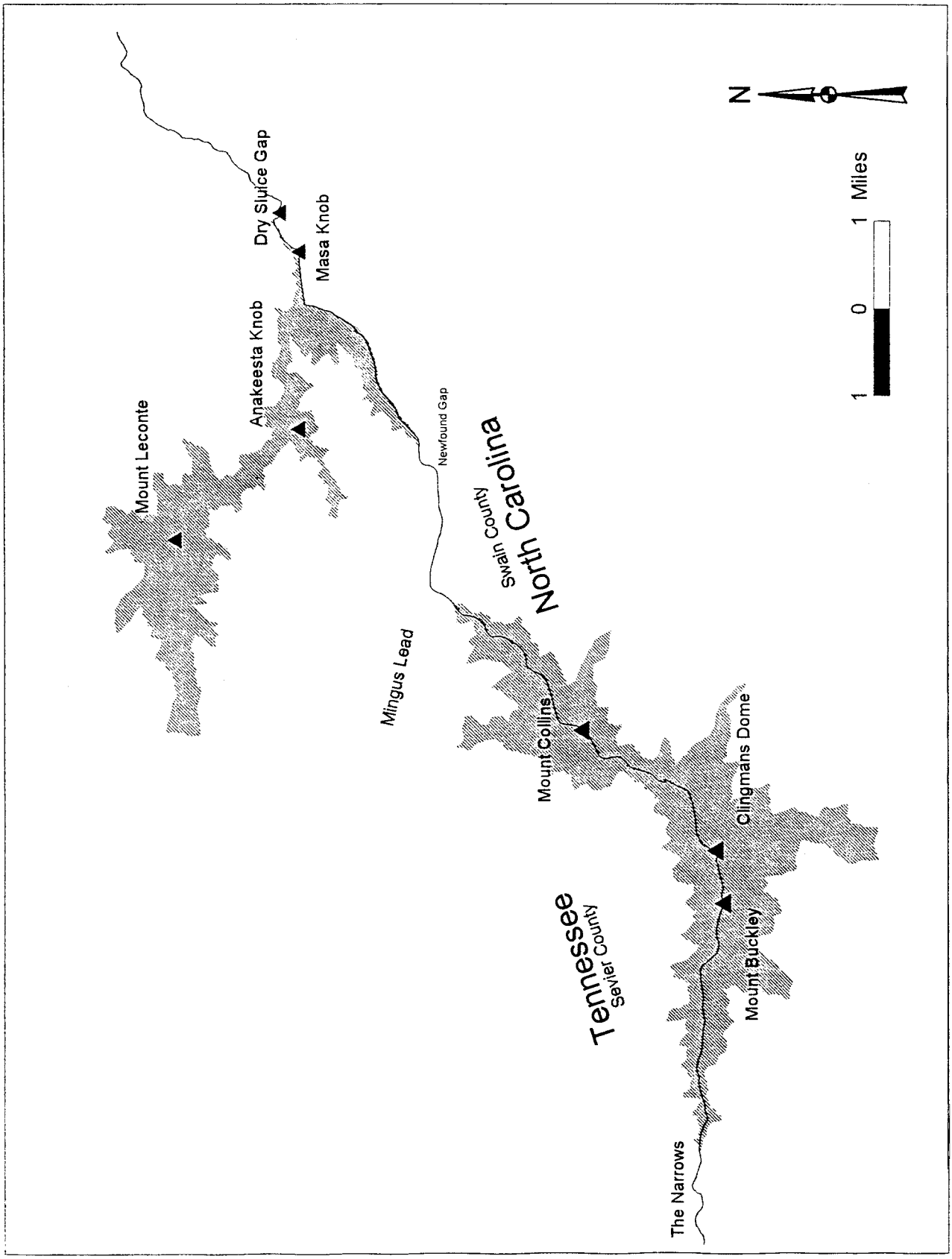
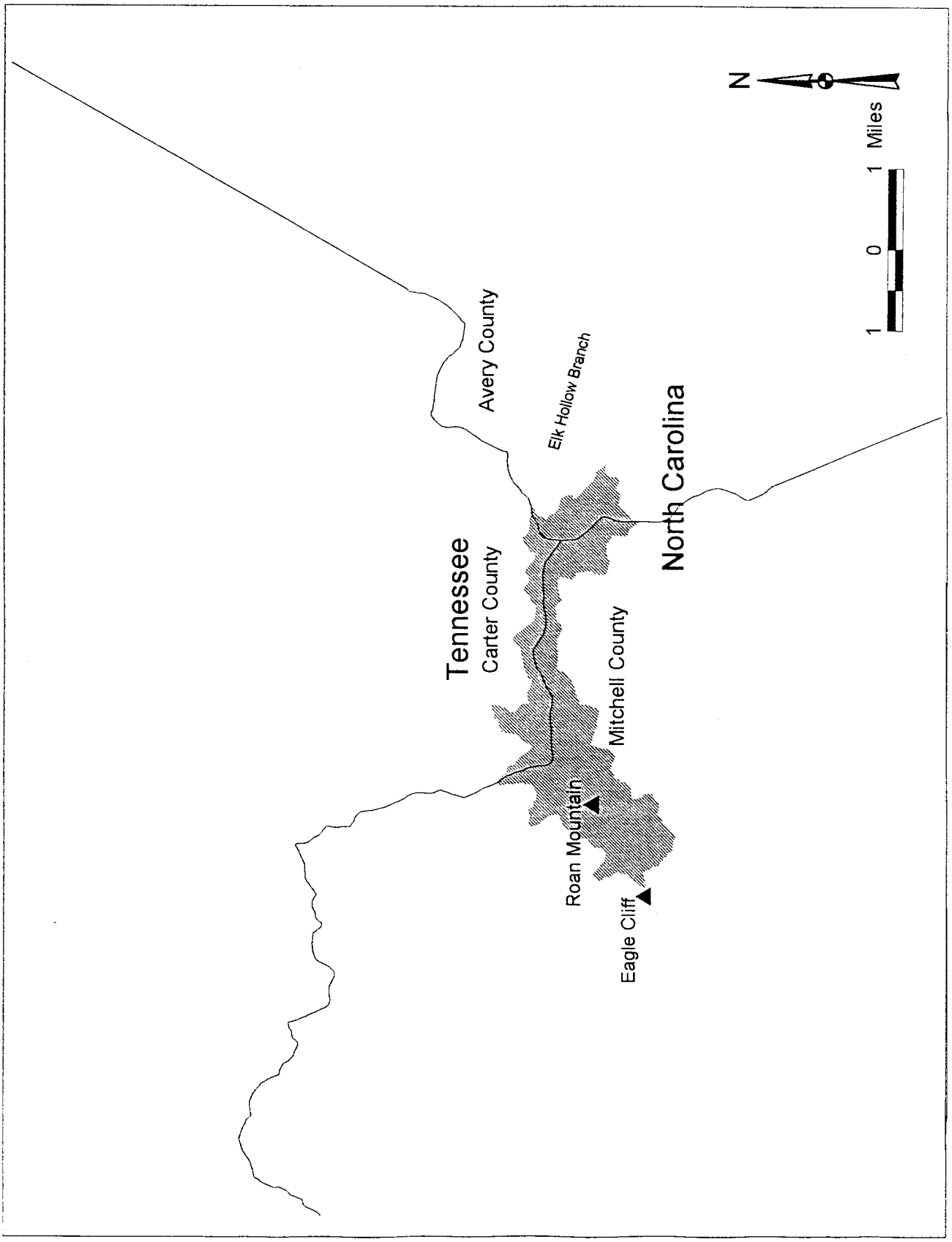


Unit 1: Swain County, North Carolina, and Sevier County, Tennessee—all portions of the GSMNP bounded to the north and to the south of the North Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour,

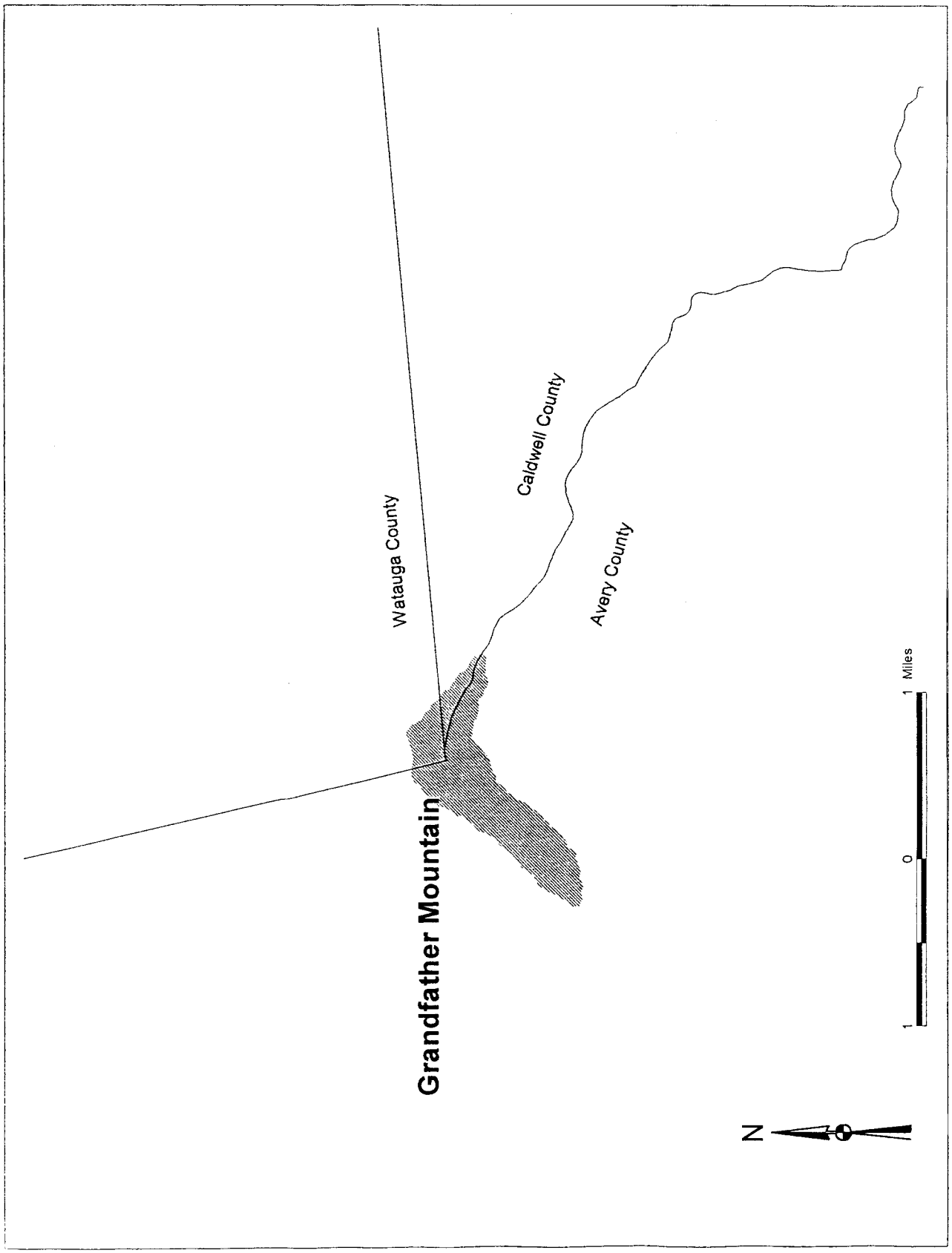
from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The Narrows and west of Jenkins Knob, North Carolina, and Tennessee.

Unit 2: Sevier County, Tennessee—all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the 1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.



Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee—all portions of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, bounded to the north and to

the south of the North Carolina/Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the 1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.



Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina—all areas of Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

2. Within these areas, the primary constituent elements include:

i) Fraser fir or fir-dominated spruce-fir forests at and above 1,646-m (5,400-ft) in elevation; and

ii) Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium,* and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

3. Existing human structures and other features not containing all of the primary constituent elements are not considered critical habitat.

Dated: September 28, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–25671 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000927275-0275-01; I.D. 082800F]

RIN 0648-AO31

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 12

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing a rule to implement portions of Amendment 12 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) prepared Amendment 12 to provide procedures for developing rebuilding plans for overfished species, for setting guidelines for contents of rebuilding plans, and for sending rebuilding plans to NMFS for review and approval/disapproval. Amendment 12 would also declare all Pacific coast groundfish to be fully utilized by domestic harvesters and processors. This action would remove references to foreign and joint venture fishing in the groundfish regulations, and is intended to update the FMP and its implementing regulations to reflect the current status of the fishery.

DATES: Comments must be submitted in writing by November 20, 2000.

ADDRESSES: Send comments to Donna Darm,, Acting Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 12 to the Pacific Coast Groundfish FMP, and the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to William Stelle, Jr. or Rebecca Lent.

FOR FURTHER INFORMATION CONTACT: William Robinson at: phone, 206-526-6140; fax, 206-526-6736, and email, *bill.robinson@noaa.gov* Svein Fougner at: phone, 562-980-4000; fax, 562-980-4047; and email, *svein.fougner@noaa.gov*

Electronic Access: This **Federal Register**document is also accessible via the internet at the website of the Office of the Federal Register: <<http://www.access.gpo.gov/su-docs/aces/aces140.html.≤≤

SUPPLEMENTARY INFORMATION: NMFS is proposing this rule to implement the portions of Amendment 12 that declare the West Coast groundfish resource fully utilized by domestic harvesting and processing entities. Minor regulatory changes would be needed to make the regulations at 50 CFR part 660 consistent with Amendment 12. This proposed rule is based on the Council's recommendations, under the authority of the Pacific Coast Groundfish FMP and the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized here; further details appear in the EA/RIR prepared by the Council for Amendment 12.

Background

In September 1998, the Council adopted Amendment 11 to the FMP to make the FMP consistent with revisions to the Magnuson-Stevens Act. Among other things, Amendment 11 set control rules to define rates of ''overfishing'' and set defined levels at which managed stocks are considered ''overfished.'' Amendment 11 was approved and incorporated into the FMP in March 1999.

While implementing Amendment 11 provisions for rebuilding overfished stocks, the Council determined that it needed to set procedures within the groundfish FMP for developing overfished species rebuilding plans and for providing NMFS with the opportunity to review and approve/disapprove those plans. Amendment 12 provides a process by which the Council will develop overfished species rebuilding plans during its annual specifications and management measures process.

During the Council's two-meeting process for setting annual specifications and management measures (usually September and November,) the Council would make overfished species rebuilding plans available for public review, and would incorporate measures to implement those plans within the annual specifications and management measures. Rebuilding plan contents are defined in the FMP and rely upon the Council's annual stock assessment and review process. Once the Council approves a new rebuilding plan, it would submit that plan for NMFS review and approval/disapproval, generally at the same time that it submits its annual specifications package for review and approval/disapproval. This process would ensure that rebuilding efforts are incorporated into fishery management measures as quickly and efficiently as practicable, and that they are consistent with management measures for other groundfish species.

Procedural matters developed in Amendment 12 for overfished species rebuilding plans provide the Council with direction for future activities, are not regulatory in nature, and so do not result in any change to regulations. However, Amendment 12 also announces that the Pacific Coast groundfish resource is fully utilized by domestic harvesting and processing interests and provides an opportunity for NMFS to update its regulations to recognize this fully utilized status.

Foreign Fisheries and Pacific Coast Underutilized Groundfish Species

When the FMP was first implemented in 1982, most of the vessels were foreign and joint venture vessels and these vessels were primarily targeting Pacific whiting. In 1983, about 60 percent of the whiting optimum yield (OY) was reserved for domestic harvest, and about 3 percent of the OY was reserved for domestic processing. ''Americanization'' happened slowly for the Pacific whiting resource; the whiting OY was not fully utilized by domestic harvesters until 1989, and not fully utilized by domestic processors until 1991. In addition to whiting, there were minor joint venture processing opportunities for shortbelly rockfish and jack mackerel. Those species were considered fully utilized by the domestic fleet by 1992.

In 1991, Amendment 6 to the FMP created a limited entry program and specifically addressed domestic underutilization of the groundfish resource with ''designated species B'' permits. These permits were made available to fishing vessels that had not qualified for limited entry ''A'' permits, to encourage those vessels to fish specifically for Pacific whiting, jack mackerel, and shortbelly rockfish. By the time that the limited entry permit program was implemented in 1994, foreign harvest and processing of the three underutilized species were no longer an issue.

Although the West Coast groundfish fishery has been fully Americanized for almost a decade, the Council had not amended the FMP to reflect the full and expected long-term domestic utilization of the resource until Amendment 12. Amendment 12 still leaves open the possibility of future foreign harvest of West Coast groundfish should domestic utilization decline, but requires an FMP amendment to re-open the fisheries to foreign access. The primary effect of declaring the West Coast groundfish resource fully utilized by domestic fisheries would be to modestly reduce NMFS' and Council's workload associated with the annual specifications and management measures process.

Regulatory changes to implement Amendment 12 would simply remove references within the regulations at 50 CFR 660 to foreign and joint venture fishing. These changes would have neither biological nor socio-economic effects on the environment.

Classification

At this time, NMFS has not determined whether Amendment 12 that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The full effect of this proposed rule would be to remove outdated regulatory language at 50 CFR 660 that refers to foreign and joint venture fishing. There have been no foreign or joint venture fisheries for West Coast groundfish since 1992. These regulatory changes would have no effect on any U.S. businesses, small or otherwise. As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 3, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

l. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definitions for ''Reserve'' and ''Specification'' are revised to read as follows:

§ 660.302 Definitions.

* * * * *

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates.

* * * * *

Specification is a numerical or descriptive designation of a management objective, including, but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision.

* * * * *

3. In § 660.303, paragraph (a) is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323 (a)(4(v). No Federal reports are required of fishermen or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

* * * * *

[FR Doc. 00–25777 Filed 10–5–00; 8:45 am]

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Notices

Federal Register

Vol. 65, No. 195

Friday, October 6, 2000

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Food and Nutrition Service**

Title: Form FNS–388, State Issuance and Participation Estimates.

OMB Control Number: 0584–0081.

Summary of Collection: Section 18(b) of the Food Stamp Act of 1977, as amended, requires that ''In any fiscal year, the Secretary shall limit the value of those allotments issued (under the Food Stamp Program) to an amount not in excess of the appropriation for such fiscal year.'' Timely State monthly issuance estimates are necessary for the Food and Nutrition Service (FNS) to ensure that it remains within the appropriation and will have a direct effect upon the manner in which allotments would be reduced when necessary. FNS uses the FNS–388 report to obtain monthly Statewide estimated or actual issuance and participation data for the current and previous months, and the actual participation data for the second preceding month.

Need and Use of the Information: The FNS–388 report provides the necessary data for an early warning system to enable the Department to fulfill the requirements of Section 18(b) of the Food Stamp Act. In addition, the data is used to: (1) Validate the Annual Food Stamp Household Characteristic Survey; (2) to compile a Statistical Summary Report which is used for special studies and in response to Congressional and other inquiries; and (3) to compare against the coupon issuance points' FNS–250 (which reports issuances from inventory) and reconciliation points' FNS–46 issuance data (which reports issuances for coupons, electronic benefit transfer, and cash-out) for indications of accountability problems.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Reporting: Monthly; Semi-annually.

Total Burden Hours: 4,542.

- **Rural Housing Service**

Title: Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI).

OMB Control Number: 0575–0180.

Summary of Collection: The Rural Community Development Initiative (RCDI) was created by Congress in Fiscal Year 2000 with an appropriation of $6 million under the Rural Community Advancement Program. The Rural Housing Service (RHS) will administer the grant program. The grants will be made to qualified intermediary organizations that will provide technical assistance to recipients to increase their capacity and ability in the areas of housing, community facilities, and community and economic development in rural areas. Eligible recipients are private, nonprofit community/based housing and community development organizations and low-income rural communities.

Need and Use of the Information: RHS will collect information to determine applicant/grantee eligibility, project feasibility, and to ensure that grantees operate on a sound basis and use grant funds for authorized purposes. Failure to collect this information could result in improper use of Federal funds.

Description of Respondents: Not-for profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Annually

Total Burden Hours: 1,702.

- **Agricultural Marketing Service**

Title: Tart Cherries Grown in the states of MI, NY, PA, OR, UT, WA, and WI.

OMB Control Number : 0581–0177.

Summary of Collection: Marketing Order No. 930 (7 CFR part 930) regulates the handling of tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in inter and intrastate commerce and improving returns to growers. The primary objective of the Order is to stabilize the supply of tart cherries. Only tart cherries that will be canned or frozen will be regulated. The Order is administered by a 18 member Board comprised of producers, handlers and one public member with each member serving for a three-year term office.

Need and Use of the Information: Various forms are used to collect information necessary to effectively carry out the requirements of the Order.

The information gathered is used to ensure compliance, verify eligibility, and vote on amendments, monitor and record grower's information. Authorized Board employees and the industry are the primary users of the information.

Description of Respondents: Business or other for profit; arms.

Number of Respondents: 943.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 852.

- **Food and Nutrition Service**

Title: Worksheet for Food Stamp Program Quality Control Reviews, FNS–380.

OMB Control Number: 0584–0074.

Summary of Collection: State agencies are required to perform Quality Control reviews for the Food Stamp Program in conjunction with Section 16 of the Food Stamp Act of 1977. The Food Stamp Worksheet provides a systematic means of aiding the State agency's quality control reviewer in analyzing household case records; planning and carrying out the field investigations; and gathering, comparing, analyzing and evaluating the review data. The Food and Nutrition Service (FNS) has traditionally used the FNS–380 as a hardcopy worksheet; however, recent efforts to automate the form have been completed. FNS would like to implement an automated version of the form at the beginning of FY 2001.

Need and Use of the Information: FNS will use the hardcopy and automated versions of the FNS–380 to document and evaluate each step of the field investigation process to determine eligibility and payment amounts under FNS approved State practices.

Description of Respondents: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 491,967.

- **Rural Business—Cooperative Service**

Title: Research on Rural Cooperative Opportunities and Problems.

OMB Control Number: 0570–0028.

Summary of Collection: The Department of Agriculture Reorganization Act of 1994, Public Law 103–350, established the Rural Business-Cooperative Service (RBS). RBS' mission is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. The primary objective of this funding is to encourage research through cooperative agreements on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. RBS will collect information through research proposals prepared by applicants, who may be public or private colleges or universities, research foundations maintained, by a college or university, or private nonprofit organizations.

Need and Use of the Information: RBS will collect information from applicants to determine: (1) Eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities surrounding the use of funds will be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Without the collection of information, there would be no basis on which to award funds or monitor project progress.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Quarterly.

Total Burden Hours: 1,140.

- **Economic Research Service**

Title: Study of Program Access and Declining Food Stamp Participation.

OMB Control Number: 0536–NEW.

Summary of Collection: The Economic Research Service (ERS) of the Department of Agriculture (USDA) has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including: domestic food assistance programs; low-income assistance programs; food security status of the poor; food consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; and food safety regulations. The Food Stamp Program (FSP) is the cornerstone of the Nation's nutrition safety net for low-income Americans. The program's intent is to eliminate hunger and enable eligible low-income persons to obtain a more nutritionally adequate diet by providing food stamp coupons (or other forms of payment) redeemable at many retail food stores. USDA is concerned about the declines in Food Stamp Program participation that have occurred since 1994, and whether or not the program is reaching all those in need. In an effort to better understand the factors affecting Food Stamp Program participants, the ERS will launch a study. The evaluation is being performed pursuant to Public Law 95–73, which authorizes USDA to undertake research in this area.

Need and Use of the Information: ERS will collect information to describe the policies and practices in local food stamp offices, particularly those instituted since welfare reform, that may affect accessibility to the FSP; to examine how local policies and practices affect households' decisions to apply for food stamps and their decisions to continue to receive food stamps; and to examine the reason eligible households do not participate in the FSP. If the information is not collected, FNS would be severely limited in its ability to make appropriate policy decisions regarding the FSP.

Description of Respondents: Individuals; State, Local, or Tribal Government.

Number of Respondents: 37,278.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 5,110.5.

- Rural Housing Service

Title: 7 CFR 3570–B, Community Facilities Grant Program.

OMB Control Number: 0575–0173.

Summary of Collection: The Consolidated Farm and Rural Development Act (7 U.S.C. 1926) authorizes the Rural Housing Service (RHS) to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, clinics, assisted-living facilities, fire and rescuer stations, police stations, community centers, public buildings, and transportation. The Department of Agriculture through its Community Programs strives to ensure that facilities are readily available to all rural communities.

Need and Use of the Information: Rural Development field offices will collect information from applicant/borrowers and consultants. This information is used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect information could have an adverse impact on effectively carrying out the mission, administration, processing, and program requirements.

Description of Respondents: Not-for-profit institutions: State, Local, or Tribal Government.

Number of Respondents: 294.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,078.

- **Agricultural Marketing Service**

Title: Vegetable and Specialty Crops.

OMB Control Number: 0581–0178.

Summary of Collection: The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in inter and intrastate commerce and improving returns to growers. The Order and agreements are administered by committees/board comprised of producers/growers, handlers and in some cases, a member representing the public. The marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas to work together to solve marketing problems that cannot be solved individually.

Need and Use of the Information: Various forms are used to collect information necessary to effectively carry out the requirements of the Act and the Order/Agreement. Information collected is used to formulate market policy, track current inventory and statistical data for market development programs, ensure compliance, and verify eligibility, monitor and record grower's information. The Committees/Boards periodically review the forms to avoid unnecessary duplication by industry and public sector agencies. If information were not collected, it would eliminate data needed to keep the industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for profit; Farms; Federal Government; Individuals or households; Not-for-profit institutions.

Number of Respondents: 17,463.

Frequency of Responses: Reporting: On occasion, Quarterly, Biennially, Weekly, Semi-annually, Monthly, Annually and Recordkeeping.

Total Burden Hours: 9,102.

- **National Agricultural Statistics Service**

Title: Nursery and Greenhouse Production Survey and Nursery and Floriculture Chemical Use Survey.

OMB Control Number: 0535–NEW.

Summary of Collection: In February 1997, the Secretary of Agriculture issued the report of the Civil Rights Action Team entitled ''Civil Rights at the Department of Agriculture.'' Civil Rights teams were formed to implement the report recommendations. One of the recommendations that was a direct outcome of the evaluation was the condition of farm workers. The team recognized the need for reliable pesticide use information about enterprises that involve farm workers and requested that the National Agricultural Statistics Service (NASS) obtain pesticide use information for commodities which require intensive farm labor. Congress appropriated funds for the collection of pesticide use data on nursery and flouriculture operations. NASS will incorporate biennial nursery production statistics into the NASS estimating program to measure the nursery industry's growing significance to the agriculture economy and also provide a link to the collection of chemical use data. The data will be collected under the authority of 7 U.S.C. 2204(a). NASS will collect information using surveys.

Need and Use of the Information: NASS will collect information to assess the environmental and economic impact of various programs, policies, and procedures on nursery and flouriculture operators and their workers. The basic chemical use and farm practices information will be used to enhance the national chemical use database maintained by NASS. The information will also aid in determining the needs of growers, such as appropriation of research funds to target pests and diseases.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 9,834.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 5,098.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–25727 Filed 10–5–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Public Meeting on U.S. Participation in the 17th Annual Meeting of the International Consultative Group on Food Irradiation

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: FAS is informing the public of a meeting to be held Friday, October 20, 2000, at the U.S. Department of Agriculture (USDA) in Washington, DC. The purpose of this meeting is to solicit public comment on U.S. participation in the 17th annual meeting of the International Consultative Group on Food Irradiation (ICGFI), November 1–3, 2000, in Geneva, Switzerland, including future activities (Plan of Work), U.S. level of contributions (funding), and ICGFI's role. It is also to seek public input in identifying any new issues of concern that should be considered.

Representatives from past delegations will also be present to apprise the public of the background of ICGFI, its mandate, past contributions and to respond to questions. ICGFI was established under the joint aegis of the Food and Agriculture Organization of the United Nations (FAO), the International Atomic Energy Agency (IAEA) and the World Health Organization (WHO).

The functions of ICGFI are:

1. To evaluate global developments in the field of food irradiation;
2. To provide a focal point of advice on the application of food irradiation to Member States and the three Organizations; and
3. To furnish information, as required, through the Organizations, to the Joint FAO/IAEA/WHO Expert Committee on the Wholesomeness of Irradiated Food and the Codex Alimentarius Commission.

DATES: The public meeting date is Friday, October 20, 2000, 9 a.m. to 11 a.m., Washington, DC in the back of the cafeteria, South Building. Written comments should be submitted by October 17, 2000. All visitors should enter at Wing 2 on the C Street side of the South Building.

FOR FURTHER INFORMATION CONTACT: Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 1400 Independence Avenue, SW., Washington, DC 20250; (202) 720–1301; or e-mail ofsts@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Topics To Be Discussed at the Public Meeting Include the Following:

Should the United States continue to support ICGFI financially?

Should United States government funding for ICGFI continue at the same level, increase, or decrease?

Should contributions continue to come only from the Government, or should industry contribute as well (or in place of the Government)?

Should the proposed ''Programme of Work and Budget for 2001'' be approved?

Programme of work	Estimated budget (US$)
1. International Trade	
(a) Food Irradiation Process Control School (FIPCOS) for Food Inspectors	25,000

Programme of work	Estimated budget (US$)
(b) Workshop on Food Safety/Trade in Irradiated Food With the SU	10,000
(c) Workshop on Certification of Food Irradiation Process in Latin America	25,000
(d) Establishing an Irradiation Promotion Council E-Commerce to Facilitate Trade in Irradiated Food	15,000
2. Codification	
(a) Amendments to Codex General Standard for Irradiated Foods and Its Code of Practice (through the Codex Committee on Food Additives and Contaminants)	5,000
(b) Amendment to the Labeling Provisions on Irradiated Foods (through the Codex Committee on Food Labelling)	5,000
(c) Publication of Revised Code of Good Irradiation Practice	in-kind
3. Information Transfer	
(a) Publication of Brochure on Application of ''High-Dose Irradiation of Food''	in-kind
(b) ICGFI/IUFoST Symposium on Food Irradiation	10,000
(c) Preparation of Education Materials on Food Irradiation	5,000
(d) Publication of Brochure on ''Irradiation Food Safety''	in-kind
4. Database	
(a) Maintain database on list of clearance of irradiated food	no-cost
(b) Update current databases: national regulations, authorized food irradiation facilities, authorized packaging, materials, etc.	no-cost
5. Administration	
(a) One professional staff (part-time)	45,000
(b) One support staff (full time)	60,000
(c) Travel	10,000
(d) Miscellaneous (telephone, shipping, etc.)	5,000
Total (cash)	220,000

What is the appropriate role for industry and consumer groups?

Should industry participate as delegates?

Are there any other topics we think ICGFI should address?

Background Information on ICGFI

What Is ICGFI?

An independent body composed of government-designat experts on food irradiation.

How Was ICGFI Formed?

In 1982, the Directors General of FAO, IAEA and WHO invited Member States to consider forming a consultative group to focus in international co-operation in food irradiation. Upon receipt of a favorable response from 44 Member States, those present at a meeting in 1983 drafted a Declaration establishing the International Consultative Group on Food Irradiation (ICGFI). ICGFI, composed of experts or other participants designated by each government, was established in 1984 for an initial period of 5 years.

How Is ICGFI Organized?

FAO, IAEA and WHO, through the Joint FAO/IAEA Division of Nuclear Techniques in Food and Agriculture based at the IAEA, Vienna, serve as ICGFI's Secretariat.

What Are the Functions of ICGFI?

1. To evaluate global developments in the field of food irradiation;

2. To provide a focal point of advice on the application of food irradiation to Member States and the three Organizations; and

3. To furnish information, as required, through the Organizations, to the Joint FAO/IAEA/WHO Expert Committee on the Wholesomeness of Irradiated Food and the Codex Alimentarius Commission.

Who Determines the Priorities?

ICGFI funds and operates its own programs, focusing on developing policy guidelines related to the safety assurance of the process, legislation, public information, economic feasibility, food safety, and international trade.

How Does ICGFI Acquire Funding?

Member State governments pledge, or arrange for participants to pledge to make voluntary contributions in cash or in kind, for carrying out the activities of the Consultative Group. The Consultative Group may accept voluntary contributions in cash or in kind from Non-Member State governments and from organizations whose objectives are consistent with those of the Consultative Group.

What Are the Guidelines for Donations to ICGFI?

1. IAEA rules govern the acceptance of gifts of services, equipment, facilities and money.

2. Voluntary contributions may be offered to the Agency by: United Nations Member State governments, intergovernmental organizations and non-governmental sources.

3. Contributions may not exceed US $100,000 or its equivalent per year.

How Much Does the United States Contribute?

For the past 2 years, various Departments and Agencies have together contributed $20,000 to ICGFI each year.

How Frequently Does ICGFI Meet?

ICGFI convenes annual meetings to develop technical recommendations and to consider its program of work and budget. At the 10th Annual Meeting held at WHO Headquarters in Geneva from November 2–4, 1993, the group's experts recommended that the ICGFI mandate be extended for a further 5 years until May 1999.

How Much Longer Does ICGFI's Mandate Last?

Many of the activities set out for ICGFI in the original mandate have been accomplished. However, a Task Force identified six areas of activity in which further work is needed. In October 1998 at the 15th Annual Meeting, the mandate of the ICGFI was extended to another 3 years, *i.e.,* May 1999 to May 2002. The ICGFI program will be co-ordinated by a Management Committee and will be refocused, putting emphasis on international trade, information exchange, high dose irrigation and seminars/training.

What Kind of Training is ICGF Involved With?

One example is the FAO/IAEA/WHO International Conference on Irradiation to Ensure the Safety and Quality of Food, in Antalya, Turkey, October 19–22, 1999. This Conference reviewed achievements on food irradiation during the 20th century and examine the rule of irradiation to ensure the safety and quality of food in trade. Irradiation is increasingly accepted and applied as a sanitary and phytosanitary treatment of food in trade. Currently, some 50 countries have approved one or more irradiated foods items or classes of food for consumption and over 30 countries are actually applying the technology in practice. The number of irradiation facilities available for treating food has increased in recent years with many more under construction or planned. Consumers are getting accurate information and are beginning to appreciate the benefit of irradiated food.

Another example is the Trade Opportunities for Irradiated Food in Hawaii; 22–24 May 2000 to inform representatives of the food industry and trade in Asia and the Pacific and the USA of the role of irradiation as a sanitary and phytosanitary treatment in order to expedite international trade in food and agricultural commodities.

Who Belongs to ICGFI?

The group is currently composed of the following 47 Member States, more than half of which are developing countries: Argentina, Australia, Bangladesh, Belgium, Brazil, Bulgaria,

Canada, Chile, People's Republic of China, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, Ghana, Greece, Hungary, India, Indonesia, Iraq, Israel, Italy, Republic of Korea, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Pakistan, Peru, Philippines, Poland, Portugal, South Africa, Syrian Arab Republic, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, USA, Vietnam, and Yugoslavia.

Do Only Government Representatives Attend ICGFI Meetings?

Meetings are attended by designated experts from ICGFI member governments, and representatives of other interested governments, international organizations and non-governmental organizations are invited by ICGFI to attend as observers.

Where Is the Secretariat Located?

Food & Environmental Protection Section, Joint FAO/IAEA Division of Nuclear Techniques in Food and Agriculture, International Atomic Energy Agency, Wagramerstrasse 5, P.O. Box 100, A–1400 Vienna, Austria. Phone: (43–1) 2600 extension 21638 or 21639; Facsimile: (43–1) 26007; e-mail: Official.Mail@iaea.org

How Does ICGFI Communicate With All the Countries?

There is an ICGFI National Contact Point for each Member State.

What Are the Responsibilities of ICGFI Contact Points?

1. Distribution within the country of documents, working papers and other information material emanating from ICGFI or its Secretariat;
2. Co-ordinating the preparation for transmission to the Secretariat of technical comments/information requested;
3. Taking follow-up action on particular matters, in collaboration with the expert(s) attending the particular ICGFI meeting;
4. Providing information, as available, to the Secretariat on the status of food irradiation technology, its regulatory control and other related topics of interest to ICGFI; and
5. Ensuring that information made available by the ICGFI Secretariat is disseminated to the interested national entities/individuals.

Public Meeting

The public meeting will take place at the U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC, back of the cafeteria, South Building. To accommodate all public forum participants, we request that individuals planning to attend should so inform the Department in advance by contacting: Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 1400 Independence Avenue, SW., Washington, DC 20250; (202) 720–1301; or e-mail ofsts@fas.usda.gov. Please indicate the organization represented, if any, including the names and titles of individuals attending.

Written Comments

Those persons wishing to submit written comments should provide five (5) typed copies to Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Stop Code 1027, Room 5545, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

If the submission contains business confidential information, five copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''nonconfidential.''

Written comments submitted in connection with this request, except for information deemed ''business confidential'' by FAS will be available for public inspection in the USDA Reading Room, Room 1141, USDA South Building, 1400 Independence Avenue, SW., Washington, DC. Normal Reading Room hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Please call (202) 690–2817 to assure that assistance will be available in the Reading Room.

Dated: October 2, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 00–25726 Filed 10–5–00; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on October 25 and 26, 2000, at the Best Western El Grande Banquet Room in Clearlake, California. The meeting will be held from 1 p.m. until 5 p.m. on Wednesday, October 25, and from 8 a.m. to 3:15 p.m. on Thursday, October 26. The Best Western El Grande is located at 15135 Lakeshore Drive in Clearlake.

Agenda items to be covered include: (1) Panel on State and Federal Watershed Analyses/restoration programs; (2) Panel discussion on the issue of restoring native fish populations and their habitat on federal lands in the Province; (3) Presentation on demographics of northern spotted owls in Marin County; (4) Regional Ecosystem Office (REO) update; (5) Videotape presentation of Redwood National Park road program; (6) Megram Fire Update; (7) IAC/PAC/REIC communication; (8) Draft action plan for the Province comprehensive road work/fisheries and watershed restoration plan; and (9) open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to James Fenwood, Forest Supervisor, or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988; (530) 934–3316.

Dated: September 19, 2000.

James D. Fenwood,

Forest Supervisor.

[FR Doc. 00–25711 Filed 10–5–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting October 17, 2000, at the Tahoe City Public Utility District Board Room, 221 Fairway Drive, Tahoe City, California 96145. This committee, established by the Secretary of Agriculture June 23, 2000 (65 FR 44519), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency

Partnership at Lake Tahoe and on other matters raised by the Secretary.

DATES AND TIME: The meeting will be held October 17, 2000, beginning at 9 a.m. and ending at 4 p.m. Public comment period is scheduled for 2 p.m.

ADDRESSES: The meeting will be held at the Tahoe City Public Utility District Board Room, 221 Fairway Drive, Tahoe City, California 96145.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Sue Fitzgerald, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150; (530) 573–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include:

(1) Agenda Review

(2) Budget Subcommittee Report

(3) Legislative Update

(4) Update on the Federal Partnership Actions Progress Report

(5) Update on the U.S. Fish & Wildlife Service's proposal to list the Tahoe Yellow Cress As an Endangered Species

(6) Update on the Environmental Improvement Program

(7) Discussion on the need for a communications subcommittee

(8) Discussion on possible amendments to the Lake Tahoe Basin Federal Advisory Committee consensus process

(9) Public comment.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the committee during the open public comment period at the meeting or by filing written statements with the secretary for committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address above.

Late Notice: Owing to staff transition and shortages at the Lake Tahoe Basin related to this year's extremely heavy fire season in the western states, this notice is being filed under the usual 15-day notification period.

Dated: October 2, 2000.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 00–25690 Filed 10–5–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

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

ACTION: Proposed additions to and deletion from the Procurement List.

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

Comments Must Be Received on or Before: November 6, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot, (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.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the 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 services to the Government.

2. The action will result in authorizing small entities to furnish the 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 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 services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Support Services (Recreational Aide)

Building 156, Altus Air Force Base, Oklahoma
NPA: Oklahoma County Council for Mentally Retarded Citizens, Inc., Oklahoma City, Oklahoma

Janitorial/Grounds Maintenance

Portsmouth Federal Building, 431 Crawford Street, Portsmouth, Virginia
NPA: Portco, Inc., Portsmouth, Virginia

Deletion

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.

2. The action will result in authorizing small entities to furnish the commodity 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 commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Ribbon, Typewriter
7510–01–233–0033

Rita L. Wells,

Deputy Executive Director.

[FR Doc. 00–25785 Filed 10–5–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

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

ACTION: Additions to the Procurement List.

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

EFFECTIVE DATE: November 6, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, August 11, and 18, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 40607, 49217 and 50499) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are 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 services to the Government.

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

3. The action will result in authorizing small entities to furnish the services 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 services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART

MacDill Air Force Base, Florida

Janitorial/Custodial

Defense Systems Management College (DSMC), 9820 Belvoir Road, Fort Belvoir, Virginia

Wheelchair Maintenance

Veterans Affairs Medical Center, 800 Zorn Avenue, Louisville, Kentucky

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.

Rita L. Wells,

Deputy Executive Director.

[FR Doc. 00–25786 Filed 10–5–00; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, October 13, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of September 15, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. Mississippi Delta Hearing Report
VI. Supreme Court Project
VII. State Advisory Committee Reports
- The Decision to Prosecute Drug Offenses and Homicides in Marion County, Indiana (Indiana)
- Limited-English-Proficient Students in Maine: An Assessment of Equal Educational Opportunities (Maine)
- The Status of Equal Opportunity Minorities in Moorhead, Minnesota (Minnesota)
- Community Forum on Race Relations in Racine County, Wisconsin (Wisconsin)

VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, JR.

Acting General Counsel.

[FR Doc. 00–25979 Filed 10–4–00; 2:58 pm]

BILLING CODE 6335–0–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on the American Indian and Alaska Native Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee on the American Indian and Alaska Native Populations. The meeting will focus on data and geographic products affecting American Indians and Alaska Native Populations. We are still finalizing the details of the meeting's agenda.

DATES: November 1, 2000. The meeting will begin at 12:30 p.m. and end at approximately 5:15 p.m.

ADDRESSES: The meeting will take place at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Census Bureau, Department of Commerce, Room 1647, Federal Building 3, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Committee is composed of nine members appointed by the Secretary of Commerce. The Committee provides a channel of communication between the representative communities and the Census Bureau. It assists the Census Bureau in its efforts to reduce the differential undercount for American Indian and Alaska Native Populations and advises on ways that decennial census data can best be disseminated to communities and other users. It provides advice and recommendations for the Census Bureau to consider in planning the 2010 census and the American Community Survey.

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer at least three days prior to the meeting.

Dated: October 3, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 00–25730 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees on the American Indian and Alaska Native Populations, the African American Population, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the American Indian and Alaska Native Populations, the African American Population, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population.

DATES: November 2–3, 2000. The November 2 meeting will begin at 9 a.m. and end at 5 p.m. The November 3 meeting will begin at 8:30 a.m. and end at 3:30 p.m.

ADDRESSES: The meeting will take place at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Census Bureau, Department of Commerce, Room 1647, Federal Building 3, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The agenda for the November 2 and 3 meetings will include discussions on the American Community Survey, Census 2000 update, early evaluation results, and other census information. We are still finalizing the details of the meeting's agenda.

The CACs on the American Indian and Alaska Native Populations, the African American Population, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population are composed of nine members each. The Secretary of Commerce appoints the members. The Committees provide an organized and continuing channel of communication between the representative communities and the Census Bureau. They assist the Census Bureau in its efforts to reduce the differential undercount for Census 2000 and advise on ways that census data can best be disseminated to communities and other users. They provide advice and recommendations for the Census Bureau to consider in planning the 2010 census and the American Community Survey.

All meetings are open to the public, and a brief period will be set aside on November 3 for public comment and questions. Individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer at least three days prior to the meeting.

Dated: October 3, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 00–25731 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–2000]

Foreign-Trade Zone 70—Detroit, Michigan Area, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, requesting authority to expand its zone to include an additional site in the Detroit, Michigan area, within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 29, 2000.

FTZ 70 was approved on July 21, 1981 (Board Order 176, 46 FR 38941, 7/30/81) and expanded on April 15, 1985 (Board Order 299, 50 FR 16119, 4/24/85); November 27, 1989 (Board Order 453, 54 FR 50258, 12/5/89); April 20, 1990 (Board Order 471, 55 FR 17775, 4/27/90); February 20, 1996 (Board Order 802, 61 FR 7237, 2/27/96); and, August 26, 1996 (Board Order 843, 61 FR 46763, 9/5/96). The general-purpose zone project currently consists of 15 sites (some 300 acres) for warehousing/storage operations in the Detroit, Michigan area. An application is currently pending for an additional site at the Buske Lines logistics complex in Brownstown Township (FTZ Doc. 42–2000).

The applicant is now requesting authority to expand the general-purpose zone to include an additional site *Proposed Site 17* (593 acres)—within the 1,265 acre Pinnacle Aeropark of Wayne County, located at the southern end of Detroit Metropolitan Airport, east of I–275 and south of Eureka Road. The site encompasses a portion of Huron Township and the City of Romulus. It is owned by Wayne County and will be operated by W. F. Whelan Company. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 5, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 20, 2000.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 211 W. Fort Street, Suite 2220, Detroit, MI 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: September 29, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–25792 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review

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

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: October 6, 2000.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Greg Campbell at (202) 482–0189 and (202) 482–2239, respectively, Office of AD/CVD Enforcement I, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On December 28, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea, covering the period November 1, 1998, through October 31, 1999 (64 FR 72644). On July 18, 2000, the Department extended the time limit for completion of the preliminary results by 66 days, or until no later than October 6, 2000. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Administrative Review,* (65 FR 44521).

Extension of Preliminary Results of Review

We determine that due to limited administrative resources and complex issues present in this review (*e.g.,* date of sale, level of trade, and CEP offset), it is not practicable to complete the preliminary results of this review within the previously extended time limit. Therefore, the Department is further extending the time limits for completion of the preliminary results by an additional 28 days, or until no later than November 3, 2000.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 2, 2000.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration, Group I.

[FR Doc. 00–25793 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review

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

ACTION: Notice of initiation of New Shipper Antidumping Administrative Review.

SUMMARY: The Department of Commerce (''the Department'') has received a request from Shandong Jinma Industrial Group Co., Ltd. (''Jinma'') to conduct a new shipper administrative review of the antidumping duty order on hammers/sledges, one of the four classes or kinds of subject merchandise covered by the antidumping duty orders on heavy forged hand tools (''HFHTs'') from the People's Republic of China (''PRC''). In accordance with 19 CFR 351.214(d) of the Department's regulations, we are initiating this administrative review.

EFFECTIVE DATE: October 6, 2000.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Howard Smith, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–5193 respectively.

The 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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (1999).

Background

On July 20, 2000, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on hammers/sledges. The antidumping duty orders on HFHTs from the PRC have a February anniversary month and an August semiannual anniversary month. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China,* 56 FR 6622 (February 19, 1991).

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), Jinma's July 20, 2000 request for review certified that it did not export the subject merchandise to the United States during the period of investigation (''POI'') and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Jinma's request certified that its export activities are not controlled by the central government of the PRC.

In addition, pursuant to 19 CFR 351.214(b)(2)(iv), Jinma's request contained documentation establishing: the date after the POI on which Jinma first shipped the subject merchandise for export to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review,* 65 FR 17257 (March 31, 2000). Accordingly, we will issue a separate rates questionnaire to the above-named respondent. If respondent Jinma provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of HFHTs, this review will proceed. If, on the other hand, Jinma does not meet its burden to demonstrate its eligibility for a separate rate, then Jinma will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(iii)(B).

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on hammers/sledges from the PRC. Therefore, we intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Pursuant to 19 CFR 351.214(g)(1)(i)(B) of the Department's regulations, the period of review (''POR'') for a new shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this new shipper is:

Antidumping duty proceeding	Period to be reviewed
HFHTs from the PRC, A–570–803: Shandong Jinma Industrial Group Co., Ltd	2/1/00–7/31/00

Subject to receipt of an adequate separate rates questionnaire response from the respondent, we will instruct the U.S. Customs Service to suspend liquidation of unliquidated entries of subject merchandise from the above company and allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the companies listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: September 28, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary For Import Administration.

[FR Doc. 00–25791 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

New York Board of Trade; Proposed Amendments to the Coffee ''C'' Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The New York Board of Trade (Exchange) has proposed amendments to the Exchange's coffee ''C'' futures contract. The proposed amendments would specify the conditions under which deliverers, receivers and operators of regular warehouses are liable for the repair of torn coffee bags, require that Exchange-licensed warehouses maintain a log of the required weekly inspections of futures delivery coffee, and establish an expedited arbitration procedure to be used in the case of controversies concerning liability for torn bags. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provide that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on October 30, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before October 23, 2000.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary @cftc.gov. Reference should be made to the proposed amendments to the New York Board of Trade coffee ''C'' futures contract regarding torn coffee bags.

FOR FURTHER INFORMATION, CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: The coffee 'C' futures contract currently calls for the delivery of specified growths of washed arabica coffee packaged in bags and held in storage at Exchange-licensed warehouses located in New York, New Orleans and Miami. The duties and obligations of licensed warehouse operators are specified in Coffee 'C' Resolution No. 2 Under Part (IV)(2) of Resolution No. 2, Exchange-licensed warehouse operators are required to maintain coffee bags in store in accordance with Exchange standards, including keeping the stored coffee bags and coffee clean, undamaged, and free from any and all foreign matter which could be detrimental to the delivery of the coffee. Licensed warehouse operators also are required to conduct weekly inspections of each lot of Exchange coffee in store to determine the condition and conformity with Exchange standards.

Part (IV)(3) of Resolution No. 2 currently requires that licensed warehouse operators are required to promptly repair any coffee bags that are torn, bags from which coffee beans are sifting, or bags that are in peril of having coffee beans spilled therefrom. Part (IV)(4) further provides that, with the exception of coffee bags that exhibit the aforementioned conditions, the licensed warehouse operator must notify the owner of the coffee of any further maintenance to be performed on the bags and provide the owner five business days to respond. If no response is received within five business days, the owner is deemed to have authorized the maintenance and to have agreed to pay all costs associated with said maintenance. The resolution also currently specifies that the licensed warehouse operator may notify the Exchange if the warehouse operator believes that the response received from the owners is insufficient to bring the coffee bags into compliance with Exchange standards.

The proposed amendments would implement new provisions clarifying the responsibilities of deliverers, receivers and licensed warehouse operators with regard to the repair of torn bags. The proposed amendments would provide, in part, that, if the licensed warehouse operator has given written notice to the deliverer prior to delivery that one or more of the bags containing the delivery coffee are torn, the deliverer of the coffee is responsible for the repair of the torn bag(s). Alternatively, if the warehouse has met its obligations as provided in Coffee ''C'' Resolution No. 2(IV)(2) and the receiver has failed to inspect the coffee during the seven business days between the issuance of the delivery notice and the delivery date, the receiver is responsible for repair of the bag(s). The proposed amendments will further specify that, in order for the warehouse to demonstrate that it is conducting the weekly inspections of the coffee as required in

Coffee ''C'' Resolution No. 2(IV)(2), the warehouse will be required to keep a log of the weekly inspections. The log will be required to contain specific information including the location of the warehouse, the name of the individual who conducted the inspection, and the Exchange application and lot numbers of the bags found to require maintenance work.

The proposed amendments also would provide, in part, that a dispute between any member and a licensed warehouse operator concerning the liability for a torn bag during the delivery period may be settled by arbitration before a Special Arbitration Committee consisting of three disinterested members of the Exchange's Warehouse and License Committee, who must be appointed by the Committee's Chairman within one business day after the Exchange's receipt of a written notice of the dispute. If members of the Warehouse and License Committee have an interest in the dispute, the Chairman may appoint other persons who are associated with coffee warehousing and storage. However, at least one member of the Special Arbitration Committee must be a member of the Exchange's Warehouse and License Committee. The proposed amendments also would change the fee a claimant must pay for filing a notice of dispute with the Exchange to $375 *for each lot* of coffee covered by a notice of dispute, in place of the current requirement that a single fee of $375 per notice by paid.

The Exchange intends to make the proposed amendments effective upon Commission approval for all existing and newly listed contract months.

According to the Exchange, the proposed amendments concerning the liability for repair of torn coffee bags essentially will provide that, as long as the warehouse is doing its job as required by Resolution No. 2, then either the delivery or the receiver is responsible for repair of the bags.

The Division is requesting comments on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 3,2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–25924 Filed 10–5–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01–C00001]

Crawford Textile Corporation, a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Profice Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(f). Published below is a provisionally-accepted Settlement Agreement with Crawford Textile Corporation, a corporation, containing a civil penalty of $150,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 23, 2000.

ADDRESSES: Persons wishing to commment on this Settlement Agreement should send written comments to the Comment 01–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0226, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 2, 2000.

Todd A. Stevenson,

Deputy Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Crawford Textile Corporation (hereinafter, ''Crawford'' or ''Respondent''), a corporation, and the staff of the Consumer Product Safety Commission (hereinafter, ''Staff''), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent federal regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

3. Respondent Crawford Textile Corporation is a corporation organized and existing under the laws of the State of North Carolina. Its office is located at 319–A South Westgate Drive, Greensboro, NC 27407. Respondent is a converter of circular knitted fabrics.

II. Allegations of the Staff

A. Violation of the Flammable Fabrics Act

4. On August 27, 1998, Respondent entered into a contract with Milano Express, Inc. (hereinafter, ''Milano'') whereby Respondent agreed to manufacture for sale approximately 25,000 yards of weathered blue sherpa fabric, style number 11012, 80% cotton/20% polyester (hereinafter, ''fabric'').

5. In September 1998, Respondent manufactured for sale approximately 22,570 yards of fabric for Milano.

6. Respondent sold, caused to be transported, and delivered after a sale, in commerce, approximately 22,570 yards of fabric to Milano in September 1998.

7. The fabric is subject to the Standard for the Flammability of Clothing Textiles (hereinafter, ''Clothing Standard''), 16 CFR Part 1610, issued under section 4 of the Flammable Fabrics Act (FFA), 15 U.S.C. 1193.

8. After Respondent had shipped and distributed all of the fabric to Milano,

Respondent received flammability test reports for the fabric on October 7 and 9, 1998. The test results showed that several lots of the fabric did not comply with the Clothing Standard and, therefore, were dangerously flammable and unsuitable to be made into clothing because of their rapid and intense burning.

9. Respondent never informed Milano that several lots of the fabric did not comply with the Clothing Standard. As a result, Milano distributed to a retailer between 3,300 to 4,000 sweatshirts made from fabric that violated the Clothing Standard.

10. On February 2, 1999, the staff learned an 80 year old woman suffered third degree burns to 18% of her body when the blue pullover Milano sweatshirt she was wearing caught fire when she struck a book match to light her cigarette and a burning fragment of the match head landed on it.

11. After receiving this report, the staff sampled a Milano blue pullover sweatshirt from a retailer. The staff tested the sweatshirt. The test results showed the sweatshirt violated the Clothing Standard and, therefore, was dangerously flammable and unsuitable for clothing because it was susceptible to rapid and intense burning when exposed to an ignition source. Respondent manufactured the blue sherpa fabric used by Milano to manufacture the sweatshirt that the staff tested.

12. On March 17, 1999, the staff notified Milano that the sweatshirt failed to comply with the Clothing Standard.

13. After receipt of this information, Milano tested sweatshirts made from fabric manufactured by Respondent. The test results confirmed the sweatshirts violated the Clothing Standard.

14. Respondent knowingly manufactured for sale, sold, caused to be transported, and delivered after a sale, in commerce, fabric that violated the Clothing Standard, as the term ''knowingly'' is defined in section 5(e)(4) of the FFA, 15 U.S.C. 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. 1192, and subjects Respondent to civil penalties pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

B. Violation of the Consumer Product Safety Act

15. The allegations contained in paragraphs 4 through 14 above are repeated and realleged, as applicable.

16. The fabric is a ''consumer product'' and Respondent Crawford Textile Corporation is a ''manufacturer'' of a ''consumer product'' which is ''distributed in commerce'' as those terms are defined in sections 3(a)(1), (4), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4), and (11).

17. Upon receipt of failing flammability test results in October 1998, Respondent had sufficient information to conclude that several lots of the fabric contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death. Specifically, the fabric presented a flammability risk.

18. Respondent also had sufficient information to foresee that its fabric could cause severe burn injuries or death.

19. Respondent did not notify Milano or the Commission of its failing test results, or of the risk presented by garments manufactured with its fabric.

20. On or about March 25, 1999, Respondent learned from Milano that the Commission had sampled and tested a sweatshirt made from fabric manufactured by Respondent and found it was dangerously flammable and unsuitable for clothing because of its rapid and intense burning.

21. On or about March 29, 1999, Milano faxed to Respondent the Commission's and its own flammability test reports for sweatshirts made from fabric manufactured by Respondent. The test results showed that sweatshirts made from that fabric violated the Clothing Standard.

22. Only after receiving all of this evidence and knowing the Commission was already aware of the hazard did Respondent notify the Commission about its hazardous fabric pursuant to section 15(b) of the CPSA.

23. By October 1998, Respondent had obtained sufficient information to reasonably support the conclusion that the fabric contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death. Respondent failed to report such information in a timely manner as required by section 15(b) of the CPSA. A failure to report under section 15(b) is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4). By knowingly failing to report, Respondent is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Response of Respondent

24. Respondent denies the staff's allegations set forth in paragraphs 4 through 23 above.

25. Respondent denies that it knowingly violated either the Flammable Fabrics Act or the Consumer Product Safety Act.

IV. Agreement of the Parties

26. The Commission has jurisdiction over Respondent and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*; the Flammable Fabrics Act (FFA), 15 U.S.C. 1191 *et seq.*; and the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.*

27. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA's Clothing Standard and/or the CPSA's Reporting Requirement.

28. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(f). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the **Federal Register**.

29. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA, as alleged, or the CPSA, as alleged, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

30. In settlement of the staff's allegations, Respondent agrees to pay a $150,000.00 civil penalty as set forth in the incorporated Order.

31. The Commission may publicize the terms of the Settlement Agreement and Order.

32. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

33. A violation of the attached Order shall subject Respondent to appropriate legal action.

34. Agreement, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

35. The provisions of this Settlement Agreement and Order shall apply to Respondent and each of its successors and assigns.

Respondent Crawford Textile Corporation

Dated: August 30, 2000

John C. McCuiston,
President, Crawford Textile Corporation, 319–A South Westgate Drive, Greensboro, NC 27407.

Commission Staff

Alan H. Schoem,
Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, D.C. 20207–0001.

Eric L. Stone,
Director, Legal Division, Office of Compliance.

Dated: August 31, 2000

Dennis C. Kacoyanis,
Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Crawford Textile Corporation (hereinafter, ''Respondent''), a corporation, and the staff of the Consumer Product Safety Commission (''Commission''); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest. IT IS

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further ordered, that upon final acceptance of the Settlement Agreement and Order, Respondent Crawford Textile Corporation shall pay to the United States Treasury a civil penalty in the amount of *One Hundred Fifty Thousand and 00/100 Dollars* ($150,000,000) in three (3) payments each. The first payment of *Fifty Thousand and 00/100 Dollars* ($50,000) shall be paid within twenty (20) days after service of the Final Order of the Commission (hereinafter, ''the anniversary date''). The second payment of *Fifty Thousand and 00/100 Dollars* ($50,000.00) shall be paid within one (1) year of the anniversary date. The third payment shall be paid within two (2) years of the anniversary date. Upon the failure of Respondent Crawford Textile Corporation to make a payment or upon the making of a late payment by Respondent Crawford Textile Corporation (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisioned Order issued on the 2nd day of October, 2000.

By Order of the Commission.

Todd A. Stevenson,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 00–25659 Filed 10–5–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting.

Name of Committee: Army Science Board (ASB).

Date of Meeting: October 30, 2000—November 1, 2000.

Time of Meeting: 0730—1700.

Place: Fort Benning, Georgia (Classroom Six in the Infantry Hall).

Agenda: The Army Science Board's (ASB) will hold their annual Fall Membership meeting at Fort Benning. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Mr. Everett R. Gooch at (703) 604–7479.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 00–25759 Filed 10–5–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy, Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 17 November 2000.

Place of Meeting: Superintendent's Conference Room, Taylor Hall, United States Military Academy, West Point, New York.

Start Time of Meeting: Approximately 1 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lieutenant Colonel John L. Pothin, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Review of the Academic, Military and Physical Programs, Bicentennial Campaign, Athletic Program, Admissions at USMA and USMAPS Program update. All proceedings are open.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–25657 Filed 10–5–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of Notice of Intent To Prepare a Draft Environmental Impact Statement for the Whitney Point Lake Project Modification, Susquehanna River Basin Water Management Feasibility Study, Broome County, NY

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

ACTION: Notice of withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, Baltimore District, is withdrawing its intent to prepare a Draft Environmental Impact Statement (DEIS) for modification of the Whitney Point Lake, Broome County, New York. The Corps' environmental analyses have not identified any significant adverse impacts associated with the proposed action; therefore, intent to prepare a DEIS is hereby terminated. The Corps is preparing an Environmental Assessment (EA) for the proposed project modification. The draft EA evaluates the elimination of the 7-foot annual winter drawdown and the release of water from the lake for low flow augmentation (drought conditions) for the enhancement of acquatic habitat downstream of the lake, in the Otselic, Tioughnioga, and Chenango River reaches. The Susquehanna River Basin Commission is the non-Federal, cost-sharing partner and is participating in the feasibility study and draft EA development. The goal of this project is to provide for low flow augmentation during drought conditions and reduce the stress upon the aquatic ecosystem. Formulation of the restoration measures focus on examining existing conditions, maximizing potential benefits to the in-lake and downstream aquatic resources, and minimizing impacts to in-lake resources and recreational facilities due to lake drawdowns resulting from low flow augmentation releases. The draft feasibility report and integrated EA is scheduled to be released for a 30-day public review and comment period in October 2000.

FOR FURTHER INFORMATION CONTACT: Questions about the termination of the DEIS can be addressed to Ms. Maria E. de la Torre, Study Manager, Baltimore

District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, Maryland 21203–1715. E-mail address: maria.e.delatorre@usace.army.mil.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–25658 Filed 10–5–00; 8:45 am]
BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Establishment of New and/or Modification of Existing Military Operations Areas Near Marine Corps Air Station Cherry Point, NC

AGENCY: Department of the Navy, DOD.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the establishment of new and/or modification of existing Military Operations Areas (MOAs) near Marine Corps Air Station (MCAS) Cherry Point, North Carolina. The Federal Aviation Administration (FAA) will serve as a cooperating agency on this EIS.

DATES: All written scoping comments should be postmarked by November 20, 2000. Public scoping open houses will be held to receive oral and/or written comments on environmental concerns that should be addressed in the EIS on October 23, 2000, from 5:30 pm to 8:30 pm, in the Cape Hatteras High School, Highway 12, Buxton, North Carolina; October 24, 2000, from 5:30 pm to 8:30 pm, in the Northside High School, 7860 Free Union Church Road, Pinetown, North Carolina; October 25, 2000, from 5:30 pm to 8:30 pm, in the East Carteret High School, 3263 Highway 70, Beaufort, North Carolina; and October 26, 2000, from 5:30 pm to 8:30 pm, in the New Bern Riverfront Convention Center, 203 South Front Street, New Bern, North Carolina.

ADDRESSES: Written comments, statements and/or questions regarding scoping issues should be addressed to: Atlantic Division, Naval Facilities Engineering Command, (Code BD33KK), 1510 Gilbert Street, Norfolk, Virginia, 23511.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Knight, telephone (757) 322–4886, fax (757) 322–4894.

SUPPLEMENTARY INFORMATION: Establishment of new and/or modification of existing MOAs is required to provide military aviators with more realistic training opportunities. The purpose of this action is to eliminate required administrative airspeed reductions so that aircraft can maintain tactical flight profiles, and create additional SUA in order to optimize existing aviation training. Military aviators using existing SUA in the MCAS Cherry Point area are required to reduce airspeed to 250 knots or less prior to entering non-SUA below 10,000 feet mean sea level (MSL) and when transiting from one non-contiguous SUA to another. This airspeed reduction requires aircrews to initiate speed reduction prior to departing existing SUA, thereby terminating their tactical profile. This greatly diminishes training value due to decreased realism in tactical flight profiles and restricted tactical approach options, which require the repetition of non-tactical maneuvers during training. Second, expansion of SUA over land is desired to accommodate critical aircrew training requirements that do not require the use of restricted airspace such as air combat maneuvers, formation flight, air intercepts, staging and packaging of multiple aircraft strikes, and a larger acquisition area for simulated weapon systems delivery. These objectives cannot be met through non-SUA actions due to the space requirements to accommodate such operations and restrictive procedures inherent in Airspace for Special Use development and utilization.

Seven MOA alternatives have been identified so far, four individual MOA alternatives and three combination MOA alternatives, for consideration in the EIS. The individual MOA alternatives include: (1) Establishment of the Core MOA at a proposed location east of MCAS Cherry Point and extending from Cape Lookout north to Portsmouth Island and overlying the Cape Lookout National Seashore; (2) establishment of the Mattamuskeet MOA at a proposed location located northeast of MCAS Cherry Point and overlying portions of Pamlico, Beaufort, Hyde, Tyrrell, and Washington counties and the Lake Mattamuskeet and Swanquarter National Wildlife Refuges; (3) establishment of the Cherry MOA at a proposed location northwest of MCAS Cherry Point and overlying portions of Craven, Pamlico, Beaufort and Hyde counties; and (4) modification of the Pamlico B MOA located northeast of MCAS Cherry Point and overlying the Pamlico Sound and portions of Carteret, Hyde and Dare counties. Unlike the first three proposed MOAs, Pamlico B is an existing MOA the use of which would be modified by lowering its base altitude from 8,000 feet mean sea level (MSL) to 3,000 feet MSL. All other existing dimensions would remain unchanged. The proposed floor for any MOA alternative under consideration is 3,000 feet above ground level. In addition to these four individual MOA alternatives, three combination MOA alternatives have been identified. They include: (1) Core and Mattamuskeet MOAs, (2) Core and Cherry MOAs, and (3) Core and Pamlico B MOAs. The No Action Alternative, which would neither establish new nor modify existing MOAS, will also be analyzed in this EIS.

Environmental issues to be addressed in the EIS include, but are not limited to, the effects on wildlife and threatened and endangered species, public lands and waters, civilian aviation, public health and safety, recreation, and community noise.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed, and identifying significant issues related to this action. Public scoping meetings will be held as noted in the Dates section of this notice. These meetings will be advertised in area newspapers.

Marine Corps representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state and local agencies, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed by November 20, 2000 to: Commander, Atlantic Division (Attn: Code BD33KK), Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511.

Dated: September 25, 2000.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy, (Environment and Safety).

[FR Doc. 00–25655 Filed 10–5–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the West Coast Introduction of the MV–22 Tilt-Rotor Aircraft to Third and Fourth Marine Aircraft Wings

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy intends to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of the West Coast introduction of the MV–22 tilt-rotor aircraft to the Third and Fourth Marine Aircraft Wings.

DATES: All written comments must be postmarked no later than December 1, 2000.

ADDRESSES: Seven public scoping meetings will be held to receive oral and/or written comments from agencies and interested individuals on environmental concerns that should be addressed in the EIS.

1. October 25, 2000, from 6:00 pm to 10:00 pm at The Desert Inn, 44219 Sierra Highway, Lancaster, California;
2. November 1, 2000, from 6:00 pm to 10:00 pm at the County Administrative Center, 940 Main Street, Room 211, El Centro, California;
3. November 2, 2000, from 6:00 pm to 9:00 pm at Yuma Main Library, Auditorium, 350 Third Avenue, Yuma, Arizona;
4. November 6, 2000, from 6:00 pm to 10:00 pm at Torrey Pines High School, Lecture Hall, 3710 Del Mar Heights Road, San Diego, California;
5. November 7, 2000, from 6:00 pm to 10:00 pm at San Clemente High School, Little Triton Theater, 700 Avenida Pico, San Clemente, California;
6. November 8, 2000, from 6:00 pm to 10:00 pm at Mira Mesa High School, Auditorium, 10510 Reagan Road, San Diego, California;
7. November 9, 2000, from 6:00 pm to 10:00 pm at the Fallbrook Community Center, 341 Heald Lane, Fallbrook, California.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Gilkey, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190; telephone 619–532–3348, fax 619–532–2469, email *gilkeyde@efdsw.navfac.navy.mil.*

SUPPLEMENTARY INFORMATION: The MV–22 aircraft, known as the Osprey, represents a new technology in military aviation. This aircraft utilizes tilt-rotary technology to enable it to operate like a rotary-wing aircraft and a fixed-wing aircraft. The MV–22 will replace the aging CH–46 and CH–53 rotary-wing aircraft. In December 1999, the Department of the Navy completed an EIS for introduction of the MV–22 to the Second Marine Aircraft Wing supporting Fleet Marine Force training and operations at Marine Corps Base (MCB) Camp Lejeune, North Carolina.

The proposal being evaluated in this EIS is the basing and operation of seven squadrons of MV–22 aircraft in the Third Marine Aircraft Wing and two squadrons of MV–22 aircraft in the Fourth Marine Aircraft Wing. The primary mission of the MV–22 in the Third and Fourth Marine Aircraft Wings will be to support Fleet Marine Force training and operations at MCB Camp Pendleton; accordingly, alternatives to be considered in the EIS are all aviation facilities within the operational radius of the MV–22 from MCB Camp Pendleton.

This proposal includes construction and/or renovation of facilities to accommodate the aircraft, and associated equipment and personnel. Also, the proposal includes the use of existing and potentially new outlying fields and other landing areas, as well as existing and potentially new airspace for military aircraft in support of both military training and operations.

The Marine Corps is currently evaluating all DoD West Coast installations to develop reasonable MV–22 siting alternatives. To date, five installations have been identified as potential receiving sites: Marine Corps Air Station (MCAS) Camp Pendleton, MCAS Miramar, MCAS Yuma, Naval Air Facility El Centro, and Edwards Air Force Base. Application of screening criteria will identify a range of reasonable alternatives that will be evaluated in the EIS and other siting alternatives may be considered as appropriate.

Environmental issues to be addressed in the EIS include: geological resources, biological resources, water resources, noise, air quality, land use compatibility, cultural resources, socioeconomics, environmental justice, public health and safety, transportation/circulation, aesthetics, utilities, hazardous materials and solid waste.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed, and identifying the significant issues related to this action. The Marine Corps will hold public scoping meetings as noted in the Addresses Section of this notice. These meetings will be advertised in area newspapers.

Marine Corps representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state and local agencies, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. Agencies and the public are also invited and encouraged to provide written comments on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS should address.

Written comments must be postmarked no later than December 1, 2000, and mailed to: Commander, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190 (Attn: Mr. Doug Gilkey).

Dated: September 30, 2000.

Duncan Holaday,

Deputy Assistant Secretary of the Navy, (Installations and Facilities).

[FR Doc. 00–25656 Filed 10–5–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before November 6, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New

Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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

Dated: October 2, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of the Public Charter Schools Program, Data Collection Clearance Package: Year 2 and Year 3 Submission.

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 3,590

Burden Hours: 2,390.

Abstract: The evaluation of the Public Charter Schools Program (PCSP) is the first national study of federal support for charter schools. The contractor, SRI International, will gather data on charter school policies and practices at the state, charter school authorizer, and charter school levels. The study examines the use of PCSP funds at these levels, assesses the impact of flexibility provisions in states' charter school legislation, and assesses the effect of charter schools on student performance. Respondents include federal PCSP staff, state charter school coordinators, representatives of charter school authorizing agencies, charter schools, and parents.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please Specify the Complete Title of the Information Collection When Making Your Request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25672 Filed 10–5–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 01–02; Plasma Physics Junior Faculty Development Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers.

DATES: To permit timely consideration for awards in FY 2001, formal applications in response to this notice should be received on or before February 7, 2001.

ADDRESSES: Completed formal applications referencing Program Notice 01–02 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 01–02. The above address must also be used when submitting applications by U.S. Postal Service Express, any other commercial mail delivery service or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald McKnight, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, SC–55 (GTN), 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–4597. E-mail: ronald.mcknight@science.doe.gov

SUPPLEMENTARY INFORMATION: The Plasma Physics Junior Faculty Development Program was started in FY 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Applications from Junior Faculty involved in any areas of plasma physics research, not only magnetic fusion, are welcomed and encouraged. Emphasis is to be placed on basic plasma science research. For applications to be considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during FY 2001, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-by-case basis. The number of awards during FY 2001 will depend on the number of meritorious applications and the availability of appropriated funds. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. The usual duration of these grants is three years and they will not

normally be renewed after the project period is completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to the Department of Energy or other Federal funding agencies. For the Office of Science, these applications should follow the usual application process. Applications will be subjected to scientific merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

An additional review criteria will address educational aspects of the proposed work including the involvement of graduate and undergraduate students. These aspects should be discussed in the application.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605 which is available on the World Wide Web at: http://www.science.doe.gov/production/grants/grants.html

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on September 20, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–25778 Filed 10–5–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces a open teleconference meeting of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the teleconference is to discuss the draft final findings and recommendations of the National Ignition Facility Laser System Task Force. **Note:** Copies of the draft final report of the National Ignition Facility Laser System Task Force may be obtained from the following internet address http://www.hr.doe.seab or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092.

NAME: Secretary of Energy Advisory Board—National Ignition Facility Laser System Task Force.

DATES: Thursday, October 19, 2000, 1:30 p.m.—3 p.m., Eastern Time.

ADDRESSES: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the NIF Task Force is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Task Force will focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system. The Task Force's review will cover the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The review will also address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology.

Tentative Agenda

Thursday, October 19, 2000

1:30 p.m.—1:40 p.m. Welcome & Opening Remarks—Dr. John McTague, NIF Task Force Chairman

1:40 p.m.—2:00 p.m. Overview of the National Ignition Facility Laser System Task Force's Interim Findings and Recommendations—Dr. John McTague, NIF Task Force Chairman

2:00 p.m.—2:30 p.m. Public Comment Period

2:30 p.m.—3:00 p.m. NIF Task Force Review & Comment and Action—Dr. John McTague, NIF Task Force Chairman

3:00 p.m. Adjourn

This tentative agenda is subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the NIF Task Force and submit written comments or comment during the scheduled public comment period. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open teleconference meeting, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: A copy of the minutes and a transcript of the open teleconference meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on October 3, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–25769 Filed 10–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the first meeting of the Federal Energy Management Advisory Committee (FEMAC) under Executive Order 13123—''Greening the Government through Efficient Energy Management.''

DATES: Monday, October 23, 2000; 1:30 p.m. to 5:00 p.m.; Tuesday, October 24, 2000; 9:00 a.m. to 4:00 p.m.

ADDRESS: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Steven Huff, Designated Federal Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3507.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on the Federal Energy Management.

Tentative Agenda: Agenda will include discussions on the following:

Monday, October 23, 2000 and Tuesday October 24, 2000

- Energy-Savings Performance Contracts
- Utility energy-efficiency service contracts
- Procurement of ENERGY STAR (Registered Trademark) and other energy efficient products
- Building design
- Process energy use
- Applications of efficient and renewable energy technologies (including clean energy technologies) at Federal Facilities
- Public Comment

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Steven Huff at (202) 586–3507 or *Steven.Huff@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 3, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–25768 Filed 10–5–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–2932–001]

James R. Lientz, Jr; Order Granting Interventions, Dismissing Rehearing As Moot, and Directing Notification of Change in Status

Issued October 2, 2000.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

In this order, the Commission dismisses as moot a request for rehearing, in light of subsequent and superseding Congressional action, of a letter order issued in this proceeding on August 13, 1998, that concluded that James R. Lientz, Jr. could only conditionally hold interlocking positions as Director of Georgia Power Company (Georgia Power) and President and Director of NationsBank of Georgia, N.A. (NationsBank Georgia).[1]

In addition, the Commission directs other individuals who have been granted authorization to hold an interlock and who believe they are affected by the above Congressional action to provide notice to us.

Background

On January 3, 1996, Mr. Lientz filed an application pursuant to section 305(b) of the Federal Power Act (FPA)[2] for Commission authorization to hold interlocking positions as Director of Georgia Power and President and Director of NationsBank Georgia. As explained in the August 13 Order, Georgia Power is a public utility for the purpose of section 305(b).[3] While neither NationsBank Georgia nor its parent may directly underwrite or participate in the marketing of the securities of a public utility, two affiliates of NationsBank Georgia may underwrite or participate in the marketing of the securities of public utilities. The Commission has found that these securities underwriting and marketing authorizations are attributed to NationsBank Georgia, and as a consequence, the proposed interlocking positions were found to be jurisdictional pursuant to section 305(b).[4]

In the August 13 Letter Order, the Director, Division of Opinions and Corporate Applications, Office of Electric Power Regulation, pursuant to delegated authority, explained.

> [T]he Commission has observed that a senior executive or corporate officer has the ability to substantially influence company policies in such a manner as to jeopardize the best interests of the utility, its investors, and the consuming public. Accordingly, the Commission has held that this type of interlock requires the imposition of certain safeguards to prevent ''opportunities for undue influence, failures in arms length bargaining, or other potential improprieties.''
>
> After consideration, it is concluded that the conditioned holding of the positions identified will not adversely affect public or private interests. Authorization to hold them is hereby granted subject to the condition that NationsBank Georgia (and its subsidiaries and affiliates) refrain from underwriting or participating in the marketing of securities (other than dealing in the secondary securities market) of Georgia Power (and its subsidiaries and affiliates) during the period Mr. Lientz holds any of the authorized interlocking positions.[5]

On rehearing, Mr. Lientz requests that the Commission no longer impose the underwriting ban as a condition of his interlock authorization. Mr. Lientz asserts that the underwriting ban ''is no longer justified or necessary to protect the public interest,''[6] and that changed circumstances warrant the Commission

[1] James R. Lientz, Jr., 84 FERC ¶ 62,143 (1998) (August 13 Letter Order).

[2] 16 U.S.C. 825d(b) (1994).

[3] 84 FERC at 64,226.

[4] *See id.* at 64,226 & n.3.

[5] *Id.* at 64,226 (footnotes omitted).

[6] Request for Rehearing at 2.

ceasing to impose the underwriting ban as a condition of approving the type of interlock at issue in this proceeding.

Mr. Lientz also requests that, in lieu of the underwriting ban, the Commission consider the use of two alternative, and less onerous, conditions when approving an interlock between a public utility and an underwriting firm. Specifically, that:

(i) the applicant would refrain from participating, directly, or indirectly, as director or officer of the public utility or the affected underwriting firm (or such underwriting firm's parent), in any decisions regarding the financing of the public utility (or its affiliate(s)) by such underwriting firm; or

(ii) the applicant would prove, to the satisfaction of a majority of the disinterested directors of the public utility and the affected underwriting firm, respectively, that the proposed transactions(s) between the public utility and the underwriting firm are fair and reasonable to the utility's shareholders and ratepayers, such proof to be evidenced by a vote of the disinterested directors of the public utility and the affected underwriting firm.[7]

On September 14, 1998, Georgia Power filed an untimely motion to intervene and a brief in support of Mr. Lientz's request for rehearing. On April 20, 1999, first Union Corporation (First Union) filed an untimely motion to intervene and an amicus brief in support of granting rehearing to reconsider whether the Commission's current policy on interlocks between banks and public utilities should be continued.

Subsequent and Superseding Congressional Action

On November 12, 1999, the President signed into law the Gramm-Leach-Bliley Financial Modernization Act (Financial Modernization Act).[8] Among other things, this legislation amends section 305(b) to include four conditions, and if any one of these were met, they would remove from our jurisdiction a person seeking to hold an interlocking directorate.[9] On November 18, 1999, First Union filed a motion to lodge the Financial Modernization Act.

Discussion

Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, we will grant the untimely motions to intervene of Georgia Power and First Union, given the unique circumstances present here, their interest in the outcome of this proceeding, and the absence of any prejudice or delay.[10]

We will dismiss as moot the request for rehearing. As noted above, subsequent to the August 13 Letter Order and Mr. Lientz's request for rehearing, Congress amended section 305(b). Section 305(b)(2)(B) now provides, in relevant part, that the section 305(b) ban on holding interlocking directorates, absent Commission authorization, does not apply if the person holding the interlock:

(i) does not participate in any deliberations or decisions of the public utility regarding the selection of a bank, trust company, banking association, or firm to underwrite or participate in the marketing of securities of the public utility, if the person serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;

(ii) the bank, trust company, banking association, or firm of which the person is an officer or director does not engage in the underwriting of, or participate in the marketing of, securities of the public utility of which the person holds the position of officer or director;

(iii) the public utility for which the person serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

(iv) the issuance of securities of the public utility for which the person serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.[11]

Thus, in amending section 305(b)(2), Congress has eliminated, in certain circumstances, the need for the holder of the interlocks to obtain Commission authorization for such interlocks. These circumstances include, as relevant here, where the underwriting firm[12] involved in an interlock is under consideration to underwrite the securities of the public utility involved in the interlock and where persons who would hold the interlocks do not themselves participate in the public utility's selection of the underwriting firm.[13]

As noted above, in his request for rehearing, Mr. Lientz proposed that as a condition for Commission approval of an interlock, ''the applicant would refrain from participating, directly, or indirectly, as director or officer of the public utility or the affected underwriting firm (or such underwriting firm's parent), in any decisions affecting the financing of the public utility (or its affiliate(s)) by such underwriting firm.'' [14] We interpret Mr. Lientz' proposed condition as effectively agreeing to the first condition of section 305(b)(2)(B), and we direct Mr. Lientz to notify the Commission within 30 days if he believes that further Commission action is required.

In light of the new legislation pertaining to section 305(b)(2)(B)(i) and our understanding that Mr. Lientz meets at least one of the conditions of section 305(b)(2)(B), he no longer needs Commission authorization to hold the interlocking directorate. Thus, we will dismiss as moot Mr. Lientz's request for rehearing.

We also take this opportunity to state that if there are other individuals who have been granted authorization to hold interlocking directorates, but believe that they now do not need such Commission authorization because of section 305(b)(2)(B), they should notify the Commission of this within 30 days of the date of publication in the **Federal Register,** pursuant to section 45.5(b) of the Commission's regulations.[15]

The Commission orders:

(A) Georgia Power's and First Union's untimely motions to intervene are hereby granted.

(B) Mr. Lientz's request for rehearing of the August 13 Order is hereby dismissed as moot, as discussed in the body of this order.

(C) Any individual who has been granted authorization to hold an interlock who believes he is affected by the Financial Modernization Act is hereby directed to so notify the Commission, within thirty (30) days of the date of publication of this order in the **Federal Register,** as discussed in the body of this order.

(D) The Secretary is hereby directed to publish this order in the **Federal Register.**

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–25664 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–M

[7] *Id.* at 43.

[8] Pub. L. 106–102, 113 Stat. 1338 (1999).

[9] 16 U.S.C.A. 825d(b)(2) (West Supp. 2000).

[10] 18 CFR 385.214(d)(2000).

[11] 16 U.S.C.A. 825d(b)(2)(B) (West Supp. 2000).

[12] We use the phrase ''underwriting firm'' as a short-hand description of the longer, statutory ''bank, trust company, banking association, or firm.''

[13] *See* 16 U.S.C.A. 825d(b)(2)(B)(i) (West Supp. 2000).

[14] Request for Rehearing at 43.

[15] 18 CFR 45.5(b) (2000).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6611–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements
Filed September 25, 2000 Through September 29, 2000
Pursuant to 40 CFR 1506.9.

EIS No. 000335, Final EIS, FHW, WI, WI–113 Wisconsin River Crossing at Merrimac, Improvements, US Coast Guard and COE Section 10 and 404 Permits, Columbia and Sauk Counties, WI, Due: November 06, 2000, Contact: Peter Garcia (608) 829–7513.

EIS No. 000336, Draft EIS, BLM, MA, New Bedford Whaling National Historical Park, General Management Plan, Implementation, Bristol County, MA , Due: December 01, 2000, Contact: John Piltzecker (508) 996–4095.

EIS No. 000337, Draft Supplement, IBR, CA, East Bay Municipal Utility District Supplemental Water Supply Project and Water Service Contract Amendment, New and Additional Information on Alternatives, American River Division of the Central Valley Project (CVP), Sacramento County, CA, Due: November 20, 2000, Contact: Rob Schroeder (916) 988–1707.

EIS No. 000338, Draft EIS, STB, SD, WY, MN, Powder River Basin Expansion Project, Construction of New Rail Facilities, Finance Docket No. 33407 Dakota, Minnesota and Eastern Railroad, SD, WY and MN, Due: November 20, 2000, Contact: Victoria Rutson (202) 565–1545.

EIS No. 000339, Final EIS, AFS, KY, Daniel Boone National Forest, Implementation, Salvage Harvest Due to 1998 Storm Damage Timber, McCreary and Pulaske County, KY, Due: November 06, 2000, Contact: Benjamin T. Washington (606) 679–2018.

EIS No. 000340, Final EIS, AFS, ID, Warm Springs Ridge Vegetation Management Project, Improve Forest Condition, Boise National Forest, Cascade Resource Area, Boise County, ID, Due: November 06, 2000, Contact: Kathy Ramirez (208) 392–6681.

EIS No. 000341, Final Supplement, COE, CA, Port of Los Angeles Channel Deepening Project, To Improve Navigation and Disposal of Dredge Material for the Inner Harbor Channels, Los Angeles County, CA, Due: November 06, 2000, Contact: Larry Smith (213) 452–3846.

EIS No. 000342, Draft EIS, NOA, AK, Cook Inlet Beluga Whale Stock, Federal Actions Associated with the Management and Recovery, Implementation, Cook Inlet, AK, Due: November 20, 2000, Contact: P. Michael Payne (907) 586–2735.

EIS No. 000343, Draft EIS, UAF, TX, Brooks City Base Project, To Improve Mission Effectiveness and Reduce Cost of Quality Installation Support, Implementation, Brooks Air Force Base, Bexar County, TX, Due: November 20, 2000, Contact: Jonathan D. Farthing (210) 536–3668.

EIS No. 000344, Draft EIS, BLM, UT, 3R Minerals Coal Bed Canyon Mine Plan, Approval, Grand Staircase-Escalante National Monument, Garfield County, UT, Due: December 04, 2000, Contact: Paul Chapman (435) 644–4309.

Amended Notices

EIS No. 000196, Draft EIS, NPS, MN, Voyageurs National Park General Management, Visitor Use and Facilities Plans, Implementation, Koochiching and St. Louis Counties, MN, Due: October 23, 2000, Contact: Kathleen Przybylski (218) 283–9821. Revision of FR notice published on 06/23/2000: CEQ Comment Date has been Extended from 09–22–2000 to 10/23/2000.

Dated: October 2, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–25787 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6611–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared 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) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–K65359–00 Rating EC2, Northern Sierra Amendment to the Toiyabe Land and Resource Management, To Unify and Revise Management Direction, Humboldt-Toiyabe National Forest, Carson Ranger District, Stanislaus National Forest, Lake Tahoe Basin Management Unit, Douglas and Washoe Counties, NV and Alpine and Toulomne Counties, CA.

Summary: EPA expressed concerns related to purpose and need and the timing of the plan amendment in advance of the 15 year deadline for Forest Plan revision set for June 23, 2001. Specific concerns were expressed regarding the lack of standards and guidelines promoting road decommissioning pursuant to the Chief's Natural Resource Agenda and the Clean Water Action Plan.

ERP No. D–AFS–L65362–ID Rating EC2, West Mountain North Project, Timber Harvest, Road Construction and Reconstruction), Boise National Forest, Cascade Ranger District, Valley County, ID.

Summary: EPA expressed environmental concerns over water and air quality. EPA requested that further information on these concerns be provided in the final EIS.

ERP No. D–COE–E30041–NC Rating EC2, Dare County Beaches (Bodie Island Portion) Hurricane Wave Protection and Beach Erosion Control, The towns of Nags Head, Kill Devil Hills, Kitty Hawk, Dare County, NC.

Summary: EPA expressed environmental concerns due to the open-ended loss of biotic stability along the project shoreline which was not mitigated by the incremental gain in sea turtle nesting habitat.

ERP No. D–FRC–F03008–00 Rating EO2, Guardian Pipeline Project, Proposal to Construct and Operate an Interstate Natural Gas Pipeline that would extend from Joliet (Will County), IL and Ixonia (Jefferson County), WI.

Summary: EIS raised objections and identified several issues that were not adequately addressed in the Draft EIS, including the cumulative impacts analysis, mitigation measures, and the definition of the project purpose and need.

ERP No. D–IBR–K29000–AZ Rating EC2, Central Arizona Project (CAP), Allocation of Water Supply and Long-Term Contract Execution, Maricopa, Pinal and Pima Counties, AZ.

Summary: EPA expressed concern that there was minimal discussion and commitment to available tools for enhancing water management flexibility/reliability and providing long-term sustainable use of the allocated water. EPA also had concerns regarding the potential impacts to soil salinity, land subsidence, sustainable groundwater yields, and the specifics of the long-term water supply contracts. EPA did express strong support for the underlying goal of a long-term sustainable water supply by achieving a balance between water use/demand and available water resources EPA also urged Reclamation to take a role beyond

just mere allocation of CAP water and to promote efficient, equitable and sustainable use of the allocated water as part of this Federal action.

Final EISs

ERP No. F–AFS–J65315–UT, Monroe Mountain Ecosystem Restoration Project, Implementation, Fishlake National Forest, Richfield Ranger District, Sevier and Piute Counties, UT.

Summary: EPA has no objection to the proposed action, as this document adequately responded to EPA's previous comments on the draft EIS.

ERP No. F–AFS–L65322–AK, Luck Lake Timber Sales Project, Implementation, Tongass National Forest, Thorne Bay Ranger District, Prince of Wales Island, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65356–ID, Box Canyon Timber Sale, Vegetative Management, Implementation, Palisades Ranger District, Caribou-Targhee National Forest, Bonneville County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–G40155–TX, TX–45 Highway Project, Extending from Anderson Mill Road just west of US 183 to Farm-to-Market Road 685 (FM–685) east of IH–35, Funding, Williamson and Travis Counties, TX.

Summary: EPA has no objection to the action as proposed.

ERP No. F–NPS–J26002–MT, Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation, Implementation, COE Section 404 Permit, Glacier National Park, A Portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT.

Summary: EPA supports the preferred alternatives, but recommends that the site location of the ultimate wastewater treatment plant sludge disposal be evaluated and established. The information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. F–SFW–L65334–WA, Simpson Washington Timberlands Forest Management and Timber Harvesting Project, Proposed Issuing of a Multiple Species Incidental Take Permit, Mason, Thurston and Gray Harbor Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: October 3, 2000.

Joseph C. Montgomery,

Director, NEPA, Office of Federal Activities.

[FR Doc. 00–25788 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6883–3]

Open Meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group.

SUMMARY: As required by section 10 (a)(2) of the Federal Advisory Committee Act (Public Law 92–463), EPA is giving notice of the seventh meeting of the Industrial Non-Hazardous Waste Policy Dialogue Committee, also known as the Industrial Non-Hazardous Waste Stakeholders Focus Group. The purpose of this Committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial non-hazardous waste in new landfills, waste piles, surface impoundments, and land application units. The Focus Group facilitates the exchange of information and ideas among the interested parties relating to the development of the final ''Guide for Industrial Waste Management.'' The purpose of the seventh meeting will be to review and discuss issues associated with the public comments received on the ''Draft Guide for Industrial Waste Management.'' Major areas of discussion will include the public comments on the draft air tool (IWAIR) and the draft ground-water tool (IWEM), as well as suggested changes to the individual chapters of the Guide. In addition, there will be an opportunity for limited public comment at the end of each day of the meeting.

DATES: The committee will meet on November 1 and 2, 2000, from 9:00 a.m. to 5:00 p.m. on November 1, and from 8:30 a.m. to 12:00 p.m. on November 2.

ADDRESSES: The location of the meeting is the Governor's House, 1615 Rhode Island Ave., NW, Washington, D.C. 20001. The phone number is 202–296–2100. The seating capacity of the room is approximately 75 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket F–1999–IDWA–FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. Most of the material to be discussed at the November Focus Group meeting will be available for viewing in the above docket on and after October 17, 2000. For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the committee should contact John Sager, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308–7256.

SUPPLEMENTARY INFORMATION:

Background

EPA and ASTSWMO formed a State/EPA Steering Committee in 1996 to jointly develop voluntary facility guidance regarding the management of industrial nonhazardous waste in new land-based disposal units. The purpose of the guidance document is to provide a guide to facility managers, State and Tribal environmental staff, and members of the general public so that safe industrial waste management can be achieved. The current draft Guide addresses such topics as appropriate controls for ground-water protection, liner designs, air emissions, run-on/run-off, public participation, daily operating practices, monitoring and corrective action, and closure and post-closure considerations. In addition, the draft Guide addresses such topics as waste characterization, pollution prevention, and building partnerships.

The draft Guide and the CD–ROM, on which the Guide and modeling tools were placed, were noticed in the *FR* in June 1999. The public comment period ended in January 2000. The State/EPA Steering Committee will continue to convene this Stakeholders Focus Group in order to obtain recommendations from those individuals who represent a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants are forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders Focus Group does not strive for a consensus.

Copies of the minutes of the past six Stakeholder Focus Group meetings have previously been made available through the original docket for this project (F–96–INHA–FFFFF) at the RCRA

Information Center. The past six Focus Group meetings were held on April 11–12, 1996, September 11–12, 1996, February 19–20, 1997, May 20–21, 1997, October 8–9, 1997, and March 18–19, 1998.

Dated: September 26, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–25744 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439E; FRL–6748–7]

Pesticide Program Dialogue Committee (PPDC): Inert Disclosure Stakeholder Workgroup; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: This notice announces a conference call meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information concerns.

DATES: The meeting will be held by conference call on Tuesday, October 17, 2000 from 12:00 pm to 3:00 pm EST.

ADDRESSES: Members of the public may listen to the meeting discussions on site at: Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA; conference Room 1123. Seating is limited and will be available on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (703) 305–5454. Office locations: 11th floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. E-mail smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION: The Inert Disclosure Stakeholder Workgroup is composed of a participants from the following sectors: environmental/public interest and consumer groups; industry and pesticide users; Federal, State and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup, will advise the EPA through the Pesticide Program Dialogue Committee (PPDC), on potential measures to increase the availability to the public of information about inert ingredients (also called ''other ingredients'') under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among the factors the workgroup has been asked to consider in preparing its recommendations are: existing law regarding inert ingredients and Confidential Business Information (CBI); current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Written public statements are welcome and should be submitted to the OPP administrative docket OPP–00439A. Any person who wishes to file a written statement can do so before or after the conference call. These statements will become part of the permanent file and will be provided to the Workgroup members for their information.

How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00439A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: ''*opp-docket@epa.gov,*'' or you can submit a computer disk as described above in paragraphs 1. and 2. of this section. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00439A. Electronic comments may also be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection. pesticides, inerts, PPDC.

Dated: September 29, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–25752 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6882–8]

Policy on Alternative Dispute Resolution

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This document publishes the draft final policy of the United States Environmental Protection Agency (EPA) regarding the use of alternative dispute resolution (''ADR''). The Agency is requesting public comment on this draft document. This document replaces the Interim Statement of Policy on Alternative Dispute Resolution (65 FR 13383) which was issued on March 13, 2000.

The draft final policy is published in the **Federal Register** to affirm EPA's commitment to the use of ADR in Agency activities. The draft final policy discusses the types of situations in which ADR should be considered, how EPA is organized to support ADR, confidentiality of information in ADR processes, efforts to promote a commitment to and awareness of ADR within the Agency, and how the success of ADR will be measured. Nothing in this document creates any right or benefit by a party against the United States.

DATES: Comments must be submitted on or before December 5, 2000.

ADDRESSES: Please address comments to W. Robert Ward, Dispute Resolution Specialist, by mail at Conflict Prevention and Resolution Center, U.S. EPA, Ariel Rios Building, 1200

Pennsylvania Avenue, NW., (MC 2310A), Washington, DC 20460. Comments sent by overnight delivery services or by courier should be addressed to W. Robert Ward, Conflict Prevention and Resolution Center, U.S. EPA, Ariel Rios Building, Room 6330F, 1200 Pennsylvania Avenue, N.W. 20004. Comments may also be submitted by fax at (202) 501–1715, or by e-mail at *ward.robert@epa.gov.*

FOR FURTHER INFORMATION CONTACT: W. Robert Ward, Dispute Resolution Specialist, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., (MC 2310A), Washington, DC 20460; (202) 564–2922; *ward.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: This draft final policy is consistent with the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320, Oct. 19, 1996, 5 U.S.C. 571–583), which requires, in part, that each federal agency adopt a policy that addresses the use of ADR. It is also consistent with provisions of the Civil Justice Reform Act (Pub. L. 101–650, Dec. 1, 1990, 28 U.S.C. 471–482), the Alternative Dispute Resolution Act of 1998 (Pub. L. 105–315, Oct. 30, 1998, 28 U.S.C. 651–658), the Regulatory Negotiation Act of 1996 (Pub. L. 104–320, Oct. 19, 1996, 5 U.S.C. 561–570); the Federal Acquisition Streamlining Act (Pub. L. 103–355, Oct. 13, 1994, 41 U.S.C. 405); the Contracts Disputes Act (41 U.S.C. 601–613); Executive Order 12988, ''Civil Justice Reform,'' February 5, 1996; Executive Order 12979, ''Agency Procurement Protests,'' October 25, 1995; the Federal Acquisition Regulation (48 CFR 33.204); Equal Employment Opportunity Commission regulations (29 CFR part 1614); Presidential Memorandum, ''Designation of Interagency Committees to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking,'' May 1, 1998; and the Report of the National Performance Review, ''Creating a Government that Works Better and Costs Less,'' September 7, 1993.

On March 13, 2000, EPA published an Interim Statement of Policy on Alternative Dispute Resolution in the **Federal Register**. The document published today supercedes and replaces the Interim Statement of Policy. EPA requested public comment on the Interim Statement of Policy as input for the development of this draft final policy. The Agency received one comment in response to the Interim Statement of Policy. The comment was generally supportive of the application of ADR in the environmental arena. It included suggestions regarding the qualifications for neutral third parties selected to assist in resolving complex environmental disputes. It also supported the concept of flexible ADR techniques, including the use of minitrials in appropriate circumstances. The draft final policy does not address neutral third party qualification criteria explicitly, although the Agency recognizes that the success of an ADR proceeding often depends upon the selection of a neutral third party with the correct combination of background, skills, and experience for the particular matter. The Agency chose not to establish neutral third party qualification criteria in the context of the draft final policy because this policy is intended to apply to a wide range of ADR activities. The Agency believes that desirable qualification criteria may differ based on the type of dispute, the participating parties, and the type of ADR technique being used. With regard to the use of minitrials and other flexible ADR techniques, the draft final policy explicitly authorizes the use of minitrials among a variety of ADR techniques.

EPA Policy on Alternative Dispute Resolution

Purpose

The U.S. Environmental Protection Agency (EPA or the Agency) strongly supports the use of alternative dispute resolution (ADR) to deal with disputes and potential conflicts. ADR refers to voluntary techniques for preventing and resolving conflict with the help of neutral third parties. Experience within this Agency and elsewhere shows that ADR techniques for preventing and resolving conflicts can have many benefits including:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among EPA, its stakeholders, and its employees;
- Improved working relationships;
- Increased likelihood of compliance with environmental laws and regulation;
- Broader stakeholder support for agency programs; and
- Better environmental outcomes.

ADR techniques can be effective in both internal Agency disagreements and external conflicts. ADR allows the Agency to have a more productive work environment and to work better with State, Tribal, and local governments, the regulated community, environmental and public health organizations, and the public. This policy is intended to be flexible enough to respond to the full range of disputes EPA faces, and to achieve these objectives:

- Promote understanding of ADR techniques;
- Encourage routine consideration of ADR approaches to anticipate, prevent, and resolve disputes;
- Increase the use of ADR in EPA business;
- Highlight the importance of addressing confidentiality concerns in ADR processes;
- Promote systematic evaluation and reporting on ADR at EPA; and
- Further the Agency's overall mission through ADR program development.

What Does EPA Mean by the Term ''ADR''?

EPA adopts the definition of ADR in the Administrative Dispute Resolution Act of 1996 (ADRA): ''Any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof.'' 5 USC 571(3). All these techniques involve a neutral third party. Depending on the circumstances of a particular dispute, neutrals may be Agency employees or may come from outside EPA. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement.

In What Types of Situations Does EPA Encourage the Use of ADR?

EPA encourages the use of ADR techniques to prevent and resolve disputes with external parties in many contexts, including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, protests of contract awards, administration of contracts and grants, stakeholder involvement, negotiations, and litigation. In addition, EPA encourages the use of ADR techniques to prevent and resolve internal disputes such as workplace grievances and equal employment opportunity complaints, and to improve labor-management partnerships.

While ADR may be appropriate in any of these contexts, the decision to use an ADR technique in a particular matter must reflect an assessment of the specific parties, issues, and other factors. Considerations relevant to the appropriateness of ADR for any particular matter include, at a minimum, the guidelines in section 572 of the ADRA and any applicable Agency

guidance on particular ADR techniques or ADR use in specific types of disputes. ADR program staff at EPA headquarters and in the Regions can help the parties assess whether and which form of ADR should be used in a particular matter.

How Is EPA Organized To Support ADR?

EPA's Conflict Prevention and Resolution Center (CPRC) in the Office of General Counsel (OGC) provides ADR services to the entire Agency. The Agency's Dispute Resolution Specialist, designated under the ADRA, is the head of the CPRC. Because the Dispute Resolution Specialist's responsibilities include development and implementation of all Agency ADR policy, Headquarters Offices and Regions are expected to coordinate with the CPRC from the earliest stages in developing any program-specific ADR guidance and in addressing issues during ADR policy implementation. The CPRC also will administer Agency-wide ADR programs, coordinate case management and evaluation, and provide support to program-specific ADR activities. Building on existing ADR efforts at EPA, the CPRC assists other Agency offices in developing effective ways to anticipate, prevent, and resolve disputes, and makes neutral third parties more readily available for those purposes.

Other EPA offices, including the Office of Enforcement and Compliance Assurance, and the Office of Administrative Law Judges, are using ADR to resolve conflicts between the Agency and regulated entities. The Office of Policy, Economics and Innovation and the Office of Cooperative Environmental Management, in partnership with many EPA program offices, use ADR to provide opportunities for stakeholders to contribute to the design of Agency actions that affect them.

EPA Regions have ADR programs that meet their particular needs. For example, in some cases, EPA Regions have identified staff experts to coordinate workplace, enforcement, and other ADR activities. EPA Regions have also used internal and external neutral third parties to foster stakeholder involvement, resolve workplace disputes, help in organizational problem-solving, and mediate enforcement cases. The CPRC will continue to provide support to existing Regional ADR programs and is available to help in developing new ADR efforts.

Anyone interested in exploring the possibility of ADR in an EPA matter can contact the CPRC, a Regional ADR program, or a program office with an established ADR function for information and assistance regarding mechanics, process design, or advice on what to expect from an ADR process.

How Should Confidentiality Be Handled in ADR Processes?

A thorough discussion of confidentiality is often critical to success in ADR. It is EPA's policy to maintain confidentiality in ADR processes consistent with the ADRA and other applicable law. Section 574 of the ADRA reflects a balancing of the need for confidentiality in ADR with the dual goals of open government and effective law enforcement. Other federal laws may impact the confidentiality of information in specific cases, potentially compelling disclosure or enhancing protection against disclosure (*e.g.,* Inspector General Act, Freedom of Information Act, Privacy Act). The CPRC can provide further information on authorities that may impact confidentiality in a federal ADR process.

The confidentiality needs and concerns of the parties must be discussed early in every ADR process. EPA staff, the parties, and the neutral third party should be aware of how confidentiality operates in the context of federal ADR. Within this context, the parties and the neutral third party should work together to establish a common understanding of how confidentiality protections apply in a specific process. In most cases, this understanding should be recorded in a written confidentiality agreement. This initial work will benefit all parties by clarifying expectations regarding confidentiality before full initiation of the ADR process.

How Will EPA Promote Commitment to and Awareness of ADR Within the Agency?

Information Sources

The CPRC, in consultation with Agency program offices and Regions, will compile existing information and develop additional information on ADR practice at EPA and will make this information available to EPA personnel through a website and through the CPRC. Information may include model agreements to mediate, case selection criteria, descriptions of ADR processes, mechanisms for accessing external neutral third parties, case studies, guidance on confidentiality and evaluating ADR processes, directories of EPA ADR contacts, bibliographies, and links to external sources of information.

Training

The Agency strongly encourages all EPA personnel to learn about ADR. Training is crucial not only for those selected to serve as in-house neutrals, but also for negotiators and others who need to understand how ADR can enhance negotiation and agency decision making. The Dispute Resolution Specialist will identify and recommend relevant ADR training. Training sources may include existing EPA training programs, training sponsored by other agencies, newly developed courses, and commercially available training.

This policy affirms a goal of EPA's Labor/Management Partnership Strategic Plan (Spring 2000) to train line managers, first line supervisors, Federal union representatives and other employees in consensual methods of dispute resolution such as ADR and interest-based negotiation. Finally, the Agency will add skills in negotiation and alternative dispute resolution to its inventory of desirable management characteristics used to prepare and select managers for the Senior Executive Service.

Mentoring

The Agency encourages those with ADR experience to share their expertise with other Agency personnel. Mentoring and apprenticing can strengthen EPA's ADR program by expanding the number of staff with ADR skills, increasing opportunities to practice ADR techniques, and providing for exchange between more and less experienced ADR professionals.

Funding

Costs associated with ADR processes, including fees for external neutral third parties, are typically paid in whole or in part by the sponsoring EPA office. Depending on the circumstances, other parties or offices also contribute. The Agency expects each program office at Headquarters and each Region to demonstrate a commitment to ADR by making funds available for ADR processes.

How Will EPA Measure the Success of Its ADR Programs?

Many federal agencies have shown significant time and money savings from the use of ADR and have received intangible benefits such as improved relationships and broader stakeholder support for their programs. Evaluation is an important way to identify these savings and benefits and is key to systematic improvement of ADR programs. Through evaluation, EPA is committed to measuring the success of

its ADR programs and continually improving them to better meet the needs of EPA offices, Regions, and external stakeholders.

Several EPA offices and Regions have already evaluated their ADR efforts. To build on these evaluations and to strengthen the evaluation component of ADR practice across the Agency, the CPRC, consulting with internal and external stakeholders, will develop an evaluation system for ADR at EPA. The evaluation system will include goals and both qualitative and quantitative measures of success.

Where Can I Get Additional Information or Help With ADR at EPA?

Additional information on ADR contacts within EPA, topics covered in this policy, and others, may be obtained from the CPRC at (202) 564–2922.

What Is the Legal Authority for this Policy?

This policy satisfies the requirement of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583, that each federal agency adopt a policy that addresses the use of ADR. The policy is also consistent with the following federal statutes, regulations, and orders:

- Regulatory Negotiation Act of 1996, 5 U.S.C. 561–570
- Civil Justice Reform Act, 28 U.S.C. 471–482
- Alternative Dispute Resolution Act of 1998, 28 U.S.C. 651–658
- Federal Acquisition Streamlining Act, 41 U.S.C. 405
- Contracts Disputes Act, 41 U.S.C. 601–613
- Federal Acquisition Regulation, 48 CFR 33.103 & 33.204
- Federal Sector Equal Employment Opportunity Regulations, 29 CFR part 1614
- Civil Justice Reform, Executive Order 12988, 61 FR 4729 (Feb. 5, 1996)
- Agency Procurement Protests, Executive Order 12979, 60 FR 55171 (Oct. 27, 1995)
- Presidential Memorandum, ''Designation of Interagency Committees to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking,'' May 1, 1998

Request for Public Comment

The Environmental Protection Agency invites public comment on this draft document. Comments should be received by December 5, 2000.

Dated: September 29, 2000.

Carol Browner,

Administrator.

[FR Doc. 00–25749 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6883–2]

Draft EPA Guidelines for Management of Onsite/Decentralized Wastewater Systems and Guidance Manual Outline

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability for comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making available for review and comment a draft of its Guidelines for Management of Onsite/Decentralized Wastewater Systems and an outline for a guidance manual that will be developed to supplement the guidelines. The purpose of the guidelines is to raise the level of performance of onsite/decentralized wastewater systems through improved management programs. Onsite/decentralized wastewater treatment systems include individual onsite or cluster wastewater systems (commonly referred to as septic systems, private sewage systems, individual sewage systems, etc.) used to treat and dispose of relatively small volumes of wastewater, generally from individual dwellings, or groups of dwellings and businesses which are located relatively close together. EPA is proposing the voluntary national guidelines in order to raise the quality of management programs, establish minimum levels of activity, and institutionalize the concept of management. Implementation of the guidelines will provide a greater range of options for cost-effectively meeting wastewater needs and meeting water quality and public health goals.

The guidelines contain a set of model programs, based on a comprehensive approach that relies on coordinating the responsibilities and actions among the state, tribal or local regulatory agency, the management entity or service provider and the system owner(s). These model programs are structured to reflect a need for more comprehensive management as the sensitivity of the environment and/or the degree of technological complexity increases. A program's designation increases progressively from Model Program 1 through Model Program 5, reflecting the increased level of management activities needed to achieve water quality and public health goals. Adoption of the guidelines is voluntary and EPA encourages that communities to consider the guidelines as a basis for their onsite/decentralized wastewater management program.

The guidelines apply to both existing communities and to areas of new development that use onsite/decentralized systems of any size for residential and commercial wastewater treatment and disposal.

DATES: Email or written comments are requested by December 5, 2000.

ADDRESSES: Comments can be submitted online at http://www.epa.gov/owm/smallc/guidelines.htm, emailed to decentralized@epa.gov, via U.S. mail to Joyce Hudson, US EPA, Office of Wastewater Management (4204), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or faxed to (202) 260–0116.

FOR FURTHER INFORMATION CONTACT: Any questions regarding the content of EPA's Guidelines for Management of Onsite/Decentralized Wastewater Systems can be addressed to Joyce Hudson by email at *hudson.joyce@epa.gov.* Additional copies of the documents may be obtained by calling Melanie Montalvo, the EPA contractor, at (703) 934–2323 or by downloading the documents at http://www.epa.gov/owm/smallc/guidelines.htm

SUPPLEMENTARY INFORMATION: In April, 1997, EPA prepared a ''Response to Congress on the Use of Decentralized Wastewater Treatment Systems.'' The report concluded that alternative treatment technologies offer a cost-effective, long term wastewater solution for many communities. However, the report emphasized that these ''decentralized'' (onsite and small cluster) technologies must be implemented in the context of a responsible management program to consistently achieve water quality and public health goals. The report identified the current lack of management as a barrier to successfully applying these otherwise promising technologies.

The development of management standards for decentralized wastewater treatment systems was therefore included in the Clean Water Action Plan (CWAP) as Action Item 77B . In fulfillment of this action item, EPA prepared a concept paper in the spring of 1999, which was gradually developed into a set of voluntary national guidelines for the management of onsite and decentralized wastewater systems. The guidelines which we are proposing for formal public comment have been developed with considerable input from

various stakeholders, including other Federal agencies, State health agencies, environmental groups, trade associations and public interest groups. Based on comments received, a detailed outline was developed and comments were once again solicited, which led to the draft document in this notice.

Onsite/decentralized systems currently serve about 25 percent of the U.S. population and approximately 40 percent of new development. The vast majority of these systems are conventional onsite wastewater systems (septic systems). States report that these wastewater systems have failed because of inappropriate siting or design or inadequate long-term maintenance and that septic tank systems constitute the third most common source of ground water contamination.

The final guidelines will be accompanied by a guidance manual. An outline of this guidance manual is also available for review and comment. The final manual will provide details on assessing, developing, implementing, and sustaining a viable management program. The guidelines for management and the accompanying guidance manual are scheduled for completion in the Summer of 2001. Prior to completion, EPA will reach out to interested parties, primarily through discussions with national and State-level organizations to gain input.

Dated: September 27, 2000.

J. Charles Fox,

Assistant Administrator for Office of Solid Waste and Emergency Response.

[FR Doc. 00–25743 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6882–1]

Public Water System Supervision Program Revision for the State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Florida is revising its approved Public Water System Supervision Program. Florida has adopted drinking water regulations requiring consumer confidence reports from all community water systems. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by November 6, 2000 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by November 6, 2000, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on November 6, 2000. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Florida Department of Environmental Protection, 2600 Blairstone Road, Tallahassee, Florida 32399 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Bonita Johnson, EPA Region 4, Drinking Water Section at the Atlanta address given above or by telephone at (404) 562–9442.

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations)

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–25748 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–2171 and DA 00–2232]

Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues; Auction of Additional FM Broadcast Construction Permits To Be Included in Auction No. 37 Scheduled for February 21, 2001

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain FM broadcast construction permits to commence February 21, 2001.

DATES: Comments regarding the vacant FM allotments listed in Attachment A of DA 00–2171 (''*Auction No. 37 Comment Public Notice*'') are due on or before October 9, 2000. Comments regarding the eight additional vacant FM allotments listed in DA 00–2232 (''*Addendum Public Notice*'') are due on or before October 13, 2000. All reply comments are due on or before October 23, 2000.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20054. In addition, parties must submit one copy to Louis Sigalos, Deputy Division Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Suite 4–A668, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathy Garland, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (717) 338–2888; Kenneth Burnley, Legal Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660; or Lisa Scanlan, Audio Services Division, Mass Media Bureau at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of two Public Notices, DA 00–2171 (''*Auction No. 37 Comment Public Notice*'') and DA 00–2232 (''*Addendum Public Notice*''), released September 25, 2000 and September 29, 2000 respectively. The complete text of the public notices, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW,

Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. By these Public Notices, the Wireless Telecommunications Bureau (the ''Bureau'') and the Mass Media Bureau (collectively referred to as the ''Bureaus'') announce the auction of certain FM broadcast construction permits to commence February 21, 2001. As discussed in greater detail herein, the Bureaus propose that Auction No. 37 be composed of 359 construction permits in the FM Broadcast service as listed in Attachment A of DA 00–2232 (''*Addendum Public Notice*'').

2. Specifically, Attachment A of DA 00–2171 (''*Auction No. 37 Comment Public Notice*'') lists 351 vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. Attachment A of the *Addendum Public Notice* adds eight additional vacant FM allotments not listed in the *Auction No. 37 Comment Public Notice*, and lists *all* vacant FM allotments that will be included in Auction No. 37. The eight additional vacant FM allotments of the *Addendum Public Notice* have been inserted into Attachment A alphabetically by state and the market numbers identified in the attachment to the *Auction 37 Comment Public Notice* have been revised to reflect the addition of these eight vacant FM allotments. Both Public Notices seek comment on procedural issues related to the auctioning of FM broadcast construction permits in Auction No. 37.

3. As stated in the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), applicants may apply for any vacant FM allotment, as specified in Attachment A of the *Addendum Public Notice*; applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures. The reference coordinates for each vacant FM allotment are also listed in Attachment A of the *Addendum Public Notice.*

4. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. We therefore seek comment on the following issues relating to Auction No. 37.

I. Auction Structure

A. Simultaneous Multiple Round Auction Design

5. We propose to award these FM construction permits in a single stage, simultaneous multiple-round auction. As described further, this methodology offers every FM construction permit for bid at the same time in successive rounds of bidding. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility for Each Bidder

6. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for the FM construction permits being auctioned taking into account such factors as the efficiency of the auction process and the potential value of spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the FM construction permits. Upfront payments related to the specific spectrum subject to auction protects against frivolous or insincere bidding and provides the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind, we propose the schedule of upfront payments contained in Attachment A to the Public Notice. We seek comment on this proposal.

7. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

8. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to either place a valid bid and/or be the standing high bidder during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either use an activity rule waiver, if any remain, or lose bidding eligibility in the auction.

9. We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction. We seek comment on this proposal.

D. Activity Rule Waivers

10. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

11. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required, unless (i) there are no more activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

12. We propose that a bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility would be permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder

would not be permitted to regain its lost bidding eligibility.

13. We propose that a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open, under the simultaneous stopping rule. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round.

14. We propose that each bidder in Auction No. 37 be provided with five activity rule waivers that may be used in any round during the course of the auction. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension or Cancellation

15. For Auction No. 37, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

II. Bidding Procedures

A. Round Structure

16. The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 37. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

17. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

18. The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.,* because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bids and/or reserve price prior to the start of each auction of broadcast construction permits.

19. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

20. In light of the Balanced Budget Act, the Bureaus propose to establish minimum opening bids for Auction No. 37. The Bureaus believe a minimum opening bid, which has been utilized in other broadcast auctions, is an effective bidding tool. A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

21. For Auction No. 37, the proposed minimum opening bid for each FM allotment, as listed in Attachment A of the Public Notice, was determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data and recent broadcast transactions. We seek comment on this proposal.

22. If commenters believe that these minimum opening bids will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claim with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bids or reserve prices.

C. Minimum Accepted Bids and Bid Increments

23. Once there is a standing high bid on a construction permit, a bid increment will be applied to that permit to establish a minimum acceptable bid for the following round. For Auction No. 37, we propose to set a minimum 10 percent increment. This means that a new bid placed by a bidder must be at least 10 percent greater than the previous bid received on the construction permit. The Bureau retains the discretion to change the methodology for determining the minimum bid increment if they determine the circumstances so dictate. Advanced notice of the Bureau's decision to do so will be announced via the Automated Auction System.

24. Bidders will enter their bid as multiples of the bid increment (*i.e.,* with a 10 percent bid increment, a bid of 1 increment will place a bid 10 percent above the previous high bid, a bid of 2 increments will place a bid 20 percent above the previous high bid). We seek comment on this proposal.

D. Information Regarding Bid Withdrawal and Bid Removal

25. For Auction No. 37, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove bid function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment.

26. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw

standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. We seek comment on these bid removal and bid withdrawal procedures.

27. In the *Part 1 Third Report and Order,* 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market it finds that a bidder is abusing the Commission's bid withdrawal procedures.

28. Applying this reasoning, we propose to limit each bidder in Auction No. 37 to withdraw standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on these proposals.

E. Stopping Rule

29. For Auction No. 37, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' A simultaneous stopping rule means that all construction permits remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all construction permits. Thus, unless circumstances dictate otherwise, bidding would remain open on all construction permits until bidding stops on every permit.

30. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be utilized.

31. We propose that the Bureau retains the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

32. Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, they will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. We seek comment on these proposals.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–25741 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 20, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. John Mark DeCook, Pella, Iowa, and Martin ''Bruce'' Heerema, Pella, Iowa; each to retain voting shares of Vermeer Investment Company, Pella, Iowa, and thereby indirectly retain voting shares of Marion County State Bank, Pella, Iowa.

2. Raymond James Schirmer, and Robert Lawrence Foust, both of Strawberry Point, Iowa; to acquire additional voting shares of Munter Agency, Inc., Strawberry Point, Iowa, and thereby indirectly acquire additional voting shares of Union Bank and Trust Company, Strawberry Point, Iowa.

Board of Governors of the Federal Reserve System, October 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–25667 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. eZCB Bancorp, Inc., Grand Rapids, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of eZCommunityBank.Com (in organization), Grand Rapids, Michigan.

2. Spectrum Bancorporation, Inc., Omaha, Nebraska; to merge with Great Western Securities, Inc., Omaha, Nebraska, and thereby indirectly acquire Great Western Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, October 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–25668 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–24690) published on pages 57815 and 57816 of the issue for September 26, 2000.

Under the Federal Reserve Bank of Kansas City heading, the entry for Grace Investment Company, Inc., Alva, Oklahoma, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Grace Investment Company, Inc., Alva, Oklahoma; to become a bank holding company by acquiring 93.87 percent of the voting shares, for a total of 100 percent of the voting shares of The First National Bank in Okeene, Okeene, Oklahoma.

In connection with this application, applicant also has applied to engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Comments on this application must be received by October 20, 2000.

Board of Governors of the Federal Reserve System, October 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–25772 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bank Hapoalim B.M., Tel Aviv, Israel; Zohar Hashemesh Le'Hashkaot Ltd., Tel Aviv, Israel; Hapoalim U.S.A. Holding Company, Inc., New York, New York; Shareholder Consortium of Bank Hapoalim B.M., Tel Aviv, Israel; Arison Holdings (1988) Ltd., Tel Aviv, Israel; and Israel Salt Industries Ltd., Atlit, Israel; to engage *de novo* through their subsidiary, Signature Securities Group Corporation, in financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y, and in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–25669 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President), 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. FNB Corporation, Christiansburg, Virginia; to acquire SWVA Bancshares, Inc., Roanoke, Virginia, and thereby indirectly acquire Southwest Virginia Savings Bank, FSB, Roanoke, Virginia, and thereby engage in operating a savings association, pursuant to § 225.28 (b)(4)(ii) of Regulation Y, and Southwest Virginia Service Corporation, Inc., Roanoke, Virginia, and thereby engage in acting as an agent in the sale of credit related insurance, pursuant to § 225.28(b)(11)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–25771 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, October 11, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 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: October 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–25910 Filed 10–4–00; 10:36 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 001 0098]

Manheim Auctions, Inc., Cox Enterprises, Inc., ADT Automotive Holdings, Inc., and Tyco International, Ltd.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violated of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order embodied in the consent agreement that would settle these allegations.

DATES: Comments must be received on or before October 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John B. Kirkwood, FTC Northwest Region, 915 Second Avenue, Suite 2896, Seattle, Washington 98174, (206) 220–4484.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 2, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/2000/09/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Complaint and Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment an Agreement Containing Consent Order (''proposed order'') with Manheim Auctions, Inc. (''Manheim''), Tyco International, Ltd. (''Tyco''), ADT Automotive Holdings, Inc. (''ADT''), and Cox Enterprises, Inc. (''Cox'') (collectively ''Proposed Respondents''). The proposed order seeks to remedy the anticompetitive effects of Manheim's proposed acquisition of ADT's wholesale motor vehicle auctions by requiring Manheim to divest eight of the acquired ADT auctions in locations where Manheim already owns auctions and its ownership of these acquired auctions would likely injure competition. Moreover, the proposed order seeks to remedy the anticompetitive effects of Manheim's 1996 acquisition of an auction in the Phoenix, Arizona area by requiring Manheim to divest one of its Phoenix-area auctions.

II. Description of the Parties and the Proposed Acquisition

Manheim, a Delaware corporation, is a wholly-owned subsidiary of Cox and is the largest auto auction company in the United States. Manheim operates 65 auctions nationwide and reported sales of 4.1 million vehicles in 1999. Manheim has acquired 55 auctions in the last 10 years. ADT, a Delaware corporation, is a wholly owned subsidiary of Tyco and is the third-largest auction company in the United States. ADT operates 28 auctions

nationwide and reported sales of 1.3 million automobiles in 1999.

By the terms of a Stock Purchase Agreement dated January 13, 2000, Manheim will acquire all of ADT's outstanding voting stock for approximately $1 billion.

In a separate transaction that occurred in 1996, Manheim acquired JM Family Enterprises, Inc., its sole competitor in the provision of wholesale motor vehicle auction services in the greater metropolitan area of Phoenix, Arizona.

III. The Proposed Complaint

The proposed complaint alleges that the relevant line of commerce (*i.e.,* the product market) in which to analyze this transaction is the provision of wholesale motor vehicle auction services (''WMVA services'') by major vehicle auctioneers. These services include marshaling motor vehicles before auctions, preparing condition reports, reconditioning the motor vehicles, promoting and marketing auctions to potential buyers, auctioning motor vehicles, and reporting the results of those auctions.

Major wholesale auctions serve automakers and large institutional lessors that sell large quantities of used motor vehicles. They are equipped with advanced computer systems and technology that allow them to deal with larger customers than the smaller wholesale auto auctions can handle. Moreover, this technological sophistication and the resulting benefits and services simultaneously attract a large number of buyers and sellers to each auction. These attributes distinguish major wholesale auction services from the broader market, which consists of services provided by small, independent wholesale auctions that serve regional customers. Typically, major wholesale auctions serve a trade area consisting of a large city and the surrounding metropolitan area.

The proposed complaint further alleges that Manheim's proposed acquisition of ADT, if consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following trade areas (*i.e.,* the geographic markets): (a) The greater metropolitan area of Kansas City, Missouri; (b) the Colorado Front Range, which includes the greater metropolitan areas of Denver and Colorado Springs; (c) the greater metropolitan area of Atlanta, Georgia; (d) the greater metropolitan area of San Francisco, California; (e) the greater metropolitan area of Seattle, Washington; and (f) the I–4 Corridor of Florida, which includes the greater metropolitan areas of Tampa, Orlando, and Daytona Beach. The acquisition would substantially increase concentration and create a monopoly in the provision of WMVA services, as evidenced by post-acquisition Herfindahl-Hirschman Indices (''HHIs'') of 10,000 in each of these geographic markets. After the proposed acquisition, Manheim would have the ability to unilaterally increase prices charged for WMVA services and to substantially decrease the quality and range of services offered to auction customers in these areas.

The proposed complaint also alleges that in 1996 Manheim acquired JM Family Enterprises, Inc., its sole competitor in the provision of WMVA services in the greater Phoenix, Arizona area. The effect of that acquisition, which also resulted in an HHI of 10,000, may have been to substantially lessen competition and create a monopoly in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. Manheim may have both unilaterally increased prices charged for WMVA services and reduced the quality and range of services offered to auction customers in the greater Phoenix area.

The proposed complaint further alleges that new entry into the relevant geographic markets will not likely, timely or sufficient to prevent or counteract these anticompetitive effects. Building an auction requires substantial amounts of capital and entails significant assumption of risk. Other companies have recently required more than two years to complete construction of major auctions. Moreover, even if built, a competing auction would not likely provide significant competition to an existing firm. Because of the large capital investment required, major auctions must sell a high volume of motor vehicles to be profitable, while sellers are reluctant to use the services of an auction that does not have an existing base of strong buyers and buyers are reluctant to attend an auction that does not have a significant number of participating sellers. Consequently, existing auctions possess a considerable first-mover advantage over new entrants. Thus, even if a competitor entered the market, it might not attract enough business to restore competition. In the Phoenix area, no new competitors have entered since 1996.

IV. Terms of the Agreement Containing Consent Order

The proposed order is designed to remedy the alleged anticompetitive effects of the proposed acquisition. Under the terms of the proposed order, the Proposed Respondents must divest to ADESA eight of the acquired ADT auctions and one Manheim auction that currently operate in the geographic markets described above.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems.

The Commission is satisfied that ADESA is a well-qualified acquirer of the divested assets. Based in Indianapolis, Indiana, ADESA is a large chain with 30 auction sites throughout the United States. ADESA possesses the necessary industry expertise to replace the competition that existed prior to the proposed acquisition in the divestiture markets. Furthermore, ADESA poses no separate competitive issues as the acquirer of the divested assets.

The proposed order requires that Proposed Respondents divest the nine auctions to ADESA, in accordance with an agreement between Manheim and ADESA, within 3 months after Manheim acquires ADT. If, at the time the Commission decides to make the proposed order final, the Commission notifies the Proposed Respondents that ADESA is not an acceptable acquirer, or that the agreement with ADESA is not an acceptable manner of divestiture, then Proposed Respondents must immediately rescind the transaction and divest the auction, within 6 months after the proposed order becomes final, to an acquirer approved by the Commission.

The proposed order also includes a provision requiring Proposed Respondents to use their best efforts to maintain the auctions as they would in the ordinary course of business until the divestiture occurs. Moreover, the proposed order prohibits Proposed Respondents from soliciting and hiring employees away from the divested auctions for a period of one year after the divestitures occur.

Additionally, for a period of 10 years after the proposed order becomes final, Proposed Respondents must provide written notice to the Commission prior to acquiring any interest in any wholesale auction facility. Furthermore, Proposed Respondents must provide the Commission with a report of compliance with the proposed order within 30 days after the proposed order becomes final and every 30 days thereafter until they have complied with their divestiture obligations. Respondents are also required to provide annual reports during the term

of the proposed order. For Manheim and Cox, the term of the proposed order is 10 years; for ADT and Tyco, the term ends when the eight ADT auctions are transferred to Manheim.

In the event that Proposed Respondents fail to divest the required auctions within the time allotted, the proposed order enables the Commission to appoint a trustee to divest any assets necessary to satisfy the requirements of the proposed order. Appointment of a trustee is in addition to civil penalties and other relief available from Proposed Respondents for non-compliance with any provision of the proposed order.

V. Opportunity for Public Comment

The proposed order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the proposed order of make it final. By accepting the proposed order subject to final approval, the Commission anticipates that the competitive problems alleged in the proposed complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed order, including the proposed divestitures, to aid the Commission in its determination of whether to make the proposed order final. This analysis is not intended to constitute an official interpretation of the proposed order, nor is it intended to modify the terms of the proposed order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–25661 Filed 10–5–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Caroline E. Garey, Boston College: Based on the Report and Addendum of the Boston College Research Misconduct Investigation Committee and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) finds that Ms. Caroline E. Garey, former doctoral student, Boston College, engaged in scientific misconduct by falsifying research supported by National Institute of Neurological Disorders and Strokes (NINDS), National Institutes of Health (NIH), grant R01 NS23355.

Specifically, as a graduate student at Boston College, Ms. Garey falsified restriction fragment length polymorphism (RFLP) data for ABP and DBA backcross mice DNA samples by misrepresenting results from multiple assays of identical backcross ABP DNA samples as being from different animals and misrepresenting the autoradiograms of backcross ABP DNA samples as the results from experiments on backcross DBA mice. Ms. Garey reported this falsified data in her doctoral dissertation, ''Defect in the ceruloplasmin gene associated with epilepsy in the EL mouse,'' and in an article in Nature Genetics 6:426–431, 1994. She caused her falsified data to be reported by her laboratory director in NINDS, NIH, grant application 2 R01 NS23355–08A1 and at an international workshop on epilepsy on September 24, 1994. Ms. Garey also fabricated a translation table that she used to assign falsified RFLP data to individual backcross DBA mice. As a result of falsifying these assays over a minimum of two and one-half years, none of Ms. Garey's research can be considered reliable and the Nature Genetics publication has been retracted. These actions adversely and materially affected the laboratory's ongoing research on the genetic causes of epilepsy.

Ms. Garey also has engaged in a pattern of dishonest conduct that indicates that she is not presently responsible to be a steward of Federal funds. This pattern of behavior includes (1) a history of falsely claiming that she has performed scientific experiments when she has not, and (2) repeated instances in which she has misrepresented her credentials to prospective employers, colleagues, customers, and the general public as including a Ph.D. degree even though Boston College refused to grant her a doctoral degree because of her scientific misconduct.

The publication affected is:

- Garey, C.E., Schwarzman, A.L., Rise, M.L., & Seyfried, T.N. ''Ceruloplasmin gene defect associated with epilepsy in EL mice.'' Nature Genetics 6:426–431, 1994 (retracted in Nature Genetics 11:104, 1995).

While Ms. Garey does not admit to the allegations of scientific misconduct, she has entered into a Voluntary Exclusion Agreement with PHS in which she has voluntarily agreed for a period of five (5) years, beginning on September 25, 2000:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations);

(2) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris Pascal,

Director, Office of Research Integrity.

[FR Doc. 00–25568 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Ethics Subcommittee of the Advisory Committee to the Director, CDC.

Time and Date: 9:30 a.m.–5 p.m., October 16, 2000.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Building 16, Room 5126, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Purpose: This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

Matters To Be Discussed: Agenda items will include updates from the Associate director for Science, Dixie E. Snider, M.D., M.P.H.; a discussion on ethical considerations of studies to evaluate the risk of transmission of Human Herpes virus (HHV–8) in international settings; and anticipating issues involved in future decisions regarding this issue.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S/ D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–25710 Filed 10–5–00; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee (Formerly Hospital Infection Control Practices Advisory Committee).

Times and Dates: 8:30 a.m.–5 p.m., November 6, 2000; 8:30 a.m.–4 p.m., November 7, 2000.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of proposed revisions to the Guideline for Prevention of Healthcare-associated Pneumonia, the Guideline for Isolation Precautions in Hospitals, the Guideline for Prevention of Intravascular Device-related Infections, the Guideline for Sterilization and Disinfection, the Guideline for Hand Hygiene, and the Guideline for Environmental Controls in Healthcare Settings; a discussion of the status of Staphylococcus aureus with Reduced Susceptibility to Vancomycin (VISA) in the United States; and updates on CDC activities of interest to the committee, including nosocomial tuberculosis control, the Federal Action Plan for Antimicrobial Resistance, and bioterrorism response in healthcare facilities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/639–6439.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–25685 Filed 10–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Meeting

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Interagency Committee on Smoking and Health.

Date and Time: 9 a.m.–1 p.m. October 26, 2000.

Place: Secretary's Conference Room (Stonehenge) Hubert H. Humphrey Building, 200 Independence Avenue, SW, 6th Floor, Washington, DC 20201.

Status: Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 E.S.T. on October 20, 2000.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the: (a) Coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters to be Discussed: The agenda will focus on the Framework Convention on Tobacco Control.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet *(www.cdc.gov/tobacco)* in mid-November or from Ms. Monica L. Swann, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW, Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–25689 Filed 10–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1534]

Agency Information Collection Activities; Proposed Collection; Comment Request; Year 2000 Continuation of National Surveys of Prescription Drug Information Provided to Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a national tracking survey, conducted every 2 years, of prescription drug information received by patients.

DATES: Submit written or electronic comments on the collection of information by December 5, 2000.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Year 2000 Continuation of National Surveys of Prescription Drug Information Provided to Patients

FDA implements the provisions of the Federal Food, Drug, and Cosmetic Act (the act) designed to ensure the adequate labeling of prescription (Rx) drugs. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug product is misbranded if its labeling is false or misleading in any particular, and under section 201(n) of the act (21 U.S.C. 321(n)), a drug's labeling is misleading if its labeling or advertising fails to reveal material facts. FDA also has the authority to collect this information under Title VI of Public Law 104–180 (Related Agencies and Food and Drug Administration) section 601 (Effective Medication Guides), which directs the development of ''a mechanism to assess periodically * * * the frequency with which the [oral and written prescription] information is provided to consumers.''

To ensure that Rx drugs are not misbranded, FDA has historically asserted that adequate labeling requires certain information be provided to patients. In 1982, when FDA revoked a planned initiative to require mandatory patient package inserts for all Rx drugs in favor of private sector initiatives, the agency indicated that it will periodically conduct surveys to evaluate the availability of adequate patient information on a nationwide basis. In addition, FDA has been responsible for setting and tracking Healthy People 2000 goals and now for Healthy People 2010 goals for the receipt of medication information by patients.

Surveys of consumers about their receipt of Rx drug information were carried out in 1982, 1984, 1992, 1994, 1996, and 1998. This notice is in regard to conducting the survey in the year 2000.

The survey is conducted by telephone on a national random sample of adults who received a new prescription for themselves or a household member within the past 4 weeks. The interview assesses the extent to which oral and written information were received from the doctor, the pharmacist, and other sources. Survey respondents are also asked attitudinal questions, and demographic and other background characteristics are obtained. The survey enables FDA to determine the frequency with which such information is provided to consumers. Without this information, the agency would be unable to assess the degree to which adequate patient information and counseling about Rx drugs is provided.

Respondents to this collection of information are adults (18 years or older) in the continental United States who have obtained a new (nonrefill) prescription at a pharmacy for themselves or a member of their household in the last 4 weeks.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN:[1] SCREENER

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
2000	9,643	1	9,643	.03	289

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ANNUAL REPORTING BURDEN:[1] SURVEY

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
2000	1,000	1	1,000	.32	320

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

This total estimate of 609 total annual burden hours is based on the 1998 survey administration, in which 9,643 potential respondents were contacted to obtain 1,000 interviews.

Dated: October 2, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25701 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1353]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 6, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practices (CGMP) and Related Regulations for Blood and Blood Components (OMB Number 0910–0116)—Extension

Under the statutory requirements contained in the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enable FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Section 606.100(b) (21 CFR 606.100(b)) requires that written standard operating procedures (SOP's) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release of the lot or unit. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) (21 CFR 606.110(a)) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. The regulation in 21 CFR 606.151(e) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, 21 CFR 606.160 requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. The regulations in 21 CFR 606.165 require that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) (21 CFR 606.170(a)) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collections and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days.

In addition to the CGMP's in part 606 (21 CFR part 606), there are regulations in part 640 (21 CFR part 640) that require additional standards for blood and blood components as follows: Sections 640.2(f); 640.3(a); 640.4(a); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72, 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described below. Respondents to this collection of information are licensed and unlicensed blood establishments inspected by FDA, and other transfusion services inspected by the Health Care Financing Administration (HCFA). Based on FDA's registration system, there are an estimated 3,032 registered blood establishments inspected by FDA of which 1,349 perform pheresis. Based on information provided by HCFA, there are an estimated 3,400 transfusion services inspected by HCFA. An estimated 27 million units of whole blood and blood components are collected annually. The recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOP's as part of their customary and usual business practice. Establishments may minimize burdens associated with the CGMP and related regulations by using model SOP's developed by industries' accreditation

organizations. These accreditation organizations represent almost all registered blood establishments. The total annual responses in the reporting chart for fatality reporting are based on an annual average of fatality reports submitted to FDA. The annual frequency of recordkeeping and total annual records, and the estimated reporting and recordkeeping burden hours are based on information provided by industry, and FDA's experience. Under § 606.110(b), licensed establishments submit supplements to their biologics license applications to request prior CBER approval of plasmapheresis donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported under OMB control number 0910–0315.

In the **Federal Register** of July 6, 2000 (65 FR 41674), the agency requested comments on the proposed collections of information. No significant comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section[2]	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.170(b)	75	1	75	20	1,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section[2]	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
606.100(b)	322[3]	1	322	24	7,728
606.100(c)	152[4]	26	4,000	1	4,000
606.110(a)	68[5]	5	340	0.5	170
606.151(e)	322[3]	12	3,864	0.083	321
606.160	322[3]	1,677	540,000	0.5	270,000
606.165	152[4]	3,553	540,000	0.083	44,820
606.170(a)	322[3]	12	3,864	1	3,864
Total					330,903

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOP's, are included in the estimate for § 606.100(b); the recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for plateletpheresis, are included in the estimate for § 606.110(a); and the recordkeeping requirements in §§ 640.2(f), 640.3(a)(2), 640.3(f), 640.4(a)(2), 640.25(b)(4) and (c)(1), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1), and (e)(3), 640.65(b)(2), 640.71(b)(1), 640.72, and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160.
[3]5 percent of HCFA and FDA-registered blood establishments (0.05 X (3,400+3,032))
[4]5 percent of FDA-registered establishments (3,032)
[5]5 percent of pheresis establishments (1,349)

Dated: October 2, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25698 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1395]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medicated Feed Mill License

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 6, 2000.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medicated Feed Mill License 21 CFR Part 515—(OMB Control Number 0910–0337)—Extension

Description: This rule sets forth the information to be included in a medicated feed mill license application and subsequent supplemental applications. In addition, it provides criteria for the approval and nonapproval of a medicated feed mill license application and the criteria for the revocation and/or suspension of a license. More specifically, § 515.10(b) specifies requirements for submitting a completed medicated feed mill license application, using Form FDA 3448. Section 515.11(b) specifies requirements for supplemental medicated feed applications for a change in ownership and/or a change in mailing address for the facility cite, using Form FDA 3448. Section 515.23 sets forth written requirements for voluntary revocation of a medicated feed mill license by a sponsor on the grounds that the facility

no longer manufacture any animal feed. Section 515.30(c) details requirements for filing a request for a hearing by a sponsor to give reasons why a medicated feed mill license application should not be refused or revoked and § 510.305(b) (21 CFR 510.305 (b)), requires maintenance of approved labeling for each Type B and/or Type C medicated feed being manufactured on the premises of the manufacturing establishment or the facility where the feed labels are generated.

Description of Respondents: Respondents to this collection of information are individuals or firms that manufacture medicated animal feed. In the **Federal Register** of July 26, 2000 (65 FR 45987), FDA published a 60-day notice concerning the proposed extension of this collection of information and requested comments. In response to this notice, no comments were received on the estimated annual reporting and recordkeeping burden. We therefore believe that the total burden estimate of 72 hours for the annual reporting and recordkeeping burden should remain unchanged.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
515.10(b)	100	1	100	0.25	25
515.11(b)	25	1	25	0.25	6.25
515.23	50	1	50	0.25	12.25
515.30(c)	0.15	1	0.15	24	3.6
Total burden hours					47.10

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
510.305(b)	100	1	100	.25	25

[1]There are no capital cost or operating and maintenance cost associated with this collection of information.

The estimate for the number of respondents is derived from agency data, i.e. the number of medicated feed manufacturers entering the market each year, change in ownership or address, requests for voluntary revocation of a medicated feed mill license, revocation and/or suspension of a license. The estimate of the time required for the reporting and recordkeeping requirements is based on the agency communication with industry.

Dated: October 2, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25699 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1309]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 6, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision

Description: Under the pesticide tolerance reassessment process that the Environmental Protection Agency (EPA) was mandated to carry out under the Food Quality Protection Act (FQPA), EPA has proposed to revoke the tolerances for the pesticide chemical methyl parathion on several food commodities. The FQPA includes a provision in section 408(l)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 346a(l)(5)), referred to as the ''channels of trade provision,'' that addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA. These circumstances are met if the party responsible for the food can demonstrate to FDA that the residue in the food resulted from application of the pesticide chemical to the food commodity at a time and in a manner that was lawful under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

In general, FDA anticipates that the party responsible for food found to contain methyl parathion residues (within the former tolerance) after the

tolerance for the pesticide chemical has been revoked, will be able to demonstrate that the residue resulted from a lawful application under FIFRA by providing appropriate documentation to the agency showing that such food was packed or processed on or prior to December 31, 2000, as discussed in the draft guidance that was announced in a notice that FDA published in the **Federal Register** of June 2, 2000 (65 FR 35376) (the June notice). FDA is not suggesting that firms maintain a certain set list of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so packed or processed.

Examples of documentation that FDA anticipates will serve this purpose include but are not limited to packing codes, batch records, and inventory records; it is anticipated that most food processors routinely generate this documentation as part of their basic food-production operations.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food-processing industries who handle food products that may contain residues of methyl parathion after the tolerances for this pesticide chemical in those foods have been revoked.

In the June notice, the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
67	1	67	3	201

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Capital Costs
83	1	83	16	1,328	$500

[1]There are no operating and maintenance costs associated with this collection of information.

Estimates for the annual reporting burden were determined by using the maximum number of samples collected throughout a year that FDA believes may be found to contain methyl parathion residues. Because all residues are expected to have dissipated from nonfrozen foods by the time FDA intends to question firms about when a food product was packed or processed (i.e., after December 31, 2000), FDA included only frozen food in its estimate (i.e., processors of foods stored under refrigerated and ambient conditions were excluded). Although residues within the former tolerance resulting from legal application of methyl parathion are not expected to be found in nonfrozen foods after December 31, 2000, under the channels of trade provision, firms will have an opportunity to make a showing that any such food was packed or processed on or before this date.

Considering the variation in and effects of food handling, particularly with regard to the time between pesticide application and freezing, FDA estimated that potentially half of all frozen food products sampled may contain methyl parathion residues, and therefore, the responsible party, under the approach set forth in this guidance, would be subject to the reporting requirement since it would be the burden of the responsible party to demonstrate that food found to contain methyl parathion residues within the former tolerance was packed or processed on or before December 31, 2000.

When determining the annual recordkeeping burden, importers and domestic processors of frozen food commodities affected by the revocation of the pesticide chemical methyl parathion were considered. FDA estimated that most firms (at least 90 percent) maintain (or maintain access to) documentation such as packing codes, batch records, and inventory records as part of their basic food production and/or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms which may not currently be maintaining this documentation, to develop and maintain (or maintain access to) documentation such as batch records and inventory records. It was estimated that with $500 or less, the necessary software and/or hard copy filing systems could be obtained to implement a system.

Because all residues are expected to have dissipated from nonfrozen foods by the time FDA intends to ask for a showing under section 408(l)(5) of the act (i.e., after December 31, 2000), FDA used the number of frozen food processors when determining the annual recordkeeping burden. In the June notice, this burden was originally determined to be 6,600 hours. However, due to revisions that FDA will include in the final guidance document, the proposed information collection was refined, and the annual recordkeeping burden decreased to 1,328 hours. The ''Category II Documentation,'' which consisted of documentation relating to the institution of auditing programs and supplier verification, will be removed from the final guidance as suggested documentation to be provided to demonstrate compliance with the channels of trade provision.

As with the annual reporting burden estimate, although nonfrozen food processors are entitled to make a showing under the channels of trade provision, they were excluded from this estimate because based upon residue dissipation estimates provided by EPA, methyl parathion residues within the former tolerance resulting from legal application are not expected to be found in nonfrozen commodities after December 31, 2000.

Dated: October 2, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25700 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H]

Food Labeling; Health Claims and Label Statements for Dietary Supplements; Update to Strategy for Implementation of Pearson Court Decision

AGENCY: Food and Drug Administration, HHS.

ACTION: :Notice.

SUMMARY: The Food and Drug Administration (FDA) is updating its strategy for implementation of the court of appeals decision in *Pearson* v. *Shalala* (*Pearson*). The updated implementation strategy includes an interim enforcement strategy for dietary supplement health claims that do not meet the ''significant scientific agreement'' standard of evidence by which the health claims regulations require FDA to evaluate the scientific validity of claims. It also includes changes in the process that will be used for reconsidering the four *Pearson* health claims and for responding to future petitions for dietary supplement health claims. The agency is taking this action to inform interested persons of the latest developments in FDA's plans for implementation of *Pearson*.

FOR FURTHER INFORMATION CONTACT: James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–832), 200 C St. SW., Washington, DC 20204, 202–205–5372.

SUPPLEMENTARY INFORMATION:

I. Background

After the enactment of the Nutrition Labeling and Education Act of 1990 (the NLEA) and the Dietary Supplement Act of 1992, FDA issued regulations applying the general requirements for health claims for conventional foods to dietary supplements (59 FR 395, January 4, 1994). Under these regulations, a health claim is authorized for use only if FDA determines that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by the totality of publicly available scientific evidence, including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles § 101.14 (21 CFR 101.14). FDA also undertook rulemaking to consider specific health claims, including the four health claims at issue in the *Pearson* case.

In *Pearson*, the plaintiffs challenged FDA's general health claims regulation for dietary supplements and FDA's decision not to authorize health claims for four specific substance/disease relationships: Dietary fiber and cancer, antioxidant vitamins and cancer, omega-3 fatty acids and coronary heart disease, and the comparative claim that 0.8 milligram of folate[1] in dietary supplement form is more effective in reducing the risk of neural tube defects[2] than a lower amount in conventional food form. Although the district court ruled for FDA in all respects (14 F. Supp. 2d 10 (D.D.C. 1998)), the U.S. Court of Appeals for the D.C. Circuit reversed the lower court's decision (164 F.3d 650 (D.C. Cir. 1999)). The appeals court held that, on the administrative record compiled in the challenged rulemakings, the First Amendment does not permit FDA to reject health claims that the agency determines to be potentially misleading unless the agency also reasonably determines that no disclaimer would eliminate the potential deception. Accordingly, the court invalidated the regulations codifying FDA's decision not to authorize the four health claims listed above and directed the agency to reconsider the four claims. The court further held that the Administrative Procedure Act requires FDA to clarify the ''significant scientific agreement'' standard for authorizing health claims, either by issuing a regulatory definition of significant scientific agreement or by defining it on a case-by-case basis.

On March 1, 1999, the Government filed a petition for rehearing *en banc* (reconsideration by the full court of appeals). The U.S. Court of Appeals for the D.C. Circuit denied the petition for rehearing on April 2, 1999 (172 F.3d 72 (D.C. Cir. 1999)).

[1] In its original health claim evaluation, FDA used the term ''folic acid'' to describe this B vitamin. Later, the agency decided that the broader term ''folate'' was more scientifically accurate because that term encompasses both synthetic and naturally occurring forms of the vitamin, whereas folic acid refers only to the synthetic form (see 58 FR 53254 at 53257–58, and 53280, October 14, 1993). Accordingly, this notice uses the term ''folate.'' The two terms may be used interchangeably in food labeling.

[2] Neural tube defects are birth defects of the brain or spinal cord. Spinabifida and anencephaly are the most common types of neural tube defects.

II. Strategy for Implementation of the Pearson Court Decision

A. The December 1999 Implementation Strategy Notice

In the **Federal Register** of December 1, 1999 (64 FR 67289), FDA published a notice entitled ''Food Labeling: Health Claims and Label Statements for Dietary Supplements; Strategy for Implementation of *Pearson* Court Decision'' to inform the public of the steps FDA planned to follow to carry out the *Pearson* decision. The strategy included five components: (1) Update the scientific evidence on the four claims at issue in *Pearson*; (2) issue guidance clarifying the ''significant scientific agreement'' standard; (3) hold a public meeting to solicit input on what changes to FDA's general health claim regulations for dietary supplements may be warranted in light of the *Pearson* decision; (4) conduct a rulemaking to reconsider the general health claims regulations for dietary supplements in light of the *Pearson* decision; and (5) conduct rulemakings on the four *Pearson* health claims. In addition, the implementation strategy notice stated that, until the rulemaking to reconsider the general health claims regulations for dietary supplements was complete, FDA would deny, without prejudice, any petition for a dietary supplement health claim that does not meet the significant scientific agreement standard in § 101.14(c). The notice further explained that, once the rulemaking was complete, the agency would, on its own initiative, reconsider any petitions denied during the interim period.

Since the December 1999 **Federal Register** notice was published, FDA has completed the first three steps in the implementation strategy. The agency entered into contracts with two nongovernment firms to conduct a literature review for the four claims to identify relevant scientific information that became available after the agency's initial 1991 to 1993 review of these claims. FDA also published a notice in the **Federal Register** of September 8, 1999 (64 FR 48841), requesting that interested persons submit any available scientific data concerning the substance-disease relationships that are the subject of the four claims.

In December 1999, FDA issued a guidance clarifying the significant scientific agreement standard. A notice of availability of the guidance was published in the **Federal Register** of December 22, 1999 (64 FR 71794). The guidance is available on the Internet at http://vm.cfsan.fda.gov/~dms/ssaguide.html.

In response to a request from several of the *Pearson* plaintiffs, the agency agreed to reopen the comment period for scientific data on the four claims after the agency issued its guidance on the significant scientific agreement standard. Accordingly, in the **Federal Register** of January 26, 2000 (65 FR 4252), FDA reopened the comment period for an additional 75 days, until April 3, 2000.

On April 4, 2000, FDA completed the third step in the *Pearson* implementation strategy by convening a public meeting to solicit input on changes to the general health claims regulations for dietary supplements in light of the *Pearson* decision. Information on the public meeting, including the agenda and transcripts, are available on the Internet at http://vm.cfsan.fda.gov/dms/ds-0400.html.

B. Modifications to the December 1999 Implementation Strategy

1. Interim Enforcement Strategy for Dietary Supplement Health Claims

In the NLEA, Congress made health claims for dietary supplements subject to a procedure and standard to be established by FDA (see section 403(r)(5)(D) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(5)(D)). By regulation, FDA adopted the same procedure and standard for health claims in dietary supplement labeling that Congress had prescribed in the NLEA for health claims in the labeling of conventional foods (see section 403(r)(3) and (r)(4) of the act). The procedure requires the evidence supporting a health claim to be presented to FDA for review before the claim may appear in labeling (§§ 101.14(d) and (e), and 101.70 (21 CFR 101.70)). The standard requires a finding of ''significant scientific agreement'' before FDA may authorize a health claim by regulation (§ 101.14(c)). Unless and until FDA adopts a regulation authorizing use of the claim, a dietary supplement bearing the claim is subject to regulatory action as a misbranded food (see section 403(r)(1)(B) of the act), a misbranded drug (see section 502(f)(1) of the act (21 U.S.C. 352(f)(1))), and as an unapproved new drug (see section 505(a) of the act (21 U.S.C. 355(a))). Under FDA's current general health claim regulations, the agency cannot authorize use of a health claim that does not meet the significant scientific agreement standard.

Pending reconsideration of the general health claim regulations in response to *Pearson*, FDA is modifying its approach to processing new health claim petitions for dietary supplements. Absent this modification, FDA would have to deny all petitions that do not meet the significant scientific standard pending completion of the general rulemaking. Such an approach could lead to additional First Amendment challenges prior to completion of the rulemaking process.

Rather than denying all petitions that do not meet the significant scientific agreement standard pending completion of the general rulemaking, FDA intends to exercise enforcement discretion in appropriate circumstances. Specifically, the agency will consider exercising enforcement discretion for a dietary supplement health claim when the following conditions are met: (1) The claim is the subject of a health claim petition that meets the requirements of § 101.70; (2) the scientific evidence in support of the claim outweighs the scientific evidence against the claim, the claim is appropriately qualified, and all statements in the claim are consistent with the weight of the scientific evidence; (3) consumer health and safety are not threatened; and (4) the claim meets the general requirements for health claims in § 101.14, except for the requirement that the evidence supporting the claim meet the significant scientific agreement standard and the requirement that the claim be made in accordance with an authorizing regulation.

To the extent possible, FDA will consider these criteria while it is evaluating the petition and will state its conclusions in a letter to the petitioner; however, some criteria will have to be evaluated after-the-fact, because they involve information or circumstances that cannot be determined from the petition. For example, FDA will not be able to determine whether the entire claim appears in one place without intervening material, as required by § 101.14(d)(2)(iv), until it actually sees the claim on products in the marketplace. Some provisions of § 101.14 may not be relevant to a particular claim. The agency intends to identify any such provisions in its letter to the petitioner.

As discussed below, FDA will consider exercising enforcement discretion only if a petition to authorize the health claim has been submitted; the agency has filed the petition; the agency has completed its scientific evaluation of the claim and communicated that evaluation by letter to the petitioner; and the conditions previously described, as well as any others stated in the letter to the petitioner, are met.

2. Interim Process for Responding to New Dietary Supplement Health Claim Petitions and Reconsidering the Four *Pearson* Health Claims

FDA intends to respond to the four health claims at issue in the *Pearson* case and, pending rulemaking to implement *Pearson*, to new dietary supplement health claim petitions that have been filed for comprehensive review (see § 101.70(j)(2)) in one of the following three ways:

(1) If FDA determines that the significant scientific agreement standard is met, the agency will propose to authorize the health claim. FDA will consider using its interim final rule authority under section 403(r)(7)(A)(iii) of the act to allow use of the health claim immediately upon publication of the proposal.

(2) If FDA determines that the significant scientific agreement standard is not met, but that the scientific evidence in support of the claim outweighs the scientific evidence against the claim and the other threshold criteria listed above are met, FDA will consider exercising enforcement discretion with regard to dietary supplements that bear the health claim with appropriate qualifying language. The petitioner will be notified in writing of this intention. The letter to the petitioner will outline the agency's rationale for its determination that the evidence does not meet the significant scientific agreement standard set forth in § 101.14(c) and then state the conditions under which the agency would ordinarily expect to exercise enforcement discretion for the claim.

(3) If FDA determines that the significant scientific agreement standard is not met and that the evidence supporting the claim is outweighed by evidence against the claim (either qualitatively or quantitatively), or the substance poses a threat to health, or that any of the other criteria listed in section II.B.1 of this document are not met, FDA intends to deny the petition. The denial letter to the petitioner will: (1) Outline the agency's rationale for its determination that the evidence does not meet the significant scientific agreement standard set forth in § 101.14(c); and (2) explain why FDA believes that the scientific evidence for the claim is outweighed by the evidence against the claim, that the claim would be otherwise misleading even if qualified, or that authorizing a health claim would pose a threat to consumer health or safety.

This process is consistent with case law holding that FDA has wide latitude in matters of enforcement discretion.

(See, e.g., *Heckler* v. *Chaney*, 470 U.S. 821 (1985); *Schering* v. *Heckler*, 779 F.2d 683 (D.C. Cir. 1985).) It is also consistent with the *Pearson* decision, which described several circumstances in which FDA might be justified in banning certain health claims outright —e.g., where consumer health and safety are threatened, or where FDA can demonstrate that a health claim would be misleading even if qualified (see *Pearson*, 164 F.3d at 650, 657–60). For example, the court said that FDA could prohibit a health claim where the evidence in support of the claim is outweighed by evidence against the claim, either quantitatively or qualitatively (164 F.3d at 659 & n.10). The agency is adopting this modified process on an interim basis to minimize any burden on speech pending consumer research and rulemaking to complete the implementation of the *Pearson* decision.

3. Timing of FDA's Decisions on Health Claims for Dietary Supplements

FDA will complete its reconsideration of the four *Pearson* claims and issue a final decision on each of the claims within 190 days after the close of the comment period seeking scientific data on the claims, i.e., by October 10, 2000. For new health claim petitions for dietary supplements, FDA will continue to follow the applicable deadlines in § 101.70(j), as with past health claim petitions.

Dated: October 2, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–25702 Filed 10–3–00; 4:29 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10011]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Stages of Change Survey for Informed Choice in the Medicare Population;

Form No.: HCFA–10011 (OMB# 0938–NEW);

Use: This is a survey of Medicare beneficiaries in the first step in the application the Transtheoretical Model (the ''stage model'') to informed choice in the Medicare population. The Transtheoretical Model has been applied and proven effective in facilitating behavior change in a wide range of health behaviors including smoking cessation, mammography screening, and safe sex. This work will yield psychometrically sound and externally valid measures of beneficiaries' readiness to make informed choices about health plans, and provide information to HCFA to assist with its national educational campaign to inform beneficiaries about their choices. Stages of Change measures will be administered to 560 Medicare beneficiaries and initial enrollees. This survey research will yield psychometrically sound measures of beneficiaries' readiness to make informed choices about health plans, and provide information to guide HCFA's National Medicare Education Program (NMEP);

Frequency: Other: One-time survey;

Affected Public: Individuals or Households;

Number of Respondents: 560;

Total Annual Responses: 560;

Total Annual Hours: 327.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, HCFA–10011, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 26, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–25761 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–9044]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, OHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Provider Reimbursement Manual, Part 1—Chapter 27, Section 2721, 2722 and 2725, Request for Exception to ESRD Composite Rates and Supporting Regulations in 42 CFR 413.170 and 413.184; *Form No.:* HCFA–9044 (OMB# 0938–0296); *Use:* Sections 2721, 2722 and 2525 of the Provider Reimbursement Manual describe the information ESRD facilities must submit

in justifying an exception request to their composite rate for outpatient dialysis services.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 291; *Total Annual Responses:* 291; *Total Annual Hours:* 14,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, HCFA–9044 Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards

[FR Doc. 00–25762 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifiers: HCFA–R–296 (OMB # 0938–0781)]

Notice of Extension of Emergency Office of Management and Budget Clearance of Agency Information Collection Activities

AGENCY: Health Care Financing Administration, DHHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing this Notice to inform the public that the Office of Management and Budget (OMB) has approved our request for an extension of the OMB clearance on model advance beneficiary notices (ABNs), for which we first requested emergency clearance by **Federal Register** notice dated September 22, 1999 (HCFA–R–296, OMB # 0938–0781). Clearance of these model ABNs (referred to as HHABNs) for use by home health agencies (HHAs) has been extended through January 31, 2001. These model notices, together with the instructions in Program Memorandum Transmittals A–99–52 and A–99–54, remain in effect following the implementation of the prospective payment system (PPS) for home health agencies on October 1, 2000. HCFA also has published a **Federal Register** notice on September 26, 2000, 65 FR 57821, seeking emergency OMB clearance, pursuant to the Paperwork Reduction Act, of a revised uniform Home Health Advance Beneficiary Notice (HHABN), which we expect to make mandatory in January 2001.

Use: The purpose of this Notice is to clarify, for Medicare beneficiaries, for HHAs, and for other interested members of the public that existing requirements regarding notice and demand bills, as set forth in Program Memorandum Transmittals A–99–52 and A–99–54, and as reflected in the model notices for which OMB has extended the emergency clearance, remain in effect following the implementation of the prospective payment system for HHAs on October 1, 2000. Thus, in accordance with the instructions in PMs A–99–52 and A–99–54, HHAs continue to be responsible for providing proper ABNs and for submitting demand bills to Regional Home Health Intermediaries (RHHIs) when requested to do so by a beneficiary or by a person acting on the beneficiary's behalf. Moreover, the transition to PPS does not change HHAs' responsibility to follow ABN and demand bill procedures for plans of care in which the physician's order spans the transition.

HHAs must give a Medicare beneficiary a proper ABN before reducing or terminating home health care the beneficiary already is receiving, if the physician's order for such care would still continue the care, and an HHA believes that the services do not meet Medicare coverage criteria. In instances where care has not yet been initiated and an HHA believes services ordered by the physician do not meet Medicare coverage criteria, it must also provide a proper ABN. Currently, HHAs may use the model HHABNs designed by HCFA (Form No. HCFA–R–0296) or forms of the HHA's own design to meet the beneficiary notification requirement.

Continued Use of Demand Billing Procedures and Meaning of ''Prompt'' Submission Under HHA PPS

With respect to the instructions regarding demand bills in Transmittals A–99–52 and A–99–54, we want to emphasize that the demand bill process remains in effect following the implementation of HHA PPS, and must be used by HHAs to ensure continuation of beneficiary rights to obtain an official Medicare initial determination. Beginning in June, HCFA has been assessing the operational feasibility and impact of options for integrating the initial determination process into HHA PPS. In the HHA PPS final rule published on July 3, 2000, we stated, in response to public comment, that HCFA was reviewing demand billing procedures to determine whether they must be modified to account for the differences between HHA reasonable cost billing and HHA PPS. 65 FR 41128, 41169 (July 3, 2000) (Medicare Program; Prospective Payment System for Home Health Agencies, Final Rule). As a result of our assessment of the feasibility of various options, HCFA decided to continue to use the demand bill process as the mechanism by which Medicare beneficiaries obtain an official Medicare initial determination when an HHA believes, under HHA PPS, that Medicare will not, or will no longer, cover services ordered by a physician.

When a beneficiary agrees to be fully and personally responsible for payment for the services if Medicare decides the services are not covered, and has requested that a claim be submitted to Medicare, HHAs must ''promptly'' submit a claim to the RHHI and report, on the claim submitted, condition code 20 (demand-beneficiary requested billing) to indicate the beneficiary believes the services are covered (*see* PM A–99–52 sec. I–2A). Under HHA PPS, HHAs may submit only one claim for payment at the end of each episode of care. *See* 65 FR at 41141. Thus, under HHA PPS, ''prompt submission'' of a claim with the demand bill code requires that the claim (*i.e.,* the demand bill) be submitted at the end of the episode in question, at the same time the claim for final payment for the episode is submitted. Pursuant to the HHA PPS Final Rule, where an HHA has received a ''request for anticipated payment'' (RAP) for an episode, the RAP will be canceled and recovered unless the claim for the episode (with the condition code 20 to indicate that the claim is a demand bill when requested by the beneficiary in the circumstances described in PM A–99–52) is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the anticipated payment. 65 FR at 41141.

Future Plans

As noted above, on September 26, 2000, HCFA published a **Federal**

Register notice seeking emergency OMB clearance, pursuant to the Paperwork Reduction Act, of a revised uniform mandatory Home Health Advance Beneficiary Notice (HHABN). (The **Federal Register** notice, which includes procedures for submitting comments on the revised HHABN, the revised uniform HHABN and related documents, including a Supporting Statement, are posted on HCFA's website at *http://www.hcfa.gov/regs/prdact95htm,* and are also available via an e-mail request sent to Paperwork@hcfa.gov). HCFA has requested that OMB issue an emergency clearance of the proposed uniform HHABN by October 12, 2000, and HCFA intends to make mandatory the use of the HHABN not later than 90 days following OMB approval. (See the Supporting Statement for HCFA–R–0296). The instructions and requirements of PMs A–99–52 and A–99–54 will remain in effect until a further instruction with a new mandatory implementation date is issued. HCFA expects to issue these instructions as soon as it receives emergency approval by the Office of Management and Budget (OMB). HCFA strongly advises that HHAs use the new notice (the HHABN) once it is approved and instructions are issued, rather than waiting until its use becomes mandatory in January 2001.

Dated: October 4, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services Security and Standards Group Division of HCFA Enterprise Standards.

[FR Doc. 00–25936 Filed 10–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–64]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Indirect Medical Education (IME) and Supporting Regulations in 42 CFR 412.105;

Form No.: HCFA–R–64 (OMB# 0938–0456);

Use: This collection of information on interns and residents (IR) is needed to properly calculate Medicare program payments to hospitals that incur indirect costs for medical education. The agency's Intern and Resident Information System uses the information for producing automated reports of duplicate full-time equivalent IRs for IME. The reports provide contractors with information to ensure that hospitals are properly reimbursed for IME, and help eliminate duplicate reporting of IR counts which inflate payments. The collection of this information affects 1,350 hospitals which participate in approved medical education programs.;

Frequency: Annually;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 1,350;

Total Annual Responses: 1,350;

Total Annual Hours: 2,700.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 11, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–25760 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Obligated Service for Mental Health Traineeships: Regulations (42 CFR part 62a) and Forms—(Extension, no change; OMB No. 0930–0074)—SAMHSA's Center for Mental Health Services (CMHS) awards grants to institutions for training instruction and traineeships in mental health and related disciplines. Graduate student recipients of these clinical traineeships must perform service, as determined by the Secretary to be appropriate in terms of the individual's training and experience, for a length of time equal to the period of support. The clinical trainees are required to submit SAMHSA Form SMA 111, a payback agreement, SAMHSA Form 111–1, which ensures agency receipt of a termination notice prior to the end of support, and the SAMHSA Form SMA

111–2, which is an annual report on employment status and any changes in name and/or address, to SAMHSA. The burden estimate is provided below.

42 CFR citation and associated forms	Number of respondents	Responses per respondent	Average burden per response (hrs.)	Annual burden (hrs.)
64a.104 SMA 111,111–1	50	1	.10	5
64a.105(b)(2) SMA 111–2	500	1	.18	90
Total	550			95

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 29, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–25686 Filed 10–5–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–62]

Notice of Submission of Proposed Information Collection to OMB; Resident Opportunities Self-Sufficiency (ROSS) Program: Application Requirements, Evaluation, Assessment, Certifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0229) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the pubic will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Resident Opportunities Self-Sufficiency (ROSS).

Program: Application requirements, evaluation, assessment, certifications.

OMB Approval Number: 2577–0229.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Public Housing Entities, Intermediary Resident Organizations, if eligible, will submit applications for Resident Opportunities Self-Sufficiency Program funding categories: Resident Management and Business Development, Capacity Building and Conflict Resolution, Resident Services Delivery Models and Service Coordinators to HUD. HUD will review and approve or disapprove applications for grant funds.

Respondents: Individuals or Households, Not-For Profit Institutions State, Local or Tribal Government.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Reporting Burden	850		1		52.7		44,800

Total Estimated Burden Hours: 44,800.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 29, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–25670 Filed 10–5–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Arthur R. Marshall Loxahatchee National Wildlife Refuge; Comprehensive Conservation Plan, Environmental Assessment and Finding of No Significant Impact

ACTION: Notice of Availability.

SUMMARY: The Fish and Wildlife Service has published a Comprehensive Conservation Plan, Environmental Assessment, and a Finding of No Significant Impact for the Arthur R. Marshall Loxahatchee National Wildlife Refuge. This refuge, located seven miles west of Boynton Beach, Florida, consists of 221 square miles of the last remaining northern Everglades. The plan describes how the Fish and Wildlife Service intends to manage the refuge for the next 15 years.

ADDRESSES: A copy of the above documents will be available on October 6, 2000, and may be obtained by writing to Mark J. Musaus, Refuge Manager, Arthur R. Marshall Loxahatchee National Wildlife Refuge, U.S. Fish and Wildlife Service, 10216 Lee Road, Boynton Beach, Florida 33437–4796. In the meantime, a copy of the Comprehensive Conservation Plan and Environmental Assessment can be obtained from the following website address: http://loxahatchee.fws.gov

SUMMARY INFORMATION: The plan provides a clear statement regarding the future management of the refuge; ensures that the refuge's management actions are consistent with refuge purposes and mandates of the National Wildlife Refuge System; and addresses the issues regarding the renewal (planned by January 1, 2002) of the refuge's license agreement with the South Florida Water Management District, including issues relating to modifying the agreement and management capabilities and responsibilities. The major issues addressed in the plan include invasive exotic species; biological diversity; water quality, quantity, timing, and delivery; land use changes; habitat and wildlife protection; appropriate and compatible wildlife-dependent public recreational opportunities and access; environmental education and interpretation; and partnerships.

Dated: September 19, 2000.

Steven P. Thompson,

Acting Regional Director.

[FR Doc. 00–25712 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plans, and Conduct Biological, Public Use, and Wilderness Reviews for the Central Mississippi National Wildlife Refuge Complex. The Complex Includes Yazoo Refuge in Washington County; Panther Swamp Refuge in Yazoo County; Hillside and Morgan Brake Refuges in Holmes County; and Mathews Brake Refuge in Leflore County

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Written comments should be received within 60 days of this publication.

ADDRESSES: Address comments and requests for more information to the following:

Ms. Laura Reid, Natural Resource Planner, U.S. Fish and Wildlife Service, 728 Yazoo Refuge Road, Hollandale, Mississippi 38748, (662) 839–2638.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Laura_Reidfws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also my be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. These plans will guide management decisions and identify refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The plan will provide other agencies and the public with a clear understanding of the desired conditions for the refuge and how the Service will implement management strategies.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general refuge area of the time and place of such opportunities for public involvement. Review of this project will be conducted in accordance with the requirements of the National Environmental Policy act of 1969, as amended (42 U.S.C. 4321 *et seq.)*, National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available in January 2003.

Dated: September 28, 2000

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–25680 Filed 10–05–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plans for Reelfoot, Lake Isom, Chickasaw, Lower Hatchie, and Hatchie National Wildlife Refuges, and Sunk Lake Public Use Natural Area in Tennessee

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare comprehensive conservation plans and associated environmental documents pursuant to the Service's Comprehensive Conservation Planning Policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental documents.

Public scoping meetings will be held as follows:

Lower Hatchie National Wildlife Refuge, Sunk Lake Public Use Natural Area, Thursday, October 26, 2000, 7 P.M., Community Conference Room, Baptist Memorial Hospital, 1995 Highway 51 South, Covington, Tennessee 38019.

Chickasaw National Wildlife Refuge, Thursday, November 2, 2000, 7 P.M., Multi-Purpose Room, Tennessee Technology Center, 127 Industrial Drive, Ripley, Tennessee 38063.

Hatchie National Wildlife Refuge, Monday, November 6, 2000, 7 P.M., Brownsville-Haywood County Chamber of Commerce, 121 West Main, Brownsville, Tennessee 38012.

Reelfoot and Lakes Isom National Wildlife Refugees, Tuesday, November 14, 2000, 7 P.M., Ellington Center, Route 1, Box 2345, Tiptonville, Tennessee 38079, (Located on Highway 21–22, approximately 2 miles east of Tiptonville at the State Park Visitor Center.)

DATES: Written comments should be received within 60 days of this publication.

ADDRESSES: Address comments and requests for more information to the following: Rob Martin, U.S. Fish and Wildlife Service, 309 N. Church Street, Room 201, Dyersburg, Tennessee 38024, (901) 287–0650, (901) 286–0468 (Fax).

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Rob_Martin@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. These plans will guide management decisions and identify refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including public use management, habitat management, wildlife population management, and cultural resource identification and protection. Alternatives that address the issues and management strategies associated with these topics will be included in the environmental documents.

Pre-planning for each of the above stated national wildlife refuges, as well as the public use natural area, began in January 2000. Reelfoot Refuge was established in 1941 under terms of a 75-year cooperative agreement with the State of Tennessee. Lake Isom Refuge was established by a Presidential Proclamation in 1938. Chickasaw Refuge was established August 5, 1985, by the Migratory Bird Conservation Commission, as was Lower Hatchie Refuge in 1980, and Hatchie Refuge in 1964. Sunk Lake Public Use Natural Area was purchased in 1986 by the Natural and Cultural Areas Acquisition Fund. Reelfoot, Lake Isom, Chicasaw, and Lower Hatchie Refuges were established for use as inviolate sanctuaries, or for any other management purpose, for migratory birds. Hatchie Refuge was established to provide habitat for wintering and migrating waterfowl, particularly dabbling ducks. The Fish and Wildlife Service manages the Sunk Lake Public Use Natural Area in accordance with State Natural Area rules of the Tennessee Department of Conservation.

Dated: September 28, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–25681 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan for St. Vincent National Wildlife Refuge in Franklin County, FL

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Written comments should be received on or before December 5, 2000.

ADDRESSES: Address comments and requests for more information to the following:

Mr. Steve Ovenden, Natural Resource Planner, U.S. Fish and Wildlife Service, 7298 Coastal Highway, Crawfordville, Florida 32327, (850) 925–1497.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You

may also comment via the Internet to the following address: Steven_Ovenden@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individuals respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. These plans will guide management decisions and identify refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The plan will provide other agencies and the public with a clear understanding of the desired conditions for the refuge and how the Service will implement management strategies.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general refuge area of the time and place of such opportunities for public involvement. Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 C.F.R. 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available in January 2002.

Dated: September 28, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–25682 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–55–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 Granite Homes, Inc. Development in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Granite Homes, Incorporated (the Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Granite Homes is a managing member of the Elsinore 98, Limited Liability Company. The Service is considering issuance of a 2-year permit to the Applicant that would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica,* (gnatcatcher)) incidental to otherwise lawful activities.

Such take would occur during the construction of 99 homes on a previously graded site in the City of Lake Elsinore, in Riverside County, California. This project would permanently eliminate 14 acres of Riversidean sage scrub habitat, resulting in incidental take of three pairs of gnatcatchers. The Applicant proposes to reduce deleterious effects from the proposed construction and to conserve 24 acres of Riversidean sage scrub habitat within an adjacent 80-acre parcel of open space to the north of the project site.

We request comments from the public on the permit application, and an Environmental Assessment, both of which are available for review. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed action and the measures that the Applicant would undertake to minimize and mitigate take of the gnatcatcher.

DATES: We must receive your written comments on or before December 5, 2000.

ADDRESSES: Please address written comments to Mr. Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, 2730, Loker Avenue West, Carlsbad, California 92008. You also may send comments by facsimile to (760) 431–5902.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Assistant Field Supervisor, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address and at the Lake Elsinore City Library located at 600 West Graham Street, Lake Elsinore, California.

Background

Section 9 of the Endangered Species Act (Act) and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include ''harass, harm, pursue, hunt, shot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The Service may, under limited circumstances, issue permits to authorize incidental take (*i.e.* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The Applicant has proposed development of 99 high-density single family homes on 61 acres. The planning area is located within the city of Lake Elsinore, immediately northeast of Interstate 15 at Railroad Canyon Road. Land uses in the area include a graded industrial lot immediately adjacent to Interstate 15 to the southwest, a residential and light commercial district at Railroad Canyon road to the south and southeast, Summerhill Drive to the east, the Tuscany Homes residential community to the northeast, and extensive undeveloped foothills to the north.

Biologists surveyed the project site for the gnatcatcher and other biological resources between 1998–2000. Based on the survey results, the Service concluded that implementation of the proposed project would result in take of three gnatcatcher pairs through the permanent removal of 14 acres of Riversidean sage scrub. Indirect effects addressed in the Plan and Environmental Assessment include: (1) A reduced dispersal corridor of Riversidean sage scrub in the northeast section of the project site that connects high gnatcatcher population densities to the north with large areas of open space to the south; (2) increased nest predation from introduced domestic cats; (3) brown-headed cowbird (*Molothrus ater*) parasitism; (4) increased off-road vehicle use of the conserved areas, and (5) increased numbers of predators associated with backyard night-lighting and garbage surrounding constructed homes.

The Applicant proposes to implement the following measures to mitigate and minimize take of the gnatcatcher: (1) Purchase 24 acres of gnatcatcher-occupied Riversidean sage scrub from an adjacent 80-acre conservation parcel to the north that is contiguous with 29 acres previously conserved by the Applicant; (2) enhance the reduced gnatcatcher dispersal corridor in the northeastern section of the project site by removing non-native plants on the back of Lot 187 to allow regeneration of sage scrub and by leaving 2 acres on either side of this lot undeveloped through a conservation easement; (3) place fencing on the rear portion of lots adjacent to conserved areas in order to minimize predation by domestic cats; (4) implement a brown-headed cowbird trapping program if monitoring determines that trapping is necessary; (5) place deed restrictions pertaining to pets, lighting, and trash disposal on lots adjacent to open space; (5) encourage protection of the conserved areas by distributing an educational brochure to home buyers; and (6) implement an adaptive management plan for the conserved areas. The Applicant proposes to endow the long-term management of the 24 acres of Riversidean sage scrub off-site mitigation at a cost of $3,211 per acre. The conserved area would be managed by the Center for Natural Lands Management as part of a 109-acre managed open-space area.

The Environmental Assessment considers the environmental consequences of three alternatives including the Proposed Action. The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project to the gnatcatcher. Under the ''No Action'' alternative, the Service would not issue a permit. Under this alternative, the Applicant could retain the property or sell it to somebody else who may choose to develop it. In either case, in the short-term the previously graded Riversidean sage scrub habitat onsite would continue to revegetate naturally with a mixture of native and non-native plants. This sage scrub habitat would continue to be fragmented by intrusions of existing paved streets and there would be no mechanism for prohibiting off-road vehicle use and illegal dumping of trash on the property. Under the ''Project Redesign'' alternative, 55 of the 99 lots would be developed and the remaining 44 lots would be conserved. These two alternatives to the Proposed Action would result in less habitat value for the gnatcatcher than the off-site mitigation and minimization measures under the Proposed Action.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the regulations of the National Environmental Policy Act of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the California gnatcatcher. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: September 28, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 00–25780 Filed 10–05–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rincon Alcohol Control Ordinance No. 99–01 of the Rincon, San Luiseno Band of Mission Indians, Valley Center, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Rincon Alcohol Control Ordinance No. 99–01. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Rincon, San Luiseno Band of Mission Indians' trust lands, and is in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on June 13, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on October 6, 2000.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS–4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Rincon Alcohol Control Ordinance No. 99–01 was duly adopted by the Rincon, San Luiseno Band of Mission Indians General Membership on June 13, 2000. The Rincon, San Luiseno Band of Mission Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Rincon, San Luiseno Band of Mission Indians.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 Departmental Manual 8.

I certify that by Resolution No. 2000–04, the Rincon Alcohol Control Ordinance No. 99–01 was duly adopted by the Rincon, San Luiseno Band of Mission Indians General Membership on June 13, 2000.

Dated: September 29, 2000.

Kevin Gover,

Assistant Secretary-Indian Affairs.

The Rincon Alcohol Control Ordinance No. 99–01 reads as follows:

Rincon Alcohol Control Ordinance No. 99–01

Section 200.01. Title

This ordinance shall be known as the Rincon Ordinance Regulating and Controlling the Manufacture, Introduction, Sale or Possession of Alcoholic Beverages within the boundaries of the Rincon Indian Reservation. The short title of this Ordinance shall be ''Rincon Alcohol Control Ordinance.''

Section 200.02. Authority

This Ordinance is enacted pursuant to federal law, specifically the Act of August 15, 1953, Public Law 83–277, 67 Stat. 588, 18 U.S.C. 1161, and the Articles of Association, Governing Procedures for Administering the Affairs of The Rincon, San Luiseno Band of Mission Indians, California.

Section 200.03. Purpose

The purpose of this Ordinance is to regulate and control the possession and sale of alcohol within the exterior boundaries of the Rincon Indian Reservation, and to permit alcohol sales by tribally owned, controlled or operated enterprises, and at tribally approved special events, for the purpose of the economic development of the Rincon Band. The enactment of a tribal ordinance governing alcohol possession and sales within the exterior boundaries of the Rincon Indian Reservation increases the ability of the Rincon Tribal Government to control reservation alcohol distribution and possession, and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the economic viability of tribal government services. This Rincon Alcohol Control Ordinance is in conformity with the laws of the State of California as required by 18 U.S.C. 1161, and with all applicable federal laws.

Section 200.04. Manufacture of Alcohol

The manufacture of alcoholic beverages by business enterprises owned by or subject to the control of the Rincon Band shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such manufacture is in conformity with the laws of the State of California as required by federal law.

Section 200.05. Possession of Alcohol

The introduction or possession of alcoholic beverages shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such introduction or possession is in conformity with the laws of the State of California as required by federal law.

Section 200.06. Sales of Alcohol

(a) The sale of alcoholic beverages by business enterprises owned or operated by, or subject to the control of, the Rincon Band shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such sale is in conformity with the laws of the State of California as required by federal law.

(b) The sale of alcoholic beverages by the drink at special events authorized by the Rincon Band shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such sales are in conformity with the laws of the State of California as required by federal law and with prior approval by Resolution of the Tribal Council of the Rincon Band.

Section 200.07. Age Limits

(a) The drinking age within the exterior boundaries of the Rincon Indian Reservation shall be the same as that of the State of California as required by federal law. No person under such age shall purchase, possess or consume any alcoholic beverage within the exterior boundaries of the Rincon Indian Reservation.

(b) The State of California sets the drinking age within California under California Business and Professions Code § 25658. California's drinking age is 21 at the time of the enactment of this Ordinance.

(c) At such time, if any, as California Business and Professions Code § 25658 is repealed or amended to raise or lower the drinking age within California, subsection (b) above shall automatically become null and void, and the Tribal Council shall be empowered to enact a new subsection to reference the appropriate provision of the state law, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

Section 200.08. Civil Penalties

The Rincon Band, through its Tribal Council and duly authorized security personnel, shall have the authority to enforce this Ordinance by confiscating any alcohol manufactured, introduced, sold or possessed in violation hereof. The Tribal Council shall be empowered to sell such confiscated alcohol for the benefit of the Rincon Band, and to develop and approve such regulations as may become necessary for enforcement of this Ordinance.

Section 200.09. Severability

If any provision of this Ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 200.10. Prior Enactments

Any and all prior enactments of the Rincon Band which are inconsistent with the provisions of this Ordinance are hereby rescinded.

Section 200.11. Conformance With California Laws

All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as the term is used in 18 U.S.C. 1161.

Section 200.12. Effective Date

This Ordinance shall be effective on October 6, 2000.

Section 200.13. Amendment

This Ordinance may be amended only by a majority vote of the Rincon General Council.

Section 200.14. Sovereign Immunity

Nothing contained in this Ordinance is intended to, nor does, in any way, limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

[FR Doc. 00–25799 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–084–6333–00; GPO–0006]

Notice of Seasonal Closure of Public Lands; Baker County, OR

AGENCY: Bureau of Land Management, Vale District, Baker Field Office, Oregon.

ACTION: A seasonal closure to motorized vehicle use and public entry on public lands administered by the Bureau of Land Management (BLM), Vale District, Baker Resource Area, Oregon.

SUMMARY: This closure is part of the Cooperative Management Agreement between the BLM and the Oregon Department of Fish and Wildlife, dated September 18, 1985. This closure meets specific objectives stated in the Agreement to control vehicular traffic on the land during the period each year between December 1st and May 1st.

The closed area is the Elk winter feeding stations on Elk and Salmon Creek, section 8, Township 9 South, Range 39 East of the Willamette Meridian. All entry will be restricted

during this seasonal closure to protect sensitive wildlife from disturbance by motor vehicles and public traffic. Wintering bald eagles also occupy the area during the closure dates.

Closure signs will be posed at main entry points to this area. Maps of the closure area and information may be obtained from the Baker Field Office, 3165 10th Street, Baker City, Oregon.

DATES: This closure will take effect October 6, 2000.

FOR FURTHER INFORMATION CONTACT: Penelope Dunn Woods, Bureau of Land Management, Baker Field Manager, 3165 10th Street, Baker City, OR 97814, Telephone (541) 523–1256.

Discussion of the Rules

Under 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule on public lands within the closed area. You must follow this rule: You must not enter the closed area between December 1st and May 1st.

Exemptions

Persons who are exempt from these rules include:

1. Any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

2. Any person traveling on the Salmon Creek Road (road numbers 9180 and 9180010) west of the locked gate located in the southeast ¼ of section 8, Township 9 South, Range 39 East.

3. Owners or lessees of private land accessible by the Salmon Creek Road.

Penalties

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Penelope Dunn Woods,

Field Manager, Baker Resource Area.

[FR Doc. 00–25713 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–00–1220–EN]

Notice of Availability of Draft Environmental Impact Statement for 3R Minerals Coal Bed Canyon Mine

AGENCY: Bureau of Land Management, Utah State Office, DOI.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1969, a draft environmental impact statement (DEIS) for 3R Minerals Coal Bed Canyon Mine proposal on lands within Grand Staircase-Escalante National Monument, has been prepared and is available for review and comment. This DEIS is prepared in response to the Notice of Intent to Revise Mining Operations filed by 3R Minerals in June 1999. It analyzes the anticipated impacts of 3R Minerals' proposed action and three alternatives to the proposal.

ADDRESSES: Copies of the DEIS may be obtained from the following Bureau of Land Management Locations: Grand Staircase-Escalante National Monument Headquarters, 180 West 300 North, Kanab, Utah 84741; Grand Staircase-Escalante National Monument Escalante Field Station, 755 West Main, Escalante, Utah; Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah. Copies may be obtained by mail by contacting the Monument Headquarters at the above address or telephoning 435–644–4300.

DATES: Comments must be received by Grand Staircase-Escalante National Monument Headquarters, 180 West 300 North, Kanab, Utah 84741 by December 4, 2000. An open house will be held at the Conference Center at Ruby's Inn, located on Highway 63 near the entrance to Bryce Canyon National Park, on November 6, 2000 from 5:00 pm to 8:00 pm. The purpose of the open house is to clarify information in the DEIS. *IT IS NOT INTENDED TO BE A PUBLIC HEARING.*

FOR FURTHER INFORMATION CONTACT: Paul Chapman, Grand Staircase-Escalante National Monument Headquarters, 435–644–4309, or Kate Cannon, Monument Manager, Grand Staircase-Escalante National Monument Headquarters, 435–644–4330.

SUPPLEMENTARY INFORMATION: The DEIS analyzes four alternatives summarized as follows: Alternative A is the Proposed Action as submitted by 3R Minerals; Alternative B is the BLM Preferred Alternative which is to approve 3R Minerals proposed action with certain conditions of approval; Alternative C is the No Action Alternative which would be denial of 3R Minerals' Notice of Intent to Revise Mining Operations in which case 3R Minerals would continue to mine in accordance with the approvals from the State of Utah; and Alternative D, the No Mining alternative where 3R Minerals could not mine. Since mining under the approvals granted by the State of Utah is a valid existing right, the BLM has no statutory authority to select Alternative D but the alternative is presented as baseline with which to compare the other alternatives. Mining activity is based on a mineral lease issued by the Utah State Institutional Trust Lands Administration when the site was still State land. Although the lease was issued after the Monument was established, it occurred on State lands which were not affected by the Presidential Proclamation. 3R Minerals was granted approval to mine by appropriate State agencies and has been conducting limited mining activity on the site. Ownership of the land was exchanged to the Federal Government via the Utah Schools and Lands Exchange Act of 1998. Language in that act preserved 3R Minerals' existing right to mine as approved by the State. Therefore, the decision to be made in this EIS is not whether mining should be allowed, but rather whether the Notice of Intent to Revise Mining Operations should be approved, approved with certain conditions, or denied.

Sally Wisely,

State Director.

[FR Doc. 00–25109 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–DQ–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489] ES–50828, Group 30, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the survey of the Lock and Dam No. 26 and the Locks and Dam No. 26 Replacement acquisition boundaries, in Township 5 North, Ranges 9 and 10 West of the 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on November 9, 2000.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., November 9, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fees.

Dated: September 25, 2000

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–25763 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489] ES–50827, Group 23, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the survey of the subdivision of section 3 with an amended portion of the Rend Lake acquisition boundary, in Township 6 South, Range 2 East of the 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, VA at 7:30 a.m., on November 9, 2000.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, VA 22153, prior to 7:30 a.m., November 9, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: September 25, 2000.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–25764 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1920–ET–4132; NVN–37171]

Legal Description of Naval Air Station Fallon Ranges—Range Safety and Training Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the legal description for the Department of the Navy's Range Safety and Training Withdrawal as required by sec. 3012 of Pub. L. 106–65, enacted October 5, 1999.

EFFECTIVE DATE: October 5, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, (775)–861–6532.

SUPPLEMENTARY INFORMATION: Pub. L. 106–65 withdrew 201,933 acres in Churchill County, Nevada for the Naval Air Station Fallon Range Safety and Training Withdrawal. The legal description for this withdrawal is as follows:

Mount Diablo Meridian

B–16

T. 17 N., R. 27 E.,
Secs. 1 to 3, inclusive;
Sec. 11, E½;
Secs. 12 and 13;
Sec. 14, E½;
Secs. 23 to 26, inclusive;
Secs. 35 and 36.
T. 18 N., 27 E.,
Secs. 25 and 26;
Sec. 35, E½;
Sec. 36.
T. 16 N., R. 28 E.,
Sec. 3, lots 2 to 4, inclusive, SW¼NE¼, and S½NW¼;
Sec. 4, lots 1 to 4, inclusive, and S½N½;
T. 17 N., R. 28 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Sec. 22, W½NE¼, NW¼, and S½;
Secs. 27 to 34, inclusive;
T. 18 N., R. 28 E.,
Sec. 28, W½E½ and W½;
Secs. 29 to 32, inclusive;
Sec. 33, W½E½ and W½.

The area described for B–16 contains 27,252.76 acres in Churchill County.

B–17

T. 15 N., R. 33 E.,
Secs. 1 to 5, inclusive;
Sec. 6, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 7, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 8 to 17, inclusive;
Sec. 18, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 19, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 20 to 28, inclusive,
Secs. 35 and 36.
T. 16 N., R. 33 E.,
Sec. 1, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 2, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 3, those portions of the S½NE¼, SW¼NW¼, S½, south of the southerly right-of-way boundary for U.S. Highway 50;
Sec. 4, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 5, that portion south of the southerly right-of-way boundary for U.S. Highway 50 and east of the easterly right-of-way boundary for State Route 839;
Sec. 8, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 9 to 16, inclusive;
Sec. 17, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 18, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 19, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 20 to 29, inclusive;
Sec. 30, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 31, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 32, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 33 to 36, inclusive.
T. 15 N., R. 34 E., (partially surveyed)
Sec. 4, lot 4 and W½SW¼;
Secs. 5 and 6;
Sec. 7, except patented lands;
Sec. 8;
Sec. 9, W½W½;
Sec. 16, W½W½;
Sec. 17;
Sec. 18, except patented lands;
Secs. 19 and 20.
Sec. 21, W½NW¼ and NW¼SW¼;
Secs. 29 to 31, inclusive.
T. 16 N., R. 33½ E, (unsurveyed)
Secs. 1, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Secs. 12, 13, 24, 25, and 36.
T. 16 N., R. 34 E., (partially surveyed)
Sec. 4, lots 4, 6, 7, 8, 13, 14, and SW¼;
Sec. 5, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 6, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 7, except patented lands;
Sec. 8;
Sec. 9, W½ except patented lands;
Sec. 16, W½ except patented lands;
Sec. 17, lots 1 to 16, inclusive;
Sec. 18, except patented lands;
Sec. 19, except patented lands;
Sec. 20, except patented lands;
Sec. 21, W½ except patented lands;
Sec. 28, W½;
Secs. 29 to 32, inclusive;
Sec. 33, W½.

The area described for B–17 contains 52,830.35 acres in Churchill County.

B–19

T. 15 N., R. 29 E.,
Secs. 1 to 3, inclusive;
Sec. 4, those portions of lot 1, S½NE¼, E½SE¼ east of the easterly right-of-way boundary for U.S. Highway 95;
Sec. 9, that portion of the E½E½ east of the easterly right-of-way boundary for U.S. Highway 95;
Secs. 10 to 15, inclusive;
Sec. 16, that portion of the E½E½ east of the easterly right-of-way boundary for U.S. Highway 95;
Sec. 21, that portion east of the easterly right-of-way boundary for U.S. Highway 95;
Secs 22 to 24, inclusive.
T. 15 N., R. 30 E.,
Secs. 1 to 24, inclusive;
T. 16 N., R. 30 E.,
Sec. 32, SE¼;
Sec. 33, S½;

Sec. 34, S½;
Sec. 35, S½.
T. 15 N., R. 31 E.,
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive.

The area describe for B–19 contains 29,276.40 acres in Churchill County.

B–20

T. 23 N., R. 32 E.,
Sec. 2, 4, 6, 8, 10, 12, 14, 16, 18 20, 22, 24, 26, 28, and 30.
T. 24 N., R. 32 E.,
Secs. 20, 22, 24, 26, 28, 30, 32, 34, and 36.
T. 23 N., R. 33 E.,
Secs. 6 and 8;
Sec. 17, SE¼;
Sec. 18;
Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
Secs. 20 and 29;
Sec. 30, lots 1 to 4, E½, and E½W½.
T. 24 N., R. 33 E.,
Secs. 20, 30, and 32.

The area described for B–20 contains 21,577 acres in Churchill County.

Shoal Site

T. 15 N., R. 32 E.,
Secs. 4 and 5;
Sec. 8, N½;
Sec. 9, N½.
T. 16 N., R. 32 E.,
Secs. 33 and 34.

The area described for Shoal Site contains 2,560 acres in Churchill County.

The areas B–16, B–17, B–19, B–20, and Shoal Site aggregate 133,496.51 acres. Portions of these lands are unsurveyed and the acres were based on protraction diagrams. Pursuant to section 3011(a)(1) of Public Law 106–65, dated October 5, 1999, these areas were withdrawn from all forms of appropriation under the public land laws, including the mining laws, and the mineral leasing and geothermal leasing laws.

Dixie Valley Training Area

T. 16 N., R. 33 E.,
Sec. 1, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 2, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 3, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 4, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 5, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N., R. 33 E.,
Secs. 1 to 5, inclusive;
Secs. 8 to 17, inclusive;
Secs. 20 to 29, inclusive;
Secs. 32 to 36, inclusive.
T. 18 N., R. 33 E.,
Sec. 9, E½;
Sec. 10, that portion south of Elevenmile Canyon Wash;
Sec. 13, that portion south of Elevenmile Canyon Wash;
Sec. 14, that portion south of Elevenmile Canyon Wash;
Sec. 15,
Sec. 16, E½;
Secs. 21 to 28, inclusive;
Sec. 29, E½;
Secs. 32 to 36.
T. 16 N., R. 33½ E.,
Sec. 1, that portion north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N., R. 33½ E.,
Secs. 1, 12, 13, 24, 25, and 36;
T. 18 N., R. 33½ E.,
Sec. 13, those portions of lot 4 and the E½SW¼ south of Elevenmile Canyon Wash;
Sec. 24, lots 1 to 4, inclusive, E½SW¼, SE¼, and those portions of the E½NW¼ and the NE¼ south of Elevenmile Canyon Wash;
Secs. 25 and 36.
T. 16 N., R. 34 E.,
Sec. 4, lots 3 and 5;
Sec. 5, that portion north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 6, that portion north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N., R. 34 E.,
Sec. 3, lots 3 and 4, S½NW¼, and SW¼;
Secs. 4 to 9, inclusive;
Sec. 10, W½;
Sec. 15, W½;
Secs. 16 to 21, inclusive;
Sec. 22, W½;
Sec. 27, W½;
Secs. 28 to 33, inclusive;
Sec. 34, W½.
T. 18 N., R. 34 E.,
Sec. 3;
Sec. 4, lot 1, SE¼NE¼, E½SE¼, and those portions of lot 2, SW¼NE¼, W½SE¼, lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 9, E½E½, and that portion of the W½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Secs. 10 and 15;
Sec. 16, E½E½, and that portion of the W½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 19, lots 2 to 4, inclusive, E½SW¼, SE¼, and those portions of the S½NE¼ and SE¼NW¼ lying south of Elevenmile Canyon Wash;
Sec. 20, that portion lying south of Elevenmile Canyon Wash;
Sec. 21, E½, and that portion of the E½W½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road), and that portion of W½SW¼ lying south of Elevenmile Canyon Wash;
Sec. 22;
Secs. 27 to 34.
T. 19 N., R. 34 E.,
Sec. 3;
Sec. 4, those portions of lot 1, SE¼NE¼, E½SE¼, lying east of the easterly right-of-way boundary for State Route 121 (DixieValley Road);
Sec. 9, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Secs. 10 and 15;
Sec. 16, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 21, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Secs. 22 and 27;
Sec. 28, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 33, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 34.
T. 20 N., R. 34 E.,
Sec. 2, lots 2 to 4, inclusive, SE¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3, lot 1, SE¼NE¼, and E½SE¼;
Sec. 10, E½E½;
Sec. 11, W½E½ and W½;
Sec. 26, W½E½ and W½;
Sec. 27;
Sec. 28, that portion of the E½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 33, that portion of the E½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 34.
T. 21 N., R. 34 E.,
Sec. 25, lots 1 and 2, W½NE¼, and NW¼.
T. 21 N., R. 35 E.,
Sec. 17, W½;
Sec. 18, lots 5 to 11, inclusive, and E½SE¼SE¼NE¼.

The Dixie Valley Training Area contains 68,437 acres in Churchill County. Portions of these lands are unsurveyed and acres are based on protraction diagrams. Pursuant to Section 3011(a)(1) of Public Law 106–65, dated October 5, 1999, these areas were withdrawn from all forms of appropriation under the public land laws, including the mining laws, and the geothermal leasing laws, but not the mineral leasing laws.

A copy of the legal description and the map depicting the withdrawn lands are available for public inspection at the following offices:

Director (350), BLM, 1620 L Street, NW., Room 1000, Washington, DC 20036
State Director, BLM, Nevada State Office, 1430 Financial Blvd., Reno, Nevada, 89502
Field Manager, BLM Carson City Field Office, 5665 Morgan Hill Rd., Carson City, Nevada, 89701.
Commanding Officer, Naval Air Station Fallon, 4755 Pasture Road, Fallon, Nevada 89496–5000
Commanding Officer, Engineering Field Activity Northwest, Naval Facilities

Engineering Command, 19917 7th Ave. NE, Poulsbo, Washington 98370

Dated: September 29, 2000.

Margaret L. Jensen,

Deputy State Director, Natural Resources, Lands, and Planning.

[FR Doc. 00–25688 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2000, through April 30, 2001. The List of Restricted Joint Bidders published March 30, 2000, in the **Federal Register** at 65 FR 16957 covered the period May 1, 2000, through October 31, 2000.

Group I. Exxon Mobil Corporation; and ExxonMobil Exploration Company

Group II. Shell Oil Co.; Shell Offshore Inc.; SWEPILP; Shell Frontier Oil & Gas Inc.; Shell Consolidated Energy Resources Inc.; Shell Land & Energy Company; Shell Onshore Ventures Inc.; Shell Deepwater Development Inc.; Shell Deepwater Production Inc.; and Shell Offshore Properties and Capital II, Inc.

Group III. BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.; Amoco Production Company; Vastar Offshore Inc.; and Vastar Resources Inc.

Group IV. Elf Exploration, Inc.; Elf Aquitaine Oil Programs, Inc.; TOTAL Exploration Production USA, Inc.; and PetroFina Delaware, Inc.

Dated: October 2, 2000.

Walt Rosenbusch,

Director, Minerals Management Service.

[FR Doc. 00–25794 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan for Chattahoochee River National Recreation Area, Georgia

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), the National Park Service (NPS) is preparing an Environmental Impact Statement to assess the impacts of alternative management concepts that would be implemented under a revised General Management Plan for the Chattahoochee River National Recreation Area. the purpose of the General Management Plan is to establish the basic management philosophy for the park and provide strategies for addressing issues and achieving identified management objectives. The General Management Plan/Environmental Impact Statement (GMP/EIS) will evaluate the environmental impacts of a range of alternatives to address distinct management issues such as resource protection and visitor use. As a conceptual framework for formulating these alternatives, the Chattahoochee River National Recreation Area's purpose, significant resources, and management goals will first be identified. The GMP/EIS will conform to Director's Order—2, the planning guidance for National Park Service units, effective May 27, 1998.

DATES: Public scoping meetings will be scheduled this fall, and additional public meetings will be scheduled upon release of the Draft GMP/EIS. Time and place of the public meetings will be publicized in area newspapers.

Persons who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this notice with written comments. We will accept comments through December 15, 2000. A Draft GMP/EIS will be available for review in the fall of 2001.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Draft and Final GMP/EIS will be made available to known interested parties and appropriate agencies. Full public participation by Federal, State, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

ADDRESSES: Written comments concerning the GMP/EIS should be sent to Mr. Kevin Cheri, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Atlanta, GA 30350–3400, telephone (770) 399–8070.

Dated: September 29, 2000.

Charlie Powell,

Acting Regional Director, Southeast Region.

[FR Doc. 00–25677 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park and Preserve; Alaska; Glacier Bay Compensation Program

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the draft Glacier Bay Compensation Program Plan.

SUMMARY: Section 123(c) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (''the Act''), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106–31 (05/21/99), authorizes compensation for fish processors, fishing vessel crewmembers, communities and others negatively affected by congressionally directed restrictions and closures on commercial fishing in the marine waters of Glacier Bay National Park. The National Park Service (NPS) and the State of Alaska have been working to develop and implement the compensation program as broadly envisioned by Congress in the Act. The first step in this process was the August 1, 2000, release of the Final Economics Assessment Report which quantified the financial impacts resulting from the commercial fishing restrictions and closures. The draft plan was available for public review on September 29, 2000.

DATES: Comments on the draft Glacier Bay Compensation Program Plan will be accepted through November 30, 2000. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it

will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

ADDRESSES: Comments on the draft Glacier Bay Compensation Program Plan should be submitted to Clark Millett, Compensation Program Manager, Glacier Bay National Park and Preserve, 2770 Sherwood Lane, Suite I, Juneau, Alaska 99801. Phone (907) 586–7047.

FOR FURTHER INFORMATION CONTACT: A copy of the draft Compensation Program Plan can be viewed and downloaded at http://www.nps.gov/learn/preserve/issues/fish/. Copies of the draft Glacier Bay Compensation Program Plan are available from: Clark Millett, Compensation Program Manager, Glacier Bay National Park and Preserve, 2770 Sherwood Lane, Suite I. Juneau, Alaska 99801. Phone (907) 586–7047.

Dated: September 28, 2000.

Thomas Ferranti,

Acting Regional Director, Alaska Region.

[FR Doc. 00–25678 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 23, 2000. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by October 23, 2000.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Ventura County

Pratt, Charles M., House, 1330 Foothill Rd., Ojai, 00001227

FLORIDA

Hillsborough County

Union Depot Hotel, Old, 858 E. Zack St., Tampa, 00001228

LOUISIANA

St. Mary Parish

Alice C Planation House, 10736 LA 182, Franklin, 00001229

NEW MEXICO

Eddy County Last Chance Canyon Apache—Cavalry Battle Site, Address Restricted, Queen, 00001230

NEW YORK

Rensselaer County

Osgood, J.C., Firehouse, 316–324 Third St., Troy, 00001231

NORTH CAROLINA

Edgecombe County

Quigless Clinic, 99 Main St., Tarboro, 00001232

SOUTH CAROLINA

Hampton County

American Legion Hut, Jct. of Hoover St. and Jackson Ave., Hampton, 00001235

Jasper County

White Hall Plantation House Ruins and Oak Avenue, Address Restricted, Ridgeland, 00001233

Spartanburg County

Fremont School, 600 Magnolia St., Spartanburg, 00001234

WISCONSIN

Calumet County

Chilton Post Office, (United States Post Office Construction in Wisconsin MPS) 57 E. Main St., Chilton, 00001249

Clark County

Neillsville Post Office, (United States Post Office Construction in Wisconsin MPS) 619 Hewett St., Neillsville, 00001257

Columbia County

Columbus Post Office, (United States Post Office Construction in Wisconsin MPS) 211 S. Dickason Blvd., Columbus, 00001250

Crawford County

Prairie Du Chien Post Office, (United States Post Office Construction in Wisconsin MPS) 120 S. Beaumont Rd., Prairie du Chien, 00001263

Door County

Sturgeon Bay Post Office, (United States Post Office Construction in Wisconsin MPS) 359 Louisiana Ave., Sturgeon Bay, 00001237

Fond Du Lac County

Waupun Post Office, (United States Post Office Construction in Wisconsin MPS) 400 E. Franklin St., Waupun, 00001262

Grant County

Lancaster Post Office, (United States Post Office Construction in Wisconsin MPS) 236 W. Maple St., Lancaster, 00001245

Green Lake County

Berlin Post Office, (United States Post Office Construction in Wisconsin MPS) 122 S. Pearl St., Berlin, 00001248

Kewaunee County

Kewaunee Post Office, (United States Post Office Construction in Wisconsin MPS) 119 Ellis St., Kewaunee, 00001247

Langlade County

Antigo Post Office, (United States Post Office Construction in Wisconsin MPS) 501 Clermont St., Antigo, 00001255

Lincoln County

Merill Post Office, (United States Post Office Construction in Wisconsin MPS) 430 E. Second St., Merrill, 00001258

Manitowoc County

Two Rivers Post Office, (United States Post Office Construction in Wisconsin MPS) 1516 Eighteenth St., Two Rivers, 00001246

Milwaukee County

South Milwaukee Post Office, (United States Post Office Construction in Wisconsin MPS) 2210 Tenth Ave., South Milwaukee, 00001251

Ozaukee County

O'Brien—Peuschel Farmstead, 12520 N. Wauwatosa Rd., Mequon, 00001236

Price County

Park Falls Post Office, (United States Post Office Construction in Wisconsin MPS) 109 First St. N, Park Falls, 00001238

Rock County

Edgerton Post Office, (United States Post Office Construction in Wisconsin MPS) 104 N. Swift St., Edgerton, 00001239

Sauk County

Reedsburg Post Office, (United States Post Office Construction in Wisconsin MPS) 215 N. Walnut St., Reedsburg, 00001240

Shawano County

Shawano Post Office, (United States Post Office Construction in Wisconsin MPS) 235 S. Main St., Shawano, 00001241

Sheboygan County

Sheboygan Post Office, (United States Post Office Construction in Wisconsin MPS) 522 N. Ninth St., Sheboygan, 00001261

Taylor County

Medford Post Office, (United States Post Office Construction in Wisconsin MPS) 304 S. Main St., Medford, 00001244

Plymouth Post Office, (United States Post Office Construction in Wisconsin MPS) 302 E. Main St., Plymouth, 00001242

Walworth County

Delavan Post Office, (United States Post Office Construction in Wisconsin MPS) 335 E. Walworth Ave., Delavan, 00001260

Elkhorn Post Office, (United States Post Office Construction in Wisconsin MPS) 102 E. Walworth St., Elkhorn, 00001259
Whitewater Post Office, (United States Post Office Construction in Wisconsin MPS) 213 Center St., Whitewater, 00001256

Washington County

West Bend Post Office, (United States Post Office Construction in Wisconsin MPS) 607 Elm St., West Bend, 00001254

WISCONSIN

Waupaca County

Clintonville Post Office, (United States Post Office Construction in Wisconsin MPS) 2 N. Main St., Clintonville, 00001253
Waupaca Post Office, (United States Post Office Construction in Wisconsin MPS) 306 S. Main St., Waupaca, 00001252

Wood County

Marshfield Post Office, (United States Post Office Construction in Wisconsin MPS) 202 S. Chestnut Ave., Marschfield, 00001243

[FR Doc. 00–25779 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary)]

Honey From Argentina and China

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing and antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing and antidumping duty investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina and China of honey, provided for in subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value, and by reason of imports from Argentina of honey, provided for in subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Argentina. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping duty investigations in 45 days, or in this case by November 13, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by November 20, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 29, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 29, 2000, by the American Honey Producers Association (AHPA), Bruce, South Dakota, and the Sioux Honey Association (SHA), Sioux City, Iowa.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 20, 2000, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than October 17, 2000, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 25, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a

document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: October 2, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–25732 Filed 10–5–00; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on September 27, 2000 a proposed Consent Decree (''Decree'') in *United States* v. *AAI Corporation, et al.*, Civil Action No. 00–WM–1909 was lodged with the United States District Court for the District of Colorado. The United States filed this action pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a), to recover response costs incurred by the United States Environmental Protection Agency (''EPA'') in conducting response actions taken at or in connection with the release or threatened release of hazardous substances at or from the RAMP Industries Site located at 1127 and 1107 West 46th Avenue, and 1031 West 46th Avenue, Denver, Colorado (the ''Site'').

The Decree provides for the reimbursement to EPA of $4,753,149.05 by 316 persons (''generators'') within the class of persons defined by section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3) on a volumetric, pro rata basis. A total of $3,179,615.36 will be paid by 274 non-federal settling parties and $1,573,533.69 will be paid by 42 settling federal agencies. Each of the settling parties' potential liability at the Site under sections 106 or 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of RCRA, 42 U.S.C. 6973, is resolved subject to statutory reopeners.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AAI Corp. et al,* D.J. Ref. 90–11–2–1290/2. If requested, the United States will provide an opportunity for a public meeting on the proposed settlement in Denver, Colorado prior to the final entry of the Decree.

The Decree may be examined at the offices of the U.S. EPA Region VIII, 999 18th Street, Suite 500 South Tower, Denver, Colorado and at the Office of the United States Attorney, District of Colorado, 1961 Stout Street, 11th Floor, Denver, CO 80294. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 either with or without the multiple signature pages and attachments. In requesting a copy of the proposed consent decree, please enclose a check payable to the Consent Decree Library for $155.00 for a complete copy with all signature pages and attachments or $4.75 for a copy of the decree without signature pages and attachments (25 cents per page reproduction cost).

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–25716 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on September 6, 2000, a proposed consent decree in *United States* v. *Alcoa, Inc. et al.,* Civil Action No. 83–CV–1623 (N.D.N.Y.), was lodged with the United States District Court for the Northern District of New York. The proposed consent decree resolves the claims of the United States against Alcoa, Inc. (''Alcoa'') and twenty-one other potentially responsible parties listed below (''collectively the Settling Parties'') at the York Oil Superfund Site located in Moira, New York (''Site''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* Pursuant to the proposed settlement, the Settling Parties shall reimburse the United States for certain past and future response costs; implement the remedial measures, including any contingent remedies, selected in the Record of Decision for the Second Operable Unit at the Site. The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The total value of the settlement is estimated at approximately $4.4–7.5 million, depending upon whether the contingent remedy is implemented at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Alcoa*, Civil Action No. 83–CV–1623 (N.D.N.Y.), D.J. Ref. 90–5–2–1–585/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at EPA Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. A copy of the consent decree may also be obtained in person or by mail (without attachments) from the Department of Justice Consent Decree Library, 13th floor, 1425 New York Avenue, NW, Washington, DC 20005. In requesting a copy of the consent decree (without attachments), please enclose a check in the amount of $27.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–25717 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *The Berkley Products Company,* Civil Action. No. 00–CV–4628, was lodged on September 12, 2000, with the United States District Court for the Eastern District of

Pennsylvania. The Consent Decree resolves the claims of the United States under sections 106(a), 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of response costs incurred at the Berkley Products Superfund Site located in West Cocalico Township, Lancaster County, Pennsylvania, and for declaratory judgment as to liability that will be binding in actions to recover further response costs related to the Site. The Consent Decree obligates The Berkley Products Company to pay $30,000 in reimbursement of response costs incurred and to be incurred by EPA in responding to contamination at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *The Berkley Products Company,* DOJ Ref. #90–11–3–06947.

The Consent Decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Philadelphia, Pennsylvania, 19106; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103; and by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy from the Consent Decree Library, please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–25715 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on September 27, 2000, a proposed Consent Decree in *United States* v. *BF Goodrich Company, et al.,* C.A. No. C2–97–366 was lodged with the United States District Court for the Southern District of Ohio.

In this action the United States sought recovery of the past costs it incurred in connection with addressing the release or threatened release of contaminants at the Vandale Junkyard Superfund Site in Marietta, Washington County, Ohio. The Consent Decree resolves the United States' claims under section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred at the Vandale Superfund Site against six Defendants: (1) B.F. Goodrich Co., Inc.; (2) Cytec Industries, Inc.; (3) Kardex Systems, Inc.; (4) Lockheed Martin Corp.; (5) Exxon Mobil Corp.; and (6) Unisys Corporation. The proposed past cost Consent Decree provides that, in addition to their previous payments of $317,953.96, the Defendants will pay to the United States $1,975,000 for its unreimbursed past response costs and prejudgment interest incurred in connection with the Site prior to December 5, 1999. The Defendants will also reimburse all EPA and DOJ costs incurred after December 5, 1999 for overseeing implementation of the remedial design/remedial action, and for overseeing and enforcing the proposed Consent Decree, to the extent that those costs exceed $190,000.

The United States covenants not to sue Defendants for past response costs and oversight costs. The United States, however, reserves its ability to seek penalties for non-compliance with any orders issued by the Environmental Protection Agency. Similarly, Defendants agree not to sue the United States with respect to past response costs, oversight costs or this Consent Decree and Defendants waive their right to seek contribution with respect to any claims relating to past costs and oversight costs, except where another person first asserts a claim against the Defendants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *BF Goodrich Company, et al.,* C.A. No. C2–97–366 (S.D. Ohio), D.J. Ref. 90–11–2–962.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, 280 North High Street, Fourth Floor, Columbus, Ohio 43215, and the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclosure a check in the amount of $8 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–25714 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act; 42 U.S.C. 7401, et seq.

Notice is hereby given that on September 14, 2000, a proposed Consent Decree (''Decree'') in *United States* v. *Philips Petroleum Company*, Civil Action No. 1: 97–CV–0144–B, was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to Section 113 of the Clean Air Act, 42 U.S.C. 7413, seeking injunctive relief and civil penalties for the Defendant's discharge of sulfur dioxide to the atmosphere in excess of the levels permitted by the Utah State Implementation Plan (''SIP''). The violations occurred at the Phillips Petroleum Company's Woods Cross, Utah refinery.

The proposed Consent Decree requires the Defendants to operate its sulfur recovery unit within the interim limitations established by the Consent Decree until such time as the State of Utah revises its State Implementation Plan requirements. In addition, the Decree requires that Philips pay a civil penalty in the amount of $375,000 for its past violations of the Act and the Utah SIP.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *Phillips Petroleum Company,* Civil Action No. 1: 97–CV–0144–B, and D.J. Ref. # 90–5–2–1–2194.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th

Street, North Tower Suite 945, Denver, Colorado, 80202 and the U.S. EPA Region VIII, 999 18th Street. A copy of the Decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.00 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–25718 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Defense Sustainment Corporation (''DSC'')

Notice is hereby given that, on August 31, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are the Advanced Technology Institute, Charleston, SC; Dimensions International, Inc., Washington, DC; Caterpillar, Mossville IL; ERIM, Ann Arbor, MI; Rockwell Collins, Milwaukee, WI; Radian, Washington, DC; AMSEC, Virginia Beach, VA; Sarnoff Corporation, Princeton, NJ; Arthur D. Little, Inc., Cambridge, MA and United Defense, Washington, DC. The nature and objectives of the venture are to substantially reduce the cost of support for aging weapon systems. The DSC will meet this objective by conducting pilot projects that focus on five thrust areas: (1) Effective supply partnerships, (2) streamlining maintenance processes, (3) significant improvement in quality of and access to technical data, (4) effective upgrade strategies, and (5) innovative training for sustainment.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–25719 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on August 30, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP User Group International, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agilent Technologies, Santa Clara, CA and NEC Corporation, Yokohama, JAPAN have been added as parties to this venture. Also, Abpac Inc., Phoenix, AZ has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, HDP User Group International, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on March 1, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 17, 2000 (65 FR 50217).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–25723 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on August 30, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Inter Company Collaboration for AIDS Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Collaboration member Pfizer Inc., New York, NY, has acquired Warner-Lambert Co., Morris Plains, NJ by way of a merger. The combined company is called Pfizer Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for AIDS Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for AIDS Drug Development filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on May 26, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–25724 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Multiservice Switching Forum

Notice is hereby given that, on June 29, 2000, pursuant to section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Multiservice Switching Forum (''MSF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accelerated Networks, Moorpark, CA; Oki Electric, Chiba, Japan; and Swisscom AG, Berne, Switzerland have been added as parties to this venture. Vertex Networks, San Jose, CA has been dropped as a party to this venture. Also, the following parties have changed their names: Hewlett Packard, Edinburgh, Scotland, United Kingdom is now Agilent, Edinburgh, Scotland, United Kingdom; Harris & Jeffries, Dedham, MA is now NetPlane, Dedham, MA; and MCIWorldCom, Richardson, TX is now WorldCom, Richardson, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSF intends to file additional written notifications disclosing all changes in membership.

On January 22, 1999, MSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28519).

The last notification was filed with the Department on April 6, 2000. A notice for this filing has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–25720 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum (''PERF'')

Notice is hereby given that, on August 18, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BOC Gases Technology, Murray Hill, NJ has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Petroleum Environmental Research Forum (''PERF'') intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, the Petroleum Environmental Research Forum (''PERF'') filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on June 6, 2000. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–25721 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—SchoolTone Alliance, Inc.

Notice is hereby given that, on July 25, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), SchoolTone Alliance, Inc. (''SchoolTone'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are SchoolTone Alliance, Inc., San Francisco, CA; AboveNet, San Jose, CA; ACTV, New York, NY; BigChalk, Bellingham, WA; Blackboard, Inc., Washington, DC; Britannica, San Francisco, CA; Callisto Media Systems, Hull, Quebec, CANADA; Computer Curriculum Corporation, Sunnyvale, CA; Exodus Communications, Santa Clara, CA; HighWired.com, Watertown, MA; I-Mind Education Systems, Inc., Corte Madera, CA; Isis Communications Limited, Melbourne, Victoria, AUSTRALIA; Jason Project, Waltham, MA; Lucent Technologies, Warren, NJ; Open School/Open Learning, Victoria, British Columbia, CANADA; Power School, Folsom, CA; RiverDeep Interactive Learning, Cambridge, MA; Simplexis, San Francisco, CA; SRI International, Menlo Park, CA; Sun Microsystems, Inc., Palo Alto, CA; Timecruiser Computing Corporation, Fairfield, NJ; and USA Video Interactive, Mystic, CT.

The nature and objectives of the venture are to improve the quality and effectiveness of kindergarten through 12th grade (''K–12''education by creating a global association of technology and service companies to promote collaboration among companies in providing ''anytime, anywhere learning'' over the web; to create and promote the offering of high-quality portals that provide affordable and easy-to-access Internet content and communication tools and applications for K–12 schools; to promote the development of web-based educational materials, portal technologies, applications and services which can be deployed through educational service providers to K–12 schools worldwide, and be a forum for the suppliers of such materials, portal technologies, applications and services; to evaluate grant proposals and recommend the selection of specific K–12 schools as grant recipients for computer hardware, software and related technologies to be donated free of charge or below cost by for-profit corporations; and to promote to schools the availability of on-line academic resources free or at an affordable cost. The corporation shall not engage in commercial sales of products or services. In furtherance of the above stated specific purpose, SchoolTone may, among other things, engage in theoretical analysis; experimentation; systematic study research; development; testing; the extension of investigative findings or theory of a scientific or technical nature into practical application; the collection, exchange and analysis of research or production information; and any combination of the foregoing.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–25722 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–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 herein.

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, NW., Room S–3014, Washington, DC 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

Connecticut
CT000001 (Feb. 11, 2000)
CT000003 (Feb. 11, 2000)
CT000004 (Feb. 11, 2000)
Maine
ME000005 (Feb. 11, 2000)
ME000007 (Feb. 11, 2000)
ME000010 (Feb. 11, 2000)
ME000019 (Feb. 11, 2000)
ME000022 (Feb. 11, 2000)
ME000026 (Feb. 11, 2000)
ME000037 (Feb. 11, 2000)
New Jersey
NJ000001 (Feb. 11, 2000)
NJ000002 (Feb. 11, 2000)
NJ000003 (Feb. 11, 2000)
NJ000005 (Feb. 11, 2000)

Volume II

Maryland
MD000009 (Feb. 11, 2000)
MD000012 (Feb. 11, 2000)
MD000021 (Feb. 11, 2000)
MD000026 (Feb. 11, 2000)
MD000030 (Feb. 11, 2000)
MD000037 (Feb. 11, 2000)
MD000039 (Feb. 11, 2000)
MD000047 (Feb. 11, 2000)
MD000050 (Feb. 11, 2000)
MD000053 (Feb. 11, 2000)
MD000058 (Feb. 11, 2000)
Pennsylvania
PA000007 (Feb. 11, 2000)
PA000028 (Feb. 11, 2000)
PA000052 (Feb. 11, 2000)
PA000054 (Feb. 11, 2000)
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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 may 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, DC 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, DC This 28th Day of September 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–25445 Filed 10–5–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval; Correction

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Correction.

SUMMARY: In document 00–25231 on page 58822 in the issue of Monday, October 2, 2000, make the following correction:

In the first column in the third paragraph, the approval expires on March 3, 2000. It should be changed to read on March 31, 2000.

Dated: October 3, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–25775 Filed 10–5–00; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 20, 2000. Once the appraisal

of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Office of the Air Staff (N1–341–00–1, 9 items, 4 temporary items). Older records accumulated between 1951 and 1983 relating to medical research and experiments and to routine construction projects. Proposed for permanent retention are records documenting such subjects as significant military base construction projects, aircraft and equipment modifications, intelligence reporting, and expenditures relating to civilian injuries in Laos and U.S. operations in the Congo and Berlin.

2. Department of the Army, U.S. Army Security Affairs Command (N1–AU–00–18, 2 items, 2 temporary items). Case files pertaining to international logistics programs for materiel and services. Included are documents relating to individual foreign country requirements, fiscal records, and copies of programs, offers, and acceptances. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of Health and Human Services, Health Care Financing Administration (N1–440–00–01, 5 items, 5 temporary items). Paper and electronic copies of questionnaires completed by newly enrolled Medicare beneficiaries containing information concerning the individual's coverage under a primary insurance plan, including the name, address, and identifying number of the plan. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of the Interior, Bureau of Land Management (N1–49–00–4, 6 items, 6 temporary items). Records relating to Computer Century Conversion (Y2K) activities. Included are policy and planning documents, administrative records, and files summarizing the actions taken for specific systems. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Justice, Federal Bureau of Investigation (N1–65–00–6, 8 items, 8 temporary items). Year 2000 (Y2K) conversion records. Included are such records as plans, lists of applications or systems, testing documentation, reviews of Y2K programs, contracts, correspondence with vendors, and correspondence with Congress, the Office of Management and Budget, and the General Accounting Office. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Justice, Bureau of Prisons (N1–129–99–12, 34 items, 21 temporary items). Files accumulated by component offices of the Information, Policy, and Public Affairs Division. Included are such records as chronological and subject files, files on proposed legislation and other aspects of congressional relations, research proposals, background materials compiled for tours of facilities, files on media contacts, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files documenting overall Bureau activities and programs are proposed for permanent retention, including briefing books, newsletters, publications, photographs, videotapes, speeches and directives.

7. Department of Justice, Bureau of Prisons (N1–129–00–8, 6 items, 6 temporary items). Records of correctional facilities relating to inmate education programs. Included are such files as attendance records, general equivalency diploma test scores, lesson plans, certificates, and minutes of vocational training advisory committees. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, Federal Bureau of Prisons (N1–129–00–28, 4 items, 4 temporary items). Records of the Trust Fund, which handles commissaries, telephone systems, and warehouse and clothing operations. Included are records relating to such matters as daily operations, financial management reviews, funding of overtime, position descriptions, and

annual reports. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of Justice, Federal Bureau of Prisons (N1–129–00–29, 3 items, 3 temporary items). Records of the Budget Development Branch, including the agency's official budget files, subject files, and electronic copies of documents created using electronic mail and word processing.

10. Department of Justice, Federal Bureau of Prisons (N1–129–00–31, 5 items, 5 temporary items). Records of the Budget Execution Branch, including such files as budget execution correspondence, financial reports, forms and other records relating to personnel positions within the agency, and reports that identify operating costs for individual facilities on a per-capita basis. Also included are electronic copies of documents created using electronic mail and word processing.

11. Department of Justice, Federal Bureau of Prisons (N1–129–00–32, 5 items, 5 temporary items). Records of the Capacity Planning Branch. Included are such files as requests for data, statistical summaries, subject files relating to population projections and capacity planning, and daily printouts of statistical data by institution. Also included are electronic copies of documents created using electronic mail and word processing.

12. Department of Justice, Federal Bureau of Prisons (N1–129–00–33, 2 items, 2 temporary items). Records of the Facilities Management Branch. Records relate to such subjects as the cleanup of polluted sites, violations of the Clean Water Act, and the identification of environmental hazards and the procedures for their removal. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of Justice, Federal Bureau of Prisons (N1–129–00–34, 2 items, 2 temporary items). Records of the Finance Branch consisting of financial statements and related records as well as electronic copies of documents created using electronic mail and word processing.

14. Department of Justice, Federal Bureau of Prisons (N1–129–00–35, 5 items, 5 temporary items). Records of the Procurement and Property Branch, including Branch copies of controlled correspondence, agreements with other agencies and with state and local governments, and electronic copies of documents created using electronic mail and word processing.

15. Department of State (N1–59–00–3, 16 items, 16 temporary items). Files identified as lacking historical value during the review of office files with terminal dates from 1967 through 1975. Included are subject files, country files, and other files that either are fragmentary, duplicative of records included in series previously approved for permanent retention, deal with housekeeping matters, or were maintained for convenience of reference. Records were accumulated by the Bureau of Administration, the Bureau of Inter-American Affairs, the Bureau of African Affairs, the Bureau of East Asian and Pacific Affairs, the Bureau of Economic and Business Affairs, the Bureau of European Affairs, the Inspector General of the Foreign Service, the Bureau of Intelligence and Research, the Bureau of International Organization Affairs, the Office of the Legal Adviser, the Deputy Under Secretary of State for Administration/Management, the Bureau of Near Eastern and South Asian Affairs, the Bureau of Oceans and International Environmental and Scientific Affairs, the Bureau of Security and Consular Affairs, the Executive Secretariat, and the Bureau of International Scientific and Technological Affairs.

16. Department of State, Moscow Embassy Control Office (N1–59–00–20, 20 items, 15 temporary items). Records of the Moscow Embassy Control Office, including shipping files, contractor files, security logs and videotapes, and outdated copies of design drawings. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of subject files, special studies, counter-intelligence files, slides, videotapes, and photographs are proposed for permanent retention.

17. Federal Aviation Administration, Office of the Chief Counsel (N1–237–00–1, 6 items, 6 temporary items). Civil penalty hearing docket records pertaining to alleged violations of Federal Aviation Regulations. Files include such documents as complaints, transcripts of hearings, decisions and opinions, and materials submitted as evidence. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of most docket records dated after December 1, 1997, are maintained on optical disks. The agency will submit separate schedules for any files that may warrant permanent retention for appraisal on a case-by-case basis.

18. National Archives and Records Administration, Agency-wide (N1–64–00–9, 4 items, 4 temporary items). Records relating to projects to provide records management assistance to Federal agencies and to public comments submitted to the National Archives and Records Administration as a result of the publication in the **Federal Register** of notices of pending disposition schedules. Electronic copies of documents created using electronic mail and word processing are included.

19. U.S. Tax Court, Agency-wide (N1–308–97–1, 206 items, 188 temporary items). Paper, electronic, microform, and photographic records relating to the resolution of disputed tax deficiencies. Included are such records as petitions, findings of fact and opinions, calendars, case files, depositions, files relating to attorney admissions to practice, and logs and tracking systems. Also included are records relating to agency personnel, building maintenance, and other administrative and housekeeping matters. Records proposed for permanent retention include rules of practice and procedure, published opinions, administrative orders, transcripts and other records of judicial conferences, statistical reports, press releases, and photographs.

Dated: September 28, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–25662 Filed 10–5–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 61370 (November 10, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and

assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, N.W. Room 10235, Washington, D.C. 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at 703–292–7556 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the NSF Summer Programs in Japan, the NSF Postdoctoral Research Fellowships in Japan, and the NSF–CGP Science Fellowships Program.

OMB Number: 3145–New.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to carry out a new information collection for one year.

Abstract: ''Evaluation of the NSF Summer Programs in Japan, the NSF Postdoctoral Research Fellowships in Japan, and the NSF–CGP Science Fellowships Program.''

Proposed Project: The National Science Foundation (NSF), through its East Asia and Pacific Program within the Division of International Programs, manages a suite of programs designed to encourage and provide international research experiences for American scientists and engineers with Japanese colleagues. This suite of programs includes the NSF–CGP Science Fellowships and the Postdoctoral Research Fellowships in Japan for Ph.D.—holding scientists, and the Summer Institute in Japan and the Monbusho Summer Program for U.S. Graduate Students in Science and Engineering.

These Programs provide opportunities for improvements in cultural sensitivity and in the knowledge of foreign scientific community infrastructure. The international collaborative experiences provided through the Programs may be ''catalytic'' by bringing scientists from a larger global pool together in ''discovery'' and ''connection,'' and by the American participants' sharing their newly-acquired knowledge, experiences and impressions with the domestic scientific community.

The purpose of the proposed program evaluation is to assess the Programs within the context of both their individually-stated objectives and the greater NSF-wide objectives. The tenth anniversary this year of the Summer Institute in Japan marks an appropriate time for a longitudinal study of program effectiveness and success, particularly with regard to the effect of an early international experience on developing research careers. The JSPS and STA Postdoctoral Fellowships and the NSF–CGP Science Fellowships have a long history (more than a decade) by which their impact on both individual careers and the scientific community can be assessed.

Use of the Information: The information will be used by NSF to assess the extent to which these approaches to developing international collaborations among young and experienced US and Asian researchers are achieving the intended programmatic goals and are consistent with the specific outcome goals defined in the context of the current NSF Strategic Plan required by the Government Performance and Results Act (GPRA) of 1993. Among NSF's outcome goals, the most relevant to its investments in developing collaborations with Asian researchers are: Promoting discoveries at and across the frontier of science and engineering; facilitating connections between discoveries and their use in service to society; developing a diverse, globally oriented workforce of scientists and engineers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 1040.

Estimated Total Annual Burden on Respondents: 520 hours—1040 respondents at 1/2 hour per response.

Frequency of Responses: One time.

Dated: October 2, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 00–25728 Filed 10–5–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 122nd meeting on October 17–19, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, October 17, 2000

A. *8:30–10:45 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future consideration by the full Committee.

B. *11:00–12:30 P.M.: Discussion of Updated Site Suitability and License Application (LA) Task Action Plan* (TAP) (Open)—The Committee will discuss the revised LA TAP.

C. *1:30–3:00 P.M.: West Valley License Termination Report* (Open)—The Committee will be briefed by the NRC staff on the results of its evaluation of comments and proposed final approach to West Valley decommissioning criteria.

D. *3:15–5:30 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will discuss proposed ACNW Reports on matters considered during this meeting.

Wednesday, October 18, 2000

E. *8:30–12:00 Noon: Corrosion Resistance of Alloy-22* (Open)—The Committee will discuss recent tests to explore the specific aspects of the corrosion resistance of Alloy-22 material.

F. *1:00–2:00 P.M.: Entombment Option for Decommissioning Power Reactors* (Open)—The Committee will

hear a presentation from the staff on its rulemaking plan addressing the entombment option for power reactors.

G. *2:00–3:15 P.M.: Consultant/ Member Reports* (Open)—The Committee will hear comments from consultants and members on recent relevant activities.

H. *3:30–5:30 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

Thursday, October 19, 2000

I. *8:30–10:00 A.M.: Part 40 LLW Source Material and Improvement of Control of Regulated Source Material* (Open)—The Committee will receive an information briefing by the NRC staff on its progress in developing a more risk-informed and coherent set of requirements for licensing source material.

J. *10:00–2:00 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

K. *2:00–3:00 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 am and 5:00 pm EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 2, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–25691 Filed 10–5–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs; Notification to individuals who are beneficiaries under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, civil service benefit and payment information obtained from the Office of Personnel Management (OPM).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRM of this information obtained from OPM by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of Participating Agencies

Office of Personnel Management and Railroad Retirement Board.

Purpose of the Match

The purpose of the match is to enable the RRM to (1) Identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately. Previously the RRB relied on the affected annuitant to report adjustments in the amounts of such public pension benefits.

Authority for Conducting the Match

Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as Public Service Pension offset. Section 224 of the Social Security Act provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. Section 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

Categories of RECORDS and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows:

OPM will provide RRB with a magnetic tape file extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Records designation is OPM/Central-1. The following information from this OPM Privacy Act System of Records will be transmitted to RRB for the approximately 2.3 million records in the system: name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against the same fields in its Master Benefit File. The Privacy Act System of Records designations for this file is: RRB–26, ''Payment, Rate and Entitlement History File'' For records that are matched, the RRB will extract the civil service payment information.

Inclusive Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register,** whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both House of Congress and the Office of Management and Budget.

Dated: September 29, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–25766 Filed 10–5–00; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3300]

State of Florida; and Contiguous Counties in Georgia

Leon County and the contiguous counties of Gadsden, Jefferson, Liberty, and Wakulla in the State of Florida, and Grady and Thomas Counties in the State of Georgia constitute a disaster area due to damages from heavy rains and flooding caused by Tropical Storm Helene that occurred September 22–24, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 27, 2000 and for economic injury until the close of business on June 28, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300,Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damages are 330006 for Florida and 330106 for Georgia. For economic injury the numbers are 9J1600 for Florida and 9J1700 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–25797 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3299]

State of Ohio

As a result of the President's major disaster declaration on September 26, 2000, I find that Greene County, Ohio constitutes a disaster area due to damages caused by severe storms and a tornado that occurred on September 20, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 25, 2000 and for economic injury until the close of business on June 26, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clark, Clinton, Fayette, Madison, Montgomery, and Warren in the State of Ohio may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit Available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 329911 for physical damage and 9J1500 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–25796 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Interest Rates; Quarterly Notice

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This

rate will be 6.125 (6⅛) percent for the October—December quarter of FY 2001.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 00–25798 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Washington, DC District Advisory Council; Public Meeting

The U.S. Small Business Administration Washington, DC District Advisory Council, located in the metropolitan area of Washington, DC, will hold a public meeting from 9 a.m.–11 a.m., Wednesday, October 11, 2000, at The Washington Times, 3600 New York Avenue, NE., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anita L. Irving, Public Information Officer, U.S. Small Business Administration, 1110 Vermont Avenue, NW., Suite 900, (P.O. Box 34500), Washington, DC 20043–4500; telephone 202–606–4000, ext. 275.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–25795 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3430]

Culturally Significant Objects Imported for Exhibition Determinations: ''Painting Revolution: Kandinsky, Malevich and the Russian Avant-Garde''

AGENCY: United States Department of State.

ACTION: Amendment.

SUMMARY: On July 25, 2000, Notice was published on page 45814 of the **Federal Register** (Volume 65, Number 143) by the Department of State pursuant to Pub. L 3370 relating to the exhibit ''Painting Revolution: Kandinsky, Malevich and the Russian Avant-Garde.'' The referenced Notice is amended as follows. Replace ''July 9, 2001'' with ''July 29, 2001.''

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 27, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–25783 Filed 10–5–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3439]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dresden Green Diamond''

AGENCY: U.S. Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the Dresden Green Diamond, imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object is imported pursuant to loan agreements with the foreign lender. I also determine that the exhibition or display of the object at the Harry Winston Research Foundation, Inc., New York, New York, on October 11, 2000, and at the National Museum of Natural History, Smithsonian Institution, Washington, DC, from on or about October 12, 2000, to on or about January 15, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lorie J. Nierenberg, Assistant Legal Adviser for Public Diplomacy and Public Affairs, U.S. Department of State (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 3, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–25975 Filed 10–5–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3431]

Bureau of European Affairs; U.S. Bilateral Assistance to Bosnia and Serbia

The Secretary of State issued on March 15, 2000, a waiver of restrictions under Section 566 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000, for bilateral assistance to the Republika Srpska (RS) and Serbia (excluding Kosovo), as follows:

(1) In the Republika Srpska:— support for civilian police restructuring; USAID and State public diplomacy programs promoting democratization, reconciliation, and free and independent media; the Community Reintegration and Stabilization Project of USAID, as well as its Bosnia Business Development, Economic Reform and Democratic Reform Programs; OSCE-supervised elections and human rights activities; and Trade and Development Agency (TDA) activities designed to assist U.S. businesses in Bosnia. The municipalities of Foca, Pale, and Prijedor are excluded from this waiver, because competent authorities have failed to take necessary and significant steps to apprehend and transfer war crimes indictees to the International Criminal Tribunal for the Former Yugoslavia. These municipalities will not be eligible for new U.S. assistance.

(2) In Serbia: State public diplomacy and USAID programs to support democratic reform, including free and independent media and labor; economic reform and other advisory assistance to the democratic FRY opposition; developing programs with NGOs for the delivery of humanitarian assistance through new distribution mechanisms that are independent of Belgrade regime control; and technical assistance, training grants, and exchanges designed to benefit opposition-controlled municipalities.

The Secretary noted that, '' Our bilateral assistance promotes Dayton and an integrated Bosnia. Recipients of U.S. assistance must state in writing their support for Dayton and then act accordingly. Our assistance has promoted the growth of pro-Dayton parties in the RS, development of independent media, minority returns, privatization and market-oriented reform, increased minority representation in the RS police force, and efforts to investigate corruption and curb police abuse.

The promotion of independent media and pro-democracy NGOs has a special significance in the aftermath of the Kosovo conflict. The Milosevic regime in Belgrade has an interest in ensuring that no pro-Western governments can survive in areas of predominantly Serb population. RS authorities have demonstrated their readiness to ensure freedom of movement for members of opposition political parties and the

independent media from Serbia. The response from the Belgrade regime has been to curb dissemination of democratically-oriented media from the RS into Serbia and to issue threats against representatives of the RS government.

Section 566 requires publication of a listing and justification of any assistance that is obligated for any country, entity, or canton to which assistance restrictions apply, including a description of the purpose of the assistance project and its location, by municipality.

The following data are for funds obligated during April–July 2000. Locality data are provided where feasible. However, U.S. assistance in Bosnia, including Republika Srpska has largely shifted from physical reconstruction projects to provision of technical assistance and promotion of political and economic reform. As indicated below, assistance in Serbia is geared toward increasing capabilities of political opposition parties and the independent media. U.S. bilateral aid implementers apply strict screening procedures to ensure that aid beneficiaries, whether of business credits or technical assistance, are firms or organizations in which war crimes indictees have no material influence or interest.

USAID: Bosnia/Republika SRPSKA

The following list gives, in order, Date of Obligation, Amount of Obligation, Project Number , Project Title, Description of Activity, Justification of Assistance, Location.

4/04/00. $549,916. 180–0021. Political and Social Process. Voter Education Assistance.Throughout Bosnia-Herzegovina (includes RS)

4/04/00. $109,000. 180–0021. Political and Social Process. Electoral polling in support of April municipal elections. Throughout Bosnia-Herzegovina (includes RS)

4/19/00. $65,000. 180–0021. Political and Social Process. Support political resource center to service candidates and parties. Visegrad (RS).

5/2/00. $2,721,834. 180–0056. Bosnia Reconstruction Finance. Technical assistance to the business development program, to support loan program to private enterprises. Throughout RS, with emphasis on US SFOR AOR.

5/4/00. $3,501,249. 180–0014. Privatization & Enterprise Restructuring. Provide service delivery and management at selected banks. Supports development of private sector economy. Primarily Western RS in US—SFOR AOR.

5/12/00. $244,117. 180–0021. Political and Social Process. Grant with ABA/CEELI. Improve management of court system. RS wide.

5/17/00. $3,000,000. 180–0014. Privatization & Enterprise Restructuring. Provide technical assistance and training in international accounting and audit standards. Supports development of private sector economy. Primarily Western RS in US—SFOR AOR.

5/25/00. $400,000. 180–0014. Privatization & Enterprise Restructuring. Conducting financial verification of payments bureaus. Supports international community priority of shutting down payments bureau system by December 2000 and restructuring BiH financial system along Western lines. Throughout RS.

5/25/00. $489,957. 180–0019. Democratic Governance. Provision of technical assistance to managers and administrators. Supporting democratization. Throughout RS.

5/31/00. $4,643,917. 180–0022. Media Training. Technical assistance to independent electronic and print media. Federation and RS.

6/6/00. $502,193. 180–0032. NGO Development. Strengthen civil society by facilitating NGO development through training and technical assistance. Federation and RS.

USAID: Serbia

5/1/00. $995,556. 180–0021. Political and Social Process. Political party development. Economic program development; for use in opposition election campaigns and to guide polices once the political opposition is elected to office.

5/10/00. $990,131. 180–0021. Political and Social Process. Political party development; increase cohesiveness and electoral outreach capabilities of democratic opposition parties.

5/15/00. $227,820. 180–0021. Political and Social Process. Political party development. Aims to increase cohesiveness and electoral outreach capabilities of democratic opposition parties.

5/24/00. $822,470. 180–0021. Political and Social Process. Political party development; increase cohesiveness and electoral outreach capabilities of democratic opposition parties.

6/5/00. $500,000. 180–0020. Rule of Law. Work with legal community toward a more democratic legal framework. Goal: improve legal system that sustains democratic process.

6/22/00. $1,100,000. 180–0021 and 180–0032. Political and Social Process; NGO Development. Political campaign training and vote mobilization activities; develop social and political advocacy capabilities of NGOs. Goals: Increase electoral capabilities of opposition parties; strengthen NGO role in democratic process.

6/29/00. $1,000,000. 180–0021. Political and Social Process. Elections Program: Increase electoral capabilities of opposition parties through more effective civil society training and advocacy.

7/11/00. $629,460. 180–0032. NGO Development. Use telecottage concept to facilitate information sharing. Goal: Strengthen advocacy capabilities of civil society.

7/14/00. $7,767,480. 180–0022. Independent Media. Training and direct material assistance to improve capabilities of independent media.

FOR FURTHER INFORMATION CONTACT: Office of the SEED Coordinator, Department of State, 2101 C St NW, Washington, DC 20521, 202–647–0853.

Dated: October 5, 2000.

Larry C. Napper,

Coordinator for East European Assistance, U.S. Department of State.

[FR Doc. 00–25784 Filed 10–5–00; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–8032]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0617 and 2115–0016

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Direct Users' Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels, and (2) Characteristics of Liquid Chemicals Proposed for Movement in Bulk by Water. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the items described below.

DATES: Comments must reach the Coast Guard on or before December 5, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG 2000–8032], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for these request. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000–8032], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Direct Users' Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

OMB Control Number: 2115–0617.

Summary: This collection requires the submission of identifying information such as vessels' names and identification numbers. A written request to the Coast Guard is necessary.

Need: The Omnibus Reconciliation Act of 1990, which amended 46 U.S.C. 2110, requires the Coast Guard to collect users' fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure that we collect and manage these fees efficiently.

Respondents: Owners of vessels.

Frequency: Annually.

Burden Estimate: The estimated burden is 4,648 hours annually.

2. *Title:* Characteristics of Liquid Chemicals Proposed for Movement in Bulk by Water.

OMB No. 2115–0016.

Summary: The Coast Guard requires manufacturers of new chemicals to submit data on the chemicals. From these data, the Coast Guard determines the appropriate precautions to take.

Need: Under 46 CFR parts 30 to 40, 151, 153, and 154, the Coast Guard regulates the transportation of hazardous materials. Because of its nature, the chemical industry is always producing new chemicals, which it must ship. Each of these has unique characteristics that entail special attention to its mode of shipment.

Respondents: Manufacturers of chemicals.

Frequency: On occasion.

Burden Estimate: The estimated burden is 129 hours annually.

Dated: September 27, 2000.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 00–25754 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–8047]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for grants and cooperative agreements from national, nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after October 10, 2000. Proposals for the fiscal year 2001 grant cycle must be received before 4:30 p.m. eastern time, January 12, 2001.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at *http://dms.dot.gov* or at the Web Site for the Office of Boating Safety at http://www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Marmo or Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; 202–267–0950 or 202–267–0974.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504, establishes the Boat Safety Account of the Aquatic Resources Trust Fund. From this trust fund, the majority of funds are allocated to the States, and up to 5% of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national boating safety activities. It is anticipated that $2,950,000 will be available for fiscal year 2001. Twenty four awards totaling $2,948,343 were made in fiscal year 2000 ranging from $5,000 to $436,200. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 10, 2000. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

Prospective grantees may propose up to a five-year grant with twelve-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case by case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case by case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues. The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that supports the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, injuries and property damage, and lower associated health care costs. We have a high interest in initiatives that focus on recreational anglers, canoeists, kayakers, and/or personal watercraft operators. Some project areas of continuing and particular interest for grant funding include the following:

1. *Develop and Conduct a National Annual Safe Boating Campaign.* The Coast Guard seeks a grantee to develop and conduct the year 2002 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program, as well as support the nationwide grassroots activity of the many volunteer groups who coordinate local media events, education programs, and public awareness activities. The major focus of the campaign will be to affect the behavior of all boaters with special emphasis on paddlers, hunters and anglers, and users of personal watercraft. Efforts will also be coordinated, year-round, with other national transportation safety activities and special media events. Point of Contact: Ms. Jo Calkin, 202–267–0994.

2. *Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference.* The Coast Guard seeks a grantee to plan, implement, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the Recreational Boating Safety Program. The overall conference focus should have promotional strategies which address the following specific targeted audiences: Paddlers, anglers and hunters, and personal watercraft users. Point of Contact: Ms. Jo Calkin, 202–267–0994.

3. *State/Federal/Boating Organizations Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Ms. Sandy Brown, 202–267–6010.

4. *Voluntary Standards Development Support.* The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Peter Eikenberry, 202–267–6984.

5. *Develop and Conduct Boating Accident Seminars.* The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, 202–267–0985.

6. *National Estimate of Personal Flotation Devices (PFDs) Wear Rate.* The Coast Guard seeks a grantee to develop a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Point of Contact: Mr. Peter Eikenberry, 202–267–6894.

7. *Risk Analysis.* The Coast Guard seeks a grantee to apply risk analysis and risk management techniques to validate a speed versus proposed intervention matrix for the operation of recreational boats. Point of Contact: Mr. Philip Cappel, 202–267–0988.

8. *Recreational Boating Safety Needs Assessment.* The Coast Guard seeks a grantee to perform a comprehensive assessment of funding needs for State recreational boating safety programs. Point of Contact: Ms. Jeanne Timmons, 202–267–0857.

9. *Develop a State-by-State Boater Risk Exposure Study.* The Coast Guard seeks a grantee to perform an analysis of national boater survey and accident data to provide a better understanding of the relative risk boaters face as a function of the amount of time actually spent on the water. The study would provide insights regarding State-to-State comparisons of boaters' relative risk, highlighting differences based on boaters' relative exposure time. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

10. *Reference Guide to State Boating Education Laws and Regulations.* The Coast Guard seeks a grantee to collect, compile and effectively disseminate State specific boating safety education laws and regulations to the boating community to encourage uniformity and reciprocity across and between States. The project will include a survey of the State authorities to ascertain the common elements contained in State boating education laws and will present these elements in a standardized, easy-to-use format. The data will be published both in printed and electronic formats to facilitate online access. Point of Contact: Mr. Vann Burgess, 202–267–6717.

11. *Uniform Implementation of National Boating Education Standards.* The Coast Guard seeks a grantee to develop and conduct seminars to train State personnel in the accurate and effective use and interpretation of the National Boating Education Standards to better provide course review and enhance the approval process. Point of Contact: Mr. Vann Burgess, 202–267–6717.

12. *Establish Boat Operator Knowledge Exam Quality Criteria.* The Coast Guard seeks a grantee to develop nationally recognized and accepted final written boating safety education examination criteria. Criteria elements should address all core elements as presented in the National Boating Education Standards. Identifiable elements should include such items, but not limited to: total number of questions, number of questions per educational segment, types/style of questions to be used, test validity, and educational efficacy. Point of Contact: Mr. Vann Burgess, 202–267–6717.

13. *Global Maritime Distress and Safety System (GMDSS) Education.* The

Coast Guard seeks a grantee to develop a training aid to educate the recreational boating public on GMDSS, including information on GMDSS history, component systems, GMDSS Sea Areas, carriage requirements, potential difficulties non-GMDSS equipped recreational boat may encounter in trying to communicate with SOLAS-class vessels, Digital Selective Calling, and system implementation time frame. Point of Contact: CWO Michael Wedda, 202–267–1263.

14. *Boating Safety Problem-Specific Awareness.* The Coast Guard seeks a grantee to develop an informational package dealing with several safety issues, including carbon monoxide dangers, propeller injury prevention, off throttle steering properties and others to be specified. The information would be reproducible in pamphlet form as well as in format for inclusion on the Office of Boating Safety Web site. Elements must support the year-round national campaign. Point of Contact: Ms. Diane Schneider, 202–267–1196.

15. *Navigation Light Glare Minimization.* The Coast Guard seeks a grantee to investigate the aspects of recreational boat navigation light glare, especially with regard to the use of the ''all around'' white light, and determine what technologies or methodologies, if any, might eliminate or minimize the negative effects of glare on the vision of the operator. Point of Contact: Mr. Randolph J. Doubt, 202–267–6810.

16. *Flotation Foam Study.* The Coast Guard seeks a grantee to perform testing and analysis of current flotation foams used in recreational vessels to determine degree of water absorption, effects of temperature variations, effects of vibration, and effects of aging. Study shall include both in-situ and as-installed testing. Point of Contact: Mr. Gary Larimer, 202–267–0986.

17. *Carbon Monoxide Study.* The Coast Guard seeks a grantee to perform testing on current and emerging technologies for detection of carbon monoxide in a marine environment. Grantee shall also perform an analysis of in-use carbon monoxide detection equipment. Point of Contact: Mr. Randolph J. Doubt, 202–267–6810.

18. *Carbon Monoxide Build-up Relative to Vessel Configurations Study.* The Coast Guard seeks a grantee to investigate levels of carbon monoxide build-up on recreational vessels relative to particular vessel design and equipment configuration. Point of Contact: Mr. Randolph J. Doubt, 202–267–6810.

19. *Revise, Reprint and Produce On-line the Guide for Multiple Use Waterways Management.* The Coast Guard seeks a grantee to revise and update ''A Guide for Multiple Use Waterway Management'' produced under a prior Coast Guard grant, providing new management tools and techniques that have been developed or modified since the publication's initial release. In addition to providing the Guide in a printed format to satisfy current and anticipated future demand, this project would also format the Guide for availability and dissemination through the Internet. Point of Contact: CWO Michael Wedda, 202–267–1263.

20. *Disseminate Personal Watercraft (PWC) Renter Orientation Checklist.* The Coast Guard seeks a grantee to package and disseminate printed copies of a newly developed two-part PWC Renter Orientation Checklist for broad distribution to PWC livery operators and others nationwide. The Checklist would also be made available online via the Internet. Point of Contact: Mr. Vann Burgess, 202–267–6717. Potential grantees should focus on partnership, *i.e.,* exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. You may obtain a more detailed discussion of specific projects of interest to the Coast Guard by contacting the Coast Guard Infoline at 800–368–5647 and requesting a copy of a specific proposal. We also encourage proposals addressing other boating safety concerns.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: October 3, 2000.

Kenneth T. Venuto,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 00–25753 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2000–8046; Notice No. 00–12]

Exemption Reconsideration

AGENCY: Federal Aviation Administration, DOT.

ACTION: Reconsideration of certain exemptions.

SUMMARY: This notice contains a summary of existing exemptions that provide relief from regulations and permit the use of electronic records and electronic signatures. The Federal Aviation Administration (FAA) will review these exemptions to determine if they are appropriate candidates for supersedure because of recent legislative and internal actions.

DATES: Comments on this proposed action must be received by October 26, 2000.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8046 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed actions in person 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: Thomas Penland, Flight Standards Service (AFS–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–3764.

SUPPLEMENTARY INFORMATION:

In the past the FAA was contained by practical considerations to limit the reading of the language of certain regulations in a manner that was not conducive to the current electronic environment. The language of these regulations, while general, could only be implemented by requiring nonelectronic methods. This decision was necessary because of the limited technology available to the FAA at that time. In addition, the FAA did not have procedures in place to permit the agency to provide for the general acceptance of electronic data. Exemptions from certain regulations provided limited relief to permit the use of electronic means of compliance.

The FAA recently developed internal procedures to implement the requirements of the Government Paperwork Elimination Act (GPEA), Public Law 105–277, 44 U.S.C. 3504, which became law on October 21, 1998. The GPEA requires federal agencies to provide for (1) the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) the use and acceptance of electronic

signatures, when practicable. The GPEA also states:

''Electronic records submitted or maintained in accordance with procedures developed under this Act, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.''

As part of its efforts to comply with the GPEA and based on Office of Management and Budget (OMB) guidance (65 FR 25508; May 2, 2000), the FAA has developed procedures that would permit the acceptance of electronic records and electronic signatures. In addition, the FAA not has the technical capability to operate in an electronic environment. Therefore, the FAA has undertaken a review of exemptions issued by the agency allowing the use of electronic signatures and records to determine if they are superseded by the provisions of the GPEA and acceptable under FAA's internal procedures.

This notice lists the exemptions that will be reviewed. Commenters, including the listed exemptions holders, should submit their comments and concerns to the FAA by the close of the comment period.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any exemption.

Issued in Washington, DC on October 2, 2000.

Donald P. Byrne,

Assistant Chief Council for Regulations, AGC–200.

Summary of Existing Exemptions

Docket No.: 25336.

Petitioner: United Airlines, Inc. (United).

Section of 14 CFR Affected: 14 CFR 121.697(a)(3), (b), (c), and (d) and 121.709)b)(3).

Description of Relief: Permits United to use computerized signatures to satisfy the airworthiness release signature requirements of part 121 in lieu of physical signatures.

Exemption No. 5121F.

Docket No.: 27674.

Petitioner: International Business Machines Corporation Flight Operations (IBM Flight Operations).

Section of 14 CFR Affected: 14 CFR 43.9(a), 43.11(a)(3), 91.407(a)(2), 145.57(a).

Description of Relief: Permits IBM Flight Operations to use computerized personal identification codes in lieu of the physical signatures required to issue an airworthiness release and/or approval for return to service for the aircraft operated by IBM Flight Operations and the aeronautical products that IBM Flight Operations maintains for its repair station customers.

Exemption No. 6176A.

Docket No.: 28557.

Petitioner: Chromalloy Gas Turbine Corporation (Chromalloy).

Section of 14 CFR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), and 145.57(a).

Description of Relief: Permits Chromalloy and other persons holding return-to-service authority under the relevant, respective inspection procedures manuals (IPM) to use electronic signatures in lieu of physical signatures to satisfy the signature requirements of FAA Form 8130–3, Airworthiness Approval Tag.

Exemption No. 6513A.

Docket No.: 28445.

Petitioner: Aircraft Braking Systems Corporation (ABSC).

Section of 14 CFR Affected: 14 CFR 43.9(a)(4) and 43.11(a)(3), appendix B to part 43, and § 145.57(a).

Description of Relief: Permits ABSC to use computer-generated electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements.

Exemption No. 6542B.

Docket No.: 28225.

Petitioner: Northwest Airlines, Inc. (Northwest).

Section of 14 CFR Affected: 14 CFR 121.709(b)(3).

Description of Relief: Permits Northwest to use electronic signatures generated by its SCEPTRE electronic recordkeeping system in lieu of a physical signature to satisfy the airworthiness release or aircraft log entry signature requirements of § 121.709(b)(3).

Exemption No. 6575A.

Docket No.: 28708.

Petitioner: Empire Airlines, Inc. (Empire).

Section of 14 CFR Affected: 14 CFR 43.9 and 121.709(b)(3).

Description of Relief: Permits Empire to use electronic signatures in lieu of physical signatures to satisfy airworthiness release or aircraft log entry signature requirements of § 43.9 for operations conducted under 14 CFR part 135 and § 121.709(b)(3) for operations conducted under part 121.

Exemption No. 6668B.

Docket No.: 29349.

Petitioner: Texas Aero Engine Services, L.L.C. (TAESL).

Section of 14 CFR Affected: 14 CFR 43.9(a)(4).

Description of Relief: Permits TAESL to use computerized personal identification codes in lieu of physical signatures required to issue airworthiness releases and approvals for return to service of aeronautical products it maintains for its repair station customers.

Exemption No. 6890.

Docket No.: 29419.

Petitioner: Aviation Component Service Center (ACSC).

Section of 14 CFR Affected: 14 CFR 43.9(a)(4), § 43.11(a)(3), appendix B to part 43, and § 145.57(a).

Description of Relief: Permits ACSC to use computer-generated electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements.

Exemption No. 6926.

Docket No.: 28634.

Petitioner: Parker Hannifin Corporation (Parker).

Section of 14 CFR Affected: 14 CFR 43.9(a)(4), § 43.11(a)(3), appendix B to part 43, and § 145.57(a).

Description of Relief: Permits Parker to use computer-generated electronic signatures in lieu of physical signatures to satisfy the signature requirements of FAA Form 8130–3, Airworthiness Approval Tag, when the form is used as approval for return to service.

Exemption No. 7096.

Docket No.: 29422.

Petitioner: Gulfstream Aerospace Corporation (Gulfstream).

Section of 14 CFR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a).

Description of Relief: Permits Gulfstream qualified technicians and inspection personnel to use electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements for the completion processes for Gulfstream aircraft.

Exemption No. 7163.

Docket No.: 17145.

Petitioner: United Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.665 and 121.697(a) and (b).

Description of Relief: Permits United to use computerized load manifests that bear the printed name and position of the person responsible for loading the aircraft, instead of that person's signature.

Exemption No. 2466K.

Docket No.: 28545.

Petitoner: United Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.135(a)(3).

Description of Relief: Permits United to use electronic digital technology to

document the revision level in lieu of printing the last revision date on each page of the manual.

Exemption No. 6612A.

[FR Doc. 00–25694 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Butler County, OH

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 may be prepared for a proposed transportation project in Butler County, Ohio.

FOR FURTHER INFORMATION CONTACT: Mark L. Vonder Embse, Urban Programs Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6854.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposed improvement in the vicinity of Trenton, Ohio. The project termini are approximately US–127, north of the Village of Seven Mile, and the SR–63/SR–4 interchange. The study area is approximately 9 miles in length.

The purpose and need of the project are to address travel demand and capacity, access and safety deficiencies. Alternatives under consideration include: (1) Taking no action; (2) Constructing a new highway on new location; (3) Upgrading existing facilities. FHWA, ODOT, and local agencies will be invited to participate in defining the alternatives to be evaluated in the EIS, and any significant social, economic, or environmental issues related to the alternatives.

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 the project area. In addition, a public hearing will be held. 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. Scoping activities will be conducted.

To ensure that the full range of issues related to this proposed action are identified and addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be sent to the FHWA at the address 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: September 26, 2000.

Mark L. Vonder Embse,

Urban Programs Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 00–25767 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7965]

Notice of Receipt of Petition for Decision That Nonconforming 1999–2000 Porsche 911 GT3 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999–2000 Porsche 911 GT3 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999–2000 Porsche 911 GT3 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 November 6, 2000.

ADDRESS: 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**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'')(Registered Importer 90–005) has petitioned NHTSA to decide whether 1999–2000 Porsche 911 GT3 passenger cars are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1999–2000 Porsche 911 passenger cars 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 1999–2000 Porsche 911 GT3 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.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2000 Porsche 911 GT3 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 1999–2000 Porsche 911 GT3 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*, 118 *Power Window Systems*, 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*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: installation of a brake warning indicator if the vehicles are not already so equipped. The petitioner states that the vehicles are equipped with a digital speedometer which is capable of providing readings in kilometers or miles per hours. Although this unit is not identical to the one installed on U.S.-certified models, the petitioner contends that it meets the requirements of the standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Replacement of the taillight lenses with lenses that conform to the standard; (b) installation of left and right sidemarker lights. The petitioner states that the vehicles are equipped with headlight assemblies which bear DOT markings certifying that they meet the standard, even thought those assemblies are not identical to the ones installed on U.S. certified models. The petitioner also states that the vehicles are equipped at the factory with a high mounted stop lamp.

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 on vehicles that are not already so equipped.

Standard No. 114 *Theft Protection*: installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 208 *Occupant Crash Protection*: (a) Replacement of the driver's seat belt latch and installation of a safety belt warning buzzer; (b) replacement of the driver's and passenger's side air bag system and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front outboard seating positions with Type II seat belts.

Standard No. 214 *Side Impact Protection*: The petitioner states that the vehicles have a lower ride height than U.S. certified models, with the approximate front bumper clearance height being 4 9/16 inches, as opposed to 8 inches on U.S. certified models, and the rear bumper clearance height being 9 inches, as opposed to 10 inches on U.S. certified models. The petitioner states that either the vehicles' coil springs will be replaced with ones identical to those found on U.S. certified models, or spring spacers will be added so that the vehicles have the same ride height as their U.S. certified counterparts.

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 on vehicles that are not already so equipped.

Additionally, the petitioner states that front and rear bumper shocks and rear bumper pads will be installed on non-U.S. certified 1999–2000 Porsche 911 GT3 passenger cars so that they comply with the Bumper Standard found in 49 CFR part 581. The petitioner states that ride height issues will be resolved through modifications made to conform the vehicles to Standard No. 214.

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.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with U.S.-model anti-theft devices, and that all vehicles that are not so equipped will be modified to comply with the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket 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]. 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: October 2, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–25696 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33926 (Sub-No. 1)]

The Burlington Northern and Santa Fe Railway Co.—Trackage Rights Exemption—Union Pacific Railroad Co.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33926 [1] to permit the trackage rights to expire, as they relate to the operations between East Portland, OR, and Chemult, OR, on November 11, 2000.

DATES: This exemption is effective on November 5, 2000. Petitions to reopen must be filed by October 26, 2000.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33926 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW.,

[1] On September 6, 2000, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by UP to grant temporary overhead trackage rights to BNSF over approximately 245 miles of UP's lines as follows: (1) Between East Portland, OR, in the vicinity of UP's milepost 770.34, and Oakridge, OR, in the vicinity of UP's milepost 580.5 (UP's Brooklyn Subdivision); and (2) between Oakridge, in the vicinity of UP's milepost 580.5 and Chemult, OR, in the vicinity of UP's milepost 502.9 (UP's Cascade Subdivision). *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33926 (STB served Sept. 15, 2000). The trackage rights agreement is scheduled to expire on November 11, 2000. The trackage rights operations under the exemption were scheduled to be consummated on September 15, 2000.

Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives, Yolanda Grimes Brown, Esq., The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039, and Robert Opal, Esq., Union Pacific Railroad Company 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da to Da Office Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 27, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–25475 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–570 (Sub-No. 1X)]

Palouse River & Coulee City Railroad, Inc.—Abandonment Exemption—in Latah County, ID

Palouse River & Coulee City Railroad Inc. (PRCC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 26-mile portion of its rail line between milepost 21.0 at Harvard and milepost 47.0 at Bovill, in Latah County, ID. The line traverses United States Postal Service Zip Codes 83834, 83823, and 83806.

PRCC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 7, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 16, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 26, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

PRCC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 11, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PRCC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PRCC's filing of a notice of consummation by October 6, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: September 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–25474 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–471 (Sub–No. 4X)]

South Kansas and Oklahoma Railroad Co.—Abandonment Exemption—in Crawford, Wilson, Elk and Greenwood Counties, KS, and Osage and Tulsa Counties, OK

South Kansas and Oklahoma Railroad Company (SKO) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk and Greenwood Counties, KS. The line traverses United States Postal Service Zip Codes 74126, 74073, 74070, 74001, 74002, 66762, 66724, 67137, 67047, 66759 and 66736.

SKO has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or

with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 7, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 16, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 26, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW, Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

SKO has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 11, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SKO shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SKO's filing of a notice of consummation by October 6, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: September 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–25756 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub–No. 25X)]

Wisconsin Central Ltd.—Abandonment Exemption—In Langlade, Menominee and Shawano Counties, WI

On September 19, 2000, Wisconsin Central Ltd. (WCL) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 [1] to abandon a line of railroad known as the White Lake-Shawano Line, between milepost 280 north of White Lake and milepost 314.3 north of Shawano, in Langlade, Menominee, and Shawano Counties, WI, a distance of 34.3 miles. The line traverses U.S. Postal Service Zip Codes 54491, 54150, 54128, and 54166, and includes stations at White Lake (milepost 282.8), Neopit (milepost 296.8), Gresham (milepost 306.6), and Thornton (milepost 312.6).

The line does contain federally granted rights-of-way. Any documentation in WCL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 5, 2001.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 26, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–303 (Sub-No. 25X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., P.O. Box 5062, Rosemont, IL 60017–5062. Replies to the WCL petition are due on or before October 26, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

[1] WCL's petition states that it seeks exemption from the provisions of 49 U.S.C. 10903–05, thus evidently including exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. WCL has not submitted evidence to establish that the proposed exemptions from sections 10904 and 10905 meet the criteria of 49 U.S.C. 10502. Therefore, its request as to those two provisions will not be considered.

Decided: September 26, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–25247 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 28, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 6, 2000. to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–002.

Form Number: Customs Form 4315.

Type of Review: Extension.

Title: Application for Allowance in Duties.

Description: This collection is required by the Customs Service in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importers claims for such duty allowances.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 12,000.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,600 hours.

Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–25666 Filed 10–5–00; 8:45 am]

BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986): Bahrain, Iraz, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Republic of Yemen.

Dated: September 29, 2000.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 00–25758 Filed 10–5–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Board—Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: This notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and to make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Assistant Commissioner, Human Resources Management, United States Customs Service, 1300 Pennsylvania Avenue, NW, Room 2.4–A, Washington, DC 20229; Telephone (202) 927–1250.

Background

There are two (2) PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals of senior executives rated by the Commissioner of Customs. The members are:

Donnie Carter, Deputy Assistant Director, Criminal Enforcement Field Operations, East, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

Anna Fay Dixon, Director, Office of Finance and Administration, Office of the Under Secretary for Enforcement, Department of the Treasury

Jane Sullivan, Director, Office of Information Resources Management, Department of the Treasury

Kenneth Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury

Jackquelyn Fletcher, Associate Director/CIO, U.S. Mint, Department of the Treasury

Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all senior executives except those rated by the Commissioner of Customs. The members are:

William F. Riley, Director, Office of Planning, Office of the Commissioner

Assistant Commissioners:

Douglas M. Browning, International Affairs

Marjorie L. Budd, Training and Development

S.W. Hall, Information and Technology/CIO

C. Wayne Hamilton, Finance/CFO

William A. Keefer, Internal Affairs

Stuart P. Seidel, Regulations and Rulings

Robert M. Smith, Human Resources Management

Lance S. Statler, Congressional Affairs

Bonni G. Tischler, Field Operations

Dated: October 2, 2000.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 00–25663 Filed 10–5–00; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 65, No. 195

Friday, October 6, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL–6864–6]

RIN 2060–AG60

Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities

Correction

In rule document 00–22968 beginning on page 55810 in the issue of Thursday, September 14, 2000, make the following correction:

§9.1 [Corrected]

On page 55835, in the first column, in Part 63, the designation for footnote 3 located in the first amendatory instruction should be removed and included in §9.1, to read as follows: ''National Emission Standards for Hazardous Air Pollutants for Source Categories[3]''.

[FR Doc. C0–22968 Filed 10–5–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Establishment of the Advisory Committee on Organ Transplantation and Solicitation of Nominations for Membership

Correction

In notice document 00–25000 beginning on page 58279 in the issue of Thursday, September 28, 2000, make the following correction:

The corrected heading, subagency and subject appear as set forth above.

[FR Doc. C0–25000 Filed 10–5–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
October 6, 2000

Part II

Environmental Protection Agency

40 CFR Parts 85 and 86

Emissions Control, Air Pollution From 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Light-Duty On-Board Diagnostics Requirements, Revision; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[AMS–FRL–6846–4]

RIN 2060–AI12

Control of Emissions of Air Pollution from 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty On-Board Diagnostics Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action finalizes a major new program to reduce emissions from on-highway heavy-duty engines and vehicles. These reductions will provide for cleaner air and greater public health protection, primarily by reducing ozone pollution. This program is the first phase of a multi-phase strategy to reduce emissions from heavy-duty engines and vehicles.

A key element of this action is a reaffirmation of the technical and economic feasibility of the non-methane hydrocarbon plus nitrogen oxide ($NMHC+NO_X$) standard promulgated in October, 1997 for diesel heavy-duty engines. This previously-codified standard will therefore remain unchanged and effective starting with the 2004 model year for heavy-duty diesel engines. This standard represents about a 50 percent reduction in emissions of nitrogen oxides, as well as reductions in hydrocarbons, from diesel trucks and buses. Heavy-duty diesel engines and vehicles will also be subject to new test procedures and associated requirements beginning in the 2007 model year that will ensure that emission standards are met across a broad range of engine operating conditions.

In addition, this action puts in place new more stringent emission standards and related provisions for heavy-duty Otto-cycle (*e.g.,* gasoline-fueled) engines and vehicles, beginning in the 2005 model year or sooner under two optional programs finalized today. Vehicles in this category include large full size pick-up trucks and the largest cargo and passenger vans. Today's action does not affect vehicles classified as Medium-duty Passenger Vehicles (generally, large SUVs and vans), which are subject to the recently finalized Tier 2 program standards. For heavy-duty Otto-cycle engines and vehicles affected by today's action, emission standards for oxides of nitrogen and hydrocarbons are reduced by approximately 75 percent from current standards.

We are also finalizing requirements for on-board diagnostics systems for all heavy-duty vehicles and engines at or below 14,000 pounds gross vehicle weight rating (GVWR), as well as revising the on-board diagnostics requirements for diesel light-duty vehicles and trucks.

The requirements promulgated or reaffirmed in today's action will result in lower emissions of oxides of nitrogen and hydrocarbons, as well as lower particulate matter due to reductions in secondary particulate formation (secondary particulate matter is not emitted directly from the engine, but is formed when emissions of oxides of nitrogen react with ammonia in the atmosphere to produce ammonium nitrate particulates) and will assist states and regions facing ozone air quality problems that are causing a range of adverse health effects, particularly respiratory impairment and related illnesses. For example, we project a reduction in oxides of nitrogen emissions of 1,028,000 tons per year by 2010, the time frame when all states will have had to demonstrate compliance with air quality standards. In addition, the program will reduce the contribution of the on-highway heavy-duty category to other serious public health and environmental problems, including volatile organic compounds (VOC), secondary particulate matter (PM), and toxic air pollutants.

Furthermore, we project that the significant environmental benefits of this program would come at an average projected long-term cost increase of less than $400 per vehicle for heavy-duty diesel engines (less than approximately $800 in the near-term) and less than $300 per vehicle for heavy-duty gasoline vehicles and engines in both the long-term and near-term.

DATES: This rule is effective December 5, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 2000.

ADDRESSES: All comments and materials relevant to today's action have been placed in Public Docket No. A–98–32 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. EPA's Air Docket makes materials related to this rulemaking available for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4334; Fax (734) 214–4816; e-mail borushko.margaret@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This regulation will affect you if you manufacture and sell new heavy-duty motor vehicles, new heavy-duty engines, or new diesel light-duty motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. But because these are only examples, you should carefully examine these and existing regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of regulated entities
Industry	Manufacturers of new heavy-duty motor vehicles and engines. Manufacturers of new diesel light-duty motor vehicles and engines.

Internet Access to Rulemaking Documents

Today's action is available electronically on the day of publication from the Internet Web site listed below. Electronic copies of this preamble and regulatory language as well as the Response to Comments document, the Regulatory Impact Analysis and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Web Site: http://www.epa.gov/docs/fedrgstr/epa-air/

Either select a desired date or use the Search feature.)

Office of Transportation and Air Quality (OTAQ) Web Site: http://www.epa.gov/oms/

(Look in ''What's New'' or under the ''Trucks/Buses'' or ''Highway Heavy-Duty Vehicles'' topics.)

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.

Outline of This Preamble

I. Introduction

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B. What Is the ''1999 Technology Review''?
C. How Does This Action Relate to the Consent Decrees With Heavy-Duty Diesel Engine Manufacturers?
D. How Does This Action Relate to the Light-Duty Tier 2 Program?
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2. What Applies to Otto-cycle Engines and Vehicles?

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VII. What Administrative Requirements Apply to This Final Rule?

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B. Compliance With the Regulatory Flexibility Act: Impact on Small Entities
C. Compliance With the Unfunded Mandates Reform Act
D. Compliance With the Paperwork Reduction Act
E. Compliance With Executive Order 13045: Children's Health Protection
F. Compliance With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
G. National Technology Transfer and Advancement Act
H. Compliance With Executive Order 13132 (Federalism)
I. Compliance With the Congressional Review Act

VIII. What Is EPA's Statutory Authority for This Action?

I. Introduction

Under EPA's classification system, heavy-duty vehicles are those with a gross vehicle weight rating (GVWR) of 8,500 pounds or more.[1] The State of California classifies the lighter end of this class—up to 14,000 pounds GVWR—as ''medium-duty vehicles,'' and recent EPA regulations define certain vehicles from 8,500 to 10,000 pounds GVWR and designed primarily for passenger transportation as ''medium-duty passenger vehicles'' (MDPVs) subject to the recently finalized Tier 2 standards. (*See* 65 FR 6698, February 10, 2000). Heavy-duty engines (HDEs) are engines used in heavy-duty vehicles. Heavy-duty engines and vehicles are used in a wide range of applications, from large full size pick-up trucks to the largest commercial trucks. Because one type of heavy-duty engine may be used in many different applications, EPA emission standards for the heavy-duty class of vehicles have generally been based on the emissions performance of the engine

[1] The Clean Air Act defines heavy-duty vehicles as those with a GVWR of greater than 6,000 pounds. However, EPA has classified vehicles between 6,000 and 8,500 pounds GVWR as light-duty vehicles, while treating them as heavy-duty for statutory purposes. Vehicles weighing between 6,000 and 8,500 pounds GVWR are not addressed generally in this final rulemaking. Gross Vehicle Weight Rating (GVWR) is defined by federal regulation in 40 CFR 86.082–2 as ''The value specified by the manufacturer as the maximum design loaded weight of a single vehicle.'' In other words, it is the weight of the vehicle completely loaded with the maximum load that the manufacturer states the vehicle is capable of carrying.

(and any associated aftertreatment devices) as tested separately from the vehicle chassis.

Highway HDEs are categorized into diesel-cycle (compression-ignited) and Otto-cycle (spark-ignited) engines. Most diesel-cycle engines are fueled by diesel fuel, but heavy-duty diesel-cycle engines can also be fueled by methanol or natural gas. The heavy-duty diesel engine (HDDE) class is further subdivided by EPA into three subclassifications or ''primary intended service classes''; light, medium, and heavy HDDEs (*see* 40 CFR 86.090–2).[2] HDDEs are categorized into one of the three subclasses depending on the GVWR of the vehicles for which they are intended, the usage of the vehicles, the engine horsepower rating, and other factors. The subclassifications allow EPA to more effectively set requirements that are appropriate for the wide range of sizes and uses of HDDEs.

Most highway heavy-duty Otto-cycle vehicles and engines are gasoline-fueled, but may also be fueled with alternative fuels including methanol and gaseous fuels such as natural gas. Heavy-duty Otto-cycle vehicles and engines include large full size pick-up trucks, full size cargo and passenger vans, and the largest sport utility vehicles. Approximately 75 percent of heavy-duty Otto-cycle vehicles are in the 8,500–10,000 pound GVWR range, and the vast majority of these are sold as ''complete'' vehicles.[3] The majority of heavy-duty Otto-cycle vehicles above 10,000 pounds GVWR are sold as ''incomplete'' vehicles, meaning that they are manufactured without their primary cargo carrying container or device attached. These incomplete vehicles (basically the engine plus a chassis) are then manufactured into a variety of vehicles, including recreational vehicles, panel trucks, tow trucks, and dump trucks.

EPA's NO_X standard for 1998 to 2003 model year diesel and Otto-cycle heavy-duty engines is 4.0 grams per brake horsepower-hour (g/bhp-hr). The hydrocarbon standards for 1998 to 2003 model year Otto-cycle engines are 1.1 g/bhp-hr for engines used in lighter vehicles (8500 to 14,000 pounds GVWR) and 1.9 g/bhp-hr for engines used in heavier vehicles (greater than 14,000 pounds GVWR), and the 1998 to 2003 model year hydrocarbon standard for HDDEs is 1.3 g/bhp-hr. EPA currently requires testing of the engine (with emissions control systems in place) rather than the entire vehicle. Thus, the standards are in units of g/bhp-hr (*i.e.,* grams of emissions per unit of work the engine performs over the test cycle), rather than the grams-per-mile unit used for testing passenger cars and light-duty trucks.

Today's action is the continuation of a rulemaking process for heavy-duty engines which began in 1995 with an Advanced Notice of Proposed Rulemaking (ANPRM) (60 FR 45580, August 31, 1995). As discussed below, a 1996 Notice of Proposed Rulemaking proposed the same NMHC+NO_X standards for both Otto-cycle and diesel-cycle engines (61 FR 33421, June 27, 1996). However, EPA did not finalize the proposed NMHC+NO_X standard for Otto-cycle engines in the final rule published in October 1997 (62 FR 54694, October 21, 1997). EPA did finalize a new NMHC+NO_X emission standard for HDDEs, starting with the 2004 model year, but committed to review the appropriateness of this standard in 1999. Today's final action thus addresses two broad issues that remain from earlier rulemaking efforts—a reaffirmation of the NMHC+NO_X standard for diesel engines and new emission standards for heavy-duty Otto-cycle engines and vehicles. The previous rulemaking documents, and the documents referenced therein (*see* EPA Air Docket No. A–95–27), contain extensive background on the engines and vehicles, the affected industry, and the need for lower emissions standards.

Section I of this preamble provides some background information and the regulatory context of today's action, as well as a brief overview of the program. Section II details the air quality need for and the benefits of the program. Subsequent sections provide a detailed description of the specifics of the program and expand on the technological feasibility and economic impacts of the program. A public participation section reviews the process we followed in soliciting and responding to public comment. The final sections deal with several administrative requirements. You may also want to review our Final Regulatory Impact Analysis (RIA) and our Response to Comments document, both of which are found in the docket and on the Agency's website. They provide additional analyses and discussions of many topics raised in this preamble.

A. How Does This Action Relate to the Statement of Principles and Other Rulemakings?

In July of 1995, EPA, the California Air Resources Board, and heavy-duty engine manufacturers representing over 90 percent of annual nationwide engine sales signed a Statement of Principles (SOP) that established a framework for a proposed rulemaking to address concerns regarding the growing contribution of heavy-duty engines to air pollution problems. The SOP contained levels for a new proposed standard for NMHC+NO_X that would become effective in model year 2004. The SOP also contained several key provisions in addition to the standards. The SOP discusses the need to review in 1999 the technological feasibility of the NMHC+NO_X standard and its appropriateness under the Clean Air Act. Also, the SOP outlines a plan for developing technology with the goal of reducing NO_X emissions to 1.0 g/bhp-hr and particulate matter to 0.05 g/bhp-hr while maintaining performance, reliability, and efficiency of the engines. EPA sought early comment on the general regulatory framework laid out in the SOP in an ANPRM on August 31, 1995 (60 FR 45580), then subsequently issued an NPRM on June 27, 1996 (61 FR 33421).

On October 21, 1997, EPA issued a final rule (62 FR 54694). The centerpiece of the final rule was a new NO_X+NMHC standard of 2.4 g/bhp-hr (or 2.5 g/bhp-hr with a 0.5 g/bhp-hr NMHC cap) for 2004 and later model year heavy-duty diesel-cycle engines. The rule also adopted other related compliance provisions for diesel-cycle heavy-duty engines beginning with the 2004 model year, as well as revisions to the useful life for the heavy heavy-duty diesel engine service class.

In the June 27, 1996, NPRM, EPA proposed the same NMHC+NO_X standard for diesel and Otto-cycle heavy-duty engines. During the comment period several commenters urged the Agency to reconsider its proposal for Otto-cycle engines. The commenters argued that the proposal ignored the true low emissions capability of gasoline-powered vehicles equipped with advanced three way catalysts. Environmental groups provided comments highlighting manufacturers' certification data for the 1996 model year, which included some engine families with emission levels considerably below the standards proposed for the 2004 model year. One commenter recommended that the proposed standard be phased in earlier than 2004 for Otto-cycle engines since the emissions control technology capable of meeting the NMHC+NO_X standard was more advanced for Otto-cycle engines than for diesel engines. On the basis of these comments, EPA determined to reexamine the proposed standards for Otto-cycle engines and no new NMHC+NO_X standards were finalized for on-highway heavy-duty Otto-cycle engines in the October 21, 1997, final rule.

Lastly, on October 29, 1999, EPA published an NPRM that proposed, among other things, to reaffirm the technical and economic feasibility of the 2004 model year diesel NO_X+NMHC standard and to add appropriate emission standards for heavy-duty Otto-cycle vehicles and engines. (*See* 64 FR 58472, October 29, 1999.) Today's final rule is the conclusion of the first phase of EPA's strategy to achieve substantial emission reductions from heavy-duty vehicles and engines. The second phase, affecting the 2007 and later model years, is addressed in a proposal published on June 2, 2000 (65 FR 35430).

B. What Is the ''1999 Technology Review''?

In addition to the elements of the 1997 final rule described above, EPA finalized a regulatory provision providing for a 1999 review of the new NMHC+NO_X emission standard for HDDEs. EPA committed to ''reassess the appropriateness of the standards under the Clean Air Act, including the need for and technical and economic feasibility of the standards based on information available in 1999'' (*See* 62 FR 54699, October 21, 1997). This provision was put in place because the technologies required to meet the 2004 NMHC+NO_X standard for HDDEs were, at the time the standard was finalized, not yet fully developed and proven. This commitment was spelled out in regulatory language in the final rule in 40 CFR 86.004–11, paragraph (a)(1)(i)(E), which reads:

''No later than December 31, 1999, the Administrator shall review the emissions standards set forth in paragraph (a)(1)(i) of this section and determine whether these standards continue to be appropriate under the Act.''

While this specific regulatory provision is limited to the NMHC+NO_X standard for review in 1999, in the preamble to the final rule EPA committed to investigating or seeking comment on several other issues in the context of the 1999 review. Our October 29, 1999 NPRM proposed to make certain findings regarding these issues and sought comment. Today's action presents our final findings regarding these issues. These additional issues include:

- An evaluation of whether the appropriateness and technical feasibility of the 2004 standards depend upon changes to diesel fuel.
- A review of the appropriateness of the 2004 NMHC+NO_X standard in the context of the current PM standard.

C. How Does This Action Relate to the Consent Decrees With Heavy-duty Diesel Engine Manufacturers?

The Department of Justice and EPA completed consent decrees with seven of the largest heavy-duty diesel engine manufacturers in the U.S. in order to resolve the problems uncovered from current and past heavy-duty diesel engines which the government does not believe meet existing standards and defeat device rules. In these consent decrees with the Federal Government six of the manufacturers are required, among other things, to meet a 2.5 g/bhp-hr limit on NMHC+NO_X no later than October 1, 2002. The majority of these engine manufacturers have also agreed to produce engines by October 1, 2002 that meet a not-to-exceed limit, a Euro III limit (on which the Agency's finalized supplemental steady-state cycle is based), and to test engines over and eventually comply with a load response test and emission limits.[4] The fact that these engine manufacturers have agreed to meet the 2004 standards in 2002 gives the Agency additional confidence that the NMHC+NO_X standard reviewed in today's action is appropriate for the 2004 model year. However, these Consent Decrees are not the basis for the Agency's factual finding that the standards contained in today's final rule are appropriate under the Clean Air Act. Other elements of these consent decrees that are carried over to today's final rule include the addition of a new steady state certification test and a new ''not-to-exceed'' (NTE) approach to assure in-use compliance. In addition, under the consent decrees the manufacturers are required to invest considerable resources to evaluate instrumentation and methodologies for on-road testing.

The Agency believes these consent decrees will partially address the emission problems from previously produced engines. However, we do not believe that relying on the current compliance program and the use of enforcement actions in the future is the most appropriate long term method to assure in-use compliance of heavy-duty engines under all operating conditions. We estimate that the more than one million engines at issue in these consent decrees produced since 1988 will have resulted in excess NO_X emissions of more than 15 million tons over the lifetime of the engines, with an estimated 1.3 million excess tons of NO_X being emitted in 1998 alone. To put this in perspective, the Agency's National Air Pollutant Emission Trends report for 1900–1996 estimates the total U.S. emission inventory for annual NO_X emissions was 23.3 million tons. These estimates do not include the previously unknown excess NO_X emissions from on-highway heavy-duty diesels. Assuming the total 1998 national NO_X emissions are similar to 1996, the 1.3 million tons excess NO_X emissions from heavy-duty diesels in 1998 represent approximately five percent of the national total. The new compliance requirements contained in this final rule assure that the public's health and welfare will be better protected from these types of excess emissions in the future.

D. How Does This Action Relate to the Light-duty Tier 2 Program?

In December of 1999 we finalized a major, comprehensive program designed to reduce emission standards for passenger cars, light trucks, and large passenger vehicles (including sport-utility vehicles, minivans, vans, and pickup trucks) and to reduce the sulfur content of gasoline (see 65 FR 6698, February 10, 2000). Under the program, automakers will produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners will provide such cleaner gasoline nationwide. This comprehensive program is referred to in this preamble as the ''Tier 2/Gasoline Sulfur program,'' or simply the ''Tier 2 program.''

The proposal for the Tier 2/Gasoline Sulfur program (64 FR 26004, May 13, 1999) raised specific issues relating to vehicles over 8,500 pounds GVWR, and thus classified as heavy-duty vehicles. We requested comment in the Tier 2 NPRM on several potential options that would have applied more stringent standards to vehicles over 8,500 pounds GVWR, including the possibility of extending the GVWR limits that define light-duty trucks. Specifically, we requested comment in the Tier 2 NPRM on, among other options, requiring ''all complete trucks in the 8,500–10,000 pound GVWR range to meet light-duty standards ''(64 FR 26089).

We subsequently proposed to include all personal use passenger vehicles (including gasoline and diesel fueled)

[4] The Consent Decrees establish target limits for a load response test of 1.3 times the federal test procedure (FTP) standard for NMHC+NO_X and 1.7 times the FTP standard for PM. These limits would take effect for affected manufacturers after October 1, 2002. However, the Consent Decrees establish a process to determine whether these limits should be modified to ensure that they are the lowest achievable given the technology available at the time. Under this process, manufacturers would submit load response test data with their certification applications starting with the 1999 model year, and by October 1, 2000, the parties to the Consent Decrees would review these data to determine appropriate emission limits.

between 8,500 and 10,000 pounds GVWR in the Tier 2 program. This group of vehicles would include large SUVs and passenger vans and may include other types of ''crossover'' multipurpose vehicles in the future, depending on new vehicle designs. We proposed this change in our NPRM concerning emissions standards for 2004 and later heavy-duty vehicles and engines (64 FR 58472, October 29, 1999).

Tier 2 standards for these passenger vehicles above 8,500 pounds GVWR were finalized in the Tier 2 final rule (65 FR 6698, February 10, 2000). These vehicles are included in the Tier 2 program beginning in 2004 and are required to meet the final Tier 2 standards in 2009 and later. To effect this, we created a new category of heavy-duty vehicles termed ''medium-duty passenger vehicles'' (MDPVs). We define medium-duty passenger vehicles as any complete heavy-duty vehicle less than 10,000 pounds GVWR designed primarily for the transportation of persons including conversion vans (*i.e.,* vans that are intended to be converted to vans primarily intended for the transportation of persons).[5] We do not include any vehicle that (1) has a capacity of more than 12 persons total or, (2) that is designed to accommodate more than 9 persons in seating rearward of the driver's seat or, (3) has a cargo box (*e.g.,* a pick-up box or bed) of six feet or more in interior length. MDPVs will generally be grouped with heavy light-duty trucks (HLDTs) in the Tier 2 program.

Today's final rule does not, therefore, include provisions for those vehicles that meet the new definition of medium-duty passenger vehicle. The provisions in this final rule applicable to complete heavy-duty vehicles are applicable to (1) vehicles under 10,000 pounds GVWR that are not captured in the medium-duty passenger vehicle definition (*e.g.,* large pick-up trucks, 15-passenger vans), or (2) vehicles over 10,000 pounds GVWR. For more information on the new medium-duty passenger vehicle category see the Tier 2 final rule. (See 65 FR 6698, February 10, 2000.)

E. What Are the Basic Components of the Program?

Today's action contains requirements that can generally be separated into those that apply to diesel engines and vehicles and those that apply to Otto-cycle engines and vehicles. Some elements of the program harmonize EPA's regulatory program with California's Medium-duty vehicle (MDV) program (*e.g.,* vehicle-based standards for complete Otto-cycle heavy-duty vehicles below 14,000 pounds GVWR), while others may differ from California's current requirements. (Also, as noted above, some complete gasoline and diesel-fueled heavy-duty vehicles from 8,500 to 10,000 pounds GVWR are incorporated into the Tier 2 program, and are thus are not subject to the requirements in today's action (*See* 65 FR 6698, February 10, 2000).) The details of these requirements are found in section III of this preamble.

Due to lead time requirements in the Clean Air Act (CAA, or ''the Act''),[6] we are not able to finalize some of the new provisions described below to be in effect in time to apply to the 2004 model year as we originally proposed.[7] We are therefore not finalizing some of the heavy-duty diesel provisions until the 2007 model year, which avoids uncertainties regarding lead time and stability issues. New standards for heavy-duty Otto-cycle vehicles and engines can not be implemented earlier than the 2005 model year due to the lead time provisions in the Act. However, manufacturers of these vehicles and engines are given two optional compliance programs that they may select in lieu of the 2005 program, one that starts in 2003 (referred to as ''Option 1'' in the remainder of this preamble) and one that starts in 2004 (Option 2). The 2003 and 2004 implementation options offer some incentives relative to the 2005 program to encourage adoption by manufacturers. The two early-introduction options would result in greater emission reductions than the 2005 program.

This final rule therefore allows heavy-duty manufacturers to retain the statutorily-allowed four year lead time and begin implementation of the new provisions in a time frame that provides enough lead time under the Clean Air Act. However, this final rule also allows manufacturers to meet some new requirements early. Manufacturers electing to comply early would be essentially waiving the four years of lead time that the Clean Air Act allows. Manufacturers that participate in these programs and introduce cleaner technologies early are to be commended for taking positive steps towards protection of the environment. These early introduction options are described further under section III below and also in the Response to Comments document.

1. What Applies to Diesel Engines and Vehicles?

Today's action finalizes our finding that the 2004 NMHC+NO_X standard for heavy-duty diesel engines (HDDEs) is technologically feasible, cost-effective, and appropriate under the Clean Air Act, in the context of the current PM standard. This includes a finding that a change in diesel fuel formulation is not required to make the 2004 model year NMHC+NO_X standards technologically feasible and appropriate under the CAA.

In addition, this action finalizes a new set of supplemental test procedures to more closely represent the range of real world driving conditions of heavy-duty diesel engines. These elements are specifically designed to provide additional certainty that the standards will be met under a wide range of operating conditions. These elements apply to all heavy-duty diesel engines, except those in Medium-duty Passenger Vehicles, which are subject to the Tier 2 program. First, we are adding a steady-state test requirement to the current Federal test procedures (FTP) for HD diesel engines. Emission results from this test must meet the numerical standards for the pre-existing Federal test procedure (*i.e.,* the NMHC+NO_X standards noted above, a CO standard of 15.5 g/bhp-hr, and a PM standard of 0.10 g/bhp-hr). This steady-state test requirement becomes effective starting with the 2007 model year. Second, we are also finalizing Not-to-Exceed (NTE) test procedures for testing of in-use engines. These NTE procedures apply under any conditions that could reasonably be expected to be seen in normal vehicle operation and use, including an expanded range of ambient conditions. Emission results from this test procedure must be less than or equal to 1.25 times the pre-existing Federal test procedure standards noted above. The NTE test and associated emission limits are effective starting with the 2007 model year. Third, we are finalizing a Load Response Test (LRT) certification data submittal requirement for heavy-duty diesel engines, effective starting with the 2004 model year.

We are also finalizing on-board diagnostic (OBD) requirements applicable to heavy-duty diesel vehicles and engines up to 14,000 pounds GVWR. Heavy-duty diesel vehicles and

[5] The conversion from cargo to passenger use usually includes the installation of rear seating, windows, carpet, and other amenities.

[6] Clean Air Act Section 202(a)(3)(C) requires that ''Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.''

[7] An exception is the 2004 NMHC+NO_X standard for heavy-duty diesel engines, which was finalized in a 1997 rulemaking. We did not revise or reconsider this standard in this final rule.

engines must be equipped with an OBD system capable of detecting and alerting the driver of certain emission-related malfunctions or deterioration. These requirements are phased in from the 2005 through 2007 model years.

Lastly, we are finalizing the proposed provisions that require engine manufacturers to provide, to EPA, documentation necessary to read and interpret information broadcast by engine on-board computers and ECM's which relate to emission control devices and auxiliary emission control devices (AECDs). As explained in section III.A.6, these provisions are finalized with minor revisions based on public comment.

2. What Applies to Otto-cycle Engines and Vehicles?

Today's action finalizes new, more stringent emission standards for all Otto-cycle heavy-duty engines and vehicles (except, as already noted, those vehicles defined as MDPVs and covered by the Tier 2 program). We are also finalizing a major change to the structure of the regulatory program for Otto-cycle heavy-duty vehicles and engines and the way in which it applies to the different categories of vehicles. Currently, EPA has an engine-based regulatory program for all heavy-duty vehicles, in that the engine alone is tested and must currently meet engine-based standards.[8] Engine testing currently applies to all diesel-cycle and Otto-cycle heavy-duty vehicles. One of the key elements of today's action is to begin regulating a subset of heavy-duty vehicles using chassis-based requirements. The heavy-duty vehicles that are subject to chassis-based requirements are complete Otto-cycle heavy-duty vehicles with a gross vehicle weight rating (GVWR) up to 14,000 pounds.[9] We are retaining an engine-based approach for engines used in incomplete Otto-cycle vehicles up to 14,000 pounds GVWR and all Otto-cycle vehicles above 14,000 pounds GVWR (and optionally, for Otto-cycle complete vehicles, under Option 1, for the 2003 through 2006 model years). As noted earlier, manufacturers have the choice of three options, one that provides the lead time that we must allow by statute (Option 3), and two others that allow earlier introduction of cleaner technologies (Options 1 and 2).

For the primary engine-based program, we are finalizing a new NMHC+NO_X standard of 1.0 g/bhp-hr that will start in the 2005 model year and remain in place at least through the 2007 model year (Option 3). As an alternative, manufacturers may select a standard of 1.5 g/bhp-hr NMHC+NO_X that would apply to the 2004 through 2007 model years, then change to a 1.0 g/bhp-hr NMHC+NO_X standard in the 2008 model year (Option 2).[10] Further, if a manufacturer desires some additional flexibility beyond that provided by Option 2, they may certify their Otto-cycle complete vehicles to engine-based standards (rather than to the California LEV–I chassis-based standards that would apply under Option 2) through the 2006 model year, provided that they implement these new standards for engines and vehicles starting with the 2003 model year (Option 1). Like Option 2, the engine-based standard in Option 1 transitions from 1.5 g/bhp-hr to 1.0 g/bhp-hr in the 2008 model year. We believe that manufacturers are capable of meeting the requirements under any of these options, and we encourage them to take advantage of the opportunity to introduce cleaner Otto-cycle heavy-duty vehicles sooner rather than later.

For the vehicle-based program, we are harmonizing federal standards with the California Medium-duty Vehicle (MDV) Low Emission Vehicle I (LEV–I) standards. These standards, shown in the table below, would apply to Otto-cycle complete vehicles in the weight categories shown. The standards are for emissions over the FTP and vehicles will be tested at adjusted loaded vehicle weight (ALVW), also known as test weight (TW).[11] The standards apply at a useful life of 120,000 miles. We are also finalizing an averaging, banking, and trading (ABT) program tied specifically to this vehicle-based program. Under Option 3, these standards would begin with the 2005 model year. Under Option 2, these standards would apply starting with the 2004 model year. Under Option 1, Otto-cycle complete vehicles could be certified to these standards or to the engine-based standards through the 2006 model year, as noted earlier, starting with the 2003 model year.

TABLE 1.—FULL-LIFE EMISSION STANDARDS FOR OTTO-CYCLE COMPLETE VEHICLES

[Grams per mile]

Vehicle weight category (GVWR)	Non-methane organic gas (NMOG)	NO_X	CO
8,500–10,000 lbs[1]	0.28	0.9	7.3
10,001–14,000 lbs	0.33	1.0	8.1

[1] Excluding medium-duty passenger vehicles, which are covered by the Tier 2 program.

In addition, the Otto-cycle vehicle-based program includes the chassis-based enhanced evaporative emission test procedures. We are also requiring onboard refueling and vapor recovery (ORVR) controls on all complete Otto-cycle heavy-duty vehicles up to 10,000 pounds GVWR. These requirements are phased from 2004 to 2006 under Options 1 and 2, and from 2005 to 2006 under Option 3.

As with diesel heavy-duty vehicles, we are finalizing OBD requirements applicable to heavy-duty Otto-cycle vehicles and engines up to 14,000 pounds GVWR. Heavy-duty Otto-cycle vehicles and engines must be equipped with an OBD system capable of detecting and alerting the driver of certain emission-related malfunctions or deterioration. These requirements are phased in from 2004 to 2007 under Options 1 and 2, and from 2005 to 2007 under Option 3.

Lastly, as with diesel heavy-duty engines, we are finalizing the proposed provisions that require engine manufacturers to provide, to EPA, documentation necessary to read and interpret information broadcast by engine on-board computers and ECM's which relate to emission control devices and auxiliary emission control devices (AECDs). As explained in section

[8] Engine-based standards are expressed in terms of emissions per unit of work per unit of time, whereas chassis-based (or vehicle-based) standards are expressed in terms of amount of emissions per mile driven by the vehicle.

[9] "Complete" vehicles are those that are manufactured with their primary cargo carrying container or device attached, whereas "incomplete" vehicles are those that are manufactured without the primary cargo carrying container or device attached. Incomplete vehicles (basically the engine plus a chassis) are then manufactured into a variety of vehicles, such as recreational vehicles, panel trucks, dump trucks, fire trucks, and tow trucks.

[10] It is very important that readers note the recent EPA proposal (65 FR 35430, June 2, 2000) regarding the second phase of our strategy to reduce emissions from heavy-duty vehicles. This second phase will include more stringent emission standards for heavy-duty vehicles and engines (diesel and Otto-cycle) in the 2007/2008 time frame. EPA's recent proposal proposed standards for heavy-duty Otto-cycle engines that would take effect in the 2008 model year. The recent proposal gives manufacturers notice of the stringency of future standards being sought by the Agency, and in fact, these future standards may be finalized before manufacturers have to ultimately commit to Option 1 or Option 2. Consequently, the 2008 standard of 1.0 g/bhp-hr in today's final rule is intended to be a placeholder for tighter standards that will result from future final action by EPA prior to 2004; it is not intended to represent the standard that the Agency believes to be ultimately feasible or appropriate in that time frame.

[11] ALVW or TW is the actual weight of the vehicle, known as curb weight, plus half pay load. It is also the average of the curb weight and GVWR, or (CW + GVWR)/2.

III.A.6, these provisions are finalized with minor revisions based on public comment.

As noted above, to address statutory lead time requirements we are offering three options for manufacturers of Otto-cycle heavy-duty engines and vehicles, one that starts with the 2003 model year, one that starts with the 2004 model year, and one that starts with the 2005 model year. A manufacturer must select one option for its entire heavy-duty Otto-cycle product line. (Manufacturers may not select one option for some engine families and another option for other engine families, or one option for engines and another for vehicles. The selected option must apply to all HD Otto-cycle vehicles and engines sold by the manufacturer, for the time prescribed under the regulations that describe the options.) These options, summarized briefly below, are described in greater detail in section III of this preamble.

Option 1 (2003 implementation)

- Engine-based standard of 1.5 g/bhp-hr for the 2003—2007 model years.
- Engine-based standard of 1.0 g/bhp-hr starting with the 2008 model year.[12]
- Chassis-based standards shown in Table 1.
- Option to certify Otto-cycle complete vehicles to chassis-based or engine-based standards for 2003—2006 model years.
- OBD phased in from 2004 to 2007, for 8,500 to 14,000 lbs GVWR.
- ORVR phased in from 2004 to 2006, for 8,500 to 10,000 lbs GVWR.

Option 2 (2004 implementation)

- Engine-based standard of 1.5 g/bhp-hr for the 2004—2007 model years.
- Engine-based standard of 1.0 g/bhp-hr starting with the 2008 model year.[13]
- Chassis-based standards shown in Table 1; 100% compliance in 2004 model year.
- OBD phased in from 2004 to 2007, for 8,500 to 14,000 lbs GVWR.
- ORVR phased in from 2004 to 2006, for 8,500 to 10,000 lbs GVWR.

Option 3 (2005 implementation)[14]

- Engine-based standard of 1.0 g/bhp-hr starting in 2005 model year.[15]
- Chassis-based standards shown in Table 1; 100% compliance in 2005 model year.
- OBD phased in from 2005 to 2007, for 8,500 to 14,000 lbs GVWR.
- ORVR phased in from 2005 to 2006, for 8,500 to 10,000 lbs GVWR.

II. Is the Program Needed, and How Much Effect Will It Have on Emissions?

A. Environmental Need

This section presents information on the health and environmental impacts caused by air pollution from heavy-duty (HD) engines and vehicles (diesel and gasoline[16]), as well as EPA's assessment of the continuing need for additional emission reductions from HD engines and vehicles in order to meet the air quality needs of the U.S. This section also reviews our projections of the emission reductions that will result from today's action.

When we published the original 1997 final rule for the 2004 standards, we included a detailed analysis and explanation of the health impacts and air quality need for the program. Recently, as a part of our October 29, 1999 proposal of today's program mentioned above, we reassessed and updated our evaluation of the air quality need for the original program, as well as for the new provisions we proposed in the October proposal. Today, after performing further analysis and with the benefit of a range of comments from the public, we present our conclusions. As explained below and in the Regulatory Impact Analysis, our most recent analyses confirm our earlier assessments that the nationwide emission reductions from the original 1997 program, as well as the additional reductions that will occur from today's new requirements, are significant and will help many areas to comply with the health-based ambient air quality standards.

1. Need for Additional NO_X and NMHC Reductions

a. NO_X and NMHC Cause Adverse Health and Welfare Effects

Oxides of nitrogen (NO_X) and volatile organic compounds (VOC) are precursors in the photochemical reaction which forms tropospheric ozone. VOC emissions from mobile sources consist mostly of nonmethane hydrocarbons (NMHC). There is a large body of evidence showing that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, most severely affecting people with compromised respiratory systems, children, and outdoor workers. In addition, NO_X and VOCs can both harm human health directly. Beyond their human health effects, other negative environmental effects are also associated with ozone, NO_X, and VOCs. Ozone reduces crop yields and forestry yields and harms ornamental plants. NO_X, and in some cases VOCs, contribute to the secondary formation of particulate matter (PM), acid deposition, and the overgrowth of algae in coastal estuaries. These environmental effects, as well as the health effects noted above, are described in the Regulatory Impact Analysis.

b. Standards for 2004 HD Diesels Are a Key Part of State Air Pollution Control Plans

Since we published the final rule establishing the 2004 HD diesel emission standards in 1997, states have considered the projected emission reductions from these engines to be an important component of their overall State Implementation Plans (SIPs). The NO_X and NMHC nationwide emission reductions that will result from these standards beginning in the 2004 model year will help states to attain the ozone NAAQS. States have incorporated the beneficial effects of the 2004 HD diesel standards into their air quality modeling and they continue to count on the emission reductions from this program to meet their air quality goals.

c. New Standards for 2005 HD Gasoline Engines and Vehicles Are Important for States in Meeting Their Air Quality Goals

Today, many states are finding it difficult to show how they can meet or maintain compliance with the current National Ambient Air Quality Standard (NAAQS) for ozone by the deadlines established in the Clean Air Act. In December, 1999, 92 million people (1990 population) lived in 32 metropolitan areas designated

[12] A recent EPA proposal would replace the 2008 standards finalized today by more stringent standards. See 65 FR 35430, June 2, 2000.

[13] *Ibid.*

[14] 2005 model year engines or vehicles whose model year begins prior to 4 years from the date of signature of this final rule may be exempted from the 2005 model year requirements under this option. Exempted engines or vehicles would comply with requrements otherwise applicable to the 2004 model year.

[15] A recent EPA proposal would introduce more stringent standards starting in the 2008 model year. See 65 FR 35430, June 2, 2000.

[16] We will use the terms ''otto-cycle engine'' and ''gasoline engine'' interchangeably in this document. Most otto-cycle engines today are powered by gasoline, but some alternative fuel technologies also operate as otto-cycle engines.

nonattainment under the 1-hour ozone NAAQS.[17]

There is a very clear risk that there will be elevated levels of ground-level ozone above the 1-hour NAAQS during the time period when the heavy-duty gasoline vehicle standards of this rulemaking will take effect. The reductions in oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) projected from the proposed new standards will benefit public health and welfare by reducing ozone levels. This assessment is based upon our recent and extensive ozone air quality modeling and analysis performed for the Tier 2/Gasoline Sulfur rulemaking, which predicts that a significant number of areas across the nation are at risk of failing to meet the 1-hour ozone NAAQS even with Tier 2 and other controls currently in place. Because ozone concentrations causing violations of the 1-hour ozone standard are well established to endanger public health and welfare, we conclude that today's new standards for 2005 and later gasoline heavy-duty vehicles are warranted.

Projected Air Quality Problems Remain After Tier 2/Gasoline Sulfur Program Is in Place

In conjunction with our Tier 2/Gasoline Sulfur rulemaking efforts, we performed ozone air quality modeling for nearly the entire eastern U.S. covering metropolitan areas from Texas to the Northeast, and for a western U.S. modeling domain. This modeling predicted that without further emission reductions, a significant number of areas now experiencing ozone exceedances across the nation are at risk of failing to meet the 1-hour ozone NAAQS in 2004 and beyond, even with the Tier 2/Gasoline Sulfur program and other controls currently in place.

The general pattern that the ozone modeling shows is a broad reduction between 1996 and 2007 in the geographic extent of ozone concentrations above the 1-hour NAAQS, and in the frequency and severity of exceedances. In the absence of additional controls beyond those that will be achieved by current control programs—including the Tier 2/Gasoline Sulfur program—we expect there will be a slight decrease below 2007 ozone concentrations and frequencies of exceedances in 2030. However, the general trends and modeling results show that many of the areas we modeled may have exceedances continuously throughout the period from 2007 to 2030 without further reductions in emissions. Others may briefly attain and then return to nonattainment by 2030 or earlier. Although for practical reasons we limited our modeling of ozone concentrations to 1996, 2007, and 2030, we expect that concentrations between 2007 and 2030 will generally track the national emissions trend, showing a period of improvement after 2007 followed by a reversal of the trend and deterioration back towards the 2007 levels. Because individual areas' emissions trends differ, we expect that the air quality of individual areas will also vary from this general pattern.

We believe that there is a risk that future air quality in each of these areas would exceed the ozone standard during the time period when this rule will take effect. This belief is based on three factors: (1) Recent exceedances in 1995–1997 or 1996–1998, (2) predicted exceedances in 2007 or 2030 after accounting for reductions from Tier 2 and other local or regional controls currently in place or required, and (3) our assessment of the magnitude of recent exceedances, the variability of meteorological conditions, transport from areas with later attainment dates, and other variables involved in predicting future attainment such as the potential for some areas to experience unexpectedly high economic growth rates, growth in vehicle miles traveled, varying population growth from area to area, and differences in vehicle choice.

Based on the Tier 2 modeling analyses and information from recently-submitted SIPs, we have determined that over 71 million people (1996 population) in 21 metropolitan areas are likely to be exposed to unhealthy levels of ground level ozone at some point in time between 2004 and 2030 without significant additional controls. These 21 areas are those that currently violate 1-hour ozone NAAQS and are predicted by the best ozone modeling we have available to be likely to exceed the 1-hour ozone standard without significant new controls. This analysis accounts for the expected benefits from the Tier 2 program and other control programs already in place.[18] It does not include additional control measures that states would need to implement to meet their requirements under the recently proposed SIP findings. We list these metropolitan areas and discuss how we conducted the analysis in the RIA for this final rule.

There are 14 additional metropolitan areas, with another 35 million people in 1996, for which the available ozone modeling and other evidence is less clear regarding the need for additional reductions. The RIA lists the areas we put in this second category. Our Tier 2 ozone modeling predicted these 14 areas to need further reductions to avoid exceedances during the period when the standards are effective. For all of these areas, recent air quality monitoring data indicate that exceedances may occur in 2007 or 2030. Eight areas have recent exceedances, but local ozone modeling and other evidence indicates attainment in 2007. Based on this evidence, we have kept these areas separate from the previous set of 21 areas. However, we still consider there to be some risk of future exceedances for these eight areas.

For the other six of the 14 areas, the air quality monitoring data shows current attainment but with less than a 10 percent margin below the NAAQS. This suggests that these areas may remain without exceedances for some time, but that there is still a risk of future exceedance of the NAAQS due, for example, to meteorological conditions that may be more severe in the future.

There is significant risk that at least some of these 35 areas will violate the NAAQS in 2004 or thereafter without additional reductions. We consider the situation in these areas to support our belief that, overall, additional reductions are needed.

Today's Program Will Help Areas Meet Their Attainment and Maintenance Requirements

The HD gasoline vehicle standards finalized today, and the HD diesel standards reviewed today, will help all of the areas discussed above to either meet their attainment deadlines, to maintain attainment in the future, or both. The new program will be very important to each of the areas with deadlines in 2005 and later that will require (or may require) additional emission reductions (2005 is the year that new gasoline HD vehicles will begin to enter the fleet). As Table 2 shows, there are 10 such areas with almost 66 million people. The following table lists these areas and their expected attainment dates:

[17] Memorandum to the Docket, Drew Kodjak, EPA, January 12, 2000 (found in the docket for this rule as well). Information on ozone nonattainment areas and population as of December 13, 1999.

[18] Air quality modeling shows that improvements in ozone levels can be expected to occur throughout the country because of the Tier 2/Gasoline Sulfur program. EPA found that the program significantly lowers the model-predicted number of exceedances of the ozone standard by one tenth in 2007, and by almost one-third in 2030 (Tier 2/Gasoline Sulfur Final RIA, Docket A–97–10, Document Number V–B–1).

Metropolitan area	Attainment deadline	Modeling predictions	Population (millions)
Baltimore	2005	VOC Shortfall	2.6
Philadelphia	2005	NO_X and VOC Shortfall	6.0
Greater Connecticut (Hartford and other MSAs).	2007 (requested extension)	Contingent on New York Attainment	2.4
New York City, NY–NJ–CT	2007	VOC and NO_X Shortfall	19.9
Houston, TX	2007	NO_X Shortfall	4.3
Chicago, IL–IN	2007	Regional modeling to analyze existence of shortfall is underway.	8.6
Milwaukee, WI	2007	Regional modeling to analyze existence of shortfall is underway.	1.6
Dallas, TX	2007 (requested extension)	Local modeling shows nonattainment in 2007.	4.6
Beaumont-Port Arthur, TX	2007 (requested extension)	Local modeling shows nonattainment in 2007.	0.4
Los Angeles (South Coast Air Basin), CA	2010	Approved SIP with commitments for unspecified additional controls.	15.5
			65.9

All of the areas in Table 2 with 2005 or later attainment deadlines will be able to take credit in their attainment demonstrations (or in revisions to their demonstrations) for the expected reductions from both the preexisting standards for HD diesel engines and from today's new standards for HD gasoline engines and vehicles. (EPA has not approved deadline extensions for Dallas and Beaumont/Port Arthur at this time; if their requested extensions (to 2007) are approved, these areas, too, could take credit for today's program). The ability to take credit for the new HD gasoline vehicle standards will be especially important for the several areas with emission ''shortfalls'' (*i.e.*, those for which we have made our proposal to approve their attainment demonstrations contingent on their adoption of new measures for further emission reductions).

In addition to helping 8 areas from Table 2 meet their attainment deadlines (plus Dallas and Beaumont/Port Arthur if they receive a deadline extension to 2005 or later), the new program will help these and all other areas with current or potential future ozone problems to maintain their attainment into the future. This includes at least the 37 areas we expressed concern about earlier. In effect, the emission reductions of this program will reduce the risk that these areas that today are in or approaching attainment will fall back into nonattainment as they face economic development and growth in vehicle travel.

The Program Will Help States Avoid More Costly Measures

In general, the task of states to reach and maintain attainment will be easier and the economic impact on their industries and citizens will be lighter if, as a result of today's new gasoline HD vehicle standards, they are able to forego other, less cost effective programs. Following implementation of the Regional Ozone Transport Rule, states will have already adopted emission reduction requirements for nearly all large sources of VOC and NO_X for which cost-effective control technologies are known and for which they have authority to control. Those that remain in nonattainment therefore will have to consider their remaining alternatives.

Thus, the emission reductions from the standards we are proposing today will ease the need for states to find first-time reductions from the mostly smaller sources that have not yet been controlled, including area sources that are closely related to individual and small business activities. The emission reductions from today's standards will also reduce the need for states to seek even deeper reductions from large and small sources that have previously implemented emission controls.

Conclusion

In summary, the best air quality modeling available shows that, in the absence of further emission controls, many metropolitan areas totaling over 100 million people are at risk of failing to meet the 1-hour ozone NAAQS during the period when these standards will be implemented. Further, as we discussed earlier, ozone concentrations exceeding the 1-hour ozone NAAQS have clearly been shown to endanger public health and welfare. We conclude, therefore, that, given the concentrations of ozone during the time period when this rule will take effect, further control of ozone-forming NO_X and hydrocarbons is justified under the Act.

Today's new national standards for HD gasoline vehicles will result in significant reductions in these pollutants. Thus, this program will be an important part of many states' strategies for meeting their air quality requirements and maintaining attainment into the future, including at least 8–10 of these areas that, as discussed above, will be directly assisted in meeting their upcoming attainment deadlines. At the same time, this program will allow states to avoid less attractive measures that would generally provide less emission reduction at a higher cost.

d. HD Diesel and Gasoline Engines Contribute to Total NO_X and VOC Emissions

HD engines and vehicles are major contributors to nationwide emissions of NO_X and they are moderate contributors to nationwide emissions of VOC (estimates of a geographic area's emissions are called ''emission inventories''). The RIA for this rule describes in detail recent emission inventory modeling completed by EPA for this rule. Table 3 summarizes EPA's current estimates for national NO_X and VOC contributions from major mobile source categories.

TABLE 3.—ESTIMATED 2000 NATIONAL NO_X AND VOC EMISSIONS

[Thousand short tons per year]

Emission source	NO_X	NO_X (percent)	VOC	VOC (percent)
Light-Duty Vehicles	4,420	18	4,098	25
Heavy-Duty Vehicles	3,759	15	355	2
Nonroad Engines and Vehicles	5,343	22	2,485	15
Other (Stationary Point and Area Sources)	10,656	44	9,567	58
Total Nationwide Emissions	24,178		16,505	

Table 3 indicates that HD gasoline and diesel vehicles currently represent about 15 percent of national NO_X emissions and two percent of national VOC emissions. Moreover, as described in more detail in the RIA, the local heavy-duty vehicle NO_X contributions are higher than the national average in many important urban areas.

The RIA also contains updated emission inventory modeling for HD vehicles in future years. The results show that without additional HD NO_X control beyond the 1998 standards, national NO_X emissions from HD vehicles would decline for the next few years but that this trend would reverse around 2006. After that, without additional emission controls, NO_X emissions from the HD vehicle fleet would again increase as a result of future growth in the HD vehicle market. A similar trend is seen for national NMHC emissions from HD vehicles—we project that NMHC emissions will decrease until around 2009, after which growth in numbers of vehicles will offset emission reductions and NMHC emissions from HD vehicles will increase (see Chapters 6 and 7 of the RIA).[19]

2. Need for Particulate Matter Reductions

a. PM Emissions Cause Adverse Health and Welfare Effects

Particulate matter is the general term for the mixture of solid particles and liquid droplets found in the air.

Particulate matter includes dust, dirt, soot, smoke, and liquid droplets that are directly emitted into the air from natural and manmade sources, such as windblown dust, motor vehicles, construction sites, factories, and fires. Particles are also formed in the atmosphere by condensation or the transformation of emitted gases such as sulfur dioxide, nitrogen oxides, and volatile organic compounds. Motor vehicle particle emissions and the particles formed by the transformation of motor vehicle gaseous emissions (secondary particles) tend to be in the fine particle range. Fine particles (those less than 2.5 micrometers in diameter) are a health concern because they easily reach the deepest recesses of the lungs.

Scientific studies suggest that airborne particles likely play a causal role in a range of serious respiratory health problems. The key health effects categories associated with particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms (*e.g.,* coughing, difficult or painful breathing, chronic bronchitis, and shortness of breath). Exposure to fine particles is associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease. PM also causes damage to materials and soiling and is a major cause of substantial visibility impairment in many parts of the U.S.

These health and environmental effects are discussed further in the RIA, and additional information may be found in EPA's Air Quality Criteria Document for particulate matter.[20] In addition to the harmful health effects that are linked to particulate matter, diesel exhaust as a whole is also suspected of causing serious health effects. (See Section II.A.3. below)

b. Current and Future Compliance With the PM_{10} NAAQS

Compliance with the current PM_{10} standard continues to be a problem. The most recent PM_{10} monitoring data indicates that 15 counties designated PM_{10} nonattainment counties, with a population of 8.6 million in 1996, violated the PM_{10} NAAQS in the period 1996–1998. The RIA lists these 15 counties. The recent PM modeling analysis we performed for the Tier 2 rulemaking predicts that without additional controls, 8 of these areas, comprising a population of 7.8 million, are at high risk of failing to meet or maintain the PM_{10} NAAQS even with Tier 2 and other controls currently in place. An additional 5 areas, with a population of almost 17 million, are at significant risk of failing to maintain the NAAQS without further reductions in PM_{10}.[21]

c. Contribution of HD Diesel and Gasoline Vehicles to Particulate Matter

Because we are not changing the particulate matter emission standards for HD vehicles in this rule, the effect of this rule on PM results primarily from reductions in NO_X emissions and in turn reductions in the secondary formation of nitrate particles in the atmosphere. Most available modeling of PM emissions, however, focuses only on direct (primary) emissions of PM.

We have not attempted to quantify the contribution of HD vehicles to the secondary nitrate particles formed from the large NO_X emissions of these vehicles in this final rule. We are convinced that this contribution is substantial, especially in regions of the country where ammonia levels in the air are relatively high (NO_X reacts with ammonia to form ammonium nitrate particles). Similarly, we believe that the very significant NO_X reductions from HD diesel and gasoline vehicles that will result from the 2004 standards will also result in important reductions in the HD contribution to nitrate PM.

3. Air Toxics From HD Engines and Vehicles

In addition to contributing to the health and welfare problems associated with exceedances of the National Ambient Air Quality Standards for ozone and PM_{10}, emissions from HD diesel and gasoline vehicles include a

[19] The emission inventory modeling we performed for this rule includes the excess emissions that occurred as a result of certain HD diesel engines manufactured between 1988 and 1998. These engines were at issue in the ''consent decrees'' involving certain HD diesel engine manufacturers, as discussed in Section I.C. above.

[20] U.S. EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P–95/001aF.

[21] See the Regulatory Impact Analysis for the Tier 2/Gasoline Sulfur final rule, which is available in the docket for this rule and through the Office of Transportation and Air Quality web page at www.epa.gov/oms.

number of air pollutants that increase the risk of cancer or have other negative health effects. These air pollutants include benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel exhaust. For several of these pollutants, motor vehicle emissions are believed to account for a significant proportion of total nation-wide emissions. All of these compounds are products of combustion; benzene is also found in nonexhaust emissions from gasoline-fueled vehicles. The reductions in hydrocarbon emissions from HD vehicles resulting from today's program will further reduce the potential cancer risk and other health risks from these air toxics because many of these pollutants are themselves VOCs. Diesel engine exhaust is also a potential concern because of its possible carcinogenic and mutagenic effects on people.

We are addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking, pursuant to section 202(l)(2) of the Act. Our proposed rule, which was signed July 14, 2000, proposes a list of 21 mobile source air toxics as well as standards to limit on the amount of benzene in gasoline. It also sets out a Technical Analysis Plan whereby EPA will continue to conduct research and analysis and to revisit the need for and appropriateness of additional controls on toxic emissions from motor vehicles and fuels in a 2004 rulemaking.

B. Today's Action Will Result in Large Emission Reductions

1. Reductions Due to Emission Standards for Heavy-Duty Diesel Engines

We have made several improvements in our analysis of HDDE emissions since our earlier analyses (in the original 1997 rulemaking and in the 1999 proposal). Chapter 6 of the RIA provides a detailed explanation of the methodology we used to estimate the emission reductions that will result from the requirements for heavy-duty diesel engines associated with today's action. The primary improvement is to include the previously unknown excess emissions from many engines between 1988 and 1998. These engines were at issue in the ''consent decrees'' involving certain HD diesel engine manufacturers, as discussed in Section I.C. above (''How Does This Action Relate to the Consent Decrees?''). As result of this modeling change, our estimates of the contribution of the emissions of pre-1999 engines rose significantly relative to those in the proposal, which did not include these excess emissions.

The other important improvement in the modeling resulted from a better understanding of the likely balance manufacturers will make in their efforts to control both NO_X and NMHC in order to meet the combined NO_X + NMHC standard. Since some current engines are already able to meet very low NMHC levels, we expect that manufacturers will generally be able to design for NO_X levels slightly less stringent than we had originally expected and still meet the combined standard. Our modeling for the final rule thus results in slightly less NO_X control as well as somewhat more NMHC control than did our analysis for the proposed rule.

Table 4 and Figures 1 and 2 show our projections of total national NO_X and NMHC emissions and the estimated emission reductions from HD engine controls in future years. The projected emissions decline over the next several years, due to implementation of stricter controls, but then, unless there are additional controls (including the HD diesel NO_X controls reaffirmed in this rule), they begin to rise due to growth in the number of vehicle miles traveled. Without additional emission controls, by the 2005–2010 time frame, the NO_X and NMHC emissions from HD diesels will be on an accelerating rise into the future. With the diesel engine emission controls reaffirmed in today's action, we believe that NMHC emissions from these engines will not return to the 2005 ''without-control'' levels until after 2020, and that NO_X emissions will not return to the 2005 ''without-control'' levels until after 2030.

TABLE 4.—ESTIMATED NATIONAL NO_X AND NMHC EMISSIONS AND EMISSION REDUCTIONS FROM HEAVY-DUTY DIESEL VEHICLES

[Thousand short tons per year]

Year	NO_X			NMHC		
	Without new controls	With new controls	Emission reduction	Without new controls	With new controls	Emission reduction
2005	2,450	2,260	186	178	168	10
2010	2,460	1,820	635	177	142	35
2015	2,700	1,750	949	208	156	52
2020	2,990	1,810	1,180	238	173	65
2030	3,610	2,090	1,520	286	203	84

Figure 1 – Projected National Exhaust NOx Emissions from HDDEs

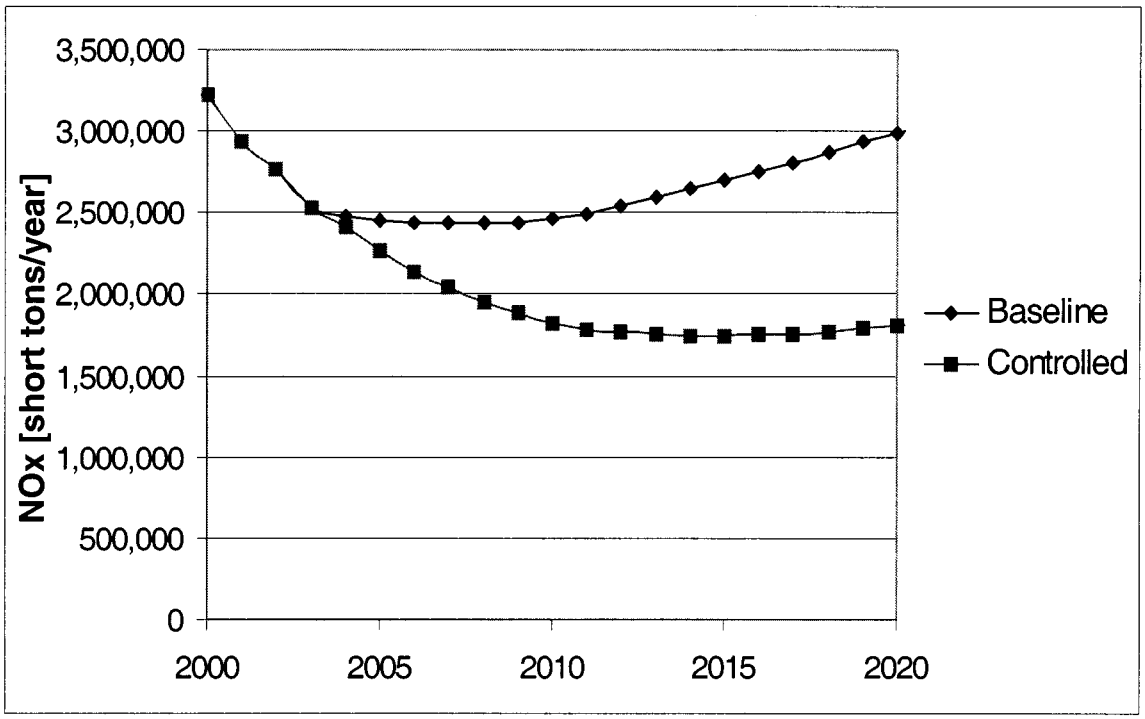
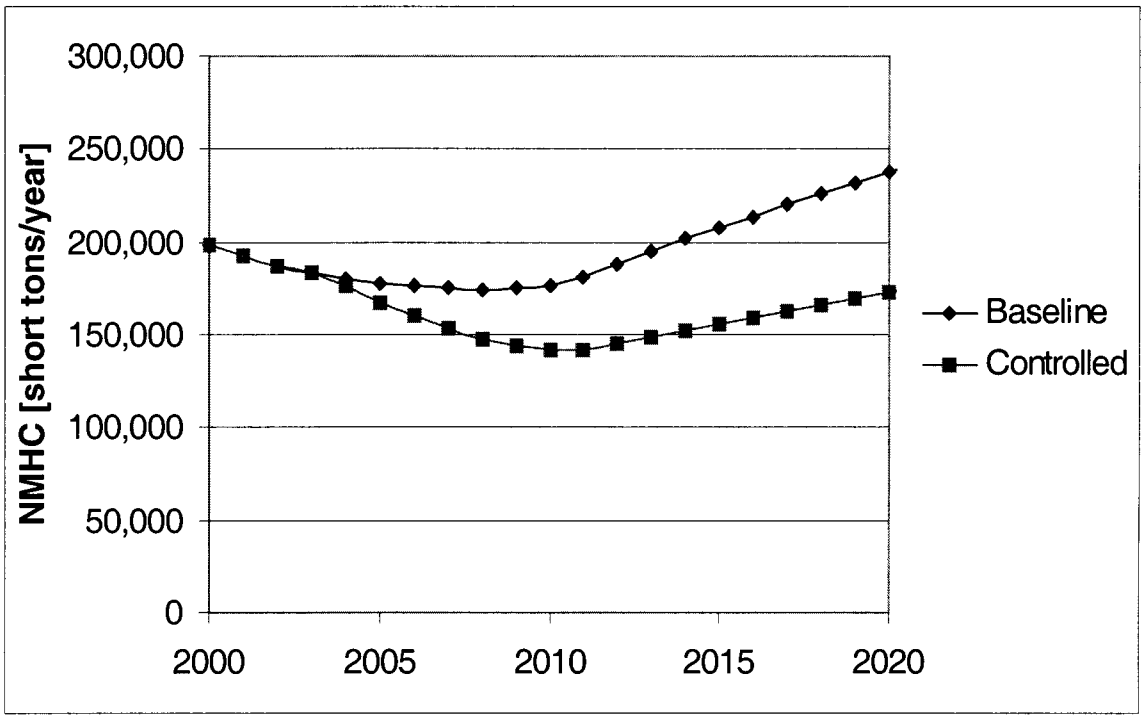


Figure 2 – Projected National Exhaust NMHC Emissions from HDDEs



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Although this rule does not require reductions in direct PM emissions, the standards are expected to result in significant reductions in the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield fine particles in the form of ammonium nitrate. The chemistry governing the conversion of NO_X to secondary PM is very complex and varies from region to region. As a result, we do not present an estimate of the tons of PM reduction that can be expected from this program. However, because of the large NO_X reductions that this program will cause, we believe that the reductions in NO_X-related PM will also be significant.

The term ''hydrocarbons'' includes many different chemical compounds. Analysis of hydrocarbons in the ambient air shows that many of these compounds can be classified as toxic air emissions including benzene, formaldehyde, acetaldehyde, and 1,3-butadiene. Hydrocarbons from HD diesel engines include approximately 1.1 percent benzene, 7.8 percent formaldehyde, 2.9 percent acetaldehyde, and 0.6 percent 1,3-butadiene. Therefore, the 117,000 tons per year reduction in NMHC we project for 2030 would result in about a 14,000 tons per year reduction in air toxics. These issues are discussed in more detail in the RIA.

EPA also believes the regulations in today's action 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 air and fuel 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 we expect manufacturers to pursue in meeting HD diesel standards should generally have the effect of reducing engine noise.

2. Reductions Due to Emission Standards for Heavy-Duty Gasoline Vehicles and Engines

In evaluating the environmental impact of today's heavy-duty gasoline engine and vehicle standards for 2005 and later, we developed estimates of exhaust NO_X and NMHC emissions from HDGVs (excluding California) both with and without the effect of the standards. The analysis performed to estimate the emission reductions from HD gasoline vehicles and engines in this final rule is identical to the analysis performed for the Agency's recently announced proposal to reduce emissions from HD gasoline engines in the 2007 time frame (published on June 2, 2000 (65 FR 35430)). This analysis is different than the analysis we performed for the proposed rulemaking. In the proposal we used the EPA MOBILE5 emission model, with in-use adjustment factors developed specifically for the proposal. As discussed in the RIA, the draft MOBILE6 emission rates for HD gasoline engines and vehicles have been completed, so we use those emission rates in this final rule. Because MOBILE6 is not complete, we used the updated emission rates from MOBILE6 in MOBILE5 for our analysis. The EPA report in which these emission rates are reported has gone through an external stakeholder review.[22] For this final rule we use zero-mile deterioration rates for 1988 and later model year HD gasoline exhaust emissions developed for the draft MOBILE6 emission model. The impact of this change on this final rule, as compared to the proposal, was to decrease the estimated in-use emission rates, for both the baseline and controlled scenarios, for 1998 and later model year HD gasoline engines. Full details of the environmental impact analysis can be found in Chapter 7 of the RIA. The following paragraphs summarize the key results.

Table 5 and Figures 3 and 4 show our projections of exhaust NMHC+NO_X emissions from HD gasoline vehicles both with and without the standards established today. As the table and figures show, without further controls we project that NO_X emissions will increase from current levels without further controls. With implementation of the standards, we expect that NO_X emissions from HDGVs will begin decreasing immediately in 2005 and will continue to decrease far into the future. In the case of exhaust NMHC emissions, we project that in the absence of new controls, they will decline over the next several years but then begin to increase beginning around 2010. With implementation of the standards, we expect the exhaust NMHC emissions from HDGVs to decrease significantly from ''without control'' emissions. Although we project that these emissions will level off and gradually begin to rise again after 2020, the level of emissions will remain well below ''without control'' emissions well past 2030.

TABLE 5.—ESTIMATED NATIONAL NO_X AND NMHC EMISSIONS AND EMISSION REDUCTIONS FROM HEAVY-DUTY GASOLINE VEHICLES

[Thousand tons per year]

Year	NO_X			NMHC		
	Without controls	With controls	Emission reduction	Without controls	With controls	Emission reduction
2005	378	362	16	70	69	1
2010	409	258	151	61	48	13
2015	441	199	242	62	41	21
2020	476	172	304	68	40	28
2030	539	152	387	80	43	37

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[22] ''Update of Heavy-Duty Emission Levels (Model Years 1988-2004+) for use in MOBILE6'', EPA document EPA–420–R–99–010.

Figure 3 – Projected Exhaust NOx Emissions from HDGVs

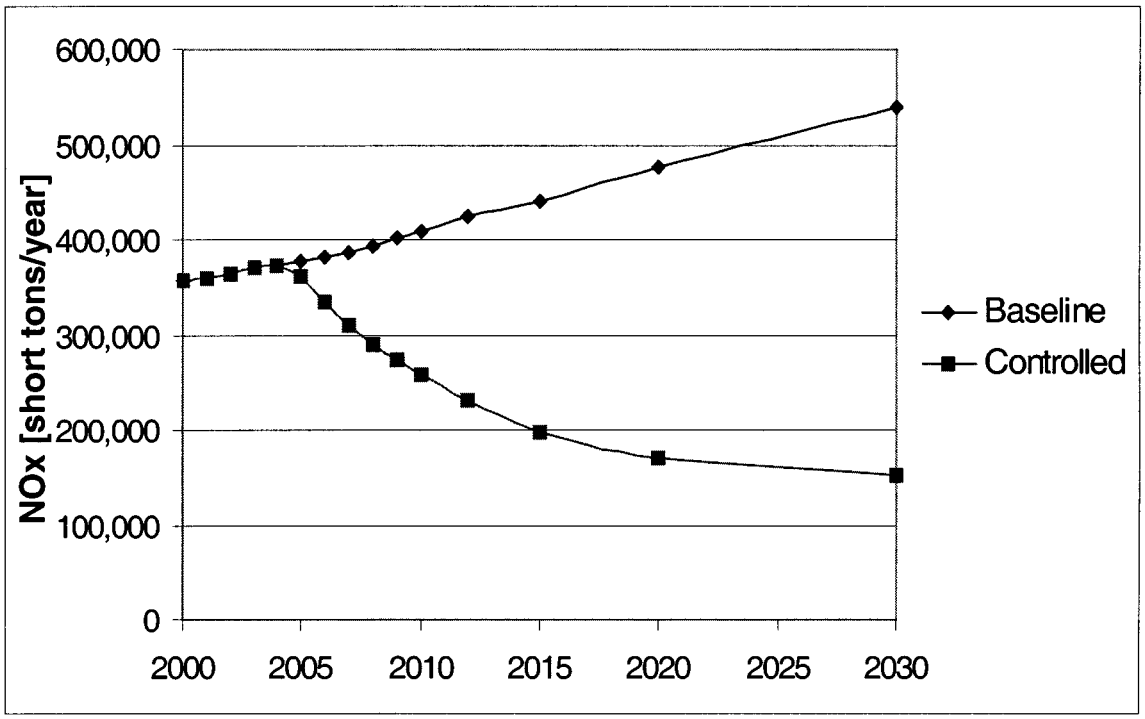
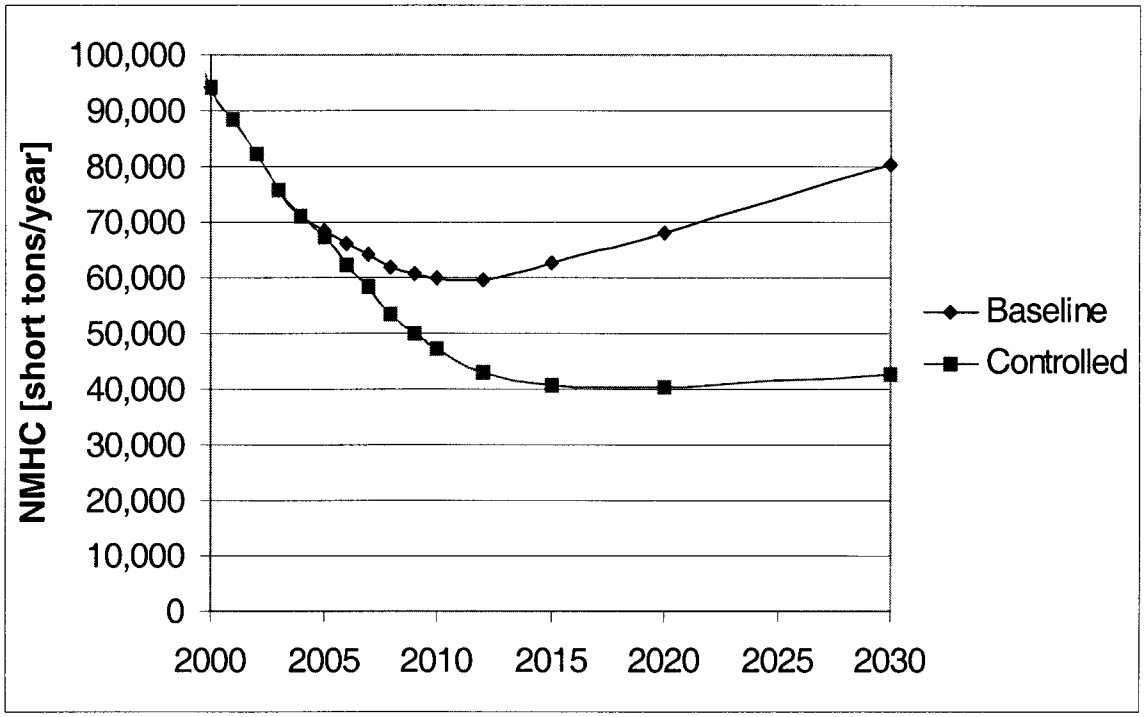


Figure 4 – Projected 49-State Exhaust NMHC Emissions from HDGVs



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As with HD diesel engines, we believe that the NO_X reductions that will result from these standards will result in a corresponding reduction in secondary nitrate PM formed from NO_X. Similarly, we believe that the NMHC reductions will result in corresponding reductions in several toxic air pollutants.

C. Benefits of the Supplemental Requirements and In-Use Control Measures of Today's Action

We consider that the supplemental test procedure and in-use control measures of today's action will play a vital role in achieving the full emission

reductions expected from the diesel and gasoline engine standards promulgated or reviewed today. As described elsewhere in this preamble, these measures include the following:

- new supplemental test procedure requirements for diesel engines,
- onboard diagnostics (OBD) requirements for vehicles (and engines intended for vehicles) rated at less than 14,000 lbs GVWR, and
- the ''CAP–2000'' in-use testing requirements for gasoline vehicles below 14,000 lbs GVWR.

The new supplemental test procedure requirements will ensure that engines are designed to meet the appropriate standards under a broad range of operating conditions. The in-use testing requirements will ensure that engines meet the appropriate standards throughout their useful lives. Finally, the OBD requirements will help ensure that engines in-use continue to operate according to design intent and that designs are durable and robust in the field. If vehicles and engines malfunction or deteriorate in ways that are not noticed by the driver, emissions may be far above the design intent of the engine or vehicle for thousands, if not tens of thousands of miles. On-board diagnostic systems are uniquely suited to identify such malfunctions. Such identification is a very important part of ensuring that the engines and vehicles continue to operate as they were designed and thus continue to provide the air quality benefits envisioned by this program.

For example, we expect that use of EGR will become increasingly widespread as manufacturers comply with the 2004 diesel standards. The EGR systems will likely cut engine-out emissions by as much as one-half. Should an EGR system malfunction in the absence of OBD provisions, the emissions could double without the driver becoming aware of the malfunction (since a non-functional EGR system may not change the performance of the vehicle, depending upon the nature of the specific malfunction). A similar situation exists for gasoline (Otto-cycle) vehicles and engines, which depend on catalytic converters and evaporative emission control systems. A failed or deteriorated catalyst, or a defective evaporative leak detection monitor, can result in a large increase in emissions. Without the OBD system, those emissions may never be identified and the malfunctions would probably never be repaired.

Benefits such as those described above are not easily quantified but are critical to the success of our program as a whole. Without any one of these compliance and in-use control measures, the benefits of today's action will undoubtedly be diminished, and perhaps to a very significant degree.

As we discussed in the proposal, we are also very concerned that additional factors may jeopardize the large emission reductions estimated in today's rule: the lack of OBD systems for HD vehicles rated at greater than 14,000 lbs GVWR; the lack of an effective in-use program for all HD engines and vehicles; and the lack of supplemental test procedures for HD gasoline engines similar to those being finalized today for diesels. As we discuss in the Response to Comments document, and in the proposal, we received broad support from states, environmental organizations, and industry to move forward with developing a proposal to address these important issues through a subsequent rulemaking process.

III. Content of the Final Rule

The following is a description of the regulations being adopted in this final rule, with any changes from the proposal also noted. A summary of the requirements is contained in preamble Section I., above. A full description of our analysis of comments received on the proposal, and our rationale for our response to those comments and any subsequent change to the final rule from the proposal, are contained in the Response to Comments for the rule.

A. What Are the Requirements for Heavy-duty Diesel Engines?

This section summarizes those actions which are being finalized in today's rule which will effect heavy-duty diesel engines.

1. Review of 2004 NMHC+NO_X Standard

One of the principal components of today's final action is the decision that the 2004 NMHC+NO_X standards for HDDE continue to be appropriate under the Clean Air Act. In our 1997 final rule (62 FR 54694) which established the 2.4 g/bhp-hr NMHC+NO_X standards (or optionally a 2.5 g/bhp-hr NMHC+NO_X with a limit of 0.5 g/bhp-hr NMHC) we agreed to perform a technological review of the standards to review the standards' appropriateness. Based on the information presented in our NPRM, as well as our analysis of comments received on the proposal and the technological feasibility and cost discussions below, we have determined these standards continue to be appropriate for the 2004 model year. As part of the reaffirmation process, EPA also examined the relationship between on-highway diesel fuel quality and the 2004 emission standards. Based on the data presented in the proposal, and our analysis of the comments received on the NPRM, no changes in on-highway diesel fuel quality are necessary or will be provided for the 2004 model year. Therefore, we have decided not to reconsider or revise these standards.

2. New Requirements

The October 29, 1999 NPRM for HDDEs contained a proposal for a new set of supplemental test requirements which would take effect in model year 2004 concurrent with the existing 2004 FTP standards (NMHC+NO_X standard of 2.5g/bhp-hr, PM standard of 0.10 g/bhp-hr for all HDDEs except urban buses, etc.). The proposed supplemental tests included the NTE, the supplemental steady-state test, and additional requirements. In the NPRM, we expressed concern regarding our ability to provide HDDE manufacturers with the four years of lead time required by the Clean Air Act for the implementation of the supplemental requirements in model year 2004 considering our compressed rulemaking schedule (See 64 FR 58475). Clean Air Act Section 202(a)(3)(C) requires that ''Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.'' Due to this CAA requirement and the timing of this final rule, the Agency is not able to promulgate a mandatory supplemental program with a model year 2004 implementation. Due to stability concerns raised by engine manufacturers, EPA will implement the supplemental requirements beginning in 2007. In the time frame from 2004 through 2006, the Agency has existing regulatory and enforcement authority, and policy guidelines which we are confident will ensure the majority of the environmental benefits of the supplemental test procedures will be met. As discussed below this includes the existing CAA prohibition on the use of defeat devices, and our existing guidance policy on the use of AECDs and defeat devices. With these policies and agreements in place, the Agency sees no need to establish a voluntary program which would implement the supplemental test procedures for the time frame prior to 2007. The following is a detailed discussion of the tools available to the Agency to ensure that the anticipated environmental benefits of the supplemental test procedures will occur prior to model year 2007.

Section I.C. of this preamble provides background information on the HD Consent Decrees (CD) which the Agency established with a number of HDDE manufacturers in 1998. The great majority of heavy-duty diesel engines are manufactured by companies covered by a CD—approximately 90 percent of the estimated model year 1999 total HDDE U.S. production, and greater than 95 percent of heavy-heavy duty diesel engines which power the line-haul truck application. The heavy heavy-duty diesel engines are the largest on-highway engines and accumulate the most miles of usage, therefore the engines manufactured by CD companies represent the vast majority of HDDE emissions.

The majority of the engines subject to the CDs must meet a not-to-exceed emission limit of 1.25 times the 2004 HDDE standards, as well as a number of additional supplemental requirements, no later than October 1, 2002 (these are sometimes referred to as ''pull-ahead'' engines). The CD manufacturers must produce these pull-ahead engines for two years from the date they are in full compliance with all requirements of the Consent Decrees. Therefore, the pull-ahead engines will be manufactured for what is essentially model years 2003 and 2004, and possibly beyond, depending on whether the engines produced by October 2002 are in full compliance with the Consent Decrees. During the rulemaking process, several of the CD companies made public statements that they were having difficulty in preparing to meet all the CD requirements for pull-ahead engines. If these companies cannot manufacturer engines meeting all the CD requirements by October, 2002, the Agency believes that under the terms of the Consent Decrees, the noncomplying companies will be required to manufacturer pull-ahead engines beyond model year 2004 until they are in full compliance for two straight years.

For engines which meet all of the Consent Decree requirements as of October 2002 and therefore would no longer be subject to these requirements for engines produced after October of 2004, EPA would not expect manufacturers to change their designs in ways that would noticeably increase emissions and will closely scrutinize designs and use our defeat device prohibition and guidance policy to assure this does not happen.[23] Therefore, regardless of whether the CD provisions terminate after model year 2004, the Agency believes the CD manufacturers will continue to manufacture engines for model years 2005 and 2006 which demonstrate compliance with the 2004 standards and satisfy the emission performance provisions of the Consent Decrees.

There are a number of HDDE companies not covered by a CD, and not all engines covered by a CD must meet a pull-ahead requirement which includes supplemental test procedure limits at the 2.5g/bhp-hr NMHC+NO_X level. These engines are concentrated in the light-heavy and medium-heavy-duty diesel market, therefore their overall emission impact is relatively small—less than 25 percent of the emissions from a given year's total HDDE production based on recent certification estimates. However, we will continue to apply our existing statutory authority, regulatory authority, and policy guidance to those engines not covered by a consent decree between model years 2004 and 2006 to ensure that these engines comply with all applicable 2004 emission standards and control emissions over the wide range of anticipated operating conditions.

In October of 1998, EPA issued guidance policy on AECDs and the defeat device prohibition for HDDEs. This guidance document includes the recommended use of the not-to-exceed test procedure and the Euro-3 steady state test (on which the 2007 supplemental steady state test is based) as screening tools for the manufacturers to use to provide the Agency additional assurance they are meeting all applicable regulatory requirements. One company not covered by a Consent Decree has already voluntarily submitted documentation and test data for their 2000 model year HDDE engine family as requested in the Agency's October 1998 guidance regarding emissions during the Euro-3 steady state test and not-to-exceed emission performance, including a voluntary statement of compliance with NTE and Euro-3 emission limits.[24] The Agency anticipates engine manufacturers will submit the requested information for model years up to 2006, after which the NTE and supplemental steady state test procedures will be mandatory certification requirements.

As noted above, we are adding two supplemental sets of requirements for HDDEs: (1) A supplemental steady-state test (SSS); and (2) Not-To-Exceed requirements (NTE). Like current emission requirements, these new requirements apply to certification, production line testing, and vehicles in actual use. These supplemental requirements will take effect with the 2007 model year. All existing compliance provisions (*e.g.,* warranty, certification, production line testing, recall) are applicable to these new requirements as well, except as noted in the regulations. The supplemental requirements establish new emission standards for HDDEs, and these new standards will be enforced in the same manner as the preexisting FTP standard. The new SSS will become part of the Agency's existing selective enforcement audit (SEA) program; however, as discussed in the Response to Comments document, the NTE, as well as the MAEL and EPA selected steady-state ''mystery points'' discussed below have been excluded from the SEA regulations. In addition, we are finalizing a third supplemental test procedure for heavy-duty diesel engines—a Load Response Test—as a data submittal requirement only, which will take effect with the 2004 model year. These supplemental requirements will provide assurance that engines are designed to achieve the expected level of in-use emissions control over all expected operating regimes in-use. These procedures are described in greater detail in the following sections.

a. Not-to-Exceed Test Under Expanded Conditions

We are finalizing a Not-To-Exceed (NTE) requirement applicable to HDDEs. The NTE approach establishes an area (the ''NTE control area'') under the torque curve of an engine where emissions must not exceed a specified value for any of the regulated pollutants.[25] The NTE requirement would apply under any engine operation conditions that could reasonably be expected to be seen by that engine in normal vehicle operation and use, as well as a wide range of real ambient conditions. The NTE control area, emissions requirements, and ambient conditions and test procedures for HDDEs are described below. These requirements would take effect starting in the 2007 model year and would apply to new engines as well as in use throughout the useful life of the engine.

[23] See ''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'', October 15, 1998. Document available in EPA Air Docket A–98–32.

[24] See—Statement of Compliance for Engine Family YNDXH04.6FAB, available in EPA Air Docket A–98–32.

[25] Torque is a measure of rotational force. The torque curve for an engine is determined by an engine ''mapping'' procedure specified in the Code of Federal Regulations. The intent of the mapping procedure is to determine the maximum available torque at all engine speeds. The torque curve is merely a graphical representation of the maximum torque across all engine speeds.

At the time of certification manufacturers would have to submit a statement that its engines will comply with these requirements under all conditions which may reasonably be expected to occur in normal vehicle operation and use. The manufacturer must provide a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This certification statement must be based on testing and/or research reasonably necessary to support such a statement. This supporting information must be submitted to EPA at certification upon request; manufacturers are not necessarily required to submit NTE test data during certification. Start up conditions are excluded from NTE testing.

The NTE test procedure can be run in a vehicle on the road or in an emissions testing laboratory using an appropriate dynamometer. The test itself does not involve a specific driving cycle of any specific length (mileage or time), rather it involves driving of any type which could reasonably be expected to occur in normal vehicle operation that could occur within the bounds of the NTE control area. The vehicle (or engine) is operated under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, including operation under steady-state or transient conditions and under varying ambient conditions. Emissions are averaged over a minimum time of thirty seconds and then compared to the applicable emission limits. The applicable ambient conditions and the methodology for correcting emissions results for temperature and/or humidity are described in the following section. The test procedure can be found in § 86.1370–2007 of the regulations.

Examples of the NTE control area are illustrated in Figures 5 and 6. With the exception of two limited regions under the torque curve (described below), the NTE control area for diesels includes all engine operation at or above 30 percent of the maximum torque value of the engine and all engine operation at or above a specific engine speed calculated based on the maximum power of the engine.[26] Two small regions are excluded (or ''carved out'') from the NTE control area. As described in the proposed rule, these regions are excluded due to the technical challenges associated with controlling emissions in these areas, as well as the fact that engines do not tend to spend a lot time operating in these regions. The combination of the NTE control area and the emission limits within the zone effectively accomplish the Agency's goals of ensuring that emissions are controlled over a wide range of in-use operation. First, we exclude the area under the torque curve that falls below the curve representing 30 percent of the maximum power value of the engine (as distinguished from maximum torque). This region is carved out for all pollutants. Second, a PM-specific region is ''carved out'' of the NTE control area. The PM-specific area of exclusion is generally in the area under the torque curve where engine speeds are high and engine torque is low, and can vary in shape depending upon several speed-related criteria and calculations detailed in the regulations.

Examples of the NTE control area, including the areas excluded from the zone, are shown below in Figures 5 and 6. The A, B, and C engine speeds are the same as those defined for the supplemental steady state test and described in the regulations. Note that there are two possible constructions of the PM ''carve-out'' detailed in the regulatory language. The example in Figure 5 shows the PM carve-out as it would look if the C speed is below 2400 revolutions per minute (rpm), while Figure 6 shows the construct of the PM carve-out if the C speed is above 2400 rpm.

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[26] The maximum torque value and maximum power of the engine are derived as part of the engine mapping procedures specified in 40 CFR 86.1332.

Figure 5 – Example NTE Control Area for Heavy-Duty Diesel Engines – C Speed < 2400 rpm

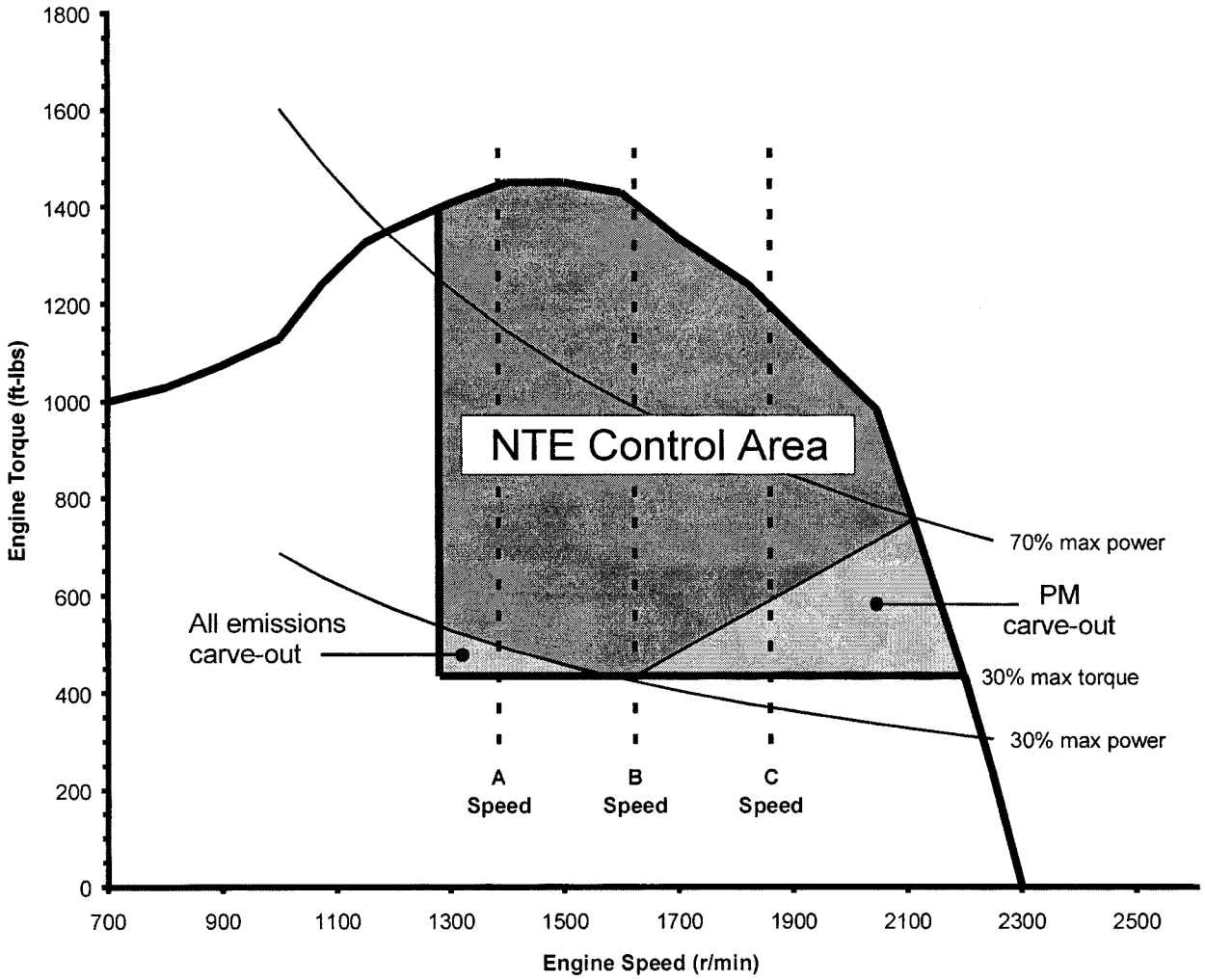
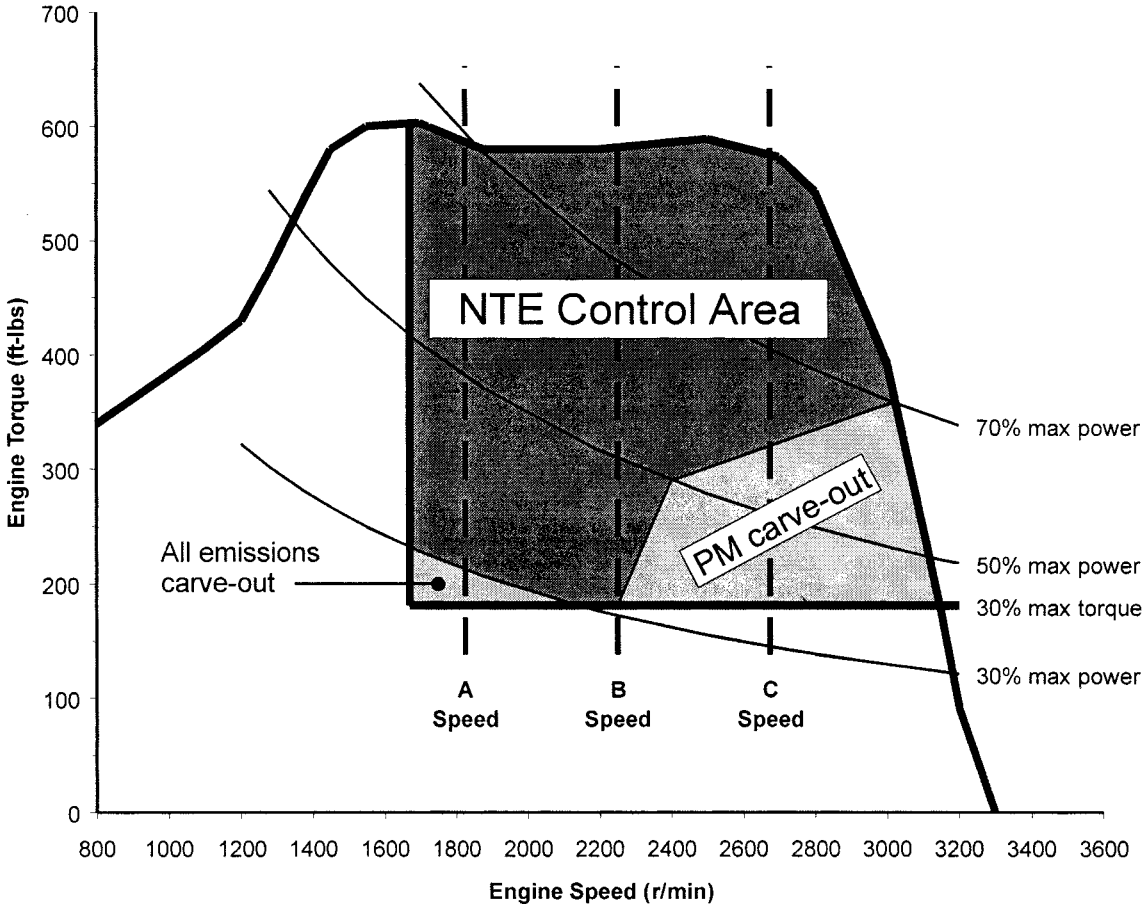


Figure 6 – Example NTE Control Area for Heavy-Duty Diesel Engines – C Speed > 2400 rpm



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Within the NTE control area, emissions of each of the regulated pollutants (NMHC + NO_X, CO, PM), when averaged over a minimum time of 30 seconds, must not exceed 1.25 times the applicable FTP standards (or FEL if ABT is used). In addition, manufacturers must meet either a smoke limit or an opacity limit within the NTE control area. The filter smoke limit is 1.0 on the Bosch smoke number scale. The alternative opacity limits is a thirty second average smoke opacity of four percent for a five inch path for transient testing and a ten second average smoke opacity of four percent for a five inch path for steady state testing.

b. Deficiencies for NTE Emission Standards

Today's action establishes NTE deficiency provisions for HDDEs similar to the deficiency provisions that apply to OBD systems. This will allow the Administrator to accept a HDDE as compliant with the NTE standards even though some specific requirements are not fully met. We are finalizing these NTE deficiency provisions because we believe that, despite the best efforts of manufacturers, for the first few model years it is possible some manufacturers may have technical problems that are limited in nature but cannot be remedied in time to meet production schedules. This provision will be available for manufacturers through model year 2009. The NTE deficiency provision will only be considered for failures to meet the NTE requirements. EPA will not consider an application for a deficiency for failure to meet the FTP or Supplemental Steady State standards.

The NTE requirements are a new regulatory provision HDDE manufacturers have not been required to meet in the past. The NTE, in combination with the expanded conditions requirements, require compliance with the standard over a wide range of engine operating conditions. Given the complexity of designing, producing, and installing the components and systems that are needed to comply with the emission standards, a number of HDDE manufacturers have expressed concern with their ability to comply with all aspects of the NTE. In particular, manufacturers have expressed concern regarding compliance at the higher ambient temperature and altitude conditions that are covered by the NTE test for higher engine family horsepower ratings under high load operation. While we believe that full compliance can and in most cases will be achieved by model year 2007 given other changes in the NTE standards we have made to address these issues, we also believe that some level of relief may be needed to allow for certification of some engines that, despite the best efforts of the manufacturers, are deficient in their

ability to achieve the NTE emission requirements.

As discussed elsewhere in this final rule, manufacturers have identified a number of technical issues which they anticipate manufacturers having difficulties overcoming. These include the availability of sensors and actuators with the necessary accuracy, precision, and repeatability to control engine and emission control hardware to the degree necessary to meet the NTE requirements under high load conditions during elevated temperatures and altitudes. Another example raised by some engine manufacturers was concerns with the limitation of current generation turbochargers, including compressor exit temperature limits and turbine wheel speed limits. While EPA projects that improvements in sensors, actuators and turbocharger materials will reduce these limitations in the future, manufacturers are concerned improvements may not be sufficient or may not occur early enough to allow the NTE requirements to be met for all engine families under certain operating conditions by 2007. These issues are discussed in more detail in the Response to Comments document and in the docket for this rulemaking.[27] The NTE deficiency provision will provide additional lead time to manufacturers to resolve those technical compliance issues, if such lead time is needed.

NTE deficiencies will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given hardware, need for more lead time, or production cycles including phase-in or phase-out of engine designs.

Specific NTE deficiencies should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any NTE deficiency requests that result from the complete failure of a major emission control component or system to operate (''major'' emission control components being those for exhaust aftertreatment devices, exhaust gas recirculation system components, turbo-machinery components, other emission control hardware, or other sensor or actuator hardware).

An NTE deficiency request must include a description of all AECDs which would be used by the engine to comply with the deficiency being requested, if applicable. In addition, the NTE deficiency request must include a description of the control system the manufacturer will use to maintain regulated NTE emissions to the lowest practical level.

The EPA NTE deficiency allowance should only be seen as an allowance for minor deviations from the NTE requirements. The NTE deficiency provisions contained in this final rule would allow a manufacturer to apply for relief from the NTE emission requirements under limited conditions. EPA expects that manufacturers should have the necessary functioning emission control hardware in place to comply with the NTE, especially given the lead time afforded to the NTE requirements in this final rule. Nonetheless, we recognize that there may be situations where a deficiency(ies) is necessary and appropriate. Deficiencies will be approved on an engine model basis, for a single model year, though a manufacturer may request a deficiency for all models and/or horsepower ratings within an engine family, if appropriate. These limitations are intended to prevent a manufacturer from using the deficiency allowance as a means to avoid compliance or delay implementation of any emission control hardware or to compromise the overall effectiveness of the NTE emission requirements.

In the past, EPA has sometimes established non-conformance penalties (NCPs) as an available alternative for manufacturers who want to sell engines which do not meet an emission standard. Once an NCP is established for an emission standard, the NCP is available to all engine manufacturers, *i.e.,* no approval from EPA is required. The NTE deficiency provisions established in today's rule are significantly different from NCPs. First, the deficiency provision are for minor deviations from the NTE requirements, such as the failure to meet the NTE emission limit under specific engine operation, during limited regions of the engine map, and during limited temperature and/or altitude conditions, for reasons such as lead time or technological feasibility. NCPs apply under all conditions covered by the applicable FTP, the manufacturer determines the level by which they will fail to meet the applicable standard, and they then calculate the per-engine penalty to be paid. Second, the manufacturer must apply for the deficiency, and EPA must then decide whether or not to grant such a deficiency. Once established, NCP's are available to all manufacturers, *i.e.,* EPA cannot deny an NCP request. The fact that we are establishing an NTE deficiency provision in today's action does not foreclose the Agency's ability to establish NCPs for the NTE emission requirements in the future. As discussed in the Response to Comments Document, the Agency will continually monitor the status of technological development towards compliance with the NTE requirements and we will establish appropriate NCPs for the NTE emission standards should the criteria for establishing NCPs be met.

c. Supplemental Steady State Test

We are adding a steady-state test cycle to the current Federal test procedures for HD diesel engines. This steady-state test cycle is consistent with the test cycle found in the European's ''EURO III ESC Test''; however not all aspects are identical to the EURO III ESC Test.[28] Manufacturers are required to meet the standards under this test cycle as well as the standards using the current test procedure (including the current transient test cycle) in 40 CFR part 86, subpart N. This test takes effect starting with the 2007 model year.

The supplemental steady-state test cycle consists of 13 modes of speed and power, primarily covering the typical highway cruise operating range of heavy-duty diesel engines. The cycle concentrates on the engine speed range bounded by 50 percent and 70 percent of rated power. This speed range is then divided into bands (engine speeds A, B and C, as defined in § 86.1360–2007(c)). The ''control area'' is defined by the area between engine speeds A and C, and between 25 to 100 percent load. During the test cycle, the engine is initially run at idle speed, then through a defined sequence of 12 modes at various speeds and engine loads of 25, 50, 75 and 100 percent. Each mode (except idle) is run for two minutes. During each mode of operation, the concentration of the gaseous pollutants is measured and weighted (according to the weighting factors in § 86.1360–2007(b)(1)). The weighted average emissions for each pollutant, as

[27] See ''Summary of Conference Call between U.S. EPA and Honeywell Turbocharging Systems on December 22, 1999 regarding 2004 On-highway Heavy-duty Diesel Proposal'', ''Summary of CBI Information regarding proposed HD Supplemental Test Requirements'', both available in EPA Air Docket A–98–32.

[28] ''Draft Proposal for a Directive of the European Parliament and the Council Amending Directive 88/77/EEC of 3 December 1987 on the Approximation of the Laws of the Member States Relating to the Measures to be Taken Against the Emission of Gaseous and Particulate Pollutants from Diesel Engines for Use in Vehicles'', a proposal adopted by the Commission of the European Union on 3 December 1997, for presentation to the European Council and Parliament.

calculated according to this steady-state test procedure, must not be greater than the applicable FTP emission standards. (*See* § 86.005–11(a)(3).) A single, time weighted PM measurement is made for the entire 13 mode test, as specified in § 86.1360–2007(e)(3).

Manufacturers will perform the supplemental steady-state test in the laboratory following all applicable test procedures in 40 CFR part 86, subpart N (*e.g.,* procedures for engine warm-up and exhaust emissions measurement). The test must be conducted with all emission-related engine control variables in the maximum NO_X producing condition which could be encountered for a 30 second or longer averaging period at the given test point.

In addition to the 13 modes of the test cycle, EPA has the opportunity to select an additional three test points as a check to ensure the effectiveness of the engine's gaseous emission controls within the control area (*e.g.,* ensuring that emissions do not ''peak'' outside of the 13-mode test points). During the test, the regulated gaseous pollutants would be measured at each of these EPA-selected test points. PM emissions do not need to be measured during the measurement of emissions for the EPA selected points. The manufacturer also will determine an interpolated value of gaseous pollutant emissions at each EPA-selected test point, using the measured emissions of the closest four adjacent test points. See the illustration in Figure 2 of § 86.1360–2007(g). We are finalizing a four-point linear interpolation procedure that is consistent with that of the European's ''EURO III'', referenced above. (See § 86.1360–2007(g)(2).) The measured emissions value is then compared to the interpolated emissions value. The measured pollutant value must not exceed the interpolated pollutant value by more than ten percent.

d. Maximum Allowable Emission Limits

The emission levels at the 12 non-idle test points and the calculated emissions values from the four-point interpolation procedure for intermediate test points described in the previous section establish an emissions ''surface'' of Maximum Allowable Emission Limits (MAELs), as illustrated in Figure 1 of § 86.1360–2007(f). This surface will limit gaseous emissions levels during all normal steady-state engine operations that occur within the control area defined above, there is no MAEL surface for PM.

Based on comments received and on further analysis of the MAEL concept, we have modified the final regulations such that the MAEL surface is applicable only to steady-state engine operation, and only during standard FTP laboratory conditions. The MAEL is specific to the test engine, and each engine must comply with it's MAEL surface. Each point on this surface will have a MAEL associated with it.[29] The MAEL for each point is calculated using the same four-point linear interpolation procedure used to determine the emission value for the EPA test points discussed above. The MAEL applies throughout the regulatory useful life of the engines.

At certification, manufacturers would be responsible for testing the MAELs by performing the ''check'' described above for the three EPA-selected test points. To determine compliance, test results from operation within the control area must comply with the MAEL generated from running the 12 non-idle points of the supplemental steady state test for the specific test engine. These requirements are effective starting with the 2007 model year.

3. Altitude Requirements and Expanded Temperature and Humidity Conditions for NTE Testing

The FTP, Supplemental Steady State, and MAEL tests are laboratory-based test procedures that would be conducted under standard laboratory conditions defined in the regulations, with emission results corrected according to existing regulations regarding laboratory testing procedures.[30] The NTE could be conducted in the laboratory or during on-the-road driving, and the standards associated with these tests, where applicable, apply under a wide range of conditions. The manufacturer must choose between two options for the range of conditions over which the engine must comply with the NTE requirements. We will briefly outline here these two options, an additional discussion is contained in the Response to Comments document under Issue 8.8.

First, manufacturers can choose to comply with the NTE limits at all altitudes less than or equal to 5,500 feet above sea level, under all temperature conditions. For temperatures outside a range of 55–95 deg. Fahrenheit (F), a correction factor for NO_X and PM is allowed. Inside the 55–95 deg. F range no correction factor for temperature is allowed.

Under option two, a manufacturer can choose to comply with the NTE limits at all altitudes less than or equal to 5,500 feet above sea level, for all temperatures less than a specified temperature at each altitude. The upper temperature limit under option two is 100 deg. F at sea-level and 86 deg. F at 5,500 feet above sea-level, with a linear interpolation for altitudes in between. Temperature correction factors for PM and NO_X are allowed for temperatures less than 55 deg. F. However, unlike option one, under option two NTE limits do not apply above the upper temperature limits defined in the regulations. However, the prohibition against defeat devices would apply above the high temperature limits.

Under either operating condition option, emissions of NO_X can be corrected for humidity outside a range from 50 to 75 grains of water per pound of dry air (7.14 to 10.71 grams of water per kilogram of dry air).

Within the specific altitude, temperature and humidity ranges, emissions from heavy-duty diesel engines must meet the requirements described above, without corrections for temperature and humidity. For situations within the specified altitude limits in which the temperature and humidity conditions are outside these ranges, NO_X is corrected for humidity and both NO_X and PM are corrected for temperature. Corrections are to the end of the specified temperature or humidity range nearest the actual conditions. Good engineering judgment is to be used when correcting for humidity and temperature outside of the specified ranges, as specified in the regulations.

4. On-board Diagnostics for Heavy-duty Diesel Engines

Today's final rule ''establishes'' new on-board diagnostic requirements for HD diesel engines used in the 8,500 to 14,000 pound GVWR category. In general, the OBD system must monitor emission-related engine components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard malfunction indicator light (MIL) must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (*e.g.,* the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a ''generic'' hand-held OBD scan tool. We received

[29] The emissions surface would include all points in the Supplemental Steady-State control area, as defined above.

[30] The acceptable temperature range for FTP testing is defined by regulation as 68–86 degrees Fahrenheit. There is no specified humidity range in the regulations, but NO_X emission results are to be corrected to 75 grains of water per pound of dry air.

a number of comments on the proposed OBD requirements and have incorporated those recommendations that we deemed to be appropriate. The summarized comments and our responses can be reviewed in the Response to Comments Document. The following is a summary of the requirements for HD diesel engines between 8,500 and 14,000 pounds GVWR.

a. OBD Malfunction Thresholds and Monitoring Requirements

This final rule requires that, beginning in the 2005 model year, heavy-duty diesel engines used in vehicles less than 14,000 pounds must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related malfunctions or deterioration as evaluated over the appropriate certification test procedure: [31]

(i) Catalyst deterioration or malfunction—before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X. This monitoring would not need to be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold. The above requirement only applies to reduction catalysts; oxidation catalysts are not required to be monitored.

(ii) Particulate trap malfunction—any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM must be monitored. Particulate trap monitoring must be capable of detecting a catastrophic failure of the device. Monitoring to the precise 1.5 threshold is not necessary. This monitoring would not need to be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

(iii) Engine misfire—lack of combustion must be monitored.

(iv) If the vehicle or engine contains an oxygen sensor, then oxygen sensor deterioration or malfunction before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC+NO_X or CO.

(v) If the vehicle or engine contains an evaporative emission control system, then any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator would be required to revise the size of the orifice to the feasibility limit, based on test data, if the most reliable monitoring method available was unable to reliably detect a system leak equal to a 0.040 inch diameter orifice.

(vi) Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the EGR system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+NO_X, PM, or CO. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (f) below, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration would be subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system would be required to indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check.

(vii) Any other deterioration or malfunction occurring in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph would be satisfied by employing electrical circuit continuity checks and, wherever feasible, rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands); malfunctions would be defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

Upon detection of a malfunction, the MIL would be required to illuminate and a fault code stored no later than the end of the next driving cycle during which monitoring occurs provided the malfunction is again detected. Alternatively, upon Administrator approval, a manufacturer would be allowed to use a diagnostic strategy that employs statistical algorithms for malfunction determination. Manufacturers would be required to determine the appropriate operating conditions for diagnostic system monitoring with the limitation that monitoring conditions are encountered at least once during the applicable certification test procedure or a similar test cycle as approved by the Administrator. This is not meant to suggest that monitors be designed to operate only under test procedure conditions, as such a design would not encompass the complete operating range required for OBD malfunction detection.

As an option to the above requirements, EPA will allow compliance demonstration according to the California OBDII requirements for HD diesel with one exception. This option allows manufacturers to concentrate on one set of OBD requirements for nationwide implementation (although federal OBD emission malfunction thresholds and monitoring requirements are essentially equivalent to those of the California OBDII regulation) and provides the highest level of OBD system effectiveness toward meeting nationwide clean air goals. However, the exception to this option is the requirement for catalyst and particulate trap monitoring. CARB does not require catalyst or aftertreatment monitoring, but as described above, this final rule does. Therefore, if a manufacturer chooses the California OBDII compliance option for a diesel engine, that manufacturer would still be required to satisfy the catalyst or particulate trap OBD monitoring requirements established in today's final rule.

b. Standardization Requirements

The light-duty OBD regulations contain requirements for standardization of certain critical aspects of the OBD system. These critical aspects include the design of the data link connector, protocols for on-board to off-board computer communication, formats for diagnostic trouble codes, and types of test modes the on-board system and the off-board scan tool must be capable of supporting. Today's action contains similar standards for heavy-duty OBD systems, as detailed in the regulatory requirements under section § 86.1806–05.

c. Deficiency Provisions

Today's action also establishes the same deficiency provisions for heavy-duty diesel OBD systems as currently apply to light-duty OBD systems. This would allow the Administrator to accept an OBD system as compliant even though specific requirements are not fully met. The deficiency provisions were first introduced on March 23, 1995 (60 FR 15242), and were recently revised on December 22, 1998 (63 FR 70681).

[31] The FTP minus the Supplemental FTP for chassis certified systems; the engine certification test procedure minus any supplemental test procedures for engine certified systems. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against defeat devices in § 86.004–16 applies to these OBD requirements.

To clarify our deficiency provisions, EPA does not expect to certify vehicles with federal OBD systems that have more than one OBD system deficiency, or to allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware and/or software modifications that cannot be accomplished in the time available, as determined by the Administrator. Nonetheless, we recognize that there may be situations where more than one deficiency is necessary and appropriate, or where carry-over of a deficiency(ies) for more than one year is necessary and appropriate. In such situations, more than one deficiency, or carry-over for more than one year, may be approved, provided the manufacturer has demonstrated an acceptable level of effort toward OBD compliance. These deficiency provisions cannot be used as a means to avoid compliance or delay implementation of any OBD monitors or as a means to compromise the overall effectiveness of the OBD program.

d. Applicability and Waivers

Today's federal HD diesel OBD requirements would be implemented beginning with the 2005 model year. OBD requirements for diesel heavy-duty engines used in vehicles up to 14,000 pounds GVWR would be phased in over a three year period, from 2005 until 2007. The percentage phase-in schedule will be 60/80/100 for the 2005/06/07 model years, respectively, based on projected sales. For those manufacturers with a single heavy-duty engine family (including otto-cycle and diesel), implementation of OBD requirements would not have to occur until the 2007 model year. As discussed in Section II(B)(6) and III(C)(4), this final rule establishes OBD requirements for heavy-duty Otto-cycle engines and vehicles up to 14,000 pounds GVWR which are similar to the requirements for HD diesel, including an identical phase-in schedule. For Otto-cycle manufacturers who choose options 1 or 2, the phase-in schedule is 40/60/80/100 percent for the 2004/05/06/07 model years, respectively. HD manufacturers will be allowed to meet the OBD phase-in requirements by combining their projected sales of HD Otto-cycle and HD diesel engines to meet a combined diesel and Otto-cycle phase-in, at their option.

For heavy-duty vehicles and engines up to 14,000 pounds GVWR operating on alternative fuel, EPA would grant OBD waivers during alternative fuel operation through the 2006 model year to the extent that manufacturers can justify the inability to fully comply with any of today's proposed OBD requirements.[32] Such inability would have to be based upon technological infeasibility, not resource reasons. Further, any heavy-duty vehicles and engines that are subsequently converted for operation on alternative fuel would not be expected to comply with the OBD requirements if the non-converted vehicle or engine does not comply. In other words, if the vehicle or engine never completes any assembly stage in OBD compliance, it need not comply with the OBD requirements while operating on the alternative fuel. If the vehicle or engine does complete any assembly stage with a compliant OBD system, it would have to comply with the OBD requirements while operating on the fuel of original intent and, to the extent feasible, while operating on the alternative fuel. For these latter situations, EPA could grant waivers through the 2006 model year if the manufacturer can show it is infeasible to meet the requirements. Beginning in the 2007 model year, all heavy-duty alternative fueled vehicles and engines up to 14,000 pounds GVWR will have to be fully compliant during both operation on the fuel of original intent and alternative fuel.

e. Certification Provisions

The OBD certification information requirements of today's rule are consistent with the existing requirements for light-duty vehicles. The manufacturers application for certification must include, for each OBD system: a description of the functional operating characteristics of the diagnostic system; the method of detecting malfunctions for each emission-related engine component; and a description of any deficiencies including resolution plans and schedules. Anything certified to the California OBDII regulations would be required to comply with California ARB information requirements. EPA may consider abbreviating the OBD information requirements through rulemaking if it gains confidence that manufacturers are designing OBD systems that are fully compliant with all applicable regulations.

During EPA certification of engines optionally certified to the California OBDII regulation, EPA may conduct audit and confirmatory testing consistent with the provisions of the California OBDII requirements. Therefore, while the Agency will consider California certification in determining whether to grant a federal certificate, EPA may also elect to conduct its own evaluation of that OBDII system. While it is unlikely, EPA may make a compliance determination that is not identical to that of the California Air Resources Board.

Further, the final rule provisions allow for a ''drop-in'' demonstration. This provision allows engine certified and engine demonstrated OBD system to fulfill the demonstration requirements of a chassis certified OBD system, however, the chassis certified system would have to incorporate transmission diagnostics even though the ''dropped-in'' engine system may not have been certified with transmission diagnostics. The drop-in provision also allows a chassis certified and chassis demonstrated OBD system to fulfill any demonstration requirements of an engine certified OBD system. The drop-in provision discussed here requires the manufacturer to rigorously demonstrate its OBD concept and approach on one engine or model, but allows the manufacturer to apply that demonstration via engineering judgement to the different engine and powertrain calibrations used across its fleet. The Agency will accept such a demonstration provided sound engineering judgement is employed.

5. Submission of Load Response Test Data

We are finalizing a new data submission requirement for HD diesel engine manufacturers. Within 180 days after submission of the application for certification, manufacturers of HD diesel engines for the 2004 model year will need to submit laboratory certification data generated during a test procedure referred to as the Load Response Test (LRT). This data submission requirement will remain through model year 2007. This test procedure is intended to provide the Agency with needed information regarding the emission impacts of very short, rapid engine loadings on new emission control technology. We have finalized a LRT data submittal requirement similar to that which was proposed, with minor modifications to reflect our response to the technical test procedure comments received during the comment period. In addition, we have finalized certification data submission requirements which would allow manufacturers to carry across LRT data from one model year to future model years for the same engine family, and we have finalized requirements which will allow manufacturers to carry-across LRT data from one engine family to other engine

[32] Note that this provision currently exists for light-duty vehicles and trucks operating on alternative fuel through the 2004 model year; that existing provision does not change with today's proposal.

families which utilize similar emission control hardware. The use of carry-over and carry-across provisions will provide the Agency with important information on new control technologies, while minimizing the testing and reporting requirements for the manufacturers.

As discussed in more detail in the Response to Comments document, the Load Response Test represents operation not adequately represented by the current FTP or the supplemental test procedures (NTE and SSS), and could eventually be used to ensure effective control of NO_X and PM during this type of operation. We believe that establishing a future Load Response Test with appropriate emission limits may be a valuable addition to EPA's compliance program, and when the process of evaluating the available data is complete we intend to evaluate the addition of specific Load Response Test emission limits to EPA's compliance program in a future proposal. The data submittal requirement will enable a better understanding of the emissions that occur under this type of operation and would ensure that EPA establishes well supported standards in a future action, if we determine it is appropriate to do so. We have established this data submission requirement for a four year period, from model years 2004 through 2007. In this time period the on-highway HD diesel engine industry will be utilizing a range of new emission control technology not previously used on these engines. As discussed throughout this document, in the 2004 time frame all manufacturers will likely be applying cooled EGR and advanced turbochargers in order to comply with the 2004 emission standards. As discussed in the Response to Comments document, the application of EGR systems has the potential to result in high emission rates of PM and NO_X under the type of operation conditions simulated by the LRT. In a recent Agency proposal (June 2, 2000, 65 FR 35430), the Agency proposed to establish new emission standards based on advanced aftertreatment for HD diesel engines in model year 2007. We believe it is important to collect LRT emission data on these new technologies in order for the Agency to make an informed decision regarding the need for a new emission standard based on the LRT.

The four years worth of LRT data should provide the Agency with sufficient information on which to make a determination regarding the appropriateness of establishing an emission standard based on the LRT.

6. EPA Policy and Regulations Regarding Defeat Devices and Auxiliary Emission Control Devices

The NPRM for this final rule proposed to modify the existing defeat device definition for HD diesel engines and vehicles. The NPRM proposed to modify the current definition of defeat device contained in § 86.094–2 by explicitly stating that AECD's which operate under conditions substantially included in the proposed NTE and MAEL test procedures would not be excluded from consideration for a possible defeat device. We discussed in the NPRM our rationale for this proposed change, *i.e.*, the range of vehicle operation covered by the NTE and MAEL procedures is very broad compared to the existing FTP and covers much of the operation which is encountered by many engines.

A number of engine manufacturers expressed concern in their comments with the proposed definition. Some manufacturers commented the proposed definition is unclear and has the potential to be interpreted too broadly.[33] A detailed discussion of these comments and our response is contained in the Response to Comments for this final rule. In light of our further analysis of how best to control for defeat devices, we have decided in this final rule to retain the existing definition of defeat device contained in § 86.094–2, with only a minor change to clarify that the applicable heavy-duty diesel federal emission test procedure includes the supplemental steady-state and not-to-exceed test procedures beginning in model year 2007.

As with the current definition of a defeat device, use of a control strategy during conditions which are substantially included in the existing FTP, the supplemental steady state test, or the not-to-exceed test, would not be considered a defeat device, even where it otherwise would be considered to reduce the effectiveness of the emissions control system during such operation. For example, use of such an AECD during the appropriate FTP, steady state supplemental, or NTE test procedure is not a violation of the defeat device prohibition. However, the engine still must comply with the applicable emission standards. For example, operation of the AECD within the NTE control zone during operation which is applicable to the NTE standard must never cause the engine to exceed 1.25 times any applicable existing FTP standard, except where EPA has approved a manufacturers request for an NTE deficiency under 40 CFR 86.007–11(a)(4)(iv). The fact that operation of the AECD during such condition is not a violation of the defeat device prohibition does not change the obligation to also comply with the applicable emissions standard. The two obligations are separate and distinct, and both must be met. An engine may not have a defeat device and it also must comply with the applicable emissions standards. When an AECD operates under conditions which are not substantially included in the existing FTP, steady state supplemental test, or the NTE test procedure, then the AECD will be considered a defeat device if it reduces the effectiveness of the emissions control system under operations which could reasonably be expected to occur in normal vehicle operation and use, unless it meets one of the other exceptions to the defeat device definition (such as engine start up). EPA will continue to interpret this provision as it has in the past, focusing on changes to the emissions control system that cause emissions to increase above what they would be without the change.

The Agency recognizes that emission control strategies which are employed during the existing FTP and the supplemental test procedures (NTE and supplemental steady state) require the manufacturer to control a complex system of engine hardware. This includes the modulation of engine sub-systems (*e.g.,* EGR temperature, EGR flow rate, turbocharger boost, fuel injection timing and pressure) to maintain emissions performance and also achieve engine performance, with the potential to increase or decrease NO_X, PM and/or other regulated pollutants while keeping all pollutants at or below all applicable emission standards. The Agency's prohibition of the use of defeat devices will continue to protect against the use of illegal emission control strategies, including but not limited to timers or ''cycle sensors'', whose purpose or result is to reduce the effectiveness of the emission control system during conditions which are not substantially included in the applicable federal emission test procedures, and do not meet the other exemptions in the defeat device definition. Strategies that ''reduce effectiveness'' of the emission control system would include those that change the way the emission control system operates during off-cycle conditions and increase emissions from the engine

[33] See EPA Air Docket A–98–32, comments from Navistar International, item IV–D–29; comments from Caterpillar Inc., item IV–D–37; comments from Detroit Diesel Corp., item IV–D–28; and comments from the Engine Manufacturers Association, item IV–D–05.

above what they would be without the change. For example, if a manufacturer operates an EGR system during on-cycle conditions in order to comply with applicable emission standards, it must operate the EGR system in a similar manner during off-cycle conditions, unless, for one of the allowable reasons set forth in the definition of defeat device, it cannot do so.

Moreover, while the definition of defeat device allows as exception strategies needed to protect the engine against accident or damage, EPA intends to continue its policy of closely reviewing the use of this exception. In determining whether a reduction in emissions control effectiveness is ''needed'' for engine protection, EPA would closely evaluate the actual technology employed on the engine family, as well as the use and availability of other emission control technologies across the industry, taking into consideration how widespread the use is, including its use in similar applications.

For example, as discussed throughout this final rule, in the context of the HD diesel 2004 standards we expect to see wide-spread use across all HD applications of advanced electronic fuel injection systems (such as common-rail or second generation unit injectors), advanced turbocharging systems (such as VGT systems), and cooled EGR systems. If, for example, a manufacturer uses hot EGR instead of cooled EGR, and seeks approval to reduce the emissions control system effectiveness to protect against engine damage during operation not substantially included in the FTP, EPA will closely review the request and intends among other things to evaluate the feasibility of cooled EGR in determining whether the reduction in emissions control effectiveness is in fact ''needed'' and appropriate. Under appropriate circumstances, EPA could determine that a reduction in emissions control effectiveness was not needed to protect the engine, based on a choice of a certain technology in the context of the widespread use in similar application of a different technology without the same need for protection.

Manufacturers must continue to comply with the existing certification requirement to fully disclose and describe all AECDs in their certification applications. The Agency will continue to review all AECDs, in particular those which impact emission performance during conditions not substantially included in testing under the applicable federal emission test procedures, including beginning in model year 2007, the supplemental steady-state and not-to-exceed test procedures.

The revised definition of defeat device, in addition to the Agency's existing policy and guidance documents concerning defeat devices, provide engine manufacturers with appropriate guidance on the requirements they need to design and manufacturer their engines to meet, as well as provide the Agency and the environment with the appropriate protection from the use of defeat devices on on-highway HD diesel engines.

B. What Are the Requirements of the Heavy-duty Otto-cycle Vehicle-based Program?

1. Emission Standards

EPA is adopting vehicle-based standards and test procedures for complete Otto-cycle vehicles between 8,500 and 14,000 pounds GVWR. As in the California MDV program, these complete vehicles will be tested on the federal light-duty vehicle and light-duty truck test procedure.[34] We are finalizing as proposed the chassis-based standards contained in Table 6 below. The standards apply to complete vehicles in the weight categories shown. The standards are for emissions over the FTP and vehicles will be tested at adjusted loaded vehicle weight (ALVW), also known as test weight (TW).[35] Manufacturers have some flexibility in meeting these standards with the ABT program applicable to heavy-duty Otto-cycle vehicles contained in today's final rule and described in a subsequent section of this preamble.

Vehicles must meet these standards starting with the 2007 model year under Option 1, the 2004 model year under Option 2, or with the 2005 model year under Option 3, as described in section I of this preamble. As noted in section I of this preamble, manufacturers selecting Option 1 may optionally meet these standards *or* an engine-based standard for the 2003 through 2006 model years.

TABLE 6.—FULL USEFUL LIFE EMISSION STANDARDS FOR OTTO-CYCLE COMPLETE VEHICLES

[Grams per mile]

Vehicle weight category (GVWR)	Nonmethane organic gas (NMOG)	NO_X	CO
8,500—10,000 lbs*	0.28	0.9	7.3
10,001—14,000 lbs	0.33	1.0	8.1

* Excluding Medium-duty Passenger Vehicles covered by the Tier 2 program.

EPA is finalizing a hydrocarbon standard in the form of nonmethane organic gas (NMOG), which is consistent with California's MDV standards. We will also accept hydrocarbon emissions data in the form of NMHC or total hydrocarbons (THC) in lieu of NMOG, which are forms of hydrocarbon standards typically used by EPA under the heavy-duty Otto-cycle control program. Accepting emissions data in these various forms provides manufacturers with additional flexibility since establishing NMOG levels can be more complex than NMHC or total hydrocarbon levels. Manufacturers submitting California certification data would submit NMOG emissions data under the California requirements.

The vehicle manufacturer is responsible for determining whether a vehicle is a complete vehicle and subject to the vehicle-based standards or an incomplete vehicle and subject to engine-based standards. The manufacturer shall make this determination based on the definition of incomplete vehicle described above and in the regulations. The vehicle manufacturer may request a determination from EPA when the status of a specific vehicle model is unclear. Manufacturers of complete vehicles are responsible for vehicle emissions certification, as is the case

[34] Test procedures contained in 40 CFR Part 86 Subpart B, excluding the Supplemental FTP.

[35] ALVW or TW is the actual weight of the vehicle, known as curb weight, plus half pay load. Its also the average of the curb weight the GVWR, which is curb weight plus full pay load.

currently in EPA light-duty vehicle programs.

2. Revision to Vehicle Useful Life

Currently, the useful life mileage interval for Otto-cycle HD engines is 8 years or 110,000 miles, whichever occurs first. The useful life for these vehicles in the California MDV program is 120,000 miles, which is also the useful life of heavy light-duty trucks. We proposed to adopt the useful life mileage interval of 120,000 miles for the HD Otto-cycle vehicles program. This approach allows consistency across the programs and is consistent with the use of the vehicles. No adverse comments were received on this provision, and it is being finalized as proposed.

3. Averaging, Banking, and Trading Provisions

a. Background

An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 202 of the Clean Air Act. ABT allows us to consider a lower emissions standard, or one that otherwise results in greater emissions reductions, compared to a standard that might otherwise be appropriate under section 202(a)(3) of the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. ABT enhances the technological feasibility and cost effectiveness of the proposed standard and allows the standard to be attainable earlier than might otherwise be possible. ABT provides manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines. ABT creates incentive for early introduction of new technology, allowing certain engine families to act as trail blazers for new technology.

We view the ABT provisions in today's rule as environmentally neutral because the use of credits by some vehicles is offset by credits generated by other vehicles. However, when coupled with the new standards, ABT will have environmental benefits because it allows the new standards to be implemented earlier than would otherwise be appropriate.

Manufacturers are able to bank credits by certifying some engine families to emissions levels lower than applicable standards. The credits may be banked and then used to certify other engine families to levels higher than the emissions standards. For HD Otto-cycle engines, ABT is available for meeting NO_X standards. Under the current ABT program, banked credits are discounted by 20 percent and have a three year life, after which they expire.[36]

The CAA requires that EPA set emission standards with appropriate consideration to feasibility and cost. EPA is finalizing separate averaging, banking, and trading programs for vehicles certified to the vehicle-based standards and engines certified to the engine-based standards. The engine-based ABT program is discussed in section III.C.3., below. We believe that the ABT programs in today's final rule are appropriate in the context of the technical feasibility and the cost of the emission standards.

b. Final ABT Program for Vehicle-Based Standards

This section addresses the ABT program for the vehicle-based standards. We are finalizing the vehicle-based ABT program as proposed. We are also finalizing options that allow manufacturers to transfer credits between the vehicles and the engines ABT programs. This is discussed below in the following section.

For the vehicles ABT program, we are finalizing the following provisions:

- Beginning in 2000, manufacturers may bank vehicle-based credits by choosing to certify vehicles rather than engines.
- Manufacturers will earn NO_X credits up to the 0.9 g/mile NO_X standard by establishing an FEL below the 0.9 g/mile standard.
- Vehicles with FELs at or below 0.6 g/mile NO_X will earn undiscounted credits, engines with FELs above 0.6 g/mile will earn credits discounted by 10 percent.
- Vehicles using credits may not exceed a NO_X level of 1.53 g/mile.
- Heavy-duty vehicles equipped with Otto-cycle engines and certified to the vehicle-based standards will be a single grouping or averaging set.

The ABT program can help manufacturers certify especially difficult or low volume applications and help manufacturers comply across their full product line without having to restrict vehicle offerings. The Agency believes the above program offers sufficient flexibility in light of the technology and cost requirements associated with the final vehicle standards. Based on current certification data and technological capabilities we believe manufacturers will have opportunities to generate credits to help with meeting the standards in the 2004 time frame. Moreover, because these standards are required in California for several model years prior to 2004, EPA does not expect feasibility issues with the vast majority of vehicle models.

c. Exchanging Credits Between the Vehicle-Based and the Engine-Based ABT Programs

In the proposal, we requested comment on credit exchanges between the separate engine and vehicle-based ABT programs. As described below, we are finalizing provisions allowing manufacturers to transfer credits between the vehicles and the engines program as part of Options 1 and 2 (full 2003 or 2004 model year implementation). We believe that allowing credit transfers under these options provides significant incentive for manufacturers to choose one of these optional programs. Therefore, the provision enhances the likelihood that significantly cleaner technology will be introduced sooner (2003 or 2004) than would otherwise occur. We also believe this temporary flexibility will help address any feasibility concerns manufacturers may have with the shorter lead time associated with the optional programs. However, because this is the first ABT program to allow such credit exchanges, we are proceeding conservatively and constraining the transfer of credits in several respects. However, early implementation of Options 1 and 2 provide clear emission reduction benefits compared to Option 3 and we believe it is appropriate to provide additional incentives to manufacturers to select one of these options. Therefore, we are allowing credit transfers between the vehicles and engines programs as part of Option 1 and Option 2 for a limited time. This flexibility, in addition to the somewhat higher standards, should provide incentive for manufacturers to select one of these early implementation options. To the extent that manufacturers select Options 1 and 2, technology will be introduced earlier (2003 or 2004) than would otherwise occur (2005). The experience gained by EPA in implementing Options 1 and 2, including the development of appropriate credit conversion factors by the manufacturers, will provide a valuable source of information for the Agency in evaluating whether to extend this flexibility more generally in a future rule. Additional discussion can be found in the Response to Comments document.

[36] With ABT, manufacturers are able to establish a Family Emissions Limit (FEL) for an engine family which becomes the standard for that family. Manufacturers earn or use credits based on the difference between the FEL and the applicable standard. A full overview of the ABT program is contained in EPA's 1996 NPRM, 61 FR 33451.

Manufacturers selecting Option 3 will not have the option of transferring credits between the vehicles and the engines ABT programs. For Option 3, manufacturers must use credits within the same averaging set in which they are generated. Providing the additional flexibility only to manufacturers selecting Options 1 or 2 provides further incentive to manufacturers to select one of the early implementation options. We believe the ABT programs provide sufficient flexibility to meet the standards without the ability to transfer credits.

We recognize that under Option 1, vehicle-based certification remains optional through the 2006 model year. While the option to transfer credits during the years preceding 2007 might not be particularly useful under Option 1, we do not believe it is necessary to restrict its use prior to 2007. Manufacturers may choose to voluntarily phase-in chassis-certified vehicles early for product planning reasons.

Manufacturers argued for allowing the transfer of credits between the programs. They were concerned about the stringency of the proposed engine standard and their ability to generate credits with the low volume of engine families that will be subject to the engine-based standards. The pool of engine families is likely to be very small because the majority of Otto-cycle vehicles would be certified to vehicle-based standards. We believe that the structure of the final program, which includes the flexibility of three options and a longer lead time for Option 3 (1.0 g/bhp-hr standard in 2005), addresses feasibility concerns. For Options 1 and 2, the somewhat higher standard of 1.5 g/bhp-hr diminishes the feasibility concerns for the 2003 and 2004 model years. However, there may also be a diminished opportunity for early banking under these early implementation options which the additional flexibility of credit transfers could help offset.

Manufacturers choosing Options 1 or 2 may transfer credits between the vehicle and engine ABT programs for compliance during model years 2003 or 2004, whichever is applicable, through the 2007 model year. We continue to believe that the ability to trade credits between the vehicle and engine-based ABT programs prior to the implementation of the new standards would unnecessarily complicate the ABT programs. Prior to the implementation of the new standards, EPA emission standards for heavy-duty Otto-cycle vehicles are engine-based standards. Absent any credit exchange provisions, manufacturers could still generate vehicle-based credits by voluntarily certifying engines to the vehicle-based program. These provisions already provide the flexibility for manufacturers to decide how many engine-based and vehicle-based credits to generate. Therefore, we are not allowing the transfer of any pre-2004 (or 2003 under Option 1) model year credits between the programs.

We requested comment on several specific concerns, including the derivation of engine and vehicle-specific conversion factors. The chassis-based ABT program is based on emissions in units of grams per mile (g/mi) and the engine ABT program is based on emissions in units of grams per brake horsepower-hour (g/bhp-hr). Consequently, trading credits between the two programs requires a conversion factor. Although the Agency uses conversion factors to estimate g/mi emissions based on g/bhp-hr emissions rates for purposes of emissions inventory modeling, these conversion factors are estimates of a fleet average, not an engine-or vehicle-specific conversion factor. There is considerable variation in the conversion factors from vehicle to vehicle. Also, conversion factors that have been previously derived don't necessarily predict emissions over the specific test cycles. Both the emission standards and the ABT credits are based on emissions over specific test cycles. Conversion factors developed for specific engines and vehicles on specific test cycles could vary widely from an ''average'' conversion factor. EPA believes that vehicle and engine test cycle specific conversion factors would be needed in order to allow transfers of credits between the two Otto-cycle ABT programs.

EMA recommended that we allow individual manufacturers to submit plans prior to the model year for converting credits and that the plans be subject to EPA approval on a case-by-case basis. In general, we are adopting the approach for establishing the conversion factor suggested by the commenter. Manufacturers requesting to transfer credits must submit plans to convert credits between the vehicle-based program and the engine-based program and the plan must be approved by EPA prior to any exchange of credits. Manufacturer plans must include data that supports the specific conversion factor for the vehicle families and engine families involved. Although manufacturers would design their test programs using good engineering judgement, each conversion factor would likely have to be based upon a number of engine and vehicle tests to provide reasonable accuracy. The conversion factors must be developed by testing engines and vehicles expected to generate ''worst-case'' emissions.

The transferred credits must be earned in model year 2004 (or 2003 under Option 1) or later and must be used during the same year in which they are transferred (no banking after transfer). This provision is needed to ensure that vehicle credits that are transferred to the engines program are not used after 2007.

Another issue for credit exchanges in the 2003 or 2004 and later model years is that vehicle credits will be based on NO_X only emissions and the engine credits will be based on NMHC+NO_X emissions. We believe that the NMHC portion of engine emissions compared to NO_X emissions is about 15 percent of total emissions, or between 0.1 and 0.2 g/bhp-hr. We requested comment on allowing credit exchanges without regard to this difference in the standards, or alternatively, requiring the use of an appropriate factor (*e.g.*, the 15 percent factor noted above) to apply to exchanges of NO_X-only and NMHC+NO_X credits. We did not receive any comment on this issue. We do not believe there is a significant difference with regard to air quality from either approach due to the relatively small number of engines likely to be involved in the program. Therefore, in order to simplify the transfer of credits, we will allow the NO_X credits from the vehicles program and NO_X plus NMHC engine-based credits to be exchanged without adjustments to account for NMHC.

4. CAP 2000

On May 4, 1999, we adopted a new compliance assurance program for light-duty vehicles and light-duty trucks known as ''CAP 2000'' (*see* 64 FR 23906, May 4, 1999). In brief, as compared with our traditional chassis-based compliance program, CAP 2000 is designed to redirect manufacturer and Agency efforts towards in-use compliance and give manufacturers more control of certification timing, and yet maintain the integrity of the compliance assurance program. Aspects of the CAP 2000 program include streamlined certification and manufacturer in-use testing.

In today's action, we are requiring that the CAP 2000 program be the compliance assurance program for heavy-duty vehicles certified to chassis-based standards (hereafter referred to as ''chassis-based HDVs''). We are including modifications to Part 86, Subpart S, that would extend the applicability of CAP 2000 to chassis-

based HDVs. Key aspects of the CAP 2000 program as it will apply to chassis-based HDVs are described below.

For the certification process, manufacturers will divide their product lines into new units called ''durability groups'', determined according to common emission deterioration elements. A vehicle with the ''worst case'' durability will be chosen from the durability group to establish the rate of emission deterioration expected from that group. The procedures used to determine durability will be developed by the manufacturer, with our approval. Durability groups will then be subdivided into ''test groups'', and a vehicle representative of each test group will be tested to show emission compliance. Once compliance has been demonstrated, certification can proceed. The CAP 2000 program provisions for information collection are streamlined from the traditional light-duty chassis-based compliance regulations. The timing of information submittal has been optimized to provide some flexibility for manufacturers, and the amount of information has been reduced, without compromising our information needs for future compliance or enforcement issues.

A second element of the chassis-based HDV CAP 2000 requirements is manufacturer in-use testing. There are two parts to the program. Part one requires manufacturers to perform in-use emission testing on privately owned vehicles in an ''as-received'' state. This ''in-use verification testing'' will occur on low mileage and high mileage test fleets. The size of the low and high mileage fleets will be dictated by sales categories. Small volume manufacturers and small volume test groups will have little or no testing, depending on sales limits. In-use verification testing data will be used by the manufacturer to improve the predictive quality of its durability program, and by us to target vehicle testing for a recall program. Manufacturers are required to conduct additional testing of a test group when the in-use verification program data for the test group equals or exceeds a mean of 1.3 times the standard, with a 50 percent or greater failure rate for the test group sample at either the low or high mileage test point. The second level of in-use testing, known as ''in-use confirmatory testing'', will be performed on ''properly maintained and used'' vehicles and could be used to determine the need for recall.

The ''heavy-as-light'' provision in the current regulations (*see* 40 CFR 86.001–01(b) and 40 CFR 86.1801(c)(1)) will be available through the 2004 model year; starting with the 2005 model year, the ''heavy-as-light'' provision will no longer be available. For manufacturers choosing the 2003 or 2004 compliance option (Option 1 or 2) discussed previously, the ''heavy-as light'' provision will only be available through the 2002 or 2003 model year, respectively. Our ''heavy-as-light'' provision permits a manufacturer to certify a HDV of 14,000 pounds GVWR or less in accordance with the light-duty truck provisions. In effect, this provision allows manufacturers to certify these HDVs on a chassis dynamometer rather than on an engine dynamometer, as long as the HDVs comply with the more stringent light-duty truck standards. Today's action obviates the ''heavy-as-light'' provision after the 2003 or 2004 model year. We are including in today's action a provision allowing manufacturers to certify incomplete HDVs under the chassis-based HDV program. This provision is similar to the current ''heavy-as light'' provision.

We are including provisions to allow manufacturers to request that vehicles from different weight categories be grouped together in the same test group, as long as the vehicles are then subject to the most stringent standards that would be applicable to any vehicles within that grouping. Voluntary certification to the more stringent emission standards means that the manufacturer would be subject to enforcement against the more stringent standards.

Manufacturers have expressed concerns about potential difficulties in procuring vehicles for testing given the commercial use of many of these vehicles. Thus, if any manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group, the manufacturer may request a smaller sample size for any test group, subject to our advance approval (*see* 40 CFR 86.1845–01(c)(3)).

The ''AMA'' cycle will not be automatically available as a durability procedure for chassis-based HDVs. (The CAP 2000 program likewise disallows the AMA durability procedure for light-duty, but does allow for the carryover of AMA-based deterioration factors.) Although the AMA cycle will not be automatically available as a durability procedure for chassis-based HDVs, a manufacturer may be able to obtain approval for it. As in the light-duty CAP 2000 program, to obtain approval for a durability process, we will require that manufacturers provide data showing that the aging procedures would predict the deterioration of the significant majority of in-use vehicles over the breadth of their product line that would ultimately be covered by this procedure. This demonstration would be more than simply matching the average in-use deterioration; manufacturers will need to demonstrate to our satisfaction that their durability processes will result in the same or more deterioration than is reflected by the in-use data for a significant majority of their vehicles. This approval process is the same as that already established for our first phase of the light-duty revised durability program (RDP–I).[37]

In order to provide a transition to the in-use confirmatory testing requirements over a period of years, as was available in the light-duty vehicle CAP 2000 program, we are delaying the in-use confirmatory testing requirements in order to allow manufacturers to gain experience with chassis-based certification and in-use verification testing for chassis-based HDVs. Thus, the in-use confirmatory requirements will be applicable to vehicles produced starting with the 2007 model year. While manufacturers will not be required to conduct in-use confirmatory testing for vehicles produced prior to the 2007 model year, we will be fully prepared to investigate any high emissions indicated through manufacturer in-use verification testing or any other means.

Finally, certain aspects of the light-duty CAP 2000 program, as contained in 40 CFR part 86, subpart S, will not apply to chassis-based HDVs, since we are not including requirements for HDVs in these areas at this time. These areas include provisions relating to intermediate useful lives, certification short test, cold temperature CO requirements, fuel economy programs, and supplemental FTP requirements.

In summary, we are extending the light-duty CAP 2000 program to chassis-based HDVs, with the following minor modifications. First, the option to certify HDVs under ''heavy-as-light'' provisions would no longer be available after the 2004 model year (2003 model year if a manufacturer elects the 2004 compliance option, or 2002 model year if a manufacturer elects the 2003 compliance option); instead, manufacturers can request to certify incomplete HDVs under the chassis-based HDV program. Second, manufacturers can request to group vehicles from different weight categories or subject to different standards into the

[37] In RDP–I manufacturers have typically shown that their durability programs cover ninety percent or higher of the distribution of deterioration rates experienced by vehicles in actual use. See EPA's guidance letter CD–94–13 dated July 29, 1994, available for review in the public docket.

same test group, provided that they meet the most stringent standards applicable to vehicles within that test group. Third, the AMA cycle will not automatically be available for HDVs as a durability procedure. Fourth, the in-use confirmatory testing requirement will be delayed for HDVs until the 2007 model year. Fifth, certain elements of the CAP 2000 program will not apply to chassis-based HDVs.

5. Evaporative Emissions and Onboard Refueling Vapor Recovery

a. Enhanced Evaporative Emissions

In 1993, EPA adopted enhanced evaporative test procedures for LDVs, LDTs and HDVs to be phased in beginning with the 1996 model year, with full compliance required by the 1999 model year (*see* 55 FR 16002, March 24, 1993). Under the enhanced evaporative requirements adopted in 1993 the provisions for LDVs and LDTs are essentially the same as those for HDVs with two main differences. The first difference is that the actual levels of the emission limits are higher for HDVs due to their typically larger fuel tanks. The second difference is in the driving cycles used in the test sequence, as described in the next paragraph. We are not making any changes to the levels of the HDV evaporative standards in today's action.

The urban dynamometer driving schedule (UDDS) currently used for HDVs is somewhat shorter than that used for light-duty, both in terms of mileage covered and minutes. What this means in practical terms is that, while the light-duty and heavy-duty procedures generally parallel each other, under the heavy-duty procedure there is considerably less driving time than under the light-duty procedure. This results in considerably less time for canister purge under the heavy-duty procedure than under the light-duty procedure.

We recognize this discrepancy between our light-duty and heavy-duty programs, and have routinely provided waivers under the enhanced evaporative program which allow the use of the light-duty procedures for heavy-duty certification testing. In today's action we are formally adopting this approach for all complete vehicles that are certified according to the provisions of the chassis-based program discussed elsewhere in this notice. Thus, we are not making any changes to the CAP 2000 regulations intended to maintain the heavy-duty UDDS for HDV evaporative testing. Rather, the light-duty UDDS currently in the CAP 2000 regulations will apply to all light-duty and heavy-duty vehicles and trucks certified according to the provisions of CAP 2000. Additionally, we are extending the application of the light-duty UDDS to all heavy-duty evaporative emissions testing upon the effective date of this rule.

b. Onboard Refueling Vapor Recovery

Onboard refueling vapor recovery (ORVR) systems prevent the fuel vapors that are displaced from a vehicle's fuel tank during refueling from entering the atmosphere. Typically, the displaced fuel vapors are routed to a charcoal canister where they are subsequently routed to the engine to be burned as fuel. We previously adopted ORVR requirements applicable to light-duty vehicles and light-duty trucks (*see* 59 FR 16262, April 6, 1994). These requirements are being phased in beginning with the 1998 model year for LDVs, the 2001 model year for light LDTs (6,000 lb and under GVWR), and 2004 for heavy LDTs (6,001 through 8,500 lb GVWR).

We are today requiring ORVR controls on all complete HDVs up to 10,000 lb GVWR in the same manner and generally on the same schedule as heavy LDTs. Thus, complete HDVs will be required to meet a refueling emission standard of 0.20 grams per gallon of fuel dispensed. For purposes of ORVR applicability, complete vehicle means a vehicle that leaves the primary manufacturer's control with its primary load carrying device or container attached.

The ORVR standard will be phased in with 80 percent compliance in the 2005 model year and 100 percent compliance in the 2006 model year. This phase-in is the same as that currently in place for heavy LDTs except that no compliance is required in the 2004 model year. For those manufacturers choosing the 2003 or 2004 compliance option discussed previously (Option 1 or 2), the ORVR standard will be phased in with 40 percent compliance required in the 2004 model year, 80 percent compliance in the 2005 model year, and 100 percent compliance in the 2006 model year. Heavy LDTs and HDVs will be considered a single category for the purposes of the phase in. In other words, the percent compliance requirements for a given model year apply to heavy LDTs and HDVs as a single group, rather than to each group separately. We are including an exception to this phase-in approach to allow additional lead time for complete HDVs that do not have light-duty counterparts and those whose fuel tank capacity is greater than 35 gallons. Thus, for those complete HDVs up to 10,000 lb GVWR that do not share an identical fuel system with a light-duty counterpart, and for those whose fuel tank(s) have a total capacity of more than 35 gallons, the ORVR requirements take effect with the 2006 model year. This additional lead time is appropriate for these vehicles because ORVR systems will have to be developed specifically for them, whereas for those heavy-duty vehicles that have light-duty counterparts the required ORVR development work is already underway in order to comply with the heavy light-duty truck ORVR requirements.

Currently, in the review of certification applications for ORVR-equipped LDVs and LDTs, we study the design of the vehicle's ORVR system, its on-vehicle configuration and operation, and consult directly with the National Highway Traffic Safety Administration (NHTSA) on these applications. We will extend this practice of consulting with NHTSA in the review of certification applications for ORVR-equipped HDVs as well.

6. On-board Diagnostics Requirements for Otto-cycle Vehicles

Today's final rule establishes new on-board diagnostic requirements for complete HD Otto-cycle vehicles in the 8,500 to 14,000 pound GVWR category. The new OBD requirements for heavy-duty Otto-cycle vehicles are identical to those already in place for light-duty Otto-cycle vehicles and trucks. In general, the OBD system must monitor emission-related powertrain components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard MIL must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (*e.g.,* the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a ''generic'' hand-held OBD scan tool. The following is a summary of the requirements for HD Otto-cycle vehicles.

a. Federal OBD Malfunction Thresholds and Monitoring Requirements

This final rule requires that, beginning in the 2005 model year (or 2004 under Option 1), complete heavy-duty Otto-cycle vehicles must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related

malfunctions or deterioration as evaluated over the appropriate certification test procedure: [38]

(i) Catalyst deterioration or malfunction before it results in an increase in NMHC [39] emissions equal to or greater than 1.5 times the NMHC standard or FEL, as compared to the NMHC emission level measured using a representative 4,000 mile catalyst system.

(ii) Engine misfire before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or NO_X.

(iii) If the vehicle or engine contains an oxygen sensor, then oxygen sensor deterioration or malfunction before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or NO_X.

(iv) If the vehicle or engine contains an evaporative emission control system, then any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator will revise the size of the orifice to the feasibility limit, based on test data, if the most reliable monitoring method available is unable to reliably detect a system leak equal to a 0.040 inch diameter orifice.

(v) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the EGR system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO_X. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (vi) below, may satisfy the requirements of this paragraph provided the manufacturer demonstrates that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system is required to indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check.

(vi) Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph may be satisfied by employing electrical circuit continuity checks and, wherever feasible, rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands); malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

Upon detection of a malfunction, the MIL is required to illuminate and a fault code stored no later than the end of the next driving cycle during which monitoring occurs provided the malfunction is again detected. Alternatively, upon EPA approval, a manufacturer is allowed to use a diagnostic strategy that employs statistical algorithms for malfunction determination. Manufacturers are required to determine the appropriate operating conditions for diagnostic system monitoring with the limitation that monitoring conditions are encountered at least once during the applicable certification test procedure or a similar test cycle as approved by EPA. This is not meant to suggest that monitors be designed to operate only under test procedure conditions, as such a design would not encompass the complete operating range required for OBD malfunction detection.

As an option to the above requirements, EPA will allow compliance demonstration according to the California OBDII requirements for HD Otto-cycle vehicles. This option allows manufacturers to concentrate on one set of OBD requirements for nationwide implementation (although federal OBD emission malfunction thresholds and monitoring requirements are essentially equivalent to those of the California OBDII regulation) and provides the highest level of OBD system effectiveness toward meeting nationwide clean air goals.

b. Standardization Requirements

The light-duty OBD regulations contain requirements for standardization of certain critical aspects of the OBD system. These critical aspects include the design of the data link connector, protocols for on-board to off-board computer communication, formats for diagnostic trouble codes, and types of test modes the on-board system and the off-board scan tool must be capable of supporting. Today's action contains similar standards for heavy-duty OBD systems, as detailed in the regulatory requirements under section § 86.1806–05.

c. Deficiency Provisions

Today's action also establishes the same deficiency provisions for HD Otto-cycle vehicle OBD systems as currently apply to light-duty OBD systems. This will allow the Administrator to accept an OBD system as compliant even though specific requirements are not fully met. The deficiency provisions were first introduced on March 23, 1995 (60 FR 15242), and were revised on December 22, 1998 (63 FR 70681).

To clarify our deficiency provisions, EPA does not expect to certify vehicles with federal OBD systems that have more than one OBD system deficiency, or to allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware and/or software modifications that cannot be accomplished in the time available, as determined by the Administrator. Nonetheless, we recognize that there may be situations where more than one deficiency is necessary and appropriate, or where carry-over of a deficiency(ies) for more than one year is necessary and appropriate. EPA may approve such deficiencies provided the manufacturer has demonstrated an acceptable level of effort toward OBD compliance. These deficiency provisions cannot be used as a means to avoid compliance or delay implementation of any OBD monitors or as a means to compromise the overall effectiveness of the OBD program.

d. Applicability and Waivers

The federal HD Otto-cycle vehicle OBD requirements finalized in today's action will be implemented beginning with the 2005 model year. OBD requirements for HD Otto-cycle vehicles up to 14,000 pounds GVWR will be phased in over a three year period, from 2005 until 2007. The percentage phase-in schedule will be 60/80/100 for the 2005/06/07 model years, respectively, based on projected sales. For those manufacturers who choose the optional 2003 or 2004 compliance path for HD Otto-cycle engines and vehicles (Option 1 or 2), the OBD phase-in schedule will be 40/60/80/100 percent for the 2004/05/06/07 model years respectively. For those manufacturers with a single heavy-duty engine family (including otto-cycle and diesel), implementation of OBD requirements would not have to occur until the 2007 model year. As discussed in Section III.A.4 and III.C.4,

[38] The FTP minus the Supplemental FTP for chassis certified systems; the engine certification test procedure minus any supplemental test procedures for engine certified systems. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against defeat devices in § 86.004–16 applies to these OBD requirements.

[39] As a point of clarification, federal emissions standards are expressed in terms of NMHC. Therefore, in order to remain consistent, all references to HC will be referred to as NMHC.

this final rule also establishes OBD requirements for heavy-duty diesel engines used in vehicles up to 14,000 pounds GVWR, and for HD Otto-cycle engines used in incomplete vehicles up to 14,000 pounds GVWR that are similar to the requirements for HD complete Otto-cycle vehicles, including an identical phase-in schedule. HD manufacturers will be allowed to meet the OBD phase-in requirements by combining their projected sales of HD Otto-cycle engines and vehicles and HD diesel engines to meet a combined diesel and Otto-cycle phase-in, at their option.

For heavy-duty vehicles and engines up to 14,000 pounds GVWR operating on alternative fuel, EPA may grant OBD waivers during alternative fuel operation through the 2006 model year to the extent that manufacturers can justify the inability to fully comply with any of the OBD requirements.[40] Such inability must be based upon technological infeasibility, not resource reasons. Further, any heavy-duty vehicles and engines that are subsequently converted for operation on alternative fuel are not expected to comply with these OBD requirements if the non-converted vehicle or engine does not comply. In other words, if the vehicle or engine never completes any assembly stage in OBD compliance, it need not comply with the OBD requirements while operating on the alternative fuel. If the vehicle or engine does complete any assembly stage with a compliant OBD system, it must comply with the OBD requirements while operating on the fuel of original intent and, to the extent feasible, while operating on the alternative fuel. For these latter situations, EPA may grant waivers through the 2006 model year if the manufacturer shows it is infeasible to meet the requirements. Beginning in the 2007 model year, all heavy-duty alternative fueled vehicles and engines up to 14,000 pounds GVWR must be fully compliant during both operation on the original fuel and the alternative fuel.

e. Certification Provisions

The OBD certification information requirements of today's action are consistent with the Compliance Assurance Programs 2000 (CAP 2000) rulemaking discussed above. The Part 1 Application must include, for each OBD system: a description of the functional operating characteristics of the diagnostic system; the method of detecting malfunctions for each emission-related powertrain component; and a description of any deficiencies including resolution plans and schedules. Anything certified to the California OBDII regulations is required to comply with California ARB information requirements. EPA may consider abbreviating the OBD information requirements through rulemaking if it gains confidence that manufacturers are designing OBD systems that are fully compliant with all applicable regulations.

During EPA certification of vehicles optionally certified to the California OBDII regulation, EPA may conduct audit and confirmatory testing consistent with the provisions of the California OBDII requirements. Therefore, while the Agency will consider California certification in determining whether to grant a federal certificate, EPA may also elect to conduct its own evaluation of that OBDII system. While it is unlikely, EPA may make a compliance determination that is not identical to that of the California Air Resources Board.

Further, this final rule establishes ''drop-in'' demonstration provisions for HD Otto-cycle OBD systems similar to those discussed under the HD diesel OBD requirements. This provision allows engine-certified and engine-demonstrated OBD system to fulfill the demonstration requirements of a chassis-certified OBD system, however, the chassis-certified system would have to incorporate transmission diagnostics even though the ''dropped-in'' engine system may not have been certified with transmission diagnostics. The drop-in provision also allows a chassis-certified and chassis-demonstrated OBD system to fulfill any demonstration requirements of an engine-certified OBD system. The drop-in provision discussed here requires the manufacturer to rigorously demonstrate its OBD concept and approach on one engine or model, but allows the manufacturer to apply that demonstration via engineering judgement to the different engine and powertrain calibrations used across its fleet. The Agency will accept such a demonstration provided sound engineering judgement is employed.

C. What Are the Requirements of the Heavy-duty Otto-cycle Engine-based Program?

1. Emission Standards

We are finalizing an NMHC+NO_X standard for Otto-cycle engines, applicable to engines used in vehicles over 14,000 pounds GVWR and in incomplete vehicles, of 1.0 g/bhp-hr.[41] Existing CO standards for these engines and vehicles will continue to remain in place. This approach is consistent with California which allows engine-based testing for these vehicles in its Medium-duty Vehicle program. This standard will take effect starting with the 2005 model year. As discussed in the proposal, and after consideration of comments received on the proposal, we continue to believe that this standard, implemented in the 2005 model year, represents the most stringent standard reasonably achievable for these engines, in keeping with the requirements of the CAA (including the four-year lead time requirement). We also believe that the ABT program for engines (described below) provides manufacturers with desirable flexibility to meet the new standard as their product lines become subject to the new engine standards. However, as noted earlier, we are also providing options to allow manufacturers to achieve lower levels of emissions starting with the 2003 or 2004 model year. Under these options (Options 1 and 2 for the 2003 and 2004 model years, respectively), manufacturers have to meet an engine-based standard of 1.5 g/bhp-hr until the 2008 model year, when the standard becomes 1.0 g/bhp-hr. (As noted earlier, EPA has recently proposed new standards for on-highway heavy-duty vehicles and engines. Thus, the 2008 standard finalized in today's rule serves only as a ''placeholder'' for standards resulting from future EPA action affecting the 2007, 2008, and later model years. The standards in EPA's recent proposal would supercede the standards finalized in today's action. See EPA's recent proposal at 65 FR 35430, June 2, 2000.) Option 1 provides more flexibility than Option 2 by allowing manufacturers to choose chassis-based or engine-based standards for their complete vehicles for the 2003 through 2006 model years.

2. Durability Procedures

Under the current certification regulations, manufacturers develop deterioration factors based on testing of development engines and emissions control systems. Because emissions control efficiency generally decreases with the accumulation of service on the engine, the regulations require that a deterioration factor (DF) be used in conjunction with engine test results as the basis for determining compliance with the standards. The regulations

[40] Note that this provision currently exists for light-duty vehicles and trucks operating on alternative fuel through the 2004 model year; that existing provision does not change with today's rule.

[41] Incomplete vehicles less than 14,000 lbs GVWR could optionally certify to the new vehicle-based standards, as discussed in a later section.

require that the manufacturer develop an appropriate DF, which is then subject to review by EPA in the certification process. These deterioration factors are applied to low mileage emissions levels of certification engines in order to predict emissions at the end of the engines' useful life. The emissions level after the deterioration factor is applied is the engine certification level, which must be below the standard for the engine to be certified. For engines equipped with aftertreatment (*e.g.,* catalysts), the DF must be ''multiplicative'' (*i.e.,* a factor that can be multiplied by the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life). For engines lacking aftertreatment (*e.g.,* most current diesels), the DF must be ''additive'' (*i.e.,* a factor that can be added to the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life).

Manufacturers provided comments indicating that their current deterioration factors are based on 50th percentile in-use deterioration rates, or average in-use deterioration. They also commented that they account for more severe deterioration than average by certifying with certification levels well below the standards.

EPA believes that the manufacturer's durability process should result in the same or greater level of deterioration than is observed in-use for a significant majority of their vehicles, rather than simply matching the average in-use deterioration. This is especially important considering that incomplete vehicles and vehicles over 14,000 pounds GVWR are more likely to be work vehicles and operated under more severe conditions a greater percentage of their useful lives. EPA believes that it is important for certification levels (emissions tests adjusted by the DF) to represent anticipated in-use emissions levels of a significant majority of in-use engines. As the standards are reduced, this will continue to be a key aspect of EPA's compliance programs. Deterioration factors are also used during production line testing to verify the emissions performance of production engines. Finally, the ABT program relies on certification data as the basis for determining credits. Although Otto-cycle engine manufacturers have not made wide use of the ABT program to date, EPA expects more use of the program in future years due to the new more stringent emissions standards and new ABT flexibilities.

EPA is finalizing today, as proposed, that the compliance provisions for heavy-duty engines contained in 40 CFR part 86, subpart A would continue to apply to HDVs subject to the engine-based standards, with modifications designed to ensure that the durability demonstration procedures used by manufacturers in the certification process, and deterioration factors calculated by means of these procedures, predict the emission deterioration of a significant majority of in-use engines to be covered by the procedure.

The deterioration factor determination procedures in the regulations are modified to specify that emission control component aging procedures will predict the deterioration of the significant majority of in-use engines over the breadth of their product line that would ultimately be covered by this procedure (manufacturers would be expected to show that their durability programs cover on the order of ninety percent or higher of the distribution of deterioration rates experienced by vehicles in actual use). In addition, manufacturers are required to calculate multiplicative DFs by dividing high mileage exhaust emissions by the low milage exhaust emissions (*e.g.,* emissions at the useful life mileage by exhaust emissions at 4,000 miles).[42] This change only adds specificity to the regulations so that DFs are calculated using a consistent and credible methodology. These modifications to the engine-based HDV compliance procedures would also be effective for any engine family generating ABT credits prior to the 2004 model year.

Manufacturers commented that multiplicative deterioration factors are becoming less accurate and reliable as low mileage emissions durability levels become very low resulting in increased test-to-test variability.[43] The low mileage levels, when divided into the 120,000 mile emissions level, produce DFs that are highly variable and inaccurate. Manufacturers recommended allowing the optional use of additive deterioration factors for engines equipped with aftertreatment. We have analyzed this issue and believe that in some cases additive DFs may be appropriate. Consequently, we have included a provision in this final rule that enables manufacturers to use additive DFs under certain conditions. Manufacturers need prior approval from EPA to use an additive deterioration factor and would be required to conduct in-use verification testing to ensure that the additive DF reasonably predicted in-use emissions performance.

3. Averaging, Banking, and Trading for Otto-Cycle Engines

As part of finalizing more stringent engine-based standards, EPA is finalizing a modified ABT program for these engines. The program is similar in design to the program adopted for diesel engines. EPA is finalizing ABT modifications to allow more flexibility within the ABT framework to help meet the more stringent standards. ABT credits can help manufacturers with engine configurations that are more difficult to modify, where more time would help reduce costs. Credits can also allow manufacturers to continue with product plans that might call for the retirement of an engine family at some point shortly after the implementation of the new standards. By banking credits manufacturers can also reduce the uncertainty or risk associated with the new standards. EPA believes that the modified ABT program contained in this rule will not decrease emissions reductions associated with the new standards.

For the 1999 model year, the ABT program was used for only one Otto-cycle engine family to meet the current 4.0 g/bhp-hr NO_X standard which went into effect in the 1998 model year. For the 2000 model year, no engine families were certified using the ABT program. Advances in catalyst technology and engine/fuel system improvements have allowed manufacturers to meet the standard across their product line. Most engine families have certification levels of less than half the standard. However, with the new more stringent engine-based standards, EPA expects that ABT may become a more important tool for Otto-cycle engine manufacturers.

An ABT program allows the Agency to consider lower emissions standard, or one that otherwise results in greater emissions reductions, compared to a standard that might otherwise be appropriate under section 202(a)(3) of the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. EPA is finalizing changes to the ABT program with the intent that the changes would enhance the technological feasibility and cost-effectiveness of the new standard, and thereby help to ensure the new standard would be attainable earlier than would otherwise be possible. The changes would provide

[42] Manufacturers are not required to accumulate actual mileage on vehicles or engines in order to determine a deterioration rate. In many cases, the accumulation of mileage (or ''service'') is simulated by various ''bench aging'' techniques that allow the process to consume less time and resources than accumulating actual mileage.

[43] High mileage emissions levels are divided by the low mileage emissions levels to calculate the multiplicative deterioration factor.

manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines meeting the new standard. Also, EPA believes that ABT creates an incentive for 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 prior to manufacturers applying the technology throughout their product line. This further improves the feasibility of achieving the standard. This early introduction can also provide valuable information for use in other regulatory programs that may benefit from similar technologies (*e.g.,* nonroad programs). 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 the Act.

EPA is finalizing the following provisions for the modified ABT program for Otto-cycle engines. The provisions are being finalized essentially as proposed except for minor adjustments to account for the three program options.

Early Credits

- Manufacturers may bank NO_X credits beginning in MY 2000 for use in meeting the more stringent standards (MYs 2003/2004/2005 and later).
- Early credits may be earned up to a NO_X level of 2.0 g/bhp-hr.
- Early credits will be discounted by 10 percent for engine families with FELs above the 1.0 g/bhp-hr NMHC+NO_X level and undiscounted for engine families with FELs at or below the 1.0 g cut point.
- Engine families generating credits must meet the revised requirements for deterioration factors contained in this rule (See Section 2 above)
- Early NO_X credits may be used to meet the new combined NMHC+NO_X standard

Regular Credits

For credits earned after the implementation of the new standard (2003/2004/2005, as applicable):

- Credits will be earned on a NO_X plus NMHC basis
- Engine families with FELs above 0.5 g/bhp-hr NMHC+NO_X will be discounted by 10 percent. Engine families with FELs at or below 0.5 g/bhp-hr will earn undiscounted credits.
- Credits will be earned up to the level of the standard (1.5 g/bhp-hr or 1.0 g/bhp-hr, as applicable)

Credit Use

- Credits banked under the modified program have unlimited credit life
- Engine families using credits may not exceed the previous NO_X standard of 4.0 g/bhp-hr
- Credits generated under the modified program may not be used to meet the current 4.0 g/bhp-hr standard

Manufacturers may continue to use the current ABT program for engines certified to the current 4.0 g/bhphr NO_X standard. The current program will not be available for engines certified to the new NO_X plus NMHC standards finalized in this rule. Credits generated in the current program cannot be used to meet the new standards. The modified program outlined above is effective for these engines. Therefore, the current program will be phased out in 2003, 2004, or 2005 depending on the option chosen by the manufacturer. EPA is ending the current program because of concern that manufacturers could generate enough credits under the current program to significantly delay the new standards. The current program allows manufacturers to earn credits up to the current NO_X standard of 4.0 g/bhp-hr. With most engines currently certified with NO_X levels below 2.0 g/bhp-hr, there is potential for substantial credit generation without the application of improved technology under the current ABT program. If manufacturers were to bank these credits, they could potentially use them to delay the introduction of engines meeting the new standards for a large majority of their sales for up to three years.

EPA received comments from manufacturers that the ceiling of 2.0 g/bhp-hr for early credit generation is too restrictive because manufacturers must account for compliance margin and more severe deterioration when establishing FELs and therefore would not set FELs at their certification level. Manufacturers recommended a ceiling of 3.0 g/bhp-hr. EPA is concerned that even after accounting for more severe deterioration and compliance cushion manufacturers would still have the ability to generate a large pool of credits prior to the implementation of the new standards if the ceiling were revised to 3.0 g/bhp-hr. EPA's concerns are increased with Option 3 which allows an additional model year (2004 model year) for early banking.

The 2.0 g/bhp-hr ceiling for credit generation in the modified program provides opportunity for manufacturers to earn credits through the use of emissions controls that are superior to the average controls currently being used. It helps ensure that the credits represent a pull-ahead of technology and are not windfall credits. The changes to credit life and discounting in the modified program provide manufacturers with more flexibility in the way they use those credits once they are earned. EPA believes this approach is consistent with the goals of ABT. For these reasons, we are finalizing the 2.0 g/bhp-hr ceiling for credit generation, as well as the changes to credit life and discounting (discussed below), as proposed.

EPA is finalizing the requirement that engines families generating early credits for use in the modified program be certified using the revised durability procedures described above in section III.C.2. These new procedures are necessary to ensure that the certification level reflects a significant majority of in-use engines within the engine family. The revised procedures are important for the ABT program because the program allows manufacturers to establish their FEL at the certification level for purposes of generating or using credits. As discussed in the Response to Comments document, the requirement to use revised durability procedures also helps address windfall credits issues with regard to the program.

We received comments that we should not require revised durability procedures for engines generating early credits because it will take manufacturer's up to three years to develop the new DFs, thus delaying their ability to generate early credits. While we anticipate some time being needed to generate new deterioration factors, we do not expect a long delay due to the new requirements in most cases. Comments from manufacturers that they currently consider more severe deterioration during the certification process suggest that the manufacturers have data on more severe deterioration. Also, there are accelerated aging methods available for use in deriving deterioration factors that can significantly decrease the amount of time required to derive new deterioration factors. These available methods generally require less than a year to carry out.

Nevertheless, in cases where manufacturers do not currently have adequate data on which to base a revised deterioration factor, the generation of new data will take time and may delay the manufacturer's

ability to generate credits in the earliest years of the ABT program. There will, however, still be at least a few years for manufacturers to generate and bank early credits even if new data must be generated, especially for Option 3 (1.0 g/bhp-hr in MY 2005). Options 1 and 2 do not provide as much lead time for early credit generation but they contain a somewhat less stringent standard so early credits may be less important for manufacturers selecting one of these options. Also, Options 1 and 2 contain provisions within the ABT program for manufacturers to exchange credits between the vehicles and engines programs. For these reasons, we do not expect the requirements for using a revised DF to significantly impact the feasibility of the standards.

The changes to credit life and discounting being finalized for Otto-cycle engines are conceptually consistent with the modifications finalized for diesel engines. We are finalizing our proposal to discount credits by 10 percent if the engine has an FEL above a certain value or cut-point. We adopted cut points in the diesel program in order to identify the introduction of new technology as opposed to recalibrating or enhancing existing technology. We believe that adoption of cut points in the HD Otto-cycle engine program will provide similar technology forcing incentives. We selected cut-point levels which represent a clear step in emissions control rather than a marginal emissions reduction. The 10 percent discount selected for the HD Otto-cycle engine ABT program is consistent with the program finalized for diesel engines. In that final rule, we noted that a 10 percent discount strikes a balance between zero (which significantly reduces the incentive to develop and implement significantly cleaner technology) and 20 percent (which manufacturers indicated in comments was far too large and would create a disincentive for the introduction of cleaner technology). (*See* 62 FR 54708, October 21, 1997.)

For diesels, EPA removed the three year credit life limit that allows manufacturers to earn credits to be used in 2004 and later as early as the 1998 model year. For Otto-cycle engines, MY 2000 will be the earliest model year that the rule would be effective due to the timing of the rulemaking. Removing the credit life limit will provide an additional year of potential credit banking and allows manufacturers to retain credits after 2004 rather than having them expire after a certain year. We believe that having credits expire would simply encourage manufacturers to use the credits rather than save them; thus, removing the credit life limit should provide a net environmental benefit.[44]

We believe the program effectively balances the manufacturer's needs for flexibility given the stringency of the standards being adopted with the environmental goals of the ABT program. We believe that our ABT program detailed above will encourage the early use of cleaner technologies and provide manufacturers with valuable flexibility in transitioning to more stringent standards. EPA is finalizing the modification to the ABT program in conjunction with the engine-based standards to provide the flexibility necessary to enable manufacturers to meet the standard across their product line.

4. On-Board Diagnostics for Otto-Cycle Engines

Today's final rule establishes new on-board diagnostic requirements for HD Otto-cycle engines used in incomplete vehicles in the 8,500 to 14,000 pound GVWR category. The new OBD requirements for heavy-duty Otto-cycle engines are essentially identical to those already in place for light-duty Otto-cycle vehicles and trucks. In general, the OBD system must monitor emission-related engine components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard MIL must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (*e.g.,* the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a ''generic'' hand-held OBD scan tool.

The provisions for HD Otto-cycle engines used in incomplete vehicles are identical to the provisions discussed in Section III.B.6 in almost every respect. The differences for the HD Otto-cycle engines used in incomplete vehicles, as specified in the regulatory language, are: (1) Engine emission related components must be monitored, not powertrain related components, and (2) NMHC+NO_X thresholds must be monitored, not NO_X and NMHC separately. In all other respects the regulatory requirements for HD Otto-cycle engines used in incomplete vehicles are the same as those for complete HD Otto-cycle vehicles.

5. Evaporative Emissions Test Procedures

We are not making any changes to the levels of the HD Otto-cycle engine evaporative emission standards in today's action. However, we are allowing, upon the effective date of this rule, manufacturers to use the light-duty urban dynamometer driving schedule (UDDS) in place of the heavy-duty UDDS for evaporative testing of HD Otto-cycle engines. A more complete discussion of this issue can be found in section III.B.5.a.

D. What Are the New On-Board Diagnostics Requirements for Light-Duty Diesel Vehicles?

Today's final rule establishes new on-board diagnostic requirements for LD diesel vehicles. OBD requirements for LD diesel vehicles have existed for many years. However, LD diesel vehicles have not been required to monitor aftertreatment devices, such as diesel oxidation catalysts or particulate traps. Similar to the new requirements for HD diesel OBD aftertreatment monitoring, today's action requires LD diesel vehicles to monitor aftertreatment devices. We received a number of comments on the proposed OBD requirements and have incorporated those recommendations that we deemed to be appropriate. The summarized comments and our responses can be reviewed in the Summary and Analysis of Comments Document. The following is a summary of the new requirements for LD diesel vehicles.

1. Federal OBD Malfunction Thresholds and Monitoring Requirements

This final rule requires that, beginning in the 2004 model year for LD diesel vehicles less than 6,000 pounds GVWR, and the 2005 model year for LD diesel vehicles between 6,000 pounds and 8,500 pounds GVWR must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related malfunctions or deterioration as evaluated over the appropriate certification test procedure:[45]

[44] EPA presented a detailed analysis of its ABT program in the Response to Comments for the Diesel Final Rule, Docket A–95–27, document no. V–C–01.

[45] The FTP minus the Supplemental FTP. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against

Continued

(i) Catalyst deterioration or malfunction—before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO_X or PM, as compared to the NO_X or PM emission level measured using a representative 4,000 mile catalyst system. The above requirement only applies to reduction catalysts; oxidation catalysts are not required to be monitored.

(ii) Particulate trap malfunction—any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO_X or PM, as compared to the NO_X or PM emission level measured using a representative 4,000 mile particulate trap system must be monitored. Particulate trap monitoring must be capable of detecting a catastrophic failure of the device, monitoring to the precise 1.5 threshold is not necessary. This monitoring would not need to be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

2. Applicability and Waivers

The federal LD diesel vehicle OBD requirements finalized in today's action would be fully implemented (100%) in the 2004 model year for vehicles less than 6,000 pounds GVWR . The federal OBD requirements for LD diesel vehicles between 6,000 pounds and 8,500 pounds GVWR and diesel MDPVs would be fully implemented (100%) in the 2005 model year.

E. Access to On-Board Computer Information

We are finalizing the proposed requirement that manufacturers be required to provide to us information and hardware that we request to read and interpret emission control information broadcast by an engine's electronic control module. Specifically, we proposed:

Upon request from EPA, a manufacturer must provide to EPA hardware (including scan tools), passwords, and/or documentation necessary for EPA to read and interpret (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read and interpret information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in miles per hour or kilometers per hour.

In response to a comment that manufacturers should not be required to provide EPA with a commercially available scantool, we are revising this language to clarify that manufacturers are not required to provide hardware that is otherwise commercially available. This new regulatory requirement is not intended to limit our authority under section 208 of the Clean Air Act to require manufacturers to provide us with commercially available tools and other information.

We believe that this requirement is necessary to ensure in-use compliance. We recognize manufacturers' concern regarding the potential burden of this requirement; however, it should be noted that this requirement does not mean that manufacturers will need to submit all of this information with each application for certification. We intend to require this information only to the extent that is necessary. Moreover, we are willing to work with the manufacturers in implementing this regulatory provision to find ways to minimize the burden while enabling us to ensure in-use compliance. Thus, we may revise this provision in a later rulemaking. This section is not intended to limit our authority under section 208 of the Clean Air Act to require manufacturers to provide us with commercially available tools and other information.

IV. The Heavy-Duty Requirements Are Technologically Feasible

A. Emission Standards for Heavy-Duty Diesel Engines

Today's final rule contains a reaffirmation of the 2004 NMHC+NO_X standards as well as several supplemental standards and test cycles for 2007 model year HDDE;

—2004—2.4 g/bhp-hr NMHC + NO_X or 2.5 g/bhp NMHC + NO_X with a limit of 0.5 g/bhp-hr on NMHC on the existing Federal Test Procedure

—2007—Emission requirements of 1.0 times the FTP standards on the new Supplemental Steady-State Test cycle and compliance under steady-state conditions with Maximum Allowable Emission Limits

—2007—Emission requirements of 1.25 times the FTP standards under the new Not-to-Exceed test zone

EPA has determined these standards and new test procedures are feasible in this time frame based on a number of factors. First, as detailed in the proposal and in the final rule, enormous progress has been made in the last few years regarding HD diesel emission control technology, principally in the areas of: Second generation full authority fuel injection systems; cooled EGR for HD diesels, advanced turbocharging systems (such as VGT), and advanced electronic control systems. Second, data published in the scientific literature has shown that individually and in combination, these emission control technologies can produce substantial emission reductions in NO_X, PM and hydrocarbons, over a broad range of engine operating conditions. As detailed in the RIA for this final rule, emission reductions on the order of 50 to 90 percent from current generation HD diesel engines have been demonstrated using combinations of these technologies. Third, with respect to the new supplemental requirements, a number of manufacturers have requested and received certificates of conformity for a large number of HD diesel engine families which meet NTE limits, Supplemental Steady-state limits, and MAEL limits using existing HD diesel engine technology (*i.e.,* engines certified to the 4.0g/bhp-hr NO_X standard, the 0.10 g/bhp-hr PM standard (0.05 for urban buses), and the 0.13 g/bhp-hr HC standard). These engine families are certified to NTE limits between 1.25 and 1.75 times the current NO_X standard of 4.0 g/bhp-hr. In addition, they have certified to Supplemental Steady-state (SSS) limits between 1.0 and 1.5 times the current NO_X standard, and 1.0 times the current standard for all other regulated emissions, including THC, PM, CO. While these engine families are not certified to the 2004 standards, they have used existing technology (*i.e.,* without the use of cooled EGR, VGT or Second generation electronic fuel injection systems) to meet NTE and SSS requirements similar to the requirements for 2007 HDDEs. As discussed previously, the application of cooled EGR systems (in combination with advanced fuel injection, turbomachinery, and electronic controls), can produce substantial emission reductions on current technology HD diesel engines over a broad range of operating conditions and therefore can be used to bring future engines into compliance with the supplemental requirements.

Fourth, in response to EPA's proposal, several manufacturers provided EPA with confidential business information (CBI) data regarding testing and development work they have performed

defeat devices in § 86.004–16 applies to these OBD requirements.

in their attempt to meet the NTE at the standard levels contained in today's final rule. This CBI information has been summarized by EPA, and the summary information can be found in a technical memorandum to the docket.[46] This technical memorandum shows that some HD diesel engine manufacturers have been able to achieve the 2007 NTE limit over a broad range of the NTE control area, and over a range of temperatures and altitudes, though not over the entire expanded conditions established in today's action. The memorandum also highlights a number of technical issues manufacturers have encountered in their attempts to meet NTE limits at the levels contained in today's final rule over the entire NTE control area, and at the limits of the expanded conditions. The RIA and the Response to Comments document for this final rule contains EPA's analysis of these issues, including our assessment of the technologies which manufacturers will be able to use to overcome the technical issues they have encountered within the time frame provided by the rule.

In addition, we have determined the 2004 NMHC+NO_X standard, and the 2007 supplemental requirements, are appropriate and feasible without changes in current on-highway diesel fuel formulation. The RIA for this final rule contains the information we have analyzed in making this decision, and the Response to Comments document contains our analysis of the comments we received on this issue. Only a brief summary will be presented here. The most detailed and relevant test program which examined the impact of diesel fuel formulation on 2004 technology engines was discussed in our proposal, and is repeated in the final RIA. The test program, a joint program sponsored by EPA, the American Petroleum Institute, and the Engine Manufacturers Association, showed that large changes in several key fuel parameters resulted in only modest improvements in NMHC+NO_X emissions from a 2004 technology HD diesel engine. In addition, as discussed above, engine control technology alone can result in NMHC+NO_X emission reductions sufficient to meet the 2004 and 2007 requirements. In response to our proposal, a number of engine manufacturers raised engine durability issues associated with the level of the proposed standards and current diesel fuel sulfur levels. As discussed in the RIA and the Response to Comments document, we believe these durability issues can be resolved thru cooled EGR temperature management combined with the selection of corrosive resistant material and bonding processes for the cooled EGR system.

[46] Memorandum to EPA Air Docket A–98–32, ''Summary of CBI Information regarding proposed HD Supplemental Test Requirements''

B. Emission Standards for Heavy-Duty Otto-cycle Vehicles and Engines

We believe that the new standards contained in this final rule are the most stringent standards technologically feasible in the 2004/2005 time frame. We are finalizing three program options for Otto-cycle engines and vehicles, increasing the flexibility of the program and further enhancing program feasibility. Manufacturers may select the option that best fits with their product line and product planning.

This section discusses the current technologies being used by manufacturers and the key technology changes we believe will be available to meet the new vehicle and engine emission standards. Technological feasibility of the exhaust emission standards is presented first, followed by analyses for ORVR controls. Manufacturers will ultimately decide what is best for their individual product lines. It is likely, however, that manufacturers will employ technologies developed first for light-duty vehicles such as improved catalysts. Further information on the various available technologies and EPA's technological feasibility assessment is contained in the Technological Feasibility section of the Regulatory Impact Analysis and the Response to Comments.

1. Current Technologies

Gasoline engine manufacturers are already producing heavy-duty engines that achieve a level of emission control better than the control required by current standards. Table 7 provides a list of some key technologies currently being used for HD engine emissions control. Manufacturers have introduced improved systems as they have introduced new or revised engine models. These systems can provide very good emissions control and many engines are being certified to levels of less than half the current standards. Many of the technologies have been carried over from light-duty applications.

TABLE 7.—KEY TECHNOLOGIES FOR CURRENT HEAVY-DUTY OTTO-CYCLE ENGINES

Sequential fuel injection/electronic control
3 way catalyst
pre and post catalyst heated oxygen sensors
Electronic EGR

TABLE 7.—KEY TECHNOLOGIES FOR CURRENT HEAVY-DUTY OTTO-CYCLE ENGINES—Continued

Secondary air injection
Improved electronic control modules

Improving fuel injection has been proven to be an effective and durable strategy for controlling emissions and reducing fuel consumption from gasoline engines. Improved fuel injection will result in better fuel atomization and a more homogeneous charge with less cylinder-to-cylinder and cycle-to-cycle variation of the air-fuel ratio. These engine performance benefits will increase as technology advances allow fuel to be injected with better atomization. Increased atomization of fuel promotes more rapid evaporation by increasing the surface area to mass ratio of the injected fuel. This results in a more homogeneous charge to the combustion chamber and more complete combustion. Currently, sequential multi-port fuel injection (SFI) is used in most, if not all, applications under the new standards because of its proven effectiveness.

One of the most effective means of reducing engine-out NO_X emissions is EGR. By recirculating spent exhaust gases into the combustion chamber, the overall air-fuel mixture is diluted, lowering peak combustion temperatures and reducing NO_X. Exhaust gas recirculation is currently used on heavy-duty Otto-cycle engines as a NO_X control strategy. Many manufacturers now use electronic EGR in place of mechanical back-pressure designs. By using electronic solenoids to open and close the EGR valve, the flow of EGR can be more precisely controlled.

EPA believes that the most promising overall emission control strategy for heavy-duty Otto-cycle engines is the combination of a three-way catalyst and closed loop electronic control of the air-fuel ratio. Control of the air-fuel ratio is important because the three-way catalyst is effective only if the air-fuel ratio is at a narrow band near stoichiometry. For example, for an 80 percent conversion efficiency of HC, CO, and NO_X with a typical three-way catalyst, the air-fuel ratio must be maintained within a fraction of one percent of stoichiometry. During transient operation, this minimal variation cannot be maintained with open-loop control. For closed-loop control, the air-fuel ratio in the exhaust is measured by an oxygen sensor and used in a feedback loop. The throttle position, fuel injection, and spark timing can then be adjusted for given operating conditions to result in the

proper air-fuel ratio in the exhaust. Most if not all engines have already been equipped with closed loop controls. Some engines have been equipped with catalysts that achieve efficiencies in excess of 90 percent. This is one key reason engine and vehicle certification levels are very low. In addition, electronic control can be used to adjust the air-fuel ratio and spark timing to adapt to lower engine temperatures, therefore controlling HC emissions during cold start operation.

All HD Otto-cycle engines are already equipped with three-way catalysts. Engines may be equipped with a variety of different catalyst sizes and configurations. Manufacturers choose catalysts to fit their needs for particular vehicles. Typically, catalyst systems are a single converter or two converters in series or in parallel. A converter is constructed of a substrate, washcoat, and catalytic material. The substrate may be metallic or ceramic with a flow-through design similar to a honeycomb. A high surface area coating, or washcoat, is used to provide a suitable surface for the catalytic material. Under high temperatures, the catalytic material will increase the rate of chemical reaction of the exhaust gas constituents.

Significant changes in catalyst formulation have been made in recent years and additional advances in these areas are still possible. Platinum, Palladium and Rhodium (Pt, Pd, and Rh) are the precious metals typically used in catalysts. Historically, platinum has been widely used. Today, palladium is being used much more widely due to its ability to withstand very high exhaust temperatures. In fact, some HD vehicles currently are equipped with palladium-only catalysts. Other catalysts contain all three metals or contain both palladium and rhodium. Some manufacturers have suggested that they will use Pd/Rh in lieu of tri-metal or conventional Pt/Rh catalysts for underfloor applications. Improvements in substrate and washcoat materials and technology have also significantly improved catalyst performance.

2. Chassis-Based Standards

We are finalizing standards that effectively extend nationwide the California LEV–I MDV standards in place prior to 2004. California began requiring some vehicles to meet LEV standards in 1998 and the phase-in will be complete in 2001. The technological feasibility assessment and technology projections are based primarily on the mix of technologies being used to achieve California LEV emission levels.

Of the anticipated changes, enhancements to the catalyst systems are expected to be most critical. Catalyst configurations are likely to continue to vary widely among the manufacturers because manufacturers must design the catalyst configurations to fit the vehicles. One potential change is that manufacturers may move the catalyst closer to the engine (close-coupled) or may place a small catalyst close to the engine followed by a larger underfloor catalyst. These designs provide lower cold start emissions because the catalyst is closer to the engine and warms up more quickly. Typically, the catalyst systems used in HD applications have a large total volume but with lower precious metal content per liter compared to light-duty catalyst systems. To meet the chassis-based standards, EPA projects an increase in overall catalyst system precious metal loading with no expected significant increases in total catalyst volume.

Calibration changes will also be important. The engine and catalyst systems must be calibrated to optimize the performance of the systems as a whole. Post catalyst oxygen sensors will allow further air fuel control. Manufacturers are moving to more powerful computer systems and EPA expects this trend to continue. Other technologies such as insulated exhaust systems may also be used in some cases to reduce cold start emissions.

HD vehicles in California have typically been certified with full life emission levels in the 0.3–0.5 g/mile range for NO_X and the 0.1–0.3 g/mile range for NMOG. These levels are well within the LEV standards and provide manufacturers with a compliance cushion. EPA expects manufacturers to sell these vehicles or very similar vehicles nationwide to meet the new vehicle standards.

3. Engine-Based Standards

EPA believes that the engine standards contained in the three options are appropriate standards for HD Otto-cycle engines in the 2003–2005 time frame. Manufacturers may select the option that is the best fit for their product line and planning. Certification levels below 1.0 g/bhp-hr NMHC+NO_X have been achieved on recently introduced engines of varied sizes. EPA believes that the standards being adopted are feasible and provide sufficient opportunity for manufacturers to maintain a reasonable compliance margin. Options 1 and 2 contain a standard of 1.5 g/bhp-hr which we believe is reasonably achievable in the 2003/2004 time frame. With the lead-time available for Option 3 (1.0 g/bhp-hr in 2005), we believe manufacturers will be able to modify systems to improve their performance and durability so that manufacturers can retain necessary compliance margins.

Currently, most engine families are certified with emission levels of less than half the standard. Manufacturers have begun to apply advanced system designs to their heavy-duty applications. Recently introduced engine families have been certified with emission levels below 1.0 g/bhp-hr combined NMHC+NO_X. These engines and systems feature precise air/fuel control and superior catalyst designs comparable to the catalyst systems being used in the California LEV I program. Based on industry input, we believe that manufacturers will continue the process of replacing their old engine families with advanced engines over the next several years. As new and more advanced engines and catalyst systems are introduced, EPA anticipates that they will be capable of achieving the engine standards finalized today.

Manufacturers commented that their current certification data represents average deterioration and therefore EPA cannot base the level of the new standards on current certification data. Manufacturers have stated on several occasions that they target emission certification levels of about half the standard, due to the potential for in-use deterioration of catalysts and oxygen sensors. Catalysts experience wide variations in exhaust temperature due to the wide and varied usage of vehicles in the field. Some vehicles may experience more severe in-use operation than is represented by the durability testing currently conducted for engine certification. Manufacturers have argued that EPA should not set new standards based on certification data because certification levels do not account for severe in-use deterioration.

We proposed standards not at the lowest current certification levels but at twice the lowest current certification levels in order to accommodate the need for compliance margins. EPA continues to believe that with the lead-time available (2005 model year implementation for Option 3, 2008 model year implementation for Options 1 and 2) and the flexibility provided by the ABT program manufacturers will be able to meet the 1.0 g/bhp-hr standard cost effectively. We understand that manufacturers in many cases will have to modify their emission control systems to provide necessary system durability and compliance margins. We believe the technologies are available and can be incorporated into current emission control systems in the time available. The RIA and Response to Comments document provide detailed

information about Technological Feasibility.

We are finalizing early implementation options (Options 1 and 2) which allow manufacturers to meet an engine standard of 1.5 g/bhp-hr standard through model year 2007 if they sign up to meet the standard starting in either model year 2003 or 2004 (Manufacturers also must meet the vehicle-based standards for complete vehicles starting in 2004 model year under Option 2. These vehicle-based standards are optional under Option 1). We proposed a standard of 1.0 g/bhp-hr to begin in the 2004 model year but are not finalizing the 1.0 g/bhp-hr standards for the 2004 model year due to the lead time requirements of the Clean Air Act. We expected that the 1.0 g/bhp-hr standard would be technologically feasible for the 2004 model year for the reasons described in the proposed rule. Therefore, we also believe the optional 1.5 g/bhp-hr standard will be feasible in the 2004 model year. Any potential feasibility concerns for the 2004 model year are diminished relative to the proposal by the higher level of the standard (1.5 g compared to 1.0 g) and the potential opportunities for credit transfers from the vehicles to the engine ABT programs. Also, the 1.5 g/bhp-hr standard level is consistent with the recommendations of two manufacturers (Ford and Daimler Chrysler) providing comments on the rule. For these reasons, we expect that Option 2 is technologically feasible and that manufacturers will consider selecting the option.

Option 1 provides incentive for further acceleration of the new standards to the 2003 model year. We believe manufacturers may find this attractive for product planning reasons. The option provides further flexibility for manufacturers to choose between engine and chassis-based testing for the initial years of the program. Based on certification data and the availability of advanced technology, we believe Option 1 would be within reach for manufacturers even though manufacturers would have less lead time if they chose this option.

Catalyst systems with increased precious metal loading will be a critical hardware change for meeting the new engine standards. Optimizing and calibrating the catalyst and engine systems as a whole will also be important in achieving the standards. Increased use of air injection to control cold start emissions may also be needed, especially to reduce NMHC emissions during cold start operation. Also, improved EGR systems and retarded spark timing may be needed to reduce engine out NO_X emission levels.

Catalyst system durability is a key issue in the feasibility of the standards. Historically, catalysts have deteriorated when exposed to very high temperatures and this has long been a concern for heavy-duty work vehicles. Manufacturers have often taken steps to protect catalysts by ensuring exhaust temperatures remain in an acceptable range. Catalyst technologies in use currently are much improved over the catalysts used only a few years ago. The improvements have come with the use of palladium, which has superior thermal stability, and through much improved washcoat technology. The catalysts have been shown to withstand temperatures typically experienced in HD applications. Manufacturers also continue to limit exhaust temperature extremes not only to protect catalyst systems but also to protect the engine.

To help address phase in concerns that could arise for manufacturers, EPA is finalizing a modified ABT program for engines, as described above. The ABT program can be an important tool for manufacturers in implementing a new standard. The program allows manufacturers to comply with the more stringent standards by introducing emission controls over a longer period of time, as opposed to during a single model year. Manufacturers plan their product introductions well in advance. With ABT, manufacturers can better manage their product lines so that the new standards don't interrupt their product introduction plans. Also, the program allows manufacturers to focus on higher sales volume vehicles first and use credits for low sales volume vehicles. EPA believes manufacturers have significant opportunity to earn credits in the pre-2004 (pre-2005 for Option 2) time frame.

We are finalizing three options that we believe will be viable for manufacturers to choose among. The three options provide a range of choices and offer manufacturers flexibility to fit the program with their product planning. As manufacturers continue with normal product plans between now and the start of the new standards, improved engines will continue to replace older models. The ABT program is available for manufacturers who have not completely changed over to new engine models by 2003/2004/2005. ABT provides manufacturers with the opportunity to earn credits prior to implementation and use the credits to continue to offer older engine models that have not yet been redesigned or retired by the start of the program.

4. Onboard Refueling Vapor Recovery

We believe that today's ORVR requirements are technologically feasible. In our previous ORVR rulemaking, we elected to apply ORVR requirements only to LDVs and LDTs (*see* 59 FR 16262, April 6, 1994). We chose at the time of the original rulemaking not to apply ORVR to HDVs because of concerns over secondary manufacturers, different fuel tank designs for larger HDVs than for LDVs and LDTs, and the fact that HDVs are certified under an engine-based testing program. These three issues are addressed in today's requirements by limiting ORVR to complete vehicles under 10,000 lbs GVWR. In the original ORVR rule we analyzed the potential application of ORVR to all HDVs. In that analysis we concluded that ORVR is technologically feasible for application to HDVs. We concluded that the systems which would be required for the covered subset of HDVs would be essentially the same as those for LDVs and LDTs. Such systems have already been successfully implemented on a portion of the LDV fleet. We are aware of no information on fundamental changes to HDV fuel system design which would cause it to believe that the original analysis is no longer valid.

ORVR systems must meet certain basic requirements in order to be effective at controlling refueling emissions. In general, they must provide for the routing of displaced vapors from the fuel tank to the engine rather than allowing them to escape uncontrolled to the atmosphere. This will likely be accomplished through the use of (1) a fillneck seal which prevents the vapors from escaping out the fillneck, (2) a fuel tank vent mechanism, to allow for the controlled routing of the vapors from the fuel tank, (3) vapor lines for transporting vapors, (4) a canister containing activated carbon to temporarily store the vapors, and 5) a purge system to regenerate the canister and route the vapors to the engine.

The major components of an ORVR system are already in place on HDVs in response to EPA's enhanced evaporative emission requirements (*see* 58 FR 16002, March 24, 1993). The primary differences between an enhanced evaporative control system and an ORVR system lie in the need to prevent vapors from escaping via the fillneck during a refueling event, and the fact that the vapor flow rates out of the fuel tank are much higher during refueling than during vehicle operation and diurnal events that enhanced evaporative systems are designed to control.

C. On-Board Diagnostics

For Otto-cycle vehicles and engines, the most difficult monitors to implement are those for the catalyst system, the evaporative emission control system, and engine misfire. While each of these monitors poses technological challenges, none of them pose technological feasibility concerns. Rather than concerns over technological feasibility, EPA expects concerns, where today's rule applies to Otto-cycle vehicles and engines, over resource constraints for OBD calibration and associated verification testing.

EPA does not consider resource constraints a feasibility issue, nor does EPA believe the manufacturers will be constrained by today's OBD provisions. EPA believes this is true for both the Otto-cycle and the diesel OBD requirements. Since the 1996 model year, manufacturers have been equipping their vehicles and engines with OBD systems essentially identical to those being finalized today. This is true federally for all vehicles below 8500 pounds GVWR, and in California for all vehicles and engines below 14,000 pounds GVWR. The Agency believes that the four year lead time within today's final rulemaking matched with the OBD phase-in of 60/80/100 or 40/60/80/100 for the optional 2005 path, provides adequate lead time to apply the real world tested OBD system technology to their new sales fleet below 14,000 pounds GVWR without resource difficulties.

The transmission represents an area of potential concern for engine certified as opposed to chassis certified Otto-cycle and diesel engines. Typically, the engine manufacturer certifies and sells its engine, without an associated transmission, to a chassis manufacturer. The chassis manufacturer then ''mates'' the engine to a transmission purchased from a transmission manufacturer representing a third industry party. The final regulations require that chassis certified systems employ transmission diagnostics, but would not require that engine certified systems employ transmission diagnostics.

EPA believes that it is reasonable to expect that electronically controlled transmissions will be designed with some level of diagnostics to ensure proper operation. In addition, the Agency expects that those transmissions will utilize industry standard communication protocols allowing the transmission and the engine control computers to communicate, and allowing any transmission-related OBD codes to be downloaded via the standard diagnostic data link connector without engine manufacturer involvement.

Specific to diesel vehicles and engines, the Agency believes there are three areas of concern associated with technological feasibility: EGR monitoring; misfire monitoring; and, aftertreatment monitoring. With respect to EGR monitoring, the primary concern is expected to be the cooling componentry of a cooled EGR system. Other aspects of the EGR system, such as activation of the EGR valve, verification of proper flow, etc., can be accomplished as is already being done on Otto-cycle and diesel vehicles and engines under 14,000 pounds GVWR.[47] However, the cooling system presents a new challenge. The Agency believes monitoring of the cooling system is feasible by employing temperature sensors to ensure proper EGR cooling (heat transfer) given existing engine conditions, and coolant flow. If the cooling system becomes fouled, its ability to transfer heat from the exhaust gases to the coolant will be diminished and a resultant temperature inconsistency should be observed. Likewise, if coolant ceases to flow through the cooling system, a resultant temperature inconsistency should be observed. In fact, EPA believes that manufacturers will monitor EGR cooling system performance absent a requirement to do so. As discussed in Chapter 3 of the Regulatory Impact Analysis for today's final rule, manufacturers will be designing their EGR systems to cool the EGR to specific design targets to optimize engine performance and to minimize condensation of sulfuric acid. The only way to ensure that engine performance is being optimized is to monitor the performance of the EGR system and compare it to the specific design targets.

As for diesel misfire monitoring, the Agency believes that the final requirement is technologically feasible. In fact, manufacturers are certifying compliant diesel misfire monitors for sale in California on vehicles and engines under 14,000 pounds GVWR. We believe, like CARB, that diesel misfire is an air quality concern. Also, we believe that most users of diesel vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines less than 10,000 pounds GVWR, will not notice or may ignore diesel misfires. In contrast, we believe that most users of engines above 14,000 pounds GVWR will notice and not ignore misfires. We believe this is true because most of these engines are driven by professionals for whom minimizing fuel consumption and maximizing engine performance is a primary business concern. Conversely, most vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines under 10,000 pounds GVWR, are driven by individuals as personal transportation or for small business use. Such drivers are probably less familiar with the day-to-day operating characteristics of their engines and are probably less concerned with fuel consumption and engine performance.

With respect to diesel catalyst monitoring, we stated in the NPRM that we expected such monitoring to be conducted using temperature sensing devices to detect an exotherm within the aftertreatment device. We received several comments stating that diesel catalyst monitoring, especially for oxidation catalysts, is less critical to ensuring in-use compliance than monitoring of otto-cycle catalysts. They stated that diesel catalysts are relied upon to reduce emissions much less than their otto-cycle counterparts. They also stated that diesel catalysts have much lower conversion efficiencies and even complete failure of the catalyst is unlikely to result in emission levels in excess of the emissions threshold. They point out that diesel catalysts encounter much lower exhaust temperatures than otto-cycle engines and, as a result diesel catalysts are very durable, exhibiting very good catalyst performance at and beyond useful life. Limited data presented to the Agency from an engine manufacturer[48] supports these comments. The data suggests that for diesel oxidation catalysts, there is essentially no deterioration up to 120,000 miles. Therefore, in light of these comments and the above mentioned data, we feel it is appropriate at this time to not require diesel oxidation catalysts to be monitored.

There was also several comments expressing concern about the ability to monitor diesel reduction catalysts by the 2004 model year. We believe that diesel reduction catalysts may play an important role for future light-duty vehicle applications, especially in meeting Tier 2 emission standards. Information from catalyst technology literature[49] indicates that diesel

[47] Current EGR monitoring systems may use the existing intake air temperature sensor—opening the EGR valve should result in an increased intake air temperature. Systems may also use an intake air pressure sensor—opening the EGR valve will change the intake air pressure.

[48] Memo to EPA Air Docket A–98–32 from William Charmley dated October 12, 1999. A–98–32, II–B–06.

[49] Discussion on diesel lean NO_X catalysts from www.DieselNet.com.

reduction catalysts are not nearly as durable as diesel oxidation catalysts. Thus, if a manufacturer were to rely on a reduction catalyst to meet today's final standards, it is imperative that they be monitored. We disagree with comments suggesting that technology needed to monitor diesel reduction catalysts will not be ready by the 2004 model year. We believe that manufacturers will be capable of monitoring diesel reduction catalysts to the required emissions threshold by using NO_X sensor technology. Direct emission measurement has been identified as an important technology to achieve diesel engine closed-loop feedback control and to achieve after-treatment OBD. Researchers already have achieved promising results on a compact NO_X sensor that is capable of measuring real-time NO_X within 10% accuracy of laboratory-grade instruments under a wide range of operating conditions, including the temperature, pressure, and oxygen concentration typical of diesel engine exhaust. This breakthrough technology could be used for closed-loop control, and, because it can accurately measure NO_X in the 100 ppm range, it would enable monitoring of NO_X aftertreatment technologies.[50] The most recent of these papers (Kato *et al.,* 1999) provides an in depth discussion of the accuracy, repeatability, and durability of an on-board NO_X sensor, as well as strategies for using the sensor for closed loop control and OBD monitoring of an active lean NO_X absorber.

We also received several comments on the feasibility of monitoring diesel particulate traps. All of the commenters agreed that the sensor technology needed to measure PM concentrations in particulate traps does not exist. They also stated that back-pressure measurement is not capable of monitoring to an emissions threshold. However, it was generally agreed that back-pressure measurement could be used to determine significant failures in the trap, such as a crack. We believe these comments to be reasonable and have decided that for the final rule, manufacturers will not be required to monitor the particulate trap to an emission threshold, rather they must monitor for the complete failure of the device. We define complete failure as a sudden drop in exhaust back-pressure below that of a clean or unloaded trap under monitoring conditions specified by the manufacturer.

Note that, for diesel vehicles and engines, the Agency considers the EGR system to be the primary emission control system that will be used to meet the 2004 standards. This makes the EGR system somewhat analogous to the catalyst in an Otto-cycle emission control system. Because the Otto-cycle catalyst is responsible for roughly 90 percent of emission control, the Agency considers it imperative that the catalyst be monitored via OBD to ensure its continued performance. Likewise, the diesel EGR system is expected to account for roughly 50 percent of the emission control, making it perhaps the single largest contributor to emission control on a diesel engine. Therefore, the Agency considers it imperative that the EGR system be monitored on a diesel vehicle or engine. This is especially true given what the Agency considers to be a rather low cost associated with the requirement in this rule for monitoring this critical emission control system.[51] The Agency fully expects that manufacturers will employ OBD techniques on their diesel EGR systems to ensure satisfactory engine performance for their customers. Today's final rule simply ensures that the monitoring will occur, and it ensures that the monitoring will consider not only engine performance, but also emission performance.

V. What Is the Economic Impact and Cost-Effectiveness for These Requirements?

A. Emission Standards for Heavy-Duty Diesel Engines

1. Expected Technologies

In assessing the economic impact of the 2004 emission standards and the 2007 supplemental requirements (including the standards finalized in 1997 and the standards finalized today), EPA has used a current best judgement of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. Full details of EPA's cost analysis, including information not presented here, can be found in the Regulatory Impact Analysis in the public docket. The costs presented here were developed assuming that heavy-duty diesel engines would need high-flow cooled EGR, combustion chamber optimization, improved electronic fuel injection, and variable geometry turbochargers (except for light heavy-duty engines). The costs also include testing costs necessary to comply with the OBD and not-to-exceed requirements. As was done in the proposal, EPA is projecting costs assuming that this testing to be completed in time for the 2004 model, even though the new requirements will not be mandatory until the 2007 model year. We believe that many manufacturers will choose (as a convenience) to incorporate the calibration changes necessary to comply with these requirements during the 2004 model year, rather than to modify their 2004 designs for the 2007 model year. Since this assumption means that manufacturers would incur the testing costs three years earlier than required, it results in a slight increase in the net present value of the costs, and is thus somewhat conservative.

The analysis also assumes that manufacturers would introduce the improved electronic fuel injection systems and variable geometry turbochargers for some engine models even without the more stringent standard in 2004. Both of these technologies will provide significant performance benefits both directly, and by allowing manufacturers to reduce the use of injection timing retard to comply with the current 4.0 g/bhp–hr NO_X standard. The Agency believes that manufacturers may draw similar conclusions for using EGR on some of these same engines, however, as a conservative assumption, EPA is assuming that no EGR would be used to comply with the current 4.0 g/bhp-hr NO_X standard. For this analysis EPA is also assuming that only 50 percent of the costs for the improved electronic fuel injection and the use of variable geometry turbochargers are attributable to emission control. This is because EPA believes that manufacturers would make these improvements for many of their engines, even in the absence of these emission standards, to reduce fuel consumption and improve engine performance, a similar approach was used in the 1997 final rule. The docket for this rulemaking contains additional information on this aspect of the Agency's cost analysis, including a cost sensitivity analysis regarding the fifty percent assumption.[52] In addition, the RIA contains an estimate of the impact this 50 percent assumption has on the

[50] *See* Kato N., H. Kurachi, Y. Hamada: ''Thick Film ZrO2 NO_X Sensor for the Measurement of Low NO_X Concentration'', SAE paper 980170, pp. 76–77, 1998, and Kato N., N. Kokune, B. Lemire, T. Walde: ''Long term stable NO_X sensor with integrated in-connector control electronics'', SAE paper 1999–01–0202, also see memorandum from Mr. Linc Wehrly to EPA Air Docket A–98–32 summarizing this paper.

[51] The Agency estimates $3 to $7 per vehicle/engine for the OBD requirements in today's rule, primarily for development and demonstration testing given that most of the diesel monitoring will be done by the manufacturer absent any requirement to do so.

[52] See EPA Air Docket A–98–32, ''Analysis of Costs and Benefits of VGT and Improved Fuel Injection'', EPA Memorandum from Charles Moulis

HD diesel cost-effectiveness. We recognize this 50 percent assumption is not a precise approach to characterizing the costs which could otherwise be attributed to our baseline assumptions. However, developing a more precise estimate is problematic due to the complexity of market demand as well as other uncertainties.

2. Per Engine Costs

Estimated per engine cost increases are broken into purchase price and total life-cycle operating costs. The incremental purchase price for new engines is comprised of variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Total operating costs include expected increases in maintenance. Cost estimates based on these projected technology packages represent an expected incremental cost of engines in the 2004 model year. Costs in subsequent years would be reduced by several factors, as described below. Separate projected costs were derived for engines used in three service classes of heavy-duty diesel engines. All costs are presented in 1999 dollars. Life-cycle costs have been discounted to the year of sale.

For the long term, EPA has identified various factors that would cause cost impacts to decrease over time. First, the analysis incorporates the expectation that manufacturers will apply ongoing research to making emission controls more effective and less costly over time. This expectation is similar to manufacturers' stated goal of decreasing their reliance on catalysts to meet emission standards in the future. Second, research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts. The analysis incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production (2006 model year) and by reducing variable costs again by 20 percent starting with the sixth year of production. Chapter 4, Section III in the RIA for this rule, as well as Chapter V, Section IV of the final RIA for the 1997 final rulemaking (*see* Docket A–95–27, Docket Item # V–B–01) contain additional discussion of the application of this learning curve. The 2004 HD diesel standards will require a fundamental change in technology for the engine manufacturers. Considering this change, we believe the learning curve concept is appropriate for this rulemaking.

Finally, since fixed costs (excluding in-use testing costs) are assumed to be recovered over a five-year period, these costs are not included in the analysis after the first five model years. Table 8 lists the projected schedule of costs for each category of vehicle over time.

TABLE 8.—PROJECTED DIESEL ENGINE COST AND PRICE INCREASES

[1999 dollars discounted to year of sale]

Vehicle class	Model year	Purchase price increase	Life-cycle operating cost
Light heavy-duty	2004	$ 485	$ 8
	2009 and later	241	8
Medium heavy-duty	2004	657	49
	2009 and later	275	49
Heavy heavy-duty	2004	803	104
	2009 and later	368	104

3. Aggregate Costs to Society

The above analysis develops per-vehicle cost estimates for each vehicle class. Using current data for the size and characteristics of the heavy-duty vehicle fleet and making projections for the future, these costs can be used to estimate the total cost to the nation for the new emission standards in any year. The result of this analysis is a projected total cost starting at $479 million in 2004. Per-vehicle costs savings over time reduce projected costs to a minimum value of $248 million in 2009, after which the growth in truck population leads to an increase in costs to $325 million in 2020. Total costs for these years are presented by vehicle class in Table 9. The calculated total costs represent a combined estimate of fixed costs as they are allocated over fleet sales, variable costs assessed at the point of sale, and operating costs as they are incurred in each calendar year. Future sales are projected for years beyond 1995, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1995.

TABLE 9.—ESTIMATED ANNUAL COSTS FOR IMPROVED HEAVY-DUTY VEHICLES

[Millions of dollars]

Category	2004	2009	2020
Light heavy-duty	161	89	105
Medium heavy-duty	109	50	67
Heavy heavy-duty	210	110	153
Total	479	248	325

4. Cost-Effectiveness

EPA has estimated the per-vehicle cost-effectiveness (*i.e.,* the cost per ton of emission reduction) of the model year 2004 NMHC+NO_X standards over the typical lifetime of heavy-duty diesel vehicles covered by today's rule. The RIA contains a more detailed discussion of the cost-effectiveness analyses. As described above in the cost section, the cost of complying with the standards

will vary by model year. 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 standards are shown in Table 10 for the same model years discussed above in the cost section. The cost-effectiveness results contained in Table 10 present the range in cost-effectiveness resulting from the two cost-effectiveness scenarios described above.

TABLE 10.—DISCOUNTED PER-VEHICLE COSTS, EMISSION REDUCTIONS AND COST-EFFECTIVENESS OF THE NMHC+NO_X STANDARD

Vehicle class	Model year	Discounted lifecycle costs	Discounted lifetime reductions (tons)		Discounted cost effectiveness ($/ton)
			NO_X	NMHC	
Light Heavy-Duty Diesel vehicles	2004	$493	0.232	0.018	$1969
	2009 and later	249			995
Medium Heavy-Duty Diesel vehicles	2004	706	0.764	0.067	849
	2009 and later	323			389
Heavy Heavy-Duty Diesel Vehicles	2004	907	3.189	0.151	272
	2009 and later	472			141
Overall (For All Heavy-Duty Diesel Vehicles)	2004				474
	2009 and later				238

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. Due to the difficulty in accurately quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits.

B. Emission Standards for Heavy-duty Otto-Cycle Vehicles and Engines

This section contains a summary of our comprehensive analyses of the economic impacts of today's regulations for heavy-duty Otto-cycle vehicles and engines. The following separate factors are analyzed: (1) The technologies expected to be used and their projected rates of application; (2) the costs of these technology packages incremental to today's vehicle designs (presented on a per-vehicle basis separately for chassis and engine certified configurations); (3) the aggregate cost to society of the requirements and; (4) the cost-effectiveness of the regulations. More information on these analyses can be found in the Regulatory Impact Analysis contained in the docket for this rule.

1. Expected Technologies

The various technologies that could be used to comply with today's regulations were previously discussed in the section on technological feasibility. In developing costs for the associated technologies we looked at the current technology used on HDVs and compared that to the technology expected to be used to meet these regulations. The incremental costs difference was then calculated based on the differences between the current (*i.e.,* baseline) technology packages and those expected to be used in 2005. Table 11 shows both the current baseline and expected technologies for complete vehicles. Table 12 shows the current baseline and expected technologies for the engine-based standards. These tables only show the technologies which are expected to change in some way from their current design or be applied to different percentages of the fleet than they are currently. Technologies such as sequential multi-port fuel injection and EGR, while important to meeting the standards in this rule, are not expected to be fundamentally changed in their design, or be utilized in different percentages of the fleet than they currently are. Thus, such technologies are not included in these tables. However, in some cases the cost of optimizing such technologies is included in the cost estimates.

TABLE 11.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR COMPLETE VEHICLE STANDARDS

Technology	Baseline Federal	Estimated 2005
Catalysts	60% single underfloor 40% dual underfloor	13% single enhanced underfloor. 50% dual enhanced underfloor. 37% dual close-coupled and dual enhanced underfloor.
Oxygen sensors	70% dual heated 10% triple heated 20% quadruple heated	13% dual heated. 87% quadruple heated.
ECM	50% 32 bit computers 50% 16 bit computers	100% 32 bit computers.
Adaptive learning	0%	80%.
Individual cylinder A/F control	0%	10%.
Leak free exhaust	90%	100%.
Insulated exhaust	0%	40%.
Secondary air injection	20%	30%.

TABLE 11.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR COMPLETE VEHICLE STANDARDS—Continued

Technology	Baseline Federal	Estimated 2005
ORVR	0%	100%.[1]

[1] ORVR only applies to complete vehicles 10,000 lbs GVWR and under, and is phased in, with 100% application to those vehicles in 2006.

TABLE 12.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR ENGINE-BASED STANDARDS

Technology	Baseline Federal	Estimated 2005
Catalysts	60% single underfloor 40% dual underfloor	13% single enhanced underfloor. 87% dual enhanced underfloor.
Oxygen sensors[1]	70% dual heated 10% triple heated 20% four heated	13% triple heated. 87% quadruple heated.
ECM	50% 32 bit computers 50% 16 bit computers	100% 32 bit computers.
Improved fuel control	50%	100%.
Secondary air injection	20%	50%.

[1] OBD only applies to HDGEs under 14,000 lbs GVWR (approximately 60 percent of HDGEs).

2. Per Vehicle Costs

The costs of the projected technologies presented in the previous section are itemized and discussed in detail in the RIA. On a per-vehicle basis these costs are summarized in Table 13 They are presented in two components: Purchase price and operating cost. The operating costs only apply to ORVR-equipped vehicles and include the combined effects of a small fuel economy penalty due to the increased weight of the ORVR hardware, and a larger fuel economy benefit resulting from the vehicle being able to utilize fuel vapors that would otherwise escape to the atmosphere in the absence of ORVR.

We believe that the manufacturers will recover the fixed costs associated with research and development, tooling and certification over the first five years of production. Thus, these fixed costs are not included in the analysis after the first five model years. The fixed costs associated with the in-use testing programs will continue indefinitely. The projected per vehicle costs impacts are summarized in Table 13.

TABLE 13.—PROJECTED HDV PRICE AND OPERATING COST INCREASES

Class	Model year	Purchase price increase	Lifetime operating cost
Complete Vehicles	2005[1]	$285	− $6
	2010 and later	281	− 6
Engines	2005[2]	296	
	2010 and later	256	

[1] This cost includes both ORVR and OBD, which are phased in, but which are not required on all complete vehicles until the 2006 model year for ORVR and the 2007 model year for OBD.

[2] This cost includes an OBD hardware cost. OBD requirements are phased in, but are not required on all engines under 14,000 lbs GVWR until the 2007 model year.

3. Aggregate Costs to Society

In addition to the per vehicle costs just described, we also calculated the aggregate cost to society. This was done by combining the per vehicle costs with assumed future sales of HDVs. The results of this analysis are summarized in Table 14. The recovery of most fixed costs results in slightly reduced costs beginning in 2010, after which costs begin to rise in accordance with projected increased sales. The aggregate costs represent a combined estimate of the fixed costs for research and development, tooling and certification as they are allocated over the first five years of sales, variable costs assessed at the point of sale, and operating costs (primarily in the form of fuel cost savings) for ORVR-equipped vehicles (calculated to net present value and applied at the point of sale). Future sales are projected for years beyond 1996, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1996.

TABLE 14.—AGGREGATE COST TO SOCIETY OF THE HEAVY-DUTY OTTO-CYCLE REQUIREMENTS

Year	Cost ($million)
2005	$110
2010	124
2020	146

4. Cost-effectiveness

We estimated the per-vehicle cost-effectiveness (i.e., the cost per ton of emission reduction) of the NMHC plus NO_X exhaust emission standards over the lifetime of typical heavy-duty gasoline vehicles. The RIA contains a more detailed discussion of the cost-effectiveness analysis.

The cost of complying with the standards will vary by vehicle category (*i.e.,* a complete Class 2b heavy-duty gasoline vehicle, a complete Class 3 heavy-duty gasoline vehicle, or an incomplete heavy-duty gasoline vehicle) and model year. Therefore, the lifetime cost-effectiveness of the standards will vary by model year. For comparison purposes, the discounted lifetime costs,

emission reductions (in short tons), and cost-effectiveness of the standards are shown in Table 15 for the same model years discussed in the per vehicle costs section. This table does not contain the costs and benefits of the ORVR requirements, which are analyzed separately.

TABLE 15.—COST-EFFECTIVENESS OF THE STANDARDS FOR HEAVY-DUTY GASOLINE VEHICLES

HDGV	Year of production	Discounted lifetime cost	Discounted lifetime NMHC+NO_X reduction	Discounted lifetime cost-effectiveness
Class 2B Complete	1	$274	0.43 tons	$635/ton
	6 and later	273		633/ton
Class 3 Complete	1	274	0.46 tons	596/ton
	6 and later	273		594/ton
Incomplete HDGV	1	296	0.52 tons	565/ton
	6 and later	256		489/ton
All HDGVs	1	280	0.46 tons	612/ton
	6 and later	268		586/ton

We also separately estimated the cost-effectiveness of the ORVR requirements for Class 2B heavy-duty gasoline vehicles. Table 16 contains the discounted lifetime cost-effectiveness of the ORVR requirements.

TABLE 16.—DISCOUNTED, LIFETIME COST-EFFECTIVENESS OF THE ORVR REQUIREMENTS FOR CLASS 2B HEAVY-DUTY GASOLINE VEHICLES

Year of production	Discounted lifetime cost	Discounted lifetime NMHC + NO_X emission reductions	Discounted lifetime cost-effectiveness
1	$5	0.035 tons	$141/ton
6	2	0.035 tons	56/ton

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X emission reductions from the heavy-duty gasoline vehicle and engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. The cost-effectiveness values presented above do not assign any numerical value to these additional benefits. Based on existing studies that have estimated the value of such benefits in the past, we believe that the actual monetary value of the multiple environmental and public health benefits that would be produced by the NO_X reductions under this rule will be greater than the estimated compliance costs.

VI. How Has EPA Responded to Input From the Public?

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. The formal comment period and public hearing associated with the NPRM provided additional opportunities for public input. EPA also met with a variety of stakeholders, including environmental and public health organizations, auto and heavy-duty engine and vehicle company representatives, emission control equipment manufacturers, and states at various points in the process.

We have prepared a detailed Response to Comments document that describes the comments received on the NPRM and presents our response to each of these comments. The Response to Comments document is available in the docket for this rule and from the Office of Mobile Sources internet home page. Comments and our responses are also included throughout this preamble for several key issues where relevant to the discussion of the final rule provisions.

VII. What Administrative Requirements Apply to This Final Rule?

A. Compliance With Executive Order 12866

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

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- 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 final rule is a ''significant regulatory action'' because the engine and vehicle standards, supplemental test requirements, on-board diagnostic requirements, and other regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. Accordingly, a Final Regulatory Impact Analysis (RIA) has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB on today's action and any responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Compliance With the Regulatory Flexibility Act: Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601) requires federal agencies to consider potential impacts of federal regulations upon small entities. If a preliminary analysis indicates that a regulation would have a significant adverse economic impact on a substantial number of small entities, then EPA must prepare a regulatory flexibility analysis.

The Agency has determined that this action would not have a significant adverse impact on a substantial number of small entities, and thus it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. Only two small entities are known to be affected by this rule. The entities are small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline versions. EPA contacted these businesses and discussed the proposed rule with them, identifying their concerns. The concerns they expressed prompted revisions to the rule, which are addressed elsewhere in the preamble. Rule revisions finalized by EPA are intended to minimize adverse impacts on the small entities affected by the rule.

C. Compliance With the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. 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 for any single year. Before promulgating a 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 that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that today's final rule represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The cost-benefit analysis required by the UMRA is discussed in Section IV.D. above and in the Draft RIA. See the ''Compliance with Executive Order 12866'' section in today's preamble (VII.A) for further information regarding these analyses.

As explained in section III.A.1 of this preamble, the 2004 heavy-duty diesel FTP standards reaffirmed in this final rule were established in the Agency's 1997 final rulemaking for heavy-duty diesels, and the 1997 rulemaking laid the ground work for this proposal. Today's final rule for HD diesel engines is simply a review of the appropriateness under the Clean Air Act of the standard finalized in 1997, including the need for and technical and economic feasibility of the standard based on information available in 1999. Therefore, today's final rule does not contain any further analysis of other, alternative FTP standards for heavy-duty diesel engines. The reader is directed to the rulemaking record for the 1997 rule, contained in EPA Air Docket A–95–27, for information on alternatives the Agency considered during that rulemaking.

The goal of EPA's heavy-duty compliance program is to ensure real-world emissions control over a broad range of in-use conditions, rather than just controlling emissions under certain laboratory conditions. The 1997 final rule that put new standards in place for heavy-duty diesel engines was based on the expectation that emission benefits would accrue from a broad range of driving conditions. The 1997 rule's projected emissions benefit, expected control technology, cost, and cost-effectiveness were derived with the belief that the engines would be meeting the standards in-use under typical operating conditions. Since 1997 it has become clear that manufacturers have substantially increased emissions during operation outside the bounds of the current federal test procedure.

In order to adequately control these ''off-cycle'' emissions, EPA evaluated whether new standards and test procedures were necessary or whether such emissions could be adequately addressed by continued reliance on the defeat device prohibition in addition to the FTP to ensure the emission reductions predicted by the standards are met during actual in-use operation. We evaluate in this final rule the necessity of the new supplemental requirements and explain the many significant drawbacks to relying wholly on the defeat device definition. In addition, given the level of emissions from heavy-duty diesel emissions prior to the consent decrees, the supplemental requirements achieve very large emission reductions and are very cost-effective requirements.

In addition, we considered and requested comment on alternatives for several aspects of the supplemental requirements, and in response to comments we have made a number of changes in this rule. For example, we requested comment on the appropriate ambient conditions (temperature, humidity, altitude) which should apply to the supplemental requirements, and in this rule we establish more limited conditions than were proposed.

Section 202(a)(3) of the Clean Air Act requires that EPA must set emission standards for heavy-duty engines to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology. As indicated above, EPA believes the standards reflect the greatest degree of emission reduction achievable by HD Otto-cycle engines in the 2004 model year and are cost-effective. EPA requested comment on the standards and alternatives.

The proposed rule included an analysis of alternative standards for HD Otto-cycle engines. We requested comment on a range of standards for HD Otto-cycle engines, and described in detail the alternative standard proposed by the engine manufacturers (see Chapter 3, Section III(H) of the RIA). As a consequence of discussions with engine manufacturers the final rule contains several options that manufacturers may select from, based on their own corporate requirements and issues. These options allow greater emission reductions to be achieved while providing a menu of emission reduction programs, thus allowing each manufacturer to select the least costly set of requirements based on their own individualized set of needs.

D. Compliance With the Paperwork Reduction Act

The information collection requirements in this final 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 (ICR) document has been prepared by EPA (ICR No. 1851.02) and a copy may be obtained from Sandy Farmer by mail at U.S. Environmental Protection Agency (2822), Office of Environmental Information, Collection Strategies Division, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* The following ICR document has been prepared by EPA:

EPA ICR # 1851.02.	Title: Non-road Compression-Ignition Engine At or Above 50 Kilowatts and On-road Heavy Duty Engine Application for Emission Certification, and Participation in the Averaging, Banking and Trading Program

The Agency will collect information related to certification results. This information will be used to ensure compliance with and enforce the provisions in this rule. Responses will be mandatory in order to complete the certification process. Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. EPA will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act.

This collection of information affects an estimated 66 respondents with a total of 459 responses per year and a total hour burden of 65,859 hours, for an estimated 143 hours per response, with estimated total annualized costs of $1,599,684 per year. The hours and annual cost of information collection activities by a given manufacturer depends on manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed 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, Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., 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 October 6, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by November 6, 2000.

E. Compliance With Executive Order 13045: Children's Health Protection

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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's final rule falls into that category only in part: risk considerations may be taken into account only to the extent the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impacts such a pollutant may have on children's health, in deciding how to take cost and other relevant factors into consideration.

This rulemaking will achieve important reductions of various emissions from heavy-duty trucks, primarily emissions of NO_X. The rulemaking also addresses NMHC and PM. These pollutants raise concerns about a disproportionately greater effect on children's health, such as impacts from ozone, PM, and certain toxic air pollutants. See section II of this rule and the RIA for a further discussion of these issues.

The effects of ozone and PM on children's health was addressed in detail in EPA's rulemaking to establish these NAAQS, and we are not revisiting those issues here. We also believe the emissions reductions from the strategies in today's rule will reduce air toxics and the related impacts on children's health. We are addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking, pursuant to section 202(l)(2) of the Act. Our proposed rule, which was signed July 14, 2000, proposes a list of 21 mobile source air toxics as well as standards to limit the amount of benzene in gasoline. It also sets out a Technical Analysis Plan whereby EPA will continue to conduct research and analysis and to revisit the need for and appropriateness of additional controls on toxic emissions from motor vehicles and fuels in a 2004 rulemaking.

In this final rule we have evaluated several regulatory strategies for reductions in these emissions from heavy-duty engines. For the reasons

described in this preamble, we believe that the strategies in today's rule are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, consistent with the Clean Air Act, the levels of control in today's rule are designed to achieve the greatest degree of reduction of emissions of these pollutants achievable through technology that will be available, taking cost and other factors into consideration.

F. Compliance With 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 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. The engine and vehicle standards, supplemental test requirements, on-board diagnostic requirements, and other related requirements for private businesses in today's rule would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's rule discussed in the other sections of this preamble are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's rule are all voluntary consensus standards. The motor vehicle emissions measurement standards referenced in today's rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of motor vehicle emissions. Therefore, the Agency is using the existing EPA-developed standards found in 40 CFR Part 86 for the measurement of motor vehicle emissions.

H. Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule adopts national emissions standards for certain categories of motor vehicles. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. In addition, EPA provided state and local

officials an opportunity to comment on the proposed regulations. A summary of concerns raised by commenters, including state and local commenters, and EPA's response to those concerns, is found in the Response to Comments document for this rulemaking.

Although this rule was proposed before the November 2, 1999 effective date of Executive Order 13132, EPA provided State and local officials notice and an opportunity for appropriate participation when it published the proposed rule, as described above. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

I. Compliance With the 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**. This rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

VIII. What Is EPA's Statutory Authority for This Action?

Section 202(a)(3) authorizes EPA to establish emission standards for heavy duty vehicles and engines.[53] These standards are to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply. EPA is to give appropriate consideration to cost, energy, and safety factors associated with the application of such technology. EPA may revise such regulations on the basis of information concerning the effects of emissions from these engines and vehicles and from other sources of mobile source related pollutants on the public health and welfare. Section 202(a)(3)(C) requires that promulgated standards apply for no less than three years and go into effect no less than 4 years after promulgation. Section 202(m) authorizes regulations requiring installation of on-board diagnostics systems for light-duty and heavy-duty vehicles and engines. Pursuant to sections 202(a)(1) and 202(d), these emission standards must be met throughout the entire useful life of the engine or vehicle as determined by EPA's regulations. If the Administrator determines that a substantial number of vehicles do not conform to emission standards when in actual use throughout their useful lives, section 207(c) of the Act requires EPA to make a determination of nonconformity. Section 208 of the Act requires manufacturers to perform tests (where not otherwise reasonably available), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer is acting in compliance with the Act and regulations thereunder. The remainder of section 202, as well as sections 203, 206, 207, 208, and 301, provide additional authority for promulgation of these regulations.

List of Subjects

40 CFR Part 85

Environmental projection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

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

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, 7554, and 7601(a).

Subpart F—[Amended]

2. Section 85.501 is revised to read as follows:

§ 85.501 General applicability.

(a) Sections 85.502 through 85.505 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

Subpart P—[Amended]

3. Section 85.1501 is amended by revising paragraph (c), to read as follows:

§ 85.1501 Applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

Subpart R—[Amended]

4. Section 85.1701 is amended by revising paragraph (c), to read as follows:

§ 85.1701 General applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

5. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

6. Section 86.1 is amended by adding entries in alphanumeric order to the table in paragraphs (b)(2) and (b)(5), to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(2) * * *

[53] 42 U.S.C. 7521(a)(3).

Document No. and name	40 CFR part 86 reference
* * * * * * *	
SAE J1939–11, December 1994, Physical Layer-250K bits/s, Shielded Twisted Pair	86.005–17; 86.1806–05
SAE J1939–13, July 1999, Off-Board Diagnostic Connector	86.005–17; 86.1806–05
SAE J1939–21, July 1994, Data Link Layer	86.005–17; 86.1806–05
* * * * * * *	
SAE J1939–31, December 1997, Network Layer	86.005–17; 86.1806–05
SAE J1939–71, May 1996, Vehicle Application Layer	86.005–17; 86.1806–05
SAE J1939–73, February 1996, Application Layer-Diagnostics	86.005–17; 86.1806–05
* * * * * * *	
SAE J1939–81, July 1997, Recommended Practice for Serial Control and Communications Vehicle Network—Part 81—Network Management.	86.005–17; 86.1806–05
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(5) * * *

Document No. and name	40 CFR part 86 reference
* * * * * * *	
ISO 14230–4:2000(E), June 1, 2000 Road Vehicles—Diagnostic Systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems.	86.005–17; 86.1806–05

Subpart A—[Amended]

7. A new § 86.000–15 is added to subpart A to read as follows:

§ 86.000–15 NO_X and particulate averaging, trading, and banking for heavy-duty engines.

Section 86.000–15 includes text that specifies requirements that differ from § 86.094–15 or § 86.098–15. Where a paragraph in § 86.094–15 or § 86.098–15 is identical and applicable to § 86.000–15, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.094–15.'' or ''[Reserved]. For guidance see § 86.098–15.''.

(a)(1) Heavy-duty engines eligible for NO_X and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. For manufacturers selecting Option 1 Otto-cycle engine standards contained in § 86.005–10(f)(1), the ABT program requirements in § 86.004–15 apply for 2003 model year Otto-cycle engines, rather than the provisions contained in this § 86.000–15. Participation in these programs is voluntary.

(a)(2) through (b) [Reserved] For guidance see § 86.094–15.

(c) [Reserved] For guidance see § 86.098–15.

(d) through (i) [Reserved] For guidance see § 86.094–15.

(j) *Optional program for early banking for diesel engines.* Provisions set forth in §§ 86.094–15 (a), (b), (d) through (i), and 86.098–15 (c) apply except as specifically stated otherwise in § 86.098–15 (j)(1) through (j)(3)(iii).

(j)(1) through (j)(3)(iii) [Reserved] For guidance see § 86.098–15.

(k) *Optional program for early banking for Otto-cycle engines.* Provisions set forth in §§ 86.094–15(a), (b), (d) through (i), and 86.098–15(c) apply except as specifically stated otherwise in this paragraph (k).

(1) To be eligible for the optional program described in this paragraph (k), the following must apply:

(i) Credits are generated from Otto-cycle heavy-duty engines which have been certified using certification durability demonstration procedures which meet the criteria contained in § 86.004–26 and with deterioration factors calculated in accordance with § 86.004–28.

(ii) During certification, the manufacturer shall declare its intent to include specific engine families in the program described in this paragraph. Separate declarations are required for each program and no engine families may be included in both programs in the same model year.

(2) *Credit generation and use.* (i) Credits shall only be generated by 2000 and later model year engine families.

(ii) Except as provided in paragraph (k)(2)(iii) of this section, credits generated under this paragraph (k) may only be used for 2003 and later model year heavy-duty Otto-cycle engines subject to NO_X or NO_X plus NMHC standards more stringent than 4.0 g/bhp-hr. When used with 2003 and later model year engines, NO_X credits may be used to meet an applicable NO_X plus NMHC standard, except as otherwise provided in § 86.004–10(a)(1)(i)(C).

(iii) If a manufacturer chooses to use credits generated under this paragraph (k) for engine families subject to the NO_X standard contained in § 86.098–10 (4.0 g/bhp-hr) the averaging, trading, and banking of such credits shall be governed by the program provided in §§ 86.094–15(a), (b), (d) through (i) and 86.098–15(c) and shall be subject to all discounting, credit life limits and all other provisions contained in §§ 86.094–15(a), (b), (d) through (i) and 86.098–15(c). In the case where the manufacturer can demonstrate that the credits were discounted under the program provided in this paragraph (k), that discount may be accounted for in the calculation of credits described in § 86.098–15(c).

(iv) For NO_X credits generated under this paragraph (k), a Std value of 2.0 grams per brake horsepower-hour shall be used in place of the current and applicable NO_X standard in the credit availability equation in § 86.098–15(c)(1).

(3) *Program flexibilities.* (i) NO_X credits that are banked under this paragraph (k) and not used as provided by paragraph (k)(2)(iii) of this section may be used without being forfeited due to credit age. The requirement in this paragraph (k)(3) applies instead of the requirements in § 86.094–15(f)(2)(i).

(ii) There are no regional category restraints for averaging, trading, and banking of credits generated under the program described in this paragraph (k) except if they are used under paragraph (k)(2)(iii) of this section. This applies instead of the regional category provisions described in the introductory text of § 86.094–15(d) and (e).

(iii) *Credit discounting.* (A) For NO_X credits generated under this paragraph (k) from engine families with NO_X FELs greater than 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 0.9 shall be used instead of 0.8 in the credit availability equation in § 86.098–15(c)(1).

(B) For NO_X credits generated under this paragraph (k) from engine families with NO_X FELs less than or equal to 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 1.0 shall be used in place of 0.8 in the credit availability equation in § 86.098–15 (c)(1).

(4) *2003 model year.* Manufacturers selecting Option 1, described in § 86.005–10(f)(1), may not generate or bank early credits under this paragraph (k) for the 2003 model year. Credit generation and banking provisions contained in § 86.004–15 apply for the 2003 model year.

(l) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in paragraph (j) or (k) of this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.098–10 or § 86.098–11, as applicable. For each engine family, the manufacturer may report engine sales in two categories, ''ABT-only credits'' and ''non-manufacturer-owned credits.''

(i) For engine sales reported as ''ABT-only credits'', the credits generated must be used solely in the ABT program described in this section.

(ii) The engine manufacturer may declare a portion of engine sales ''non-manufacturer-owned credits'' and this portion of the credits generated between the standard and the FEL, based on the calculation in § 86.098–15(c)(1), would belong to another party. For ABT, the manufacturer may not generate any credits for the engine sales reported as ''non-manufacturer-owned credits.'' Engines reported as ''non-manufacturer-owned credits'' shall comply with the FEL and the requirements of the ABT program in all other respects.

(2) Only manufacturer-owned credits reported as ''ABT-only credits'' shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in the ABT program may not be provided to an engine purchaser for use in another program.

(4) Manufacturers shall determine and state the number of engines sold as ''ABT-only credits'' and ''non-manufacturer-owned credits'' in the end-of-model year reports required under § 86.098–23.

8. Section 86.000–16 is amended by removing paragraphs (a) through (d) introductory text, adding paragraphs (a), (b), (c), and (d) introductory text, and revising paragraph (d)(1), to read as follows:

§ 86.000–16 Prohibition of defeat devices.

* * * * *

(a) No new light-duty vehicle, light-duty truck, heavy-duty vehicle, or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved]. For guidance see § 86.094–16.

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedure when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

* * * * *

9. Section 86.001–1 is amended by revising paragraph (b) to read as follows:

§ 86.001–1 General applicability.

* * * * *

(b) *Optional applicability.* (1) A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in subpart S of this part through the 2004 model year (through the 2003 model year for manufacturers choosing Otto-cycle HDE Option 2 in § 86.005–1(c)(2), or through the 2002 model year for manufacturers choosing Otto-cycle HDE Option 1 in § 86.005–1(c)(1)). Heavy-duty engine or vehicle provisions of this subpart A do not apply to such a vehicle.

(2) Beginning with the 2000 model year, a manufacturer may certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for Otto-cycle complete heavy-duty vehicles located in subpart S of this part for purposes of generating credits in the heavy-duty vehicle averaging, banking, and trading program contained in § 86.1817–05. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle.

* * * * *

10. Section 86.004–2 is amended by adding a new definition in alphabetical order, to read as follows:

§ 86.004–2 Definitions.

* * * * *

Defeat device means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the applicable Federal emission test procedure for heavy-duty vehicles and heavy-duty engines described in subpart N of this part;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

* * * * *

11. Section 86.004–11 is amended by adding introductory text, removing and reserving paragraph (a)(1)(i)(E), and revising paragraph (d), to read as follows:

§ 86.004–11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles.

This section applies to 2004 and later model year diesel HDEs.

(a) * * *

(1) * * *

(i) * * *

(E) [Reserved]

* * * * *

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of this section.

* * * * *

12. Section 86.004–15 is amended by:

a. Revising the section heading

b. Revising paragraph (a)(1).

c. Removing paragraph (a)(2)(iii).

d. Revising paragraphs (b) introductory text, (b)(1)(i), and (b)(1)(ii).

e. Revising paragraphs (c)(1) introductory text and (c)(1)(iii).

f. Revising paragraphs (d) heading, (d) introductory text and (d)(1).

g. Revising the heading for paragraph (f), and revising paragraphs (f)(1)(i), (f)(2)(i), (f)(2)(ii), (f)(3)(ii), and (f)(3)(iii).

h. Adding paragraph (f)(3)(iv).

i. Revising paragraphs (g)(1), (g)(2), and(g)(4).

j. Revising paragraphs (j) introductory text and (j)(1) introductory text.

k. Revising the heading and introductory text of paragraph (k).

l. Adding paragraph (l).

The revisions and additions read as follows:

§ 86.004–15 NO_X plus NMHC and particulate averaging, trading, and banking for heavy-duty engines.

(a)(1) Heavy-duty engines eligible for NO_X plus NMHC and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. For manufacturers not selecting Options 1 or 2 contained in § 86.005–10(f), the ABT program requirements contained in § 86.000–15 apply for 2004 model year Otto-cycle engines, rather than the provisions contained in this § 86.004–15. Participation in these programs is voluntary.

* * * * *

(b) Participation in the NO_X plus NMHC and/or particulate averaging, trading, and banking programs shall be done as follows:

(1) * * *

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (*i.e.*, NO_X plus NMHC, and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these two programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower-hour for NO_X plus NMHC emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine NO_X plus NMHC and particulate emission standards.

* * * * *

(c)(1) For each participating engine family, NO_X plus NMHC, and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a (incorporated by reference at § 86.1), to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

* * * * *

(iii) For purposes of the equation in paragraphs (c)(1)(i) and (ii) of this section:

Std = the current and applicable heavy-duty engine NO_X plus NMHC or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the NO_X plus NMHC, or particulate family emission limit for the engine family in grams per brake horsepower hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life described in § 86.004–2, or alternative life as described in § 86.004–21(f), for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount = a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraphs (k) and (l) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

* * * * *

(d) *Averaging sets for NO_X plus NMHC emission credits.* The averaging and trading of NO_X plus NMHC emission credits will only be allowed between heavy-duty engine families in the same averaging set. The averaging sets for the averaging and trading of NO_X plus NMHC emission credits for heavy-duty engines are defined as follows:

(1) For NO_X+NMHC credits from Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Otto-cycle heavy-duty vehicles certified under the chassis-based provisions of Subpart S of this Part may not average or trade with heavy-duty Otto-cycle engines except as allowed in § 86.1817–05(o).

* * * * *

(f) *Banking of NO_X plus NMHC, and particulate emission credits.* (1) * * * (i) NO_X plus NMHC, and particulate emission credits may be banked from engine families produced in any model year.

* * * * *

(2) * * * (i) NO_X plus NMHC and particulate credits generated in 2004 and later model years do not expire. NO_X plus NMHC credits generated by Otto-cycle engines in the 2003 model year for manufacturers selecting Option 1 contained in § 86.005–10(f)(1) also do not expire.

(ii) Manufacturers withdrawing banked NO_X plus NMHC, and/or particulate credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) * * *

(ii) Banked credits may not be used for NO_X plus NMHC or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(iii) NO_X credits banked under paragraph § 86.098–15(j) or § 86.000–15(k) may be used in place of NO_X plus NMHC credits in 2004 and later model years provided that they are used in the correct averaging set. NO_X credits banked under paragraph § 86.000–15(k) may also be used in place of NO_X plus NMHC credits in the 2003 model year for manufacturers selecting Option 1 contained in § 86.005–10(f)(1), provided that they are used in the correct averaging set.

(iv) Except for early credits banked under § 86.000–15(k), NO_X credits

banked in accordance with § 86.000–15 may not be used to meet the Otto-cycle engine standards contained in § 86.005–10.

(g)(1) This paragraph (g) assumes NO_X plus NMHC, and particulate nonconformance penalties (NCPs) will be available for the 2004 and later model year HDEs.

(2) Engine families using NO_X plus NMHC and/or particulate NCPs but not involved in averaging:

(i) May not generate NO_X plus NMHC or particulate credits for banking and trading.

(ii) May not use NO_X plus NMHC or particulate credits from banking and trading.

* * * * *

(4) If a manufacturer has any engine family in a given averaging set which is using NO_X plus NMHC and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

* * * * *

(j) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.005–10 or § 86.004–11. For each engine family, the manufacturer may report engine sales in two categories, ''ABT-only credits'' and ''nonmanufacturer-owned credits''.

* * * * *

(k) *Additional flexibility for diesel-cycle engines.* If a diesel-cycle engine family meets the conditions of either paragraph (k)(1) or (2) of this section, a Discount of 1.0 may be used in the trading and banking calculation, for both NO_X plus NMHC and for particulate, described in paragraph (c)(1) of this section.

* * * * *

(l) *Additional flexibility for Otto-cycle engines.* If an Otto-cycle engine family meets the conditions of paragraph (l)(1) or (2) of this section, a discount of 1.0 may be used in the trading and banking credits calculation for NO_X plus NMHC described in paragraph (c)(1) of this section, as follows:

(1) The engine family has a FEL of 0.5 g/bhp-hr NO_X plus NMHC or lower;

(2) All of the following conditions are met:

(i) For first three consecutive model years that the engine family is certified to a NO_X plus NMHC standard contained in § 86.005–10;

(ii) The engine family is certified using carry-over data from an engine family which was used to generate early NO_X credits per § 86.000–15(k) where the sum of the NO_X FEL plus the HC (or hydrocarbon equivalent where applicable) certification level is below 1.0 g/bhp–hr.

13. Section 86.004–16 is added to subpart A to read as follows:

§ 86.004–16 Prohibition of defeat devices.

(a) No new heavy-duty vehicle or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved].

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) *General.* The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that reduce emission control effectiveness exhibited during the Federal emissions test procedures, described in subpart N of this part, when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use, unless one of the specific exceptions set forth in the definition of ''defeat device'' in § 86.004–2 has been met.

(2) *Information submissions required.* The manufacturer will provide an explanation containing detailed information (including information which the Administrator may request to be submitted) regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure described in subpart N of this part.

14. Section 86.004–21 is amended by adding paragraphs (m) and (n), to read as follows:

§ 86.004–21 Application for certification.

* * * * *

(m) For model years 2004 through 2007, within 180 days after submission of the application for certification of a heavy-duty diesel engine, the manufacturer must provide emission test results from the Load Response Test conducted according to § 86.1380–2004, including, at a minimum, test results conducted at each of the speeds identified in § 86.1380–2004. Load Response Test data submissions are not necessary for carry-over engine families for which Load Response Test data has been previously submitted. In addition, upon approval of the Administrator, manufacturers may carry Load Response Test data across from one engine family to other engine families, provided that the carry-across engine families use similar emission control technology hardware which would be expected to result in the generation of similar emission data when run over the Load Response Test.

(n) Upon request from EPA, a manufacturer must provide to EPA any hardware (including scan tools), passwords, and/or documentation necessary for EPA to read, interpret, and store (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in any way to emission control devices and auxiliary emission control devices, provided that such hardware, passwords, or documentation exists and is not otherwise commercially available. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read, interpret, and store information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in miles per hour or kilometers per hour. This paragraph (n) does not restrict EPA authority to take any action authorized by section 208 of the Clean Air Act.

15. A new § 86.004–26 is added to Subpart A, to read as follows:

§ 86.004–26 Mileage and service accumulation; emission measurements.

Section 86.004–26 includes text that specifies requirements that differ from

§ 86.094–26, § 86.095–26, § 86.096–26, § 86.098–26, § 86.000–26, or § 86.001–26. Where a paragraph in § 86.094–26, § 86.095–26, § 86.096–26, § 86.098–26, § 86.000–26 or § 86.001–26 is identical and applicable to § 86.004–26, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.094–26.'' or [Reserved]. For guidance see § 86.095–26.'' or ''[Reserved]. For guidance see § 86.096–26.'' or ''[Reserved]. For guidance see § 86.098–26.'' or ''[Reserved]. For guidance see § 86.000–26.'' or ''[Reserved]. For guidance see § 86.001–26.''.

(a)(1) [Reserved]. For guidance see § 86.094–26.

(a)(2) through (a)(3)(i)(A) [Reserved]. For guidance see § 86.000–26.

(a)(3)(i)(B) [Reserved]. For guidance see § 86.094–26.

(a)(3)(i)(C) [Reserved]. For guidance see § 86.098–26.

(a)(3)(i)(D) through (a)(3)(ii)(B) [Reserved]. For guidance see § 86.094–26.

(a)(3)(ii)(C) [Reserved]. For guidance see § 86.098–26.

(a)(3)(ii)(D) through (a)(4)(i)(B)(*4*) [Reserved]. For guidance see § 86.094–26.

(a)(4)(i)(C) [Reserved]. For guidance see § 86.000–26.

(a)(4)(i)(D) through (a)(6)(ii) [Reserved]. For guidance see § 86.094–26.

(a)(6)(iii) [Reserved]. For guidance see § 86.000–26.

(a)(7) through (a)(9)(i) [Reserved]. For guidance see § 86.094–26.

(a)(9)(ii) [Reserved]. For guidance see § 86.000–26.

(a)(9)(iii) through (b)(2) introductory text [Reserved]. For guidance see § 86.094–26.

(b)(2)(i) through (b)(2)(ii) [Reserved]. For guidance see § 86.000–26.

(b)(2)(iii) [Reserved]. For guidance see § 86.094–26.

(b)(2)(iv) [Reserved]. For guidance see § 86.001–26.

(b)(3) through (b)(4)(i)(B) [Reserved]. For guidance see § 86.094–26.

(b)(4)(i)(C) [Reserved]. For guidance see § 86.001–26.

(b)(4)(i)(D) through (b)(4)(ii)(B) [Reserved]. For guidance see § 86.095–26.

(b)(4)(ii)(C) [Reserved]. For guidance see § 86.001–26.

(b)(4)(ii)(D) [Reserved]. For guidance see § 86.095–26.

(b)(4)(iii) [Reserved]

(b)(4)(iv) [Reserved]. For guidance see § 86.094–26.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) Two types of service accumulation are applicable to heavy-duty engines, as described in paragraphs (c)(2)(i) and (ii) of this section. For Otto-cycle heavy-duty engines exhaust emissions, the service accumulation method used by a manufacturer must be designed to effectively predict the deterioration of emissions in actual use over the full useful life of the of the candidate in-use vehicles and must cover the breadth of the manufacturer's product line that will be covered by the durability procedure. Manufacturers not selecting Options 1 or 2 described in § 86.005–10(f) may certify Otto-cycle engines using the provisions contained in § 86.094–26(c)(2) rather than those contained in this paragraph (c)(2) for 2004 model year engine families certified using carry-over durability data, except for those engines used for early credit banking as allowed in § 86.000–15(k).

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.094–24(c)(3)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission data engines selected under § 86.094–24(b)(2) or (3). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(3) Exhaust emission deterioration factors will be determined on the basis of the service accumulation described in § 86.000–26(b)(2)(i) and related testing, according to the manufacturer's procedures.

(c)(4) [Reserved]. For guidance see § 86.096–26.

(d)(1) through (d)(2)(i) [Reserved]. For guidance see § 86.094–26.

(d)(2)(ii) [Reserved]. For guidance see § 86.000–26.

(d)(3) [Reserved]. For guidance see § 86.094–26.

(d)(4) and (5) [Reserved].

(d)(6) [Reserved]. For guidance see § 86.094–26.

16. Section 86.004–28 is amended by revising paragraph (c)(4)(iii)(A)(*2*) and adding paragraph (c)(4)(iii)(A)(*3*) to read as follows:

§ 86.004–28 Compliance with emissions standards.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(A) * * *

(*2*) Otto-cycle HDEs utilizing aftertreatment technology (*e.g.*, catalytic converters). For transient NMHC (NMHCE), CO, NO_X, and for idle CO, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor, except as otherwise provided in paragraph (c)(4)(iii)(A)(*3*) of this section. The deterioration factor must be calculated by dividing the exhaust emissions at full useful life by the stabilized mileage emission level (reference § 86.096–26(c)(4), *e.g.*, 125 hours). However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for purposes of this paragraph (c)(4)(iii)(A)(*2*).

(*3*) An Otto-cycle heavy-duty engine manufacturer who believes that a deterioration factor derived using the calculation methodology described in paragraph (c)(4)(iii)(4)(A)(*2*) of this section are significantly unrepresentative for one or more engine families (either too high or too low) may petition the Administrator to allow for the use of an additive rather than a multiplicative deterioration factor. This petition must include full rationale behind the request together with any supporting data or other evidence. Based on this or other information the Administration may allow for an alternative procedure. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation. Manufacturers using an additive deterioration factor under this paragraph (c)(4)(iii)(A)(*3*) must perform in-use verification testing to determine if the additive deterioration factor reasonably predicts actual in-use emissions. The plan for the in-use verification testing must be approved by the Administrator as part of the approval process described in this paragraph (c)(4)(iii)(4)(A)(*3*) prior to the use of the additive deterioration factor. The Administrator may consider the results of the in-use verification testing both in certification and in-use compliance programs.

* * * * *

17. Section 86.004–30 is amended by removing paragraphs (f) introductory text through (f)(3) and (f)(4) and by adding new paragraph (f), to read as follows:

§ 86.004–30 Certification.

* * * * *

(f) For engine families required to have an OBD system, certification will

not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle.* A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC+NO_X standard or FEL above the NMHC+NO_X emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If monitored for emissions performance—a catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM.

(B) If monitored for performance—a particulate trap is replaced with a trap that has catastrophically failed, or an electronic simulation of such.

(2)(i) *Otto-cycle.* An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC+NO_X or CO.

(ii) *Diesel.* An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or CO.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related engine system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+NO_X, CO or PM.

(6) A malfunction condition is induced in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

18. A new § 86.005–1 is added to subpart A to read as follows:

§ 86.005–1 General applicability.

Section 86.005–1 includes text that specifies requirements that differ from § 86.001–1. Where a paragraph in § 86.001–1 is identical and applicable to § 86.005–1, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.001–1.''.

(a) *Applicability.* The provisions of this subpart generally apply to 2005 and later model year new Otto-cycle heavy-duty engines used in incomplete vehicles and vehicles above 14,000 pounds GVWR and 2005 and later model year new diesel-cycle heavy-duty engines. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart continue to generally apply to 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty vehicles, 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty trucks, and 2004 and earlier model year new Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR. Provisions generally applicable to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles, 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks, and 2005 and later model year Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR are located in subpart S of this part.

(b) *Optional applicability.* (1) A manufacturer may request to certify any 2003 or 2004 model year heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in subpart S of this part. Heavy-duty engine or vehicle provisions of this subpart A do not apply to such a vehicle. This option is not available in the 2003 model year for manufacturers choosing Otto-cycle HDE option 1 in paragraph (c)(1) of this section, or in the 2004 model year for manufacturers choosing Otto-cycle HDE option 2 in paragraph (c)(2) of this section.

(2) For 2005 and later model years, a manufacturer may request to certify any incomplete Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for Otto-cycle complete heavy-duty vehicles located in subpart S of this part. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle. This option is available starting with the 2003 model year to manufacturers choosing Otto-cycle HDE option 1 in paragraph (c)(1) of this section. This option is available starting with the 2004 model year to manufacturers choosing Otto-cycle HDE option 2 in paragraph (c)(1) of this section.

(c) *Otto-cycle heavy-duty engines and vehicles.* The manufacturer must select one of the three options for Otto-cycle heavy-duty engines and vehicles in paragraphs (c)(1) through (c)(3) of this section. The emission standards and other requirements that apply under a given option shall apply to all Otto-cycle heavy-duty engines and vehicles certified by the manufacturer (*e.g.*, a manufacturer may not select one option for certain engine families and the other option for other engine families). The requirements under each option shall remain effective, once selected, for subsequent model years, until superceded or otherwise revised by the Administrator (*e.g.*, a manufacturer may not select one option prior to the 2004 model year and change to another option in the 2006 model year). The complete requirements under each option are contained in subparts A and S of this part.

(1) *Otto-cycle HDE Option 1.* The following requirements apply to Otto-cycle heavy-duty engines and vehicles certified by manufacturers selecting this option:

(i) Emission standards for 2003 and later model year Otto-cycle heavy-duty engines, according to the provisions of § 86.005–10(f)(1).

(ii) Emission standards for 2003 and later model year Otto-cycle complete heavy-duty vehicles, according to the provisions of § 86.1816–05, except that, for 2003 through 2006 model year Otto-cycle complete heavy-duty vehicles, manufacturers may optionally comply with the standards in either 86.005–10 or 86.1816–05.

(iii) Averaging, banking, and trading provisions that allow transfer of credits between a manufacturer's complete vehicle averaging set and their heavy-duty Otto-cycle engine averaging set, according to the provisions of § 86.1817–05(o).

(iv) On-board diagnostics requirements effective starting with the 2004 model year for Otto-cycle engines and complete vehicles, according to the provisions of §§ 86.005–17 and 86.1806–05.

(v) Refueling emissions requirements effective starting with the 2004 model year for Otto-cycle complete vehicles, according to the provisions of §§ 86.1810–01 and 86.1816–05.

(2) *Otto-cycle HDE Option 2.* The following requirements apply to Otto-cycle heavy-duty engines and vehicles certified by manufacturers selecting this option:

(i) Emission standards for 2004 and later model year Otto-cycle heavy-duty engines, according to the provisions of § 86.005–10(f)(2).

(ii) Emission standards for 2004 and later model year Otto-cycle complete heavy-duty vehicles, according to the provisions of § 86.1816–05.

(iii) Averaging, banking, and trading provisions that allow transfer of credits between a manufacturer's complete vehicle averaging set and their heavy-duty Otto-cycle engine averaging set, according to the provisions of § 86.1817–05(o).

(iv) On-board diagnostics requirements effective starting with the 2004 model year for Otto-cycle engines and complete vehicles, according to the provisions of §§ 86.005–17 and 86.1806–05.

(v) Refueling emissions requirements effective starting with the 2004 model year for Otto-cycle complete vehicles, according to the provisions of §§ 86.1810–01 and 86.1816–05.

(3) *Otto-cycle HDE Option 3.* The following requirements apply to Otto-cycle heavy-duty engines and vehicles certified by manufacturers that do not select one of the options for 2003 or 2004 model year compliance in paragraph (c)(1) or (c)(2) of this section:

(i) Emission standards for 2005 and later model year Otto-cycle heavy-duty engines, according to the provisions of § 86.005–10.

(ii) Emission standards for 2005 and later model year Otto-cycle complete heavy-duty vehicles, according to the provisions of § 86.1816–05.

(iii) On-board diagnostics requirements effective starting with the 2005 model year for Otto-cycle engines and complete vehicles, according to the provisions of §§ 86.005–17 and 86.1806–05.

(iv) Refueling emissions requirements effective starting with the 2005 model year for Otto-cycle complete vehicles, according to the provisions of §§ 86.1810–01 and 86.1816–05.

(v) Manufacturers selecting this option may exempt 2005 model year Otto-cycle heavy-duty engines and vehicles whose model year commences before July 31, 2004 from the requirements in paragraphs (c)(3)(i) through (iv) of this section.

(vi) For 2005 model year engines or vehicles exempted under paragraph (c)(3)(v) of this section, a manufacturer shall certify such Otto-cycle heavy-duty engines and vehicles to all requirements in this subpart applicable to 2004 model year Otto-cycle heavy-duty engines. The averaging, banking, and trading provisions contained in § 86.000–15 remain effective for these engines.

(d) [Reserved].

(e) through (f) [Reserved]. For guidance see § 86.001–1.

19. A new § 86.005–10 is added to subpart A to read as follows:

§ 86.005–10 Emission standards for 2005 and later model year Otto-cycle heavy-duty engines and vehicles.

Section 86.005–10 includes text that specifies requirements that differ from § 86.098–10 or § 86.099–10. Where a paragraph in § 86.098–10 or § 86.099–10 is identical and applicable to § 86.005–10, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.098–10.'' or ''[Reserved]. For guidance see § 86.099–10.''.

(a)(1) Exhaust emissions from new 2005 and later model year Otto-cycle HDEs, except for Otto-cycle HDEs subject to the alternative standards in paragraph (f) of this section, shall not exceed:

(i)(A) *Oxides of Nitrogen plus Non-methane Hydrocarbons (NO_X + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(B) *Oxides of Nitrogen plus Non-methane HydrocarbonEquivalent (NO_X + NMHCE) for engines fueled with methanol.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(C) A manufacturer may elect to include any or all of its Otto-cycle HDE families in any or all of the emissions ABT programs for HDEs, within the restrictions described in § 86.098–15. If the manufacturer elects to include engine families in any of these programs, the NO_X plus NMHC (or NO_X plus NMHCE for methanol-fueled engines) FELs may not exceed 4.5 grams per brake horsepower-hour (1.7 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Carbon monoxide for engines intended for use in all vehicles, except as provided in paragraph (a)(3) of this section.* 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide for engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds.* 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(C) *Idle carbon monoxide.* For all Otto-cycle HDEs utilizing aftertreatment technology: 0.50 percent of exhaust gas flow at curb idle.

(2) The standards set forth in paragraphs (a)(1) and (f) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part.

(3)(i) A manufacturer may certify one or more Otto-cycle HDE configurations intended for use in all vehicles to the emission standard set forth in paragraph (a)(1)(ii)(B) of this section: Provided, that the total model year sales of such configuration(s), segregated by fuel type, being certified to the emission standard in paragraph (a)(1)(ii)(B) of this section represent no more than five percent of total model year sales of each fuel type Otto-cycle HDE intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraph (a)(1)(ii)(B) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in § 86.099–10(b)(1)(i), (b)(2)(i) and (b)(3)(i).

(4) The manufacturer may exempt 2005 model year HDE engine families whose model year begins before July, 31, 2004 from the requirements in this paragraph (a). Exempted engine families shall be subject to the requirements in § 86.099–10.

(b) [Reserved]. For guidance see § 86.099–10.

(c) [Reserved]. For guidance see § 86.098–10.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of this section.

(e) [Reserved]. For guidance see § 86.099–10.

(f) *Alternative exhaust emission standards.* In lieu of the exhaust emission standards in paragraph (a)(1)(i)(A) or (B) of this section, the

manufacturer may select the standards and provisions in either paragraph (f)(1) or (f)(2) of this section.

(1) *Otto-cycle HDE Option 1.* The alternative exhaust emission standards in this paragraph (f)(1) shall apply to new 2003 through 2007 model year Otto-cycle HDEs and, at the manufacturers option, to new 2003 through 2006 model year Otto-cycle complete heavy-duty vehicles less than or equal to 14,000 pounds GVWR.

(i) *Oxides of Nitrogen plus Non-methane Hydrocarbons (NO_X + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

(ii) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent (NO_X + NMHCE) for engines fueled with methanol.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

(2) *Otto-cycle HDE Option 2.* The alternative exhaust emission standards in this paragraph (f)(2) shall apply to new 2004 through 2007 model year Otto-cycle HDEs.

(i) *Oxides of Nitrogen plus Non-methane Hydrocarbons ($NO,_X$ + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

(ii) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent (NO_X + NMHCE) for engines fueled with methanol.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

20. Section 86.005–17 is added to subpart A, to read as follows:

§ 86.005–17 On-board diagnostics.

(a) *General.* (1) All heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related engine systems or components during the applicable useful life. Heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must meet the OBD requirements of this section according to the phase-in schedule in paragraph (k) of this section. All monitored systems and components must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in Appendix I, paragraph (f), of this part, or similar trip as approved by the Administrator.

(2) An OBD system demonstrated to fully meet the requirements in § 86.1806–05 may be used to meet the requirements of this section, provided that the Administrator finds that a manufacturer's decision to use the flexibility in this paragraph (a)(2) is based on good engineering judgement.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related engine systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart N of this part (engine-based test procedures) excluding the test procedure referred to as the ''Supplemental steady-state test; test cycle and procedures'' contained in § 86.1360–2007, and excluding the test procedure referred to as the ''Not-To-Exceed Test Procedure'' contained in § 86.1370–2007, and excluding the test procedure referred to as the ''Load Response Test'' contained in § 86.1380–2004.

(1) *Catalysts and particulate traps.* (i) *Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC+NO_X standard or FEL, as compared to the NMHC+NO_X emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If equipped, catalyst deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM. This requirement applies only to reduction catalysts; monitoring of oxidation catalysts is not required. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold.

(B) If equipped with a particulate trap, catastrophic failure of the device must be detected. Any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM must be monitored. This monitoring need not be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

(2) *Engine Misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or CO; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or CO.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. Where fuel tank capacity is greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+NO_X, CO or diesel PM. For engines equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph (b)(5) provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For engines equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related engine components.* Any other deterioration or malfunction occurring in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph (b)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input

components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display ''Check Engine,'' ''Service Engine Soon,'' a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. More than one general purpose malfunction indicator light for emission-related problems should not be used; separate specific purpose warning lights (*e.g.,* brake system, fasten seat belt, oil pressure, *etc.*) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (*i.e.,* operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the ''key-on'' position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, *i.e.,* three to six driving cycles would be considered acceptable.

(e) *Storing of computer codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (*i.e.,* MIL commanded ''ON,'' MIL commanded ''OFF'').

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel engines only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further engine operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (*e.g.,* misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to ''not ready'' status upon key-on or key-off; intentional setting of readiness codes to ''not ready'' status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (*i.e.,* more than one) due to the continued presence of extreme operating conditions (*e.g.,* ambient temperatures below 40 °F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to ''ready'' status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, ''freeze frame'' engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with

paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 ''Class B Data Communication Network Interface,'' (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 ''E/E Diagnostic Test Modes,'' (July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 ''Recommended Practices for Diagnostic Trouble Code Definitions,'' (July 1996).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 ''Diagnostic Connector,'' (January 1995).

(v) As an alternative to the above standards, heavy-duty engines may conform to the specifications of the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81).

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4 ''Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems'' may also be used as an alternative to SAE J1850.

(i) *Deficiencies and alternate fueled engines.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor (''major'' diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled engines. For alternate fueled heavy-duty engines (*e.g.* natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2006 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, alternate fuel engines must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBD II compliance option.* For heavy-duty engines at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code section 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code section 1968.1(b)(1.1.2) for diesel engines does not apply, and compliance with California Code sections 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code sections 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Phase-in for heavy-duty engines.* Manufacturers of heavy-duty engines must comply with the OBD requirements in this section according to the phase-in schedule in this paragraph (k), based on the percentage of projected engine sales within each category. The 2004 model year requirements in the phase-in schedule in this paragraph (k) are applicable only to heavy-duty Otto-cycle engines where the manufacturer has selected Otto-cycle Option 1 for alternative 2004 compliance according to § 86.005–1 (c)(2). The 2005 through 2007 requirements in the phase-in schedule in this paragraph (k) apply to all heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less. Manufacturers

may exempt 2005 model year diesel heavy-duty engines and 2005 model year Otto-cycle heavy-duty engines and vehicles if the manufacturer has selected Otto-cycle Option 3 whose model year commences before July 31, 2004 from the requirements of this section. For the purposes of calculating compliance with the phase-in provisions of this paragraph (k), heavy-duty engines may be combined with heavy-duty vehicles subject to the phase-in requirements of paragraph § 86.1806–04(l). The phase-in schedule follows:

OBD COMPLIANCE PHASE-IN FOR HEAVY-DUTY ENGINES INTENDED FOR USE IN A HEAVY-DUTY VEHICLE WEIGHING 14,000 POUNDS GVWR OR LESS

Model year	Phase-in based on projected sales
2004 MY	—applicable only to Otto-cycle engines complying with Options 1 or 2. —40% compliance. —alternative fuel waivers available.
2005 MY	—60% compliance. —alternative fuel waivers available.
2006 MY	—80% compliance. —alternative fuel waivers available.
2007 + MY ..	—100% compliance.

21. A new § 86.007–11 is added to subpart A, to read as follows:

§ 86.007–11 Emission standards and supplemental requirements for 2007 and later model year diesel heavy-duty engines and vehicles.

This section applies to new 2007 and later model year diesel HDEs. Section 86.007–11 includes text that specifies requirements that differ from § 86.004–11. Where a paragraph in § 86.004–11 is identical and applicable to § 86.007–11, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.004–11.''.

(a) through (a)(2) [Reserved]. For guidance see § 86.004–11.

(a)(3)(i) The weighted average exhaust emissions, as determined under § 86.1360–2007(e)(5) pertaining to the supplemental steady-state test cycle, for each regulated pollutant shall not exceed 1.0 times the applicable emission standards or FELs specified in § 86.004–11(a)(1).

(ii) Gaseous exhaust emissions shall not exceed the steady-state interpolated values determined by the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360–2007(f), when the engine is operated in the steady-state control area defined under § 86.1360–2007(d), during steady-state engine operation.

(4)(i) The brake-specific exhaust emissions in grams/bhp-hr, as determined under § 86.1370–2007 pertaining to the not-to-exceed test procedures, for each regulated pollutant shall not exceed 1.25 times the applicable emission standards or FELs specified in § 86.004–11(a)(1) during engine and vehicle operation specified in paragraph (a)(4)(ii) of this section, except as noted in paragraph (a)(4)(iii) of this section.

(ii) For each engine family, the not-to-exceed emission limits must apply during one of the following two ambient operating regions:

(A) The not-to-exceed limits apply for all altitudes less than or equal to 5,500 feet above sea-level, during all ambient conditions (temperature and humidity). Temperature and humidity ranges for which correction factors are allowed are specified in § 86.1370–2007(e); or

(B)(*1*) The not-to-exceed emission limits apply at all altitudes less than or equal to 5,500 feet above sea-level, for temperatures less than or equal to the temperature determined by the following equation at the specified altitude:

$$T = -0.00254 \times A + 100$$

Where:

T = ambient air temperature in degrees Fahrenheit.

A = altitude in feet above sea-level (A is negative for altitudes below sea-level).

(*2*) Temperature and humidity ranges for which correction factors are allowed are specified in § 86.1370–2007(e);

(iii) For engines equipped with exhaust gas recirculation, the not-to-exceed emission limits specified in paragraph (a)(4)(i) of this section do not apply to engine or vehicle operation during cold operating conditions as specified in § 86.1370–2007(f).

(iv) *Deficiencies for NTE emission standards.* (A) For model years 2007 through 2009, upon application by the manufacturer, the Administrator may accept a HDDE as compliant with the NTE standards even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: Technical feasibility of the given hardware and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Deficiencies will be approved on a engine model and/or horsepower rating basis within an engine family, and each approval is applicable for a single model year. A manufacturer's application must include a description of the auxiliary emission control device(s) which will be used to maintain emissions to the lowest practical level, considering the deficiency being requested, if applicable. An application for a deficiency must be made during the certification process; no deficiency will be granted to retroactively cover engines already certified.

(B) Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. The NTE deficiency should only be seen as an allowance for minor deviations from the NTE requirements. The NTE deficiency provisions allow a manufacturer to apply for relief from the NTE emission requirements under limited conditions. EPA expects that manufacturers should have the necessary functioning emission control hardware in place to comply with the NTE.

(b)(1) introductory text through (b)(1)(iii) [Reserved]. For guidance see § 86.004–11.

(b)(1)(iv) Operation within the NTE zone (defined in § 86.1370–2007) must comply with a filter smoke number of 1.0 under steady-state operation, or the following alternate opacity limits:

(A) A 30 second transient test average opacity limit of 4% for a 5 inch path; and

(B) A 10 second steady state test average opacity limit of 4% for a 5 inch path.

(2)(i) The standards set forth in § 86.004–11 (b)(1)(i) through (iii) refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(ii) The standards set forth in paragraph (b)(1)(iv) of this section refer to exhaust smoke emissions generated under the conditions set forth in § 86.1370–2007 and calculated in accordance with the procedures set forth in § 86.1372–2007.

(b)(3) through (d) [Reserved]. For guidance see § 86.004–11.

22. A new § 86.007–21 is added to Subpart A, to read as follows:

§ 86.007–21 Application for certification.

Section 86.007–21 includes text that specifies requirements that differ from § 86.004–21, 86.094–21 or 86.096–21. Where a paragraph in § 86.004–21, 86.094–21 or 86.096–21 is identical and applicable to § 86.007–21, this may be

indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.004–21.'', ''[Reserved]. For guidance see § 86.094–21.'', or ''[Reserved]. For guidance see § 86.096–21.''.

(a) through (b)(3) [Reserved]. For guidance see § 86.094–21.

(b)(4)(i) [Reserved]. For guidance see § 86.004–21.

(b)(4)(ii) through (b)(5)(iv) [Reserved]. For guidance see § 86.094–21.

(b)(5)(v) through (b)(6) [Reserved]. For guidance see § 86.004–21.

(b)(7) and (b)(8) [Reserved]. For guidance see § 86.094–21.

(b)(9) and (b)(10) [Reserved]. For guidance see § 86.004–21.

(c) through (j) [Reserved]. For guidance see § 86.094–21.

(k) and (l) [Reserved]. For guidance see § 86.096–21.

(m) and (n) [Reserved]. For guidance see § 86.004–21.

(o) For diesel heavy-duty engines, the manufacturer must provide the following additional information pertaining to the supplemental steady-state test conducted under § 86.1360–2007:

(1) Weighted brake-specific emissions data (*i.e.,* in units of g/bhp-hr), calculated according to § 86.1360–2007(e)(5), for all pollutants for which an emission standard is established in § 86.004–11(a);

(2) Brake specific gaseous emission data for each of the 13 test points (identified under § 86.1360–2007(b)(1)) and the 3 EPA-selected test points (identified under § 86.1360–2007(b)(2));

(3) Concentrations and mass flow rates of all regulated gaseous emissions plus carbon dioxide;

(4) Values of all emission-related engine control variables at each test point;

(5) Weighted break-specific particulate matter (*i.e.,* in units of g/bhp-hr);

(6) A statement that the test results correspond to the maximum NO_X producing condition specified in § 86.1360–2007(e)(4). The manufacturer also must maintain records at the manufacturer's facility which contain all test data, engineering analyses, and other information which provides the basis for this statement, where such information exists. The manufacturer must provide such information to the Administrator upon request;

(7) A statement that the engines will comply with the weighted average emissions standard and interpolated values comply with the Maximum Allowable Emission Limits specified in § 86.007–11(a)(3) for the useful life of the engine. The manufacturer also must maintain records at the manufacturer's facility which contain a detailed description of all test data, engineering analyses, and other information which provides the basis for this statement, where such information exists. The manufacturer must provide such information to the Administrator upon request.

(p)(1) The manufacturer must provide a statement in the application for certification that the diesel heavy-duty engine for which certification is being requested will comply with the applicable Not-To-Exceed Limits specified in § 86.007–11(a)(4) when operated under all conditions which may reasonably be expected to be encountered in normal vehicle operation and use. The manufacturer also must maintain records at the manufacturers facility which contain all test data, engineering analyses, and other information which provides the basis for this statement, where such information exists. The manufacturer must provide such information to the Administrator upon request.

(2) For engines equipped with exhaust gas recirculation, the manufacturer must provide a detailed description of the control system the engine will use to comply with the requirements of § 86.007–11(a)(4)(iii) and § 86.1370–2007(f) for NTE cold temperature operating exclusion, including but not limited to the method the manufacturer will use to access this exclusion during normal vehicle operation.

(3) For each engine model and/or horsepower rating within an engine family for which a manufacturer is applying for an NTE deficiency(ies) under the provisions of § 86.007–11(a)(4)(iv), the manufacturer's application for an NTE deficiency(ies) must include a complete description of the deficiency, including but not limited to: the specific description of the deficiency; what pollutant the deficiency is being applied for, all engineering efforts the manufacturer has made to overcome the deficiency, what specific operating conditions the deficiency is being requested for (i.e., temperature ranges, humidity ranges, altitude ranges, etc.), a full description of the auxiliary emission control device(s) which will be used to maintain emissions to the lowest practical level; and what the lowest practical emission level will be.

23. A new § 86.008–10 is added to subpart A to read as follows:

§ 86.008–10 Emission standards for 2008 and later model year Otto-cycle heavy-duty engines and vehicles.

Section 86.008–10 includes text that specifies requirements that differ from § 86.098–10, § 86.099–10, § 86.005–10. Where a paragraph in § 86.098–10, § 86.099–10, or § 86.005–10 is identical and applicable to § 86.008–10, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.098–10.'', ''[Reserved]. For guidance see § 86.099–10.'', or ''[Reserved]. For guidance see § 86.005–10.''.

(a)(1) Exhaust emissions from new 2008 and later model year Otto-cycle HDEs shall not exceed:

(i)(A) *Oxides of Nitrogen plus Non-methane Hydrocarbons (NO_X + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(B) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent (NO_X + NMHCE) for engines fueled with methanol.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(a)(1)(i)(C) through (a)(3)(ii) [Reserved]. For guidance see § 86.005–10.

(4) [Reserved]

(b) [Reserved]. For guidance see § 86.099–10.

(c) [Reserved]. For guidance see § 86.098–10.

(d) [Reserved]. For guidance see § 86.005–10.

(e) [Reserved]. For guidance see § 86.099–10.

(f) [Reserved]

24. Section 86.098–10 is amended by revising paragraph (a)(1) introductory text, to read as follows:

§ 86.098–10 Emission standards for 1998 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(a)(1) Except as provided for 2003 and 2004 model years in §§ 86.005–10(f) and 86.1816–05, exhaust emissions from new 1998 and later model year Otto-cycle heavy-duty engines shall not exceed:

* * * * *

25. Subpart B is amended by revising the heading of the subpart, to read as follows:

Subpart B—Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks and New Otto-Cycle Complete Heavy-Duty Vehicles; Test Procedures

26. Section 86.101 is amended by revising paragraphs (a) introductory text, (a)(3) and (d), and by adding paragraph (e) to read as follows:

§ 86.101 General applicability.

(a) The provisions of this subpart are applicable to 1977 and later model year new light-duty vehicles and light duty trucks, and 2001 and later model year new Otto-cycle heavy-duty vehicles and engines certified under the provisions of subpart S of this part.

* * * * *

(3) Sections 86.150 through 86.157 describe the refueling test procedures for light-duty vehicles and light duty trucks and apply for model years 1998 and later. They also describe the refueling test procedures for 2004 and later model year Otto-cycle complete heavy-duty vehicles that must meet the ORVR standards under the provisions of subpart S of this part.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and heavy-duty vehicles under the provisions of subpart S of this part.

(e) References in this subpart to light-duty vehicles or light-duty trucks shall be deemed to apply to light-duty vehicles, light-duty trucks, or heavy-duty vehicles and engines as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and heavy-duty vehicles and engines under the provisions of subpart S of this part.

27. Section 86.129–94 is amended by revising paragraph (a) to read as follows:

§ 86.129–94 Road load power, test weight, inertia weight class determination, and fuel temperature profile.

* * * * *

(a) Flywheels, electrical, or other means of simulating test weight as shown in the following table shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used:

Road load power at 50 mi/hour—light duty trucks [1 2 3]	Test weight basis [4 5]	Test equivalent test weight (pounds)	Inertia weight class (pounds)
	Up to 1062	1,000	1,000
	1063 to 1187	1,125	1,000
	1188 to 1312	1,250	1,250
	1313 to 1437	1,375	1,250
	1438 to 1562	1,500	1,500
	1563 to 1687	1,625	1,500
	1688 to 1812	1,750	1,750
	1813 to 1937	1,875	1,750
	1938 to 2062	2,000	2,000
	2063 to 2187	2,125	2,000
	2188 to 2312	2,250	2,250
	2313 to 2437	2,375	2,250
	2438 to 2562	2,500	2,500
	2563 to 2687	2,625	2,500
	2688 to 2812	2,750	2,750
	2813 to 2937	2,875	2,750
	2938 to 3062	3,000	3,000
	3063 to 3187	3,125	3,000
	3188 to 3312	3,250	3,000
	3313 to 3437	3,375	3,500
	3438 to 3562	3,500	3,500
	3563 to 3687	3,625	3,500
	3688 to 3812	3,750	3,500
	3813 to 3937	3,875	4,000
	3938 to 4125	4,000	4,000
	4126 to 4375	4,250	4,000
	4376 to 4625	4,500	4,500
	4626 to 4875	4,750	4,500
	4876 to 5125	5,000	5,000
	5126 to 5375	5,250	5,000
	5376 to 5750	5,500	5,500
	5751 to 6250	6,000	6,000
	6251 to 6750	6,500	6,500
	6751 to 7250	7,000	7,000
	7251 to 7750	7,500	7,500
	7751 to 8250	8,000	8,000
	8251 to 8750	8,500	8,500
	8751 to 9250	9,000	9,000
	9251 to 9750	9,500	9,500
	9751 to 10250	10,000	10,000
	10251 to 10750	10,500	10,500
	10751 to 11250	11,000	11,000
	11251 to 11750	11,500	11,500
	11751 to 12250	12,000	12,000
	12251 to 12750	12,500	12,500
	12751 to 13250	13,000	13,000
	13251 to 13750	13,500	13,500

Road load power at 50 mi/hour—light duty trucks [1 2 3]	Test weight basis [4 5]	Test equivalent test weight (pounds)	Inertia weight class (pounds)
	13751 to 14000	14,000	14,000

[1] For all light-duty trucks except vans, and for heavy-duty vehicles optionally certified as light-duty trucks, and for complete heavy-duty vehicles, the road load power (horsepower) at 50 mi/h shall be 0.58 times B (defined in footnote 3 of this table) rounded to the nearest ½ horsepower.

[2] For vans, the road load power at 50 mi/h (horsepower) shall be 0.50 times B (defined in footnote 3 of this table) rounded to the nearest ½ horsepower.

[3] B is the basic vehicle frontal area (square foot) plus the additional frontal area (square foot) of mirrors and optional equipment exceeding 0.1 ft^2 which are anticipated to be sold on more than 33 percent of the car line. Frontal area measurements shall be computed to the nearest 10th of a square foot using a method approved in advance by the Administrator.

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9, test weight basis is as follows: for emissions tests, the basis shall be adjusted loaded vehicle weight, as defined in § 86.094–2; and for fuel economy tests, the basis shall be loaded vehicle weight, as defined in § 86.082–2, or, at the manufacturer's option, adjusted loaded vehicle weight as defined in § 86.094–2. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082–2.

[5] Light-duty vehicles over 5,750 lb. loaded vehicle weight shall be tested at a 5,500 lb. equivalent test weight.

* * * * *

Subpart H—[Amended]

28. Section 86.701–94 is revised to read as follows:

§ 86.701–94 General applicability.

(a) The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines; and 2001 and later model year Otto-cycle heavy-duty vehicles and engines certified under the provisions of subpart S of this part. The provisions of subpart B of this part apply to this subpart.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle heavy-duty vehicles and engines under the provisions of subpart S of this part.

Subpart K—[Amended]

29. Section 86.1001–84 is amended by revising paragraph (b), to read as follows:

§ 86.1001–84 Applicability.

* * * * *

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

30. A new § 86.1008–2004 is added to subpart K, to read as follows:

§ 86.1008–2004 Test procedures.

Section 86.1008–2004 includes text that specifies requirements that differ from § 86.1008–2001. Where a paragraph in § 86.1008–2001 is identical and applicable to § 86.1008–2004, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1008–2001.''.

(a)(1)(i) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure as described in subparts N, I, and P of this part, except that 2004 and later model year engines shall not be subject to the test procedures specified in § 86.1380, and 2007 and later model year engines shall not be subject to the test procedures specified in §§ 86.1360(b)(2), 86.1360(f), 86.1370, and 86.1372. The Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts N, I, and P of this part for any heavy-duty vehicle which is not susceptible to satisfactory testing using the procedures in subparts N, I, and P of this part.

(a)(1)(ii) through (i) [Reserved]. For guidance see § 86.1008–2001.

Subpart L—[Amended]

31. Section 86.1101–87 is revised to read as follows:

§ 86.1101–87 Applicability.

(a) The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

Subpart M—[Amended]

32. Section 86.1206–96 is amended by revising the last sentence of paragraph (b), to read as follows:

§ 86.1206–96 Equipment required; overview.

* * * * *

(b) * * * The driving cycle is specified in § 86.1215.

33. Section 86.1215–85 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2), to read as follows:

§ 86.1215–85 EPA heavy-duty vehicle (HDV) urban dynamometer driving schedule.

(a)(1) * * *

(2) For evaporative emission testing of heavy-duty vehicles a manufacturer may optionally use the dynamometer driving schedule for light-duty vehicles and light-duty trucks specified in appendix I(a) of this part. This driving schedule may not be used for exhaust emissions testing of heavy-duty vehicles. If the manufacturer chooses to use this option, the Administrator will use this driving schedule when conducting evaporative emission tests, as described in § 86.1230–96.

* * * * *

34. Section 86.1229–85 is amended by revising paragraph (d)(5)(vi), to read as follows:

§ 86.1229–85 Dynamometer load determination and fuel temperature profile.

* * * * *

(d) * * *

(5) * * *

(vi) Time of initiation of the first driving cycle;

* * * * *

35. Section 86.1232–96 is amended by revising the third sentence in paragraph (c), to read as follows:

§ 86.1232–96 Vehicle preconditioning.

* * * * *

(c) * * * Following this soak period, the test vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one driving schedule, specified in § 86.1215 and appendix I of this part. * * *

* * * * *

36. Section 86.1234–96 is amended by revising paragraph (b), to read as follows:

§ 86.1234–96 Running loss test.

* * * * *

(b) *Driving schedule.* Conduct the running loss test by operating the test vehicle through three driving schedules (see § 86.1215 and appendix I of this part). Fifteen seconds after the engine starts, place the transmission in gear. Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule. The transmission shall be operated according to the specifications of § 86.1228 during the driving cycles.

* * * * *

37. Section 86.1235–96 is amended by revising the first sentence of paragraph (a), to read as follows:

§ 86.1235–96 Dynamometer procedure.

* * * * *

(a) The dynamometer run consists of one dynamometer driving schedule cycle (see § 86.1215 and appendix I of this part) starting not less than 12 nor more than 36 hours after completion of the drive specified in § 86.1232–96. * * *

* * * * *

38. Section 86.1246–96 is amended by revising paragraph (e), to read as follows:

§ 86.1246–96 Fuel dispensing spitback procedure.

* * * * *

(e) The vehicle shall be soaked at 80±6 °F (27±3 °C) for a minimum of six hours, then placed, either by being driven or pushed, on a dynamometer and operated through one dynamometer driving schedule (specified in § 86.1215 and appendix I of this part). The test vehicle may not be used to set the dynamometer horsepower.

* * * * *

Subpart N—[Amended]

39. Section 86.1304–90 is revised to read as follows:

§ 86.1304–90 Section numbering; construction.

(a) *Section numbering.* The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is applicable. The section continues to apply to subsequent model years unless a later model year section is adopted.

Example: Section 86.13xx–2004 applies to the 2004 and subsequent model years. If a § 86.13xx–2007 is promulgated it would apply beginning with the 2007 model year; § 86.13xx–2004 would apply to model years 2004 through 2006.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

40. A new § 86.1305–2004 is added to subpart N, to read as follows:

§ 86.1305–2004 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform exhaust emissions tests on Otto-cycle and diesel-cycle heavy duty engines. Subpart A of this part sets forth the emission standards and general testing requirements to comply with EPA certification procedures.

(b) This subpart contains five key sets of requirements, as follows: specifications and equipment needs (§§ 86.1306 through 86.1314); calibration methods and frequencies (§§ 86.1316 through 86.1326); test procedures (§§ 86.1327 through 86.1341 and §§ 86.1360 through 86.1380); calculation formulas (§§ 86.1342 and 86.1343); and data requirements (§ 86.1344).

41. A new § 86.1360–2007 is added to subpart N to read as follows:

§ 86.1360–2007 Supplemental steady-state test; test cycle and procedures.

(a) *Applicability.* This section applies to 2007 and later diesel heavy duty engines.

(b) *Test cycle.* (1) The following 13-mode cycle must be followed in dynamometer operation on the test engine:

Mode No.	Engine speed	Percent load	Weighting factor	Mode length (minutes)
1	Idle	NA	0.15	4
2	A	100	0.08	2
3	B	50	0.10	2
4	B	75	0.10	2
5	A	50	0.05	2
6	A	75	0.05	2
7	A	25	0.05	2
8	B	100	0.09	2
9	B	25	0.10	2
10	C	100	0.08	2
11	C	25	0.05	2
12	C	75	0.05	2
13	C	50	0.05	2

(2) In addition to the 13 test points identified in paragraph (b)(1) of this section, EPA may select, and require the manufacturer to conduct the test using, up to 3 additional test points within the control area (as defined in paragraph (d) of this section). EPA will notify the manufacturer of these supplemental test points in writing in a timely manner before the test. Emissions sampling for the additional test modes must include all regulated gaseous pollutants. Particulate matter does not need to be measured.

(c) *Determining engine speeds.* (1) The engine speeds A, B and C, referenced in the table in paragraph (b)(1) of this section, and speeds D and E, referenced in § 86.1380, must be determined as follows:

$$\text{Speed A} = n_{lo} + 0.25 \times (n_{hi} - n_{lo})$$

$$\text{Speed B} = n_{lo} + 0.50 \times (n_{hi} - n_{lo})$$

$$\text{Speed C} = n_{lo} + 0.75 \times (n_{hi} - n_{lo})$$

$$\text{Speed D} = n_{hi}$$

$$\text{Speed E} = n_{lo} + 0.15 \times (n_{hi} - n_{lo})$$

Where:

n_{hi} = High speed as determined by calculating 70% of the maximum power. The highest engine speed

where this power value occurs on the power curve is defined as n_{hi}.

n_{lo} = Low speed as determined by calculating 50% of the maximum power. The lowest engine speed where this power value occurs on the power curve is defined as n_{lo}.

Maximum power = the maximum observed power calculated according to the engine mapping procedures defined in § 86.1332.

(d) *Determining the control area.* The control area extends from the engine speed A to C, as defined in paragraph (c) of this section, and extends from 25 to 100 percent load.

(e) *Test requirements*—(1) *Engine warm-up.* Prior to beginning the test sequence, the engine must be warmed-up according to the procedures in § 86.1332–90(d)(3)(i) through (iv).

(2) *Test sequence.* The test must be performed in the order of the mode numbers in paragraph (b)(1) of this section. The EPA-selected test points identified under paragraph (b)(2) of this section must be performed immediately upon completion of mode 13. The engine must be operated for the prescribed time in each mode, completing engine speed and load changes in the first 20 seconds of each mode. The specified speed must be held to within <plus-minus>50 rpm and the specified torque must be held to within plus or minus two percent of the maximum torque at the test speed.

(3) *Particulate sampling.* One pair of filters (primary and back-up) shall be used for sampling PM over the 13-mode test procedure. The modal weighting factors specified in paragraph (b)(1) of this section shall be taken into account by taking a sample proportional to the exhaust mass flow during each individual mode of the cycle. This can be achieved by adjusting sample flow rate, sampling time, and/or dilution ratio, accordingly, so that the criterion for the effective weighting factors is met. The sampling time per mode must be at least 4 seconds per 0.01 weighting factor. Sampling must be conducted as late as possible within each mode. Particulate sampling shall be completed no earlier than 5 seconds before the end of each mode.

(4) The test must be conducted with all emission-related engine control variables in the highest brake-specific NO_X emissions state which could be encountered for a 30 second or longer averaging period at the given test point and for the conditions under which the engine is being tested.

(5) *Exhaust emissions measurements and calculations.* Manufacturers must follow the exhaust emissions sample analysis procedures under § 86.1340, and the calculation formulas and procedures under § 86.1342, for the 13-mode cycle and the 3 EPA-selected test points as applicable for steady-state testing, including the NO_X correction factor for humidity.

(6) *Calculating the weighted average emissions.* (i) For each regulated gaseous pollutant, the weighted average emissions must be calculated as follows:

$$A_{WA} = \frac{\sum_{i=1}^{n}\left[A_{Mi} \times WF_i\right]}{\sum_{i=2}^{n}\left[A_{Pi} \times WF_i\right]}$$

Where:

A_{WA} = Weighted average emissions for each regulated gaseous pollutant, in grams per brake horse-power hour.

A_M = Modal average mass emissions level, in grams per hour. Mass emissions must be calculated as described in § 86.1342.

A_P = Modal average power, in brake horse-power. Any power measured during the idle mode (mode 1) is not included in this calculation.

W_F = Weighting factor corresponding to each mode of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

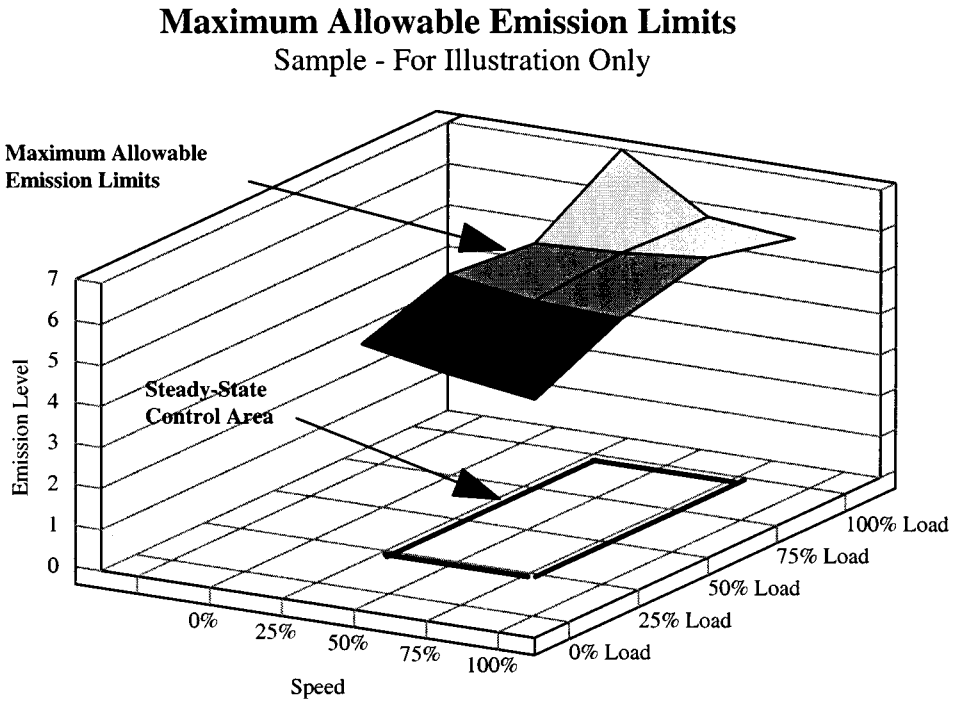
i = The modes of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

n = 13, corresponding to the 13 modes of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

(ii) For PM measurements, a single pair of filters must be used to measure PM over the 13 modes. The brake-specific PM emission level for the test must be calculated as described for a transient hot start test in § 86.1343. Only the power measured during the sampling period shall be used in the calculation.

(f) *Maximum allowable emission limits.* (1) For gaseous emissions, the 12 non-idle test point results and the four-point linear interpolation procedure specified in paragraph (g) of this section for intermediate conditions, shall define Maximum Allowable Emission Limits for purposes of § 86.007–11(a)(3) except as modified under paragraph (f)(3) of this section. Each engine shall have it's own Maximum Allowable Emission Limits generated from the 12 non-idle supplemental steady state test points from that engine. The control area extends from the 25% to the 75% engine speeds, at engine loads of 25% to 100%, as defined in paragraph (d) of this section. Figure 1 of this paragraph (f)(1) depicts a sample Maximum Allowable Emission Limit curve, for illustration purposes only, as follows:

Figure 1



(2) If the weighted average emissions, calculated according to paragraph (e)(6) of this section, for any gaseous pollutant is equal to or lower than required by § 86.007–11(a)(3), each of the 13 test values for that pollutant shall first be multiplied by the ratio of the applicable emission standard (under § 86.007–11(a)(3)) to the weighted average emissions value, and then by 1.10 for interpolation allowance, before determining the Maximum Allowable Emission Limits under paragraph (f)(1) of this section.

(3) If the Maximum Allowable Emission Limit for any point, as calculated under paragraphs (f)(1) and (2) of this section, is greater than the applicable Not-to-Exceed limit (if within the Not-to-Exceed control area defined in § 86.1370–2007(b)), then the Maximum Allowable Emission Limit for that point shall be defined as the applicable Not-to-Exceed limit.

(g) *Calculating intermediate test points.* (1) For the three test points selected by EPA under paragraph (b)(2) of this section, the emissions must be measured and calculated as described in paragraph (e)(6)(i) of this section (except that n = 1 and WF = 1). The measured values then must be compared to the interpolated values according to paragraph (g)(3) of this section. The interpolated values are determined from the modes of the test cycle closest to the respective test point according to paragraph (g)(2) of this section.

(2) Interpolating emission values from the test cycle. The gaseous emissions for each regulated pollutant for each of the control points (Z) must be interpolated from the four closest modes of the test cycle that envelop the selected control point Z as shown in Figure 2 of this paragraph (g)(2).

(i) For these modes (R, S, T, U), the following definitions apply:

(A) Speed (R) = Speed(T) = n_{RT}.

(B) Speed (S) = Speed(U) = n_{SU}.

(C) Per cent load (R) = Per cent load (S).

(D) Per cent load (T) = Per cent load (U).

(ii) The interpolated value of the brake specific gaseous emissions of the selected control point Z(EZ) must be calculated as follows:

$E_Z = E_{RS} + (E_{TU} - E_{RS}) * (M_Z - M_{RS}) / (M_{TU} - M_{RS})$

$E_{TU} = E_T + (E_U - E_T) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

$E_{RS} = E_R + (E_S - E_R) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

$M_{TU} = M_T + (M_U - M_T) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

$M_{RS} = M_R + (M_S - M_R) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

Where:

E_R, E_S, E_T, E_U = for each regulated pollutant, brake specific gaseous emissions of the enveloping modes adjusted according to the factors in(f)(2).

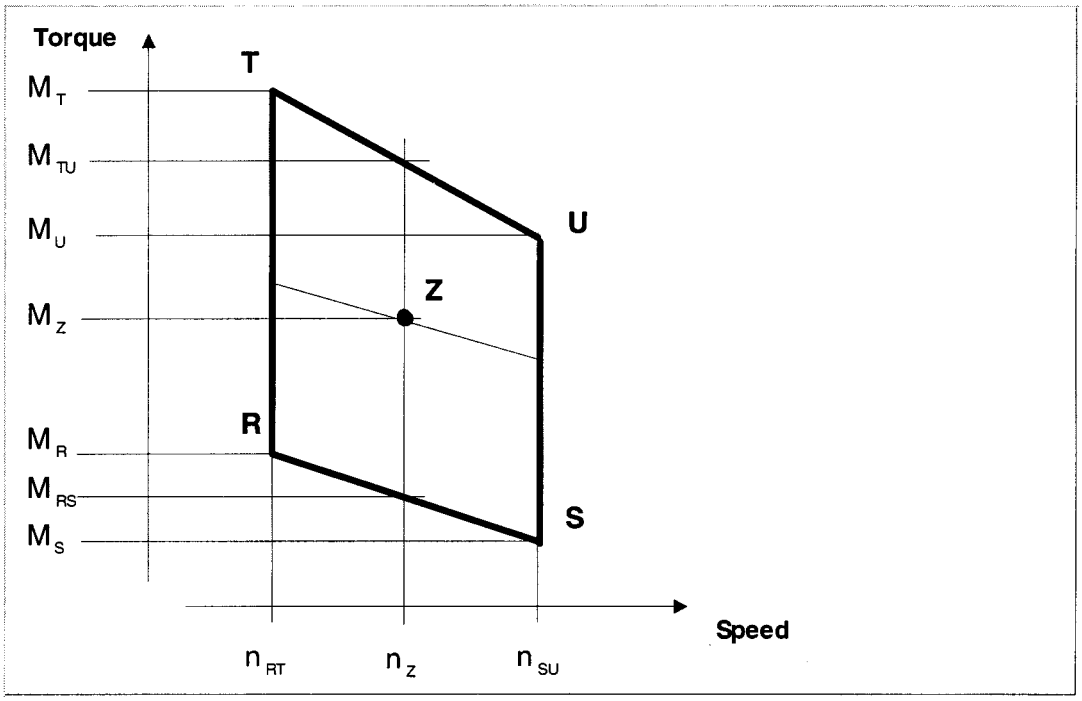
M_R, M_S, M_T, M_U = engine torque of the enveloping modes.

M_Z = engine torque of the selected control point Z.

n_Z = engine speed of the selected control point Z.

(iii) Figure 2 follows:

Figure 2
Four-Point Linear Interpolation



(3) *Comparing calculated and interpolated emission values.* The measured brake specific gaseous emissions of the control point Z (X_Z) must be less than or equal to the interpolated value (E_Z).

(h) *Test fuel specifications.* The test fuel used for supplemental steady-state testing under this section must meet the requirements of § 86.1313.

(i) *General requirements.* Ambient conditions, charge cooling specifications, and intake and exhaust restrictions for supplemental steady-state testing and maximum allowable emission limit testing under this section must meet the requirements of § 86.1330.

42. A new § 86.1370–2007 is added to subpart N, to read as follows:

§ 86.1370–2007 Not-To-Exceed test procedures.

(a) *General.* The purpose of this test procedure is to measure in-use emissions of heavy-duty diesel engines while operating within a broad range of speed and load points (the Not-To-Exceed Control Area) and under conditions which can reasonably be expected to be encountered in normal vehicle operation and use. Emission results from this test procedure are to be compared to the Not-To-Exceed Limits specified in § 86.007–11 (a)(4).

(b) *Not-to-exceed control area for diesel heavy-duty engines.* The Not-To-Exceed Control Area for diesel heavy-duty engines consists of the following engine speed and load points:

(1) All operating speeds greater than the speed calculated using the following formula, where n_{hi} and n_{lo} are determined according to the provisions in § 86.1360(c):

$n_{lo}+0.15\times(n_{hi}-n_{lo})$

(2) All engine load points greater than or equal to 30% or more of the maximum torque value produced by the engine.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, all operating speed and load points with brake specific fuel consumption (BSFC) values within 5% of the minimum BSFC value of the engine. For the purposes of this requirement, BFSC must be calculated under the general test cell conditions specified in § 86.1330. The manufacturer may petition the Administrator at certification to exclude such points if the manufacturer can demonstrate that the engine is not expected to operate at such points in normal vehicle operation and use. Engines equipped with drivelines with multi-speed manual transmissions or automatic transmissions with a finite number of gears are not subject to the requirements of this paragraph (b)(3).

(4) Notwithstanding the provisions of paragraphs (b)(1) through (b)(3) of this section, speed and load points below 30% of the maximum power value produced by the engine shall be excluded from the Not-To-Exceed Control Area for all emissions.

(5) For particulate matter only, speed and load points determined by one of the following methods, whichever is applicable, shall be excluded from the Not-To-Exceed Control Area. B and C engine speeds shall be determined according to the provisions of § 86.1360 (c):

(i) If the C speed is below 2400 rpm, the speed and load points to the right of or below the line formed by connecting the following two points:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 70% of maximum power at 100% speed (n_{hi});

(ii) If the C speed is above 2400 rpm, the speed and load points to the right of the line formed by connecting the two points in paragraphs (b)(5)(ii)(A) and (B) of this section and below the line formed by connecting the two points in paragraphs (b)(5)(ii)(B) and (C) of this section:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 50% of maximum power at 2400 rpm;

(C) 70% of maximum power at 100% speed (n_{hi}).

(6) For natural gas and other non-diesel fueled diesel cycle engines, the manufacturer may petition the

Administrator at certification to exclude operating points from the Not-to-Exceed Control Area defined in § 86.1370(b)(1) through (5) if the manufacturer can demonstrate that the engine is not expected to operate at such points in normal vehicle operation and use.

(c) [Reserved]

(d) *Not-to-exceed control area limits.* (1) When operated within the Not-To-Exceed Control Area defined in paragraph (b) of this section, diesel engine emissions shall not exceed the applicable Not-To-Exceed Limits specified in § 86.007–11(a)(4) when averaged over any period of time greater than or equal to 30 seconds.

(2) [Reserved]

(e) *Ambient corrections.* The measured data shall be corrected based on the ambient conditions under which it was taken, as specified in this section.

(1) For engines operating within the ambient conditions specified in § 86.007–11(a)(4)(ii)(a):

(i) NO_X emissions shall be corrected for ambient air humidity to a standard humidity level of 50 grains (7.14 g/kg) if the humidity of the intake air was below 50 grains, or to 75 grains (10.71 g/kg) if above 75 grains.

(ii) NO_X and PM emissions shall be corrected for ambient air temperature to a temperature of 55 degrees F (12.8 degrees C) for ambient air temperatures below 55 degrees F or to 95 degrees F (35.0 degrees C) if the ambient air temperature is above 95 degrees F.

(iii) No ambient air temperature or humidity correction factors shall be used within the ranges of 50–75 grains or 55–95 degrees F.

(iv) Where test conditions require such correction factors, the manufacturer must use good engineering judgement and generally accepted engineering practice to determine the appropriate correction factors, subject to EPA review.

(2) For engines operating within the ambient conditions specified in § 86.007–11(a)(4)(ii)(b):

(i) NO_X emissions shall be corrected for ambient air humidity to a standard humidity level of 50 grains (7.14 g/kg) if the humidity of the intake air was below 50 grains, or to 75 grains (10.71 g/kg) if above 75 grains.

(ii) NO_X and PM emissions shall be corrected for ambient air temperature to a temperature of 55 degrees F (12.8 degrees C) for ambient air temperatures below 55 degrees F.

(iii) No ambient air temperature or humidity correction factors shall be used within the ranges of 50–75 grains or for temperatures greater than or equal to 55 degrees F.

(iv) Where test conditions require such correction factors, the manufacturer must use good engineering judgement and generally accepted engineering practice to determine the appropriate correction factors, subject to EPA review.

(f) *NTE cold temperature operating exclusion.* Engines equipped with exhaust gas recirculation (EGR) whose operation within the NTE control area specified in § 86.1370(b) when operating during cold temperature conditions as specified in paragraph (f)(1) of this section are not subject to the NTE emission limits during the specified cold temperature operation conditions.

(1) Cold temperature operation is defined as engine operating conditions meeting either of the following two criteria:

(i) Intake manifold temperature (IMT) less than or equal to the temperature defined by the following relationship between IMT and absolute intake manifold pressure (IMP) for the corresponding IMP:

$$P = 0.0875 \times IMT - 7.75 \quad \text{Equation (1)}$$

Where:

P = absolute intake manifold pressure in bars.
IMT = intake manifold temperature in degrees Fahrenheit.

(ii) Engine coolant temperature (ECT) less than or equal to the temperature defined by the following relationship between ECT and absolute intake manifold pressure (IMP) for the corresponding IMP:

$$P = 0.0778 \times ECT - 9.8889 \quad \text{Equation (2)}$$

Where:

P = absolute intake manifold pressure in bars.
ECT = engine coolant temperature in degrees Fahrenheit.

(2) [Reserved]

43. A new § 86.1372–2007 is added to subpart N, to read as follows:

§ 86.1372–2007 Measuring smoke emissions within the NTE zone.

This section contains the measurement techniques to be used for determining compliance with the filter smoke limit or opacity limits in § 86.007–11(b)(1)(iv).

(a) For steady-state or transient smoke testing using full-flow opacimeters, equipment meeting the requirements of subpart I of this part or ISO/DIS–11614 ''Reciprocating internal combustion compression-ignition engines—Apparatus for measurement of the opacity and for determination of the light absorption coefficient of exhaust gas'' is required. This document is incorporated by reference (see § 86.1).

(1) All full-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full-scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full-scale.

(4) Opacimeter calibration and linearity checks shall be performed using manufacturer's recommendations or good engineering practice.

(b) For steady-state testing using a filter-type smokemeter, equipment meeting the requirements of ISO/FDIS–10054 ''Internal combustion compression-ignition engines—Measurement apparatus for smoke from engines operating under steady-state conditions—Filter-type smokemeter'' is recommended. Other equipment may be used provided it is approved in advance by the Administrator.

(1) All filter-type smokemeter results shall be reported as a filter smoke number (FSN) that is similar to the Bosch smoke number (BSN) scale.

(2) Filter-type smokemeters shall be calibrated every 90 days using manufacturer's recommended practices or good engineering practice.

(c) For steady-state testing using a partial-flow opacimeter, equipment meeting the requirements of ISO–8178–3 and ISO/DIS–11614 is recommended. Other equipment may be used provided it is approved in advance by the Administrator.

(1) All partial-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post-test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full scale.

(4) Opacimeter calibration and linearity checks shall be performed using manufacturer's recommendations or good engineering practice.

(d) Replicate smoke tests may be run to improve confidence in a single test or stabilization. If replicate tests are run, three additional tests which confirm to this section shall be run, and the final reported test results must be the average of all the valid tests.

(e) A minimum of thirty seconds sampling time shall be used for average transient smoke measurements. The opacity values used for this averaging must be collected at a minimum rate of 1 data point per second, and all data points used in the averaging must be equally spaced in time.

44. A new § 86.1380–2004 is added to subpart N, to read as follows:

§ 86.1380–2004 Load response test.

(a) *General.* This section applies to 2004 through 2007 model year heavy-duty diesel engines. The purpose of this test procedure is to measure the brake-specific gaseous and particulate emissions from a heavy-duty diesel engine as it is suddenly loaded, with its fueling lever, at a given engine operating speed. The results of this test procedure are not compared to emission standards, and this test is not considered part of the Federal Test Procedure. This procedure shall be conducted on a dynamometer.

(b) *Test conditions and equipment.* All laboratory conditions, laboratory equipment, engine set-up procedures, test fuel, and testing conditions specified in this subpart for transient testing shall apply to the Load Response Test where applicable.

(c) *Test sequence.* (1) The test has 5 separate measurement segments, each identified by a specific engine speed. At each of the following speeds, beginning with the lowest torque point at that engine speed within the NTE control area for NMHC+NO_X, the engine fuel control shall be moved suddenly to the full fuel position and held at that point for four seconds, while the specified speed is maintained constant within the tolerances of the test facility. After the four second full fuel position, the load should be immediately brought back to the minimum NTE control area load for the specified engine speed for a period of 6 seconds. Prior to the beginning of each measurement segment, the engine shall be warmed up at the supplemental steady-state Mode 4 conditions (75% engine load, Speed B as specified in § 86.1360) until engine oil temperature has stabilized.

(i) Speed A as determined in § 86.1360(c);

(ii) Speed B as determined in § 86.1360(c);

(iii) Speed C as determined in § 86.1360(c);

(iv) Speed D as determined in § 86.1360(c);

(v) Speed E as determined in § 86.1360(c).

(2) The test sequence at each engine speed may be repeated, without pause between repeats, if it is necessary to obtain sufficient particulate matter sample amount for analysis.

(3) The exhaust emissions sample shall be analyzed using the applicable procedures under § 86.1340, and the exhaust emission shall be calculated using the applicable procedures under § 86.1342, for each measurement segment. Sampling rates for engine speed, engine load, and gaseous emissions shall performed a minium rate of 10 Hz. Emissions for all regulated pollutants must be calculated and reported for each test speed condition in terms of g/bhp-hr.

(4) Data must be collected beginning with the start of the transition from the minimum NTE control area load to the full fuel position. Data must be collected until the end of the (final if repeated) 6 second operational period at the minimum NTE control area load described in paragraph (c)(1) of this section. Good engineering practice must be used to ensure that the sampling time is properly aligned with the engine operation.

Subpart P—[Amended]

45. Section 86.1501–94 is revised to read as follows:

§ 86.1501–94 Scope; applicability.

(a) This subpart contains gaseous emission idle test procedures for light-duty trucks and heavy-duty engines for which idle CO standards apply. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1994 through 1996 model year natural gas-fueled and liquified petroleum gas-fueled light-duty trucks and heavy-duty engines.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

Subpart Q—[Amended]

46. Section 86.1601 is amended by revising paragraph (d), to read as follows:

§ 86.1601 General applicability.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

47. Subpart S is amended by revising the subpart heading to read as follows:

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Complete Otto-Cycle Heavy-Duty Vehicles

47. Section 86.1801–01 is amended by revising paragraphs (a), (b), (c), the last sentence of paragraph (d), and paragraph (h), to read as follows:

§ 86.1801–01 Applicability.

(a) *Applicability.* Except as otherwise indicated, the provisions of this subpart apply to new 2001 and later model year Otto-cycle and diesel cycle light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and 2005 and later model year Otto-cycle complete heavy-duty vehicles (2003 or 2004 model year for manufacturers choosing Otto-cycle HDE option 1 or 2, respectively, in § 86.005–1(c)) including multi-fueled, alternative fueled, hybrid electric, and zero emission vehicles. These provisions also apply to 2001 model year and later new incomplete light-duty trucks below 8,500 Gross Vehicle Weight Rating, and to 2001 and later model year Otto-cycle complete heavy-duty vehicles participating in the provisions of the averaging, trading, and banking program under the provisions of § 86.1817–05(n). In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section of this subpart.

(b) *Aftermarket conversions.* The provisions of this subpart apply to aftermarket conversions of all model year Otto-cycle and diesel-cycle light-duty vehicles, light-duty trucks, and complete Otto-cycle heavy-duty vehicles as defined in 40 CFR 85.502.

(c) *Optional applicability.* (1) A manufacturer may request to certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions through the 2004 model year (2002 model year for manufacturers choosing Otto-cycle HDE option 1 in § 86.005–1(c) or 2003 model year for manufacturers choosing Otto-cycle HDE option 2 in § 86.005–1(c)). Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle. A 2004 model year heavy-duty vehicle optionally certified as a light-duty truck under this provision must comply with all provisions applicable to MDPVs

including exhaust and evaporative emission standards, test procedures, on-board diagnostics, refueling standards, phase-in requirements and fleet average standards under 40 CFR part 85 and this part.

(2) Beginning with the 2001 model year, a manufacturer may request to certify any incomplete Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete heavy-duty vehicles. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(3) A manufacturer may optionally use the provisions of this subpart in lieu of the provisions of subpart A beginning with the 2000 model year for light-duty vehicles and light-duty trucks. Manufacturers choosing this option must comply with all provisions of this subpart. Manufacturers may elect this provision for either all or a portion of their product line.

(4) Upon preapproval by the Administrator, a manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part. Such preapproval will be granted only upon demonstration that chassis-based certification would be infeasible or unreasonable for the manufacturer to perform.

(5) A manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part without advance approval from the Administrator if the vehicle was originally certified to the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part.

(d) * * * The small volume manufacturer's light-duty vehicle, light-duty truck and complete heavy-duty vehicle certification procedures are described in § 86.1838–01.

* * * * *

(h) *Applicability of provisions of this subpart to LDVs, LDTs, MDPVs and HDVs.* Numerous sections in this subpart provide requirements or procedures applicable to a ''vehicle'' or ''vehicles.'' Unless otherwise specified or otherwise determined by the Administrator, the term ''vehicle'' or ''vehicles'' in those provisions apply equally to LDVs, LDTs, MDPVs and HDVs.

48. Section 86.1803–01 is amended by revising the definitions for ''Car line,'' ''Curb-idle,'' ''Durability useful life,'' and ''Van,'' and by adding new definitions in alphabetical order, to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Averaging for chassis-bases heavy-duty vehicles means the exchange of NO_X emission credits among test groups within a given manufacturer's product line.

Averaging set means a subcategory of complete heavy-duty vehicles within which test groups can average and trade emission credits with one another.

* * * * *

Banking means the retention of NO_X emission credits for complete heavy-duty vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

* * * * *

Car line means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (*e.g.*, body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roofline, number of doors, seats, or windows except for station wagons or light-duty trucks. Station wagons, light-duty trucks, and complete heavy-duty vehicles are considered to be different car lines than passenger cars.

* * * * *

Complete heavy-duty vehicle means any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less that has the primary load carrying device or container attached at the time the vehicle leaves the control of the manufacturer of the engine.

* * * * *

Curb-idle means, for manual transmission code motor vehicles, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code motor vehicles, curb-idle means the engine speed with the automatic transmission in the park position (or neutral position if there is no park position), and with the air conditioning system, if present, turned off.

* * * * *

Durability useful life means the highest useful life mileage out of the set of all useful life mileages that apply to a given vehicle. The durability useful life determines the duration of service accumulation on a durability data vehicle. The determination of durability useful life shall reflect any light-duty truck or complete heavy-duty vehicle alternative useful life periods approved by the Administrator under § 86.1805–01(c). The determination of durability useful life shall exclude any standard and related useful life mileage for which the manufacturer has obtained a waiver of emission data submission requirements under § 86.1829–01.

* * * * *

Emission credits mean the amount of emission reductions or exceedances, by a complete heavy-duty vehicle test group, below or above the emission standard, respectively. Emission credits below the standard are considered as ''positive credits,'' while emission credits above the standard are considered as ''negative credits.'' In addition, ''projected credits'' refer to emission credits based on the projected U.S. production volume of the test group. ''Reserved credits'' are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. ''Actual credits'' refer to emission credits based on actual U.S. production volumes as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end of year reports or any subsequent audit actions uncover problems or errors.

* * * * *

Family emission limit (FEL) means an emission level declared by the manufacturer which serves in lieu of an emission standard for certification purposes in the averaging, trading and banking program. FELs must be expressed to the same number of decimal places as the applicable emission standard.

* * * * *

Incomplete heavy-duty vehicle means any heavy-duty vehicle which does not have the primary load carrying device or container attached.

* * * * *

Trading means the exchange of complete heavy-duty vehicle NO_X emission credits between manufacturers.

* * * * *

Van means a light-duty truck or complete heavy-duty vehicle having an integral enclosure, fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

* * * * *

49. Section 86.1804–01 is amended by adding ''FEL'' and ''HDV'' as new abbreviations in alphabetical order, to read as follows:

§ 86.1804–01 Acronyms and abbreviations.

* * * * *

FEL—Family Emission Limit.

* * * * *

HDV—Heavy-duty vehicle.

* * * * *

50. Section 86.1805–01 is amended by:

a. Revising paragraph (a).

b. Adding paragraph (b)(3).

c. Revising the first and last sentences of paragraph (c).

The revisions and addition read as follows:

§ 86.1805–01 Useful life.

(a) For light-duty vehicles and light-duty trucks, intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first.

(b) * * *

(3) For complete heavy-duty vehicles, the full useful life is a period of use of 11 years or 120,000 miles, which ever occurs first.

(c) Manufacturers may petition the Administrator to provide alternative useful life periods for light-duty trucks or complete heavy-duty vehicles when they believe that the useful life periods are significantly unrepresentative for one or more test groups (either too long or too short). * * * For light-duty trucks, alternative useful life periods will be granted only for THC, THCE, and idle CO requirements.

51. Section 86.1805–04 is amended by revising paragraph (a), to read as follows:

§ 86.1805–04 Useful life.

(a) Except as required under paragraph (b) of this section or permitted under paragraphs (d), (e) and (f) of this section, the full useful life for all LDVs, LDT1s and LDT2s is a period of use of 10 years or 120,000 miles, whichever occurs first. For all HLDTs, MDPVs, and complete heavy-duty vehicles full useful life is a period of 11 years or 120,000 miles, whichever occurs first. This full useful life applies to all exhaust, evaporative and refueling emission requirements except for standards which are specified to only be applicable at the time of certification.

* * * * *

52. A new § 86.1806–05 is added to subpart S, to read as follows:

§ 86.1806–05 On-board diagnostics.

(a) *General.* (1) Except as provided by paragraph (a)(2) of this section, all light-duty vehicles, light-duty trucks and complete heavy-duty vehicles weighing 14,000 pounds GVWR or less (including MDPVs) must be equipped with an onboard diagnostic (OBD) system capable of monitoring all emission-related powertrain systems or components during the applicable useful life of the vehicle. All systems and components required to be monitored by these regulations must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in paragraphs (a) and (d) of Appendix I of this part, or similar trip as approved by the Administrator.

(2) Diesel fueled MDPVs and heavy-duty vehicles weighing 14,000 pounds GVWR or less that are not MDPVs must meet the OBD requirements of this section according to the phase-in schedule in paragraph (l) of this section. Paragraph (l) of this section does not apply to Otto-cycle MDPVs.

(3) An OBD system demonstrated to fully meet the requirements in § 86.004–17 may be used to meet the requirements of this section, provided that such an OBD system also incorporates appropriate transmission diagnostics as may be required under this section, and provided that the Administrator finds that a manufacturer's decision to use the flexibility in this paragraph (a)(3) is based on good engineering judgement.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part (chassis-based test procedures), excluding those test procedures defined as ''Supplemental'' test procedures in § 86.004–2 and codified in §§ 86.158, 86.159, and 86.160.

(1) *Catalysts and particulate traps.* (i) *Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC+NO_X standard or FEL, as compared to the NMHC+NO_X emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If equipped, catalyst deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM. This requirement applies only to reduction catalysts; monitoring of oxidation catalysts is not required. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold.

(B) If equipped with a particulate trap, catastrophic failure of the device must be detected. Any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+NO_X or PM must be monitored. This monitoring need not be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

(2) *Engine misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO_X; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO_X.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO_X, or diesel PM. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the

demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For vehicles equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related powertrain components.* Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described in paragraphs (b)(1) through (b)(5) of this section that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph (b)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on vehicles so equipped.

(8) *Hybrid electric vehicles.* For Tier 2 and interim non-Tier 2 hybrid electric vehicles (HEVs) only. Unless added to HEVs in compliance with other requirements of this section, or unless otherwise approved by the Administrator:

(i) The manufacturer must equip each HEV with a maintenance indicator consisting of a light that must activate automatically by illuminating the first time the minimum performance level is observed for each battery system component. Possible battery system components requiring monitoring are: battery water level, temperature control, pressure control, and other parameters critical for determining battery condition.

(ii) The manufacturer must equip ''off-vehicle charge capable HEVs'' with a useful life indicator for the battery system consisting of a light that must illuminate the first time the battery system is unable to achieve an all-electric operating range (starting from a full state-of-charge) which is at least 75 percent of the range determined for the vehicle in the Urban Driving Schedule portion of the All-Electric Range Test (see the California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes. These requirements are incorporated by reference (see § 86.1).

(iii) The manufacturer must equip each HEV with a separate odometer or other device subject to the approval of the Administrator that can accurately measure the mileage accumulation on the engines used in these vehicles.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display ''Check Engine,'' ''Service Engine Soon,'' a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. A vehicle should not be equipped with more than one general purpose malfunction indicator light for emission-related problems; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* (1) The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (*i.e.,* operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the ''key-on'' position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(2)(i) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, vehicles produced through the 2007 model year, upon a manufacturer's written request, EPA will consider allowing the use of an on-board diagnostic system during the certification process, that functions properly on low-sulfur gasoline, but indicates sulfur-induced passes when exposed to high sulfur gasoline.

(ii) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, if vehicles produced through the 2007 model year exhibit illuminations of the emission control diagnostic system malfunction indicator light due to high sulfur gasoline, EPA will consider, upon a manufacturer's written request, allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur induced illumination.

(e) *Storing of computer codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or

component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (*i.e.,* MIL commanded ''ON,'' MIL commanded ''OFF'').

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel vehicles only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further vehicle operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (*e.g.,* misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to ''not ready'' status upon key-on or key-off; intentional setting of readiness codes to ''not ready'' status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (*i.e.,* more than one) due to the continued presence of extreme operating conditions (*e.g.,* ambient temperatures below 40 °F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to ''ready'' status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, ''freeze frame'' engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 ''Class B Data Communication Network Interface,'' (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 ''E/E Diagnostic Test Modes,''(July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 ''Recommended Practices for Diagnostic Trouble Code Definitions,'' (July 1996).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 ''Diagnostic Connector,'' (January 1995).

(v) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81).

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4 ''Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for

emission-related systems'' may also be used as an alternative to SAE J1850.

(i) *Deficiencies and alternate fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: Technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor (''major'' diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled vehicles. For alternate fueled vehicles (*e.g.* natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2004 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel; manufacturers may request this alternate fuel waiver for heavy-duty vehicles through the 2006 model year. At a minimum, alternate fuel vehicles must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII compliance option.* For light-duty vehicles, light-duty trucks, and heavy-duty vehicles at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code section 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code section 1968.1(b)(1.1.2) for diesel vehicles does not apply, and compliance with California Code sections 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code section 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Certification.* For test groups required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle.* A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC standard or FEL above the NMHC emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If monitored for emissions performance—a catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NO_X or PM.

(B) If monitored for performance—a particulate trap is replaced with a trap that has catastrophically failed, or an electronic simulation of such.

(2)(i) *Otto-cycle.* An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC, CO or NO_X.

(ii) *Diesel.* An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or NO_X.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related powertrain system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, NO_X or PM.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described in this paragraph (k) that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

(l) *Phase-in for complete heavy-duty vehicles.* Complete heavy-duty vehicles weighing 14,000 pounds GVWR or less that are not Otto-cycle MDPVs must meet the OBD requirements of this section according to the following phase-in schedule, based on the percentage of projected vehicle sales. The 2004 model year requirements in the following phase-in schedule are applicable only to heavy-duty Otto-cycle vehicles where the manufacturer has selected Otto-cycle Option 1 or 2 for alternative 2003 or 2004 compliance according to § 86.005–1(c)(1) or (c)(2). The 2005 through 2007 requirements in the following phase-in schedule apply to all heavy-duty vehicles weighing 14,000 pounds GVWR or less, excluding MDPVs. If the manufacturer has selected Otto-cycle Option 3 they may exempt 2005 model year complete heavy-duty engines and vehicles whose model year commences before July 31, 2004 from the requirements of this section. For the purposes of calculating compliance with the phase-in provisions of this paragraph (l), heavy-duty vehicles subject to the phase-in requirements of this section may be combined with heavy-duty vehicles subject to the phase-in requirements of paragraph § 86.004–17(k). The phase-in schedule follows:

OBD COMPLIANCE PHASE-IN FOR COMPLETE HEAVY-DUTY VEHICLES WEIGHING 14,000 POUNDS GVWR OR LESS

Model year	Phase-in based on projected sales
2004 MY	—Applicable only to Otto-cycle engines complying with Options 1 or 2 —40% compliance —Alternative fuel waivers available
2005 MY	—60% compliance —Alternative fuel waivers available
2006 MY	—80% compliance

OBD COMPLIANCE PHASE-IN FOR COMPLETE HEAVY-DUTY VEHICLES WEIGHING 14,000 POUNDS GVWR OR LESS—Continued

Model year	Phase-in based on projected sales
	—Alternative fuel waivers available
2007+ MY	—100% compliance

53. Section 86.1807–01 is amended by:

a. Revising paragraphs (a)(3)(v) and (a)(3)(vi).

b. Adding paragraph (c)(3).

c. Revising paragraphs (d), (e), and (f).

The revisions and addition read as follows:

§ 86.1807–01 Vehicle labeling.

(a) * * *

(3) * * *

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles;

(vi) The exhaust emission standards (or FEL, as applicable) to which the test group is certified, and for test groups having different in-use standards, the corresponding exhaust emission standards that the test group must meet in use. In lieu of this requirement, manufacturers may use the standardized test group name designated by EPA;

* * * * *

(c) * * *

(3) The manufacturer of any complete heavy-duty vehicle subject to the emission standards of this subpart shall add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d)(1) Incomplete light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: ''This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Light-Duty Trucks under the special provisions of 40 CFR 86.1801–01(c)(1) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area.''

(2) Incomplete heavy-duty vehicles optionally certified in accordance with the provisions for complete heavy-duty vehicles under the special provisions of § 86.1801–01(c)(2) shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: ''This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Complete Heavy-Duty Vehicles under the special provisions of 40 CFR 86.1801–01(c)(2) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area.''

(e) The manufacturer of any incomplete light-duty vehicle, light-duty truck, or heavy-duty vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

(f) All light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall comply with SAE Recommended Practices J1877 ''Recommended Practice for Bar-Coded Vehicle Identification Number Label,'' (July 1994), and J1892 ''Recommended Practice for Bar-Coded Vehicle Emission Configuration Label'' (October 1993). SAE J1877 and J1892 are incorporated by reference (see § 86.1).

* * * * *

54. Section 86.1809–01 is amended by revising paragraph (a), to read as follows:

§ 86.1809–01 Prohibition of defeat devices.

(a) No new light-duty vehicle, light-duty truck, or complete heavy-duty vehicle shall be equipped with a defeat device.

* * * * *

55. Section 86.1810–01 is amended by:

a. Revising the introductory text.

b. Revising paragraphs (d) and (e).

c. Revising paragraphs (j)(1) and (j)(3).

d. Revising paragraphs (k)(1)(i) introductory text, and (k)(2).

e. Revising paragraph (l)(1) introductory text.

f. Revising paragraph (m)(1) introductory text.

The revisions read as follows:

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

This section applies to model year 2001 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. This section also applies to complete heavy-duty vehicles certified according to the provisions of this subpart. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. For Tier 2 and interim non-Tier 2 vehicles, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

* * * * *

(d) *Crankcase emissions prohibited.* No crankcase emissions shall be discharged into the ambient atmosphere from any 2001 and later model year light-duty vehicle, light-duty truck, or complete heavy-duty vehicle certified according to the provisions of this subpart.

(e) *On-board diagnostics.* All light-duty vehicles, light-duty trucks and complete heavy-duty vehicles must have an on-board diagnostic system as described in § 86.1806–01 or § 86.1806–04, as applicable.

* * * * *

(j) * * * (1) The evaporative standards in §§ 86.1811–01(d), 86.1811–04(e), 86.1812–01(d), 86.1813–01(d), 86.1814–01(d), 86.1814–02(d), 86.1815–01(d), 1815–02(d) and 86.1816–04(d) apply equally to certification and in-use vehicles and trucks. The spitback standard also applies to newly assembled vehicles.

* * * * *

(3) All fuel vapor generated in a gasoline- or methanol-fueled light-duty vehicle, light-duty truck, or complete heavy-duty vehicle during in-use operation shall be routed exclusively to the evaporative control system (*e.g.,* either canister or engine purge.) The only exception to this requirement shall be for emergencies.

(k) * * * (1) * * * (i) Tables S01–3, S01–4, and S01–5 in this paragraph (k)(1)(i) give the minimum percentage of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty vehicles, light-duty trucks and complete heavy-duty vehicles which shall be tested under the applicable procedures in subpart B of this part, and shall not exceed the standards described in §§ 86.1811–01(e), 86.1811–04(e)(3), 86.1812–01(e), 86.1813–01(e), and 86.1816–04(e). Vehicles waived from the emission standards under the provisions of paragraphs (m) and (n) of this section shall not be counted in the calculation of the percentage of compliance. Either manufacturer sales

or actual production intended for sale in the United States may be used to determine combined volume, at the manufacturers option. Tables S01–3, S01–4, and S01–5 follow:

* * * * *

(2) *Determining sales percentages.* Sales percentages for the purposes of determining compliance with the applicable refueling emission standards light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and complete heavy-duty vehicles shall be based on total actual U.S. sales of heavy light-duty trucks and complete heavy-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

* * * * *

(l) * * * (1) Vehicles certified to the refueling emission standards set forth in §§ 86.1811–01(e), 86.1811–04(e)(3), 86.1812–01(e), 86.1813–01(e), and 86.1816–04(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

* * * * *

(m) * * *

(1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.1811–01(e), 86.1811–04(e)(3), 86.1812–01(e), 86.1813–01(e), and 86.1816–04(e), provided that:

* * * * *

56. Section 86.1811–01 is amended by adding paragraph (g), to read as follows:

§ 86.1811–01 Emission standards for light-duty vehicles.

* * * * *

(g) Manufacturers may request to group light-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those light-duty vehicles meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

57. Section 86.1811–04 is amended by adding a new paragraph (s), to read as follows:

§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

* * * * *

(s) Manufacturers may request to group heavy-duty vehicles into the same test group as other vehicles subject to more stringent standards, so long as all vehicles in the test group meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827–1(a)(5) and (d)(4).

58. Section 86.1812–01 is amended by adding paragraph (h), to read as follows:

§ 86.1812–01 Emission standards for light-duty trucks 1.

* * * * *

(h) Manufacturers may request to group light-duty truck 1's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 1's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

59. Section 86.1813–01 is amended by adding paragraph (h), to read as follows:

§ 86.1813–01 Emission standards for light-duty trucks 2.

* * * * *

(h) Manufacturers may request to group light-duty truck 2's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 2's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

60. Section 86.1814–01 is amended by adding paragraph (h), to read as follows:

§ 86.1814–01 Emission standards for light-duty trucks 3.

* * * * *

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

61. Section 86.1814–02 is amended by adding paragraph (h), to read as follows:

§ 86.1814–02 Emission standards for light-duty trucks 3.

* * * * *

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

62. Section 86.1815–01 is amended by adding paragraph (h), to read as follows:

§ 86.1815–01 Emission standards for light-duty trucks 4.

* * * * *

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

63. Section 86.1815–02 is amended by adding paragraph (h), to read as follows:

§ 86.1815–02 Emission standards for light-duty trucks 4.

* * * * *

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

64. A new section 86.1816–05 is added to subpart S, to read as follows:

§ 86.1816–05 Emission standards for complete heavy-duty vehicles.

This section applies to 2005 and later model year complete heavy-duty vehicles (2003 model year for manufacturers choosing Otto-cycle HDE option 1 in § 86.005–1(c)(1), or 2004 model year for manufacturers choosing Otto-cycle HDE option 2 in § 86.005–1(c)(2)) fueled by gasoline, methanol, natural gas and liquefied petroleum gas fuels except as noted. This section does not apply to Medium-duty Passenger Vehicles, which are covered under § 86.1811. This section also applies to 2000 and later model year complete heavy duty vehicles participating in the early banking provisions of the averaging, trading and banking program as specified in § 86.1817–05(n). Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to hydrocarbons or total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from 2005 and later model year complete heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane organic gas.* 0.280 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 7.3 grams per mile.

(iv) *Oxides of nitrogen.* 0.9 grams per mile.

(v) [Reserved]

(2) Exhaust emissions from 2005 and later model year complete heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating shall not exceed the following standards at full useful life:

(i) [Reserved].

(ii) *Non-methane organic gas.* 0.330 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 8.1 grams per mile.

(iv) *Oxides of nitrogen.* 1.0 grams per mile.

(v) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) *Evaporative emissions.* Evaporative hydrocarbon emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled complete heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Gasoline, natural gas, liquefied petroleum gas, and methanol fuel. For the full three-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(2) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.5 grams per test.

(3) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(4) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) *Standards.* Refueling emissions from Otto-cycle complete heavy-duty vehicles equal to or less than 10,000 pounds Gross Vehicle Weight Rating shall be phased in, in accordance with the schedule in Table S01–5 in § 86.1810–01 not to exceed the following emission standards:

(i) For gasoline-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(2) *Phase-in.* Complete heavy-duty vehicles subject to refueling standards must comply with the phase-in requirements found in Table S01–5 in § 86.1810–01, and must be grouped with HLDTs and MDPVs to determine phase-in compliance.

(3) *Alternate timing.* (i) For manufacturers choosing Otto-cycle HDE option 3 under § 86.005–1(c)(3), the refueling emissions standards are optional for 2004 model year complete heavy-duty vehicles.

(ii) For manufacturers choosing Otto-cycle HDE option 3 under § 86.005–1(c)(3), the manufacturer may exempt 2005 model year HDE test groups whose model year begins before July 31, 2004. Only 2005 model year HDE test groups whose model year begins on or after July 31, 2004 shall be considered (together with all 2005 model year HLDTs and MDPVs) for purposes of calculating the sales percentage for phase-in as outlined in § 86.1810–01(k).

(iii) For complete heavy-duty vehicles which have total fuel tank capacity of greater than 35 gallons, or which do not share a common fuel system with a light-duty truck or medium-duty passenger vehicle configuration, the refueling emissions standards are optional for the 2004 and 2005 model years.

(4) *Exceptions.* The provisions of this § 86.1816–05(e) do not apply to incomplete heavy-duty vehicles optionally certified to complete heavy duty vehicle standards under the provisions of § 86.1801–01(c)(2).

(f) [Reserved]

(g) *Idle exhaust emission standards, complete heavy-duty vehicles.* Exhaust emissions of carbon monoxide from 2005 and later model year gasoline, methanol, natural gas-and liquefied petroleum gas-fueled complete heavy-duty vehicles shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

(h) *Alternate test groups.* Manufacturers may request to group complete heavy-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those complete heavy-duty vehicles meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827–(a)(5) and (d)(4).

65. A new section 86.1817–05 is added to subpart S, to read as follows:

§ 86.1817–05 Complete heavy-duty vehicle averaging, trading, and banking program.

(a) *General.* (1) Complete heavy-duty vehicles eligible for the NO_X averaging, trading and banking program are described in the applicable emission standards section of this subpart. All heavy-duty vehicles which include an engine labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for this program. Participation in this averaging, trading, and banking program is voluntary.

(2)(i) Test groups with a family emission limit (FEL) as defined in § 86.1803–01 exceeding the applicable standard shall obtain emission credits as defined in § 86.1803–01 in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, as defined in § 86.1803–01 within the averaging set restrictions described in paragraph (d) of this section.

(ii) Test groups with an FEL below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used for averaging or trading to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of vehicles for the test group in question if the manufacturer elects to recertify to a higher FEL.

(b) *Participation.* Participation in the NO_X averaging, trading, and banking program shall be done as follows:

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific test groups in the averaging, trading and banking program.

(ii) Declare an FEL for each test group participating in the program.

(A) The FEL must be to the same level of significant digits as the emission standard (one-hundredth of a gram per mile for NO_X emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable complete heavy-duty vehicle chassis-based NO_X emission standard.

(iii) Calculate the projected NO_X emission credits (positive or negative) as defined in § 86.1803–01 based on quarterly production projections for each participating test group, using the applicable equation in paragraph (c) of this section and the applicable factors for the specific test group.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for test groups requiring credits for certification.

(B) State where the quarterly projected credits will be applied for test groups generating credits.

(C) Emission credits as defined in § 86.1803–01 may be obtained from or applied to only test groups within the same averaging set as defined in § 86.1803–01. Emission credits available for averaging, trading, or banking, may be applied exclusively to a given test

group, or designated as reserved credits as defined in § 86.1803–01.

(2) Based on this information, each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each test group has a net emissions credit balance of zero or more using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each test group involved must state specifically the source (manufacturer/test group) of the credits being used. In cases where credits are being generated/supplied, each test group involved must state specifically the designated use (manufacturer/test group or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year, manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end-of-year reports required under paragraph (i) of this section.

(iii) For manufacturers participating in emission credit trading, maintain the quarterly records required under paragraph (l) of this section.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other compliance measures deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Test groups without an adequate amount of NO_X emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided *ab initio* for test groups exceeding the emission standard.

(6) 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 balances may be adjusted by EPA for retroactive use.

(i) 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 for that test group to zero, at the ratio of 1.2 credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the test group in question to zero, EPA may void the certificate for that test group *ab initio*.

(ii) 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 (*i.e.* resulting in a positive credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(c) *Calculations.* For each participating test group, NO_X emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a (incorporated by reference at § 86.1), to the nearest one-tenth of a Megagram (MG). Consistent units are to be used throughout the equation.

(1) For determining credit need for all test groups and credit availability for test groups generating credits for averaging only:

$$\text{Emission credits} = (\text{Std-FEL}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})$$

(2) For determining credit availability for test groups generating credits for trading or banking:

$$\text{Emission credits} = (\text{Std-FEL}) \times (\text{UL}) \times (\text{Production}) \times (10^{-6})\ (\text{Discount})$$

(3) For purposes of the equations in paragraphs (c)(1) and (c)(2) of this section:

Std=the current and applicable complete heavy-duty vehicle NO_X emission standard in grams per mile or grams per kilometer.

Std=0.9 grams per mile for heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds and 1.0 grams per mile for heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating for cases where certification to chassis-based standards is optional for purposes of early credit banking.

FEL=the NO_X family emission limit for the test group in grams per mile or grams per kilometer.

UL=the useful life, or alternative life as described in paragraph (c) of § 86.1805–01, for the given test group in miles or kilometers.

Production=the number of vehicles produced for U.S. sales within the given test group during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount=a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraph (m) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(d) *Averaging sets.* The averaging and trading of NO_X emission credits will be allowed between all test groups of heavy-duty vehicles subject to chassis-based standards excluding those vehicles produced for sale in California. Averaging, banking, and trading are not applicable to vehicles sold in California.

(e) *Banking of NO_X* emission credits—(1) *Credit deposits.* (i) NO_X emission credits may be banked from test groups produced in 2000 and later model years. Early banking is described in paragraph (n) of this section.

(ii) Manufacturers may bank credits only after the end of the model year and after actual credits have been reported to EPA in the end-of-year report. During the model 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.

(2) *Credit withdrawals.* (i) NO_X credits do not expire, except as provided in paragraph (o)(2) of this section.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in paragraph (i) of this section.

(3) *Use of banked emission credits.* The use of banked credits shall be within the averaging set and geographic restrictions described in paragraph (d) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, or in trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but not reported to EPA may also be used. However, if EPA finds that the reported credits cannot be proven, they will be revoked and unavailable for use.

(ii) Banked credits may not be used for averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be

used for subsequent production of the test group if the manufacturer elects to recertify to a higher FEL.

(f) *Negative credit balance.* In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(g) *Fuel.* Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the vehicle purchaser. Therefore, upon request by the Administrator, the vehicle manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and would be used in customer service.

(h) *Credit apportionment.* At the manufacturers option, credits generated from complete heavy-duty vehicles under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per test group for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the test group is required to certify under § 86.1816–04. For each test group, the manufacturer may report vehicle sales in two categories, ''ABT-only credits'' and ''nonmanufacturer-owned credits''.

(i) For vehicle sales reported as ''ABT-only credits'', the credits generated must be used solely in the averaging, trading and banking program described in this section.

(ii) The vehicle manufacturer may declare a portion of vehicle sales ''nonmanufacturer-owned credits'' and this portion of the credits generated between the standard and the FEL, based on the calculation in paragraph (c)(1) of this section, would belong to the vehicle purchaser. The manufacturer may not generate any credits for the vehicle sales reported as ''nonmanufacturer-owned credits'' for this averaging, trading and banking program. Vehicles reported as ''nonmanufacturer-owned credits'' shall comply with the FEL and the requirements of this averaging, trading and banking program in all other respects.

(2) Only manufacturer-owned credits reported as ''ABT-only credits'' shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in this averaging, trading and banking program may not be provided to a vehicle purchaser for use in another program.

(4) Manufacturers shall determine and state the number of vehicles sold as ''ABT-only credits'' and ''nonmanufacturer-owned credits'' in the end-of-model year reports required under paragraph (i) of this section.

(i) *Application for certification and end-of-year reports.* Manufacturers participating in the emissions averaging, trading and banking program, shall submit for each participating test group the items listed in paragraphs (i)(1) through (3) of this section.

(1) *Application for certification.* (i) The application for certification will include a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the averaging, trading and banking program, cause the applicable NO_X emissions standard to be exceeded.

(ii) The application for certification will also include identification of the section of this subpart under which the test group is participating in the averaging, trading and banking program (*e.g.,* § 86.1817–05), the type (NO_X), and the projected number of credits generated/needed for this test group, the applicable averaging set, the projected U.S. production volumes (excluding vehicles produced for sale in California), by quarter, and the values required to calculate credits as given in the applicable averaging, trading and banking section. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in the applicable averaging, trading and banking section. The application must project that each test group will be in compliance with the applicable emission standards based on the vehicle mass emissions and credits from averaging, trading and banking.

(2) [Reserved].

(3) *End-of-year report.* The manufacturer shall submit

end-of-year reports for each test group participating in the averaging, trading and banking program, as described in paragraphs (i)(3)(i) through (iv) of this section.

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(ii) These reports shall indicate the test group, the averaging set, the actual U.S. production volume (excluding vehicles produced for sale in California), the values required to calculate credits as given in the applicable averaging, trading and banking section, and the resulting type and number of credits generated/required. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met. Copies of contracts related to credit trading must also be included or supplied by the broker if applicable. The report shall also include a calculation of credit balances to show that net mass emissions balances are within those allowed by the emission standards (equal to or greater than a zero credit balance). Any credit discount factor described in the applicable averaging, trading and banking section must be included as required.

(iii) The production counts for end-of-year reports shall be based on the location of the first point of retail sale (*e.g.,* customer, dealer, secondary manufacturer) by the manufacturer.

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

(j) *Failure to submit quarterly or end-of-year reports.* Failure by a manufacturer participating in the averaging, trading and banking program to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) for such vehicles.

(k) *Failure to submit end-of-year reports for banked credits.* Failure by a manufacturer generating credits for deposit only in the complete heavy-duty vehicle banking program to submit their end-of-year reports in the applicable specified time period (*i.e.,* 90 days after the end of the model year) shall result in the credits not being available for use until such reports are received and reviewed by EPA. Use of projected credits pending EPA review will not be permitted in these circumstances.

(l) *Quarterly records.* Any manufacturer producing a test group participating in trading using reserved credits, shall maintain the following records on a quarterly basis for each test group in the trading subclass:

(1) The test group;

(2) The averaging set;

(3) The actual quarterly and cumulative U.S. production volumes

excluding vehicles produced for sale in California;

(4) The values required to calculate credits as given in paragraph (c) of this section;

(5) The resulting type and number of credits generated/required;

(6) How and where credit surpluses are dispersed; and

(7) How and through what means credit deficits are met.

(m) *Additional flexibility for complete heavy-duty vehicles.* If a complete heavy-duty vehicle has a NO_X FEL of 0.6 grams per mile or lower, a discount of 1.0 may be used in the trading and banking credits calculation for NO_X described in paragraph (c)(2) of this section.

(n) *Early banking for complete heavy-duty vehicles.* Provisions set forth in paragraphs (a) through (m) of this section apply except as specifically stated otherwise in this paragraph (n).

(1) *Early banking eligibility.* To be eligible for the early banking program described in this paragraph, the following must apply:

(i) Credits are generated from complete heavy-duty vehicles.

(ii) During certification, the manufacturer shall declare its intent to include specific test groups in the early banking program described in this paragraph (n).

(2) *Credit generation and use.* (i) Early credits may be generated by test groups starting in model year 2000.

(ii) Credits may only be used for complete heavy-duty vehicles subject to chassis-based standards, except as provided by paragraph (o) in this section, and all credits shall be subject to discounting and all other provisions contained in paragraphs (a) through (m) of this section.

(o) *Credit transfers.* A manufacturer that elects to comply with Option 1 or 2 contained in § 86.005–10(f) may transfer credits between its complete vehicle averaging set and its heavy-duty Otto-cycle engine averaging set as follows:

(1) Credits earned in model years 2004 (2003 for Option 1) through 2007 are eligible to be transferred.

(2) Transferred credits may not be banked for use in model years 2008 and later. Credits that are transferred but not used prior to model year 2008 must be forfeited.

(3) Prior to transferring credits, a manufacturer must develop a methodology to transfer the credits including a conversion factor that may be used to convert between chassis-based credits (derived on a grams per mile basis) and equivalent engine-based credits (derived on a grams per brake horsepower-hour basis). The methodology must be approved by EPA prior to the start of the model year in which the credits are to be transferred. The conversion factor must provide reasonable certainty that the credits are equivalent for the specific vehicle test group(s) and engine family(s) involved in the generation and use of the credits.

66. Section 86.1823–01 is amended by revising the introductory text, paragraph (c)(2) introductory text, and the first sentence of paragraph (h), to read as follows:

§ 86.1823–01 Durability demonstration procedures for exhaust emissions.

This section applies to light-duty vehicles, light-duty trucks, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c). Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838–01 and 86.1826–01 in lieu of the requirements of this section. For model years 2001, 2002, and 2003 all manufacturers may elect to meet the provisions of paragraph (c)(2) of this section in lieu of these requirements for light-duty vehicles or light-duty trucks.

* * * * *

(c) * * *

(2) For the 2001, 2002, and 2003 model years, for light-duty vehicles and light-duty trucks the manufacturer may carry over exhaust emission DF's previously generated under the Standard AMA Durability Program described in § 86.094–13(c), the Alternate Service Accumulation Durability Program described in § 86.094–13(e) or the Standard Self-Approval Durability Program for light-duty trucks described in § 86.094–13(f) in lieu of complying with the durability provisions of paragraph (a)(1) of this section.

* * * * *

(h) The Administrator may withdraw approval to use a durability process or require modifications to a durability process based on the data collected under §§ 86.1845–01, 86.1846–01, and 86.1847–01 or other information if the Administrator determines that the durability processes have not been shown to accurately predict emission levels or compliance with the standards (or FEL, as applicable) in use on candidate vehicles (provided the inaccuracy could result in a lack of compliance with the standards for a test group covered by this durability process). * * *

* * * * *

67. Section 86.1824–01 is amended by revising the first sentence of the introductory text, to read as follows:

§ 86.1824–01 Durability demonstration procedures for evaporative emissions.

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled LDV/Ts, MDPVs, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c). * * *

* * * * *

68. Section 86.1825–01 is amended by revising the first two sentences of introductory text to read as follows:

§ 86.1825–01 Durability demonstration procedures for refueling emissions.

This section applies to light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles, and heavy-duty vehicles which are certified under light-duty rules as allowed under the provisions of § 86.1801–01(c) which are subject to refueling loss emission compliance. Refer to the provisions of §§ 86.1811–01, 86.1811–04, 86.1812–01, 86.1813–01, and 86.1816–04 to determine applicability of the refueling standards to different classes of vehicles for various model years. * * *

* * * * *

69. Section 86.1826–01 is amended by revising paragraphs (b)(2) introductory text and (b)(3) introductory text, to read as follows:

§ 86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.

* * * * *

(b) * * *

(2) Manufacturers with aggregated sales from and including 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying vehicles equipped with proven emission control systems shall conform to the following provisions:

* * * * *

(3) Manufacturers with aggregated sales from 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying vehicles equipped with unproven emission control systems shall conform to the following provisions:

* * * * *

70. Section 86.1827–01 is amended by:

a. Revising paragraph (a)(5).

b. Removing ''and'' at the end of paragraph (d)(2).

c. Removing the period at the end of paragraph (d)(3) and adding ''; and'' in its place.

d. Adding paragraph (d)(4).

The revisions and additions read as follows:

§ 86.1827–01 Test group determination.

* * * * *

(a) * * *

(5) Subject to the same emission standards, except that a manufacturer may request to group vehicles into the same test group as vehicles subject to more stringent standards, so long as all the vehicles within the test group are certified to the most stringent standards applicable to any vehicle within that test group. Light-duty trucks which are subject to the same emission standards as light-duty vehicles with the exception of the light-duty truck idle CO standard and/or total HC standard may be included in the same test group.

* * * * *

(d) * * *

(4) A statement that all vehicles within a test group are certified to the most stringent standards applicable to any vehicle within that test group.

* * * * *

71. Section 86.1829–01 is amended by revising paragraphs (b)(1)(ii)(B), (b)(2)(ii)(B), and (b)(5), to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(1)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate high-altitude emission testing, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

* * * * *

(2) * * *

(ii) * * *

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(2)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

* * * * *

(5) *Idle CO testing.* To determine idle CO emission compliance for light-duty trucks and complete heavy-duty vehicles, the manufacturer shall follow one of the following two procedures:

(i) For test groups containing light-duty trucks and complete heavy-duty vehicles, each EDV shall be tested in accordance with the idle CO testing procedures of subpart B of this part; or

(ii) In lieu of testing light trucks and complete heavy-duty vehicles for idle CO emissions, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such idle CO testing as the manufacturer deems appropriate, all light-duty trucks and complete heavy-duty vehicles comply with the idle CO emission standards.

* * * * *

72. Section 86.1834–01 is amended by:

a. Revising paragraph (b)(3) introductory text.

b. Redesignating paragraph (b)(3)(i) as paragraph (b)(3)(i)(A), and adding paragraph (b)(3)(i)(B).

c. Revising paragraph (b)(3)(ii) introductory text.

d. Redesignating paragraphs (b)(3)(iii) and (b)(3)(iv) as paragraphs (b)(3)(iv) and (b)(3)(v).

e. Adding a new paragraph (b)(3)(iii).

f. Revising newly redesignated paragraphs (b)(3)(iv) and (b)(3)(v).

g. Adding a new paragraph (b)(3)(vi).

h. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7); adding and reserving paragraph (b)(5).

i. Adding paragraph (b)(6)(i)(H).

j. Revising the first sentence of newly redesignated paragraph (b)(6)(iii), the seventh sentence of newly redesignated paragraph (b)(7)(ii), and the first sentence of newly redesignated paragraph (b)(7)(iii).

k. Revising the heading of paragraph (d).

The revisions and additions read as follows:

§ 86.1834–01 Allowable maintenance.

* * * * *

(b) * * *

(3) Emission-related maintenance in addition to, or at shorter intervals than, that listed in paragraphs (b)(3)(i) through (vi) of this section will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i)(A) * * *

(B) The cleaning or replacement of complete heavy-duty vehicle spark plugs shall occur at 25,000 miles (or 750 hours) of use and at 30,000-mile (or 750 hour) intervals thereafter, for vehicles certified for use with unleaded fuel only.

(ii) For light-duty vehicles and light-duty trucks, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter:

* * * * *

(iii) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (1,500 hour) intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(E) Exhaust gas recirculation system related filters and coolers.

(iv) For light-duty trucks, light-duty vehicles, and complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the oxygen sensor shall occur at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter.

(v) For light-duty trucks and light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Superchargers.

(I) Exhaust gas recirculation system including all related filters and control valves.

(J) Mechanical fillpipe seals.

(vi) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000 hour) intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (b)(3)(iii)(E) of this section.

(I) Mechanical fillpipe seals.

* * * * *

(5) [Reserved].

(6) * * *

(i) * * *

(H) Any other add-on emissions-related component (*i.e.*, a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emissions control and whose function is not integral to the design and performance of the engine.)

* * * * *

(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. * * *

(7) * * *

(ii) * * * For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(6) of this section. * * *

(iii) Any manufacturer may request a hearing on the Administrator's determinations in this paragraph (b)(7). * * *

* * * * *

(d) *Unscheduled maintenance on durability data vehicles.* * * *

* * * * *

73. Section 86.1835–01 is amended by revising the third sentence of paragraph (a)(1)(i), paragraph (b)(1) introductory text, and paragraph (b)(3) introductory text, to read as follows:

§ 86.1835–01 Confirmatory certification testing.

(a) * * *

(1) * * *

(i) * * * The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles. * * *

* * * * *

(b) * * * (1) If the Administrator determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, light-duty vehicle and light-duty truck manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the conditions listed in paragraphs (b)(1)(i) through (v) of this section exist, and complete heavy-duty vehicles manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever the conditions listed in paragraph (b)(1)(i) or (b)(1)(ii) of this section exist, as follows:

* * * * *

(3) For light-duty vehicles, and light-duty trucks, the manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

* * * * *

74. Section 86.1840–01 is revised to read as follows:

§ 86.1840–01 Special test procedures.

(a) The Administrator may, on the basis of written application by a manufacturer, prescribe test procedures, other than those set forth in this part, for any light-duty vehicle, light-duty truck, or complete heavy-duty vehicle which the Administrator determines is not susceptible to satisfactory testing by the procedures set forth in this part.

(b) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a light-duty vehicle, light-duty truck, or complete heavy-duty vehicle is not susceptible to satisfactory testing by the procedures set forth in this part, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.1848(a)(2).

* * * * *

75. Section 86.1844–01 is amended by revising the fourth sentence of paragraph (d)(12), the fourth sentence of paragraph (e)(3), and paragraph (g)(5), and adding paragraph (g)(14) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(d) * * *

(12) * * * The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc. and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. * * *

* * * * *

(e) * * *

(3) * * * The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. * * *

* * * * *

(g) * * *

(5) Any information necessary to demonstrate that no defeat devices are present on any vehicles covered by a certificate including, but not limited to, a description of the technology employed to control CO emissions at intermediate temperatures, as applicable.

* * * * *

(14) For complete heavy-duty vehicles only, all hardware (including scan tools) and documentation necessary for EPA to read, interpret, and store (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices, provided that such hardware, passwords, or documentation exists and is not otherwise commercially available. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read, interpret, and store information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead

center, fueling rates in cubic centimeters per stroke, vehicle speed in milers per hour or per kilometer.

* * * * *

76. Section 86.1845–01 is amended by revising paragraph (a), to read as follows:

§ 86.1845–01 Manufacturer in-use verification testing requirements.

(a) *General requirements.* A manufacturer light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall test, or cause to have tested a specified number of light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles.

* * * * *

77. Section 86.1845–04 is amended by revising paragraph (a)(1) and adding a new sentence to the end of paragraph (a)(3), to read as follows:

§ 86.1845–04 Manufacturer in-use verification testing requirements.

(a) * * * (1) A manufacturer of LDVs, LDTs, MDPVs and/or complete HDVs must test, or cause to have tested, a specified number of LDVs, LDTs, MDPVs and complete HDVs. Such testing must be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks and medium-duty vehicles.

* * * * *

(3) * * * Such procedures are not available for complete HDVs.

* * * * *

78. Section 86.1846–01 is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (b) introductory text, (b)(1), (b)(2), (c), (g), (h), and (j), to read as follows:

§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.

(a) * * * (1) A manufacturer of LDVs, LDTs and/or MDPVs must test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under §§ 86.1845–01 or 86.1845–04, as applicable, exceeds the criteria specified in paragraph (b) of this section. The testing required under this section applies separately to each test group and at each test point (low and high mileage) that meets the specified criteria. The testing requirements apply separately for each model year starting with model year 2001. These provisions do not apply to heavy-duty vehicles or engines prior to the 2007 model year.

* * * * *

(3) For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks, medium-duty vehicles and heavy-duty vehicles and engines, as applicable.

(4) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA. This provision does not apply to heavy-duty vehicles and engines.

(b) *Criteria for additional testing.* A manufacturer shall test a test group or a subset of a test group as described in paragraph (j) of this section when the results from testing conducted under §§ 86.1845–01 and 86.1845–04, as applicable, show mean emissions for that test group of any pollutant(s) to be equal to or greater than 1.30 times the applicable in-use standard and a failure rate, among the test group vehicles, for the corresponding pollutant(s) of fifty percent or greater.

(1) This requirement does not apply to Supplemental FTP testing conducted under § 86.1845–04(b)(5)(i) or evaporative/refueling testing conducted under § 86.1845–01 or § 86.1845–04. Testing conducted at high altitude under the requirements of §§ 86.1845–01 and 86.1845–04 will be included in determining if a test group meets the criteria triggering testing required under this section.

(2) The vehicle tested under the requirements of § 86.1845–01(c)(2) or § 86.1845–04(c)(2) with a minimum odometer miles of 75% of useful life will not be included in determining if a test group meets the triggering criteria.

* * * * *

(c) *Useful life.* Vehicles tested under the provisions of this section must be within the useful life specified for the emission standards which were exceeded in the testing under § 86.1845–01 or § 86.1845–04, as applicable. Testing should be within the useful life specified, subject to sections 207(c)(5) and (c)(6) of the Clean Air Act where applicable.

* * * * *

(g) *Testing.* Testing required under this section must commence within three months of completion of the testing under § 86.1845–01 or § 86.1845–04 which triggered the confirmatory testing and must be completed within seven months of the completion of the testing which triggered the confirmatory testing. Any industry review of the results obtained under § 86.1845–01 or § 86.1845–04 and any additional vehicle procurement and/or testing which takes place under the provisions of § 86.1845–01 or § 86.1845–04 which the industry believes may affect the triggering of required confirmatory testing must take place within the three month period. The data and the manufacturers reasoning for reconsideration of the data must be provided to the Agency within the three month period.

(h) *Limit on manufacturer conducted testing.* For each manufacturer, the maximum number of test group(s) (or Agency-designated subset(s)) of each model year for which testing under this section shall be required is limited to 50 percent of the total number of test groups of each model year required to be tested by each manufacturer as prescribed in § 86.1845–01 or § 86.1845–04 rounded to the next highest whole number where appropriate. For each manufacturer with only one test group under § 86.1845–01 or § 86.1845–04, as applicable, such manufacturer shall have a maximum potential testing requirement under this section of one test group (or Agency-designated subset) per model year.

* * * * *

(j) *Testing a subset.* EPA may designate a subset of the test group based on transmission type for testing under this section in lieu of testing the entire test group when the results for the entire test group from testing conducted under § 86.1845–01 or § 86.1845–04 show mean emissions and a failure rate which meet these criteria for additional testing.

79. Section 86.1848–01 is amended by revising paragraphs (c)(4) and the first sentence of paragraph (e) introductory text to read as follows:

§ 86.1848–01 Certification.

* * * * *

(c) * * *

(4) For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.1844–01.

* * * * *

(e) A manufacturer of new light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles must obtain a certificate of conformity covering such vehicles from the Administrator prior to selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States the new vehicle. * * *

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[FR Doc. 00–20144 Filed 10–5–00; 8:45 am]

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Federal Register

Friday,
October 6, 2000

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–40]

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: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; 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.D.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 Clifford Taffet 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: NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, 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: September 28, 2000.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 10/6/00

Suitable/Available Properties

Buildings (by State)

California

Bldg. 301
Naval Support Activity
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 772000200041
Status: Excess
Comment: 18,608 sq. ft., pressence of asbestos/lead paint, needs major rehab.

Bldg. 371
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020080
Status: Unutilized
Comment: 29,000 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only.

Bldg. 402
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020081
Status: Unutilized
Comment: presence of lead paint, most recent use—storage, off-site use only.

Bldg. 417
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020082
Status: Unutilized
Comment: 110 TR, needs rehab, presence of asbestos/lead paint, off-site use only.

Bldg. 418
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020083
Status: Unutilized
Comment: 288 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 426
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020084
Status: Unutilized
Comment: presence of asbestos/lead asbestos/paint, off-site use only.

Bldg. 434
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020085
Status: Unutilized
Comment: 11,440 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only.

Bldg. 210
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020086

Status: Unutilized
Comment: 17,708 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—police station, off-site use only.

Bldg. 541
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020087
Status: Unutilized
Comment: 3857 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—lab, off-site use only.

Bldg. 804
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020088
Status: Unutilized
Comment: 3119 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 805
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020089
Status: Unutilized
Comment: 3732 sq ft., needs rehab, presence of asbetos/lead paint, most recent use—storage, off-site use only.

Bldg. 806
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020090
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 807
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020091
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only.

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq.ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840002
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only.

Maine

Bldg. 4
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930005
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only.

Bldg. 8
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930006
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only.

Bldg. 12
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930007
Status: Excess
Comment: 25,354 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 41
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930008
Status: Excess
Comment: 10,526 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only.

Maryland

Bldg. 139
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010032
Status: Unutilized
Comment: 4950 sq. ft., possible asbestos/lead paint, most recent use—wind tunnel, off-site use only.

New Hampshire

Bldg. 128
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830015
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 185
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830016
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 314
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830017
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 336
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830018
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only

Bldg. 160
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910046
Status: Unutilized
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. 179
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020099
Status: Excess
Comment: 1452 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—quarters, off-site use only.

Bldg. 201
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020100
Status: Excess
Comment: 450 sq. ft., presence of asbestos/lead paint, office-site use only.

Bldg. 304
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020101
Status: Excess
Comment: 1320 sq. ft., presence of asbestos/lead paint, most recent use—garb. house, off-site use only.

New Jersey

Bldg. D1–A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940024
Status: Unutilized
Comment: 1134 sq. ft., presence of lead paint, most recent use—smokehouse/lunchroom, off-site use only.

Bldg. HA–1A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940025
Status: Unutilized
Comment; 120 sq. ft., most recent use—storage, off-site use only.

Bldg. C–16
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010014
Status: Unutilized
Comment: 34,811 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. C–25
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010015
Status: Unutilized
Comment: 4,448 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. C–40
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010016
Status: Unutilized
Comment: 6,924 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. 511
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010017
Status: Unutilized
Comment: 1,871 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldgs. 553, 554, 555
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010018
Status: Unutilized
Comment: guard towers, off-site use only.

Bldg. 557
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010019
Status: Unutilized
Comment: 9,670 sq. ft., presence of asbestos/lead paint, off-site use only.

Pennsylvania

Bldg. 38
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200010020
Status: Unutilized
Comment: 6525 sq. ft., metal butler bldg., needs rehab, presence of asbestos/lead paint, off-site use only.

Rhode Island

Bldg. 1
Old Naval Hospital
One Riggs Road
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200010022
Status: Unutilized
Comment: 49,189 sq. ft., presence of asbestos/lead paint, needs major repair, NEPA requirements, boiler plant which provides heat and hot water to bldg. will be shut down.

Bldg. K–61
Naval Station
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200030079
Status: Unutilized
Comment: 32,836 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Rhode Island

Bldg. 685
Naval Station
Middletown Co: Newport RI 02842–
Landholding Agency: Navy
Property Number: 77200030080
Status: Unutilized
Comment: 25,090 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—navy lodge, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 77199530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use–laundry

Land (by State)

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location:
Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Land—CD area
Naval Base Norfolk
Norfolk VA 23511–2797
Landholding Agency: Navy
Property Number: 77199830022
Status: Unutilized
Comment: 2 acres, open space.

Suitable/To Be Excessed

Buildings (by State)

Puerto Rico

Bldg. 561
Former Ramey AFB
Aguadilla PR 00604–
Landholding Agency: Navy
Property Number: 77199630001
Status: Unutilized
Comment: 102666 sq. ft. bldg. on 5.006 acres, most recent use—manufacturing, office and freight distribution center, presence of asbestos.

Unsuitable Properties

Buildings (by State)

California

Bldg. 210
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830001
Status: Excess
Reason: Extensive deterioration.

Bldg. 444
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830122
Status: Excess
Reason: Extensive deterioration.

Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number: 77199840001
Status: Excess
Reason: Extensive deterioration.

Bldgs. 20106, 20195
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199930001
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldgs. 40, 62
Naval Air Station, North Island
Imperial Beach Co: CA 91932–
Landholding Agency: Navy

Property Number: 77199930024
Status: Excess
Reason: Extensive deterioration.

Bldg. 5UT4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930081
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5US4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930082
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 127
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930083
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930084
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930085
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930086
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930087
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930088
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930090
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930091
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930092
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930093
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930094
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930095
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D1
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930096
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D2
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930097
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D3
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930098
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930099
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D5
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 771999300100
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 206
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930105
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 432
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930106
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 433
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 435
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930108
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 456
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930109
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 921
Naval Weapons Station Seal
—Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930110
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 201
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 205
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 227
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 230
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 232
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 337

Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 338
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 339
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940009
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 349
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940010
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 362
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940011
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 363
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 410
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940013
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 438
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940014
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q100
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940067
Status: Excess
Reason: Extensive deterioration.

Bldg. Q102
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940068
Status: Excess
Reason: Extensive deterioration.

Bldg. 106
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940069
Status: Excess
Reason: Extensive deterioration.

Bldg. 111
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940070
Status: Excess
Reason: Extensive deterioration.

Bldg. 112
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940071
Status: Excess
Reason: Extensive deterioration.

Bldg. 613
NAS, North Island
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940072
Status: Excess
Reason: Extensive deterioration.

Bldg. 55
Naval Amphibious Base
Imperial Beach Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940073
Status: Excess
Reason: Extensive deterioration.

Bldg. 154
Naval Air Station
North Island Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200010037
Status: Excess
Reason: Extensive deterioration.

Bldg. OT68
Space & Navy Warfare
Systems Center
San Diego Co: CA 92152–5001
Landholding Agency: Navy
Property Number: 77200010076
Status: Unutilized
Reason: Floodway.

Bldg. 1234
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010077
Status: Excess
Reason: Extensive deterioration.

Bldg. 1439
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010078
Status: Excess
Reason: Extensive deterioration.

Bldg. 1443
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010079
Status: Excess
Reason: Extensive deterioration.

Bldg. 2231
Marine Corps Base
Camp Pendleton CO: CA 92055–
Landholding Agency: Navy
Property Number: 77200010080
Status: Excess
Reason: Extensive deterioration.

Bldg. 2232
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010081
Status: Excess
Reason: Extensive deterioration.

Bldg. 2582
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010082
Status: Excess
Reason: Extensive deterioration.

Bldg. 2583
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010083
Status: Excess
Reason: Extensive deterioration.

Bldg. 21544
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010084
Status: Excess
Reason: Extensive deterioration.

Bldg. 21549
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010085
Status: Excess
Reason: Extensive deterioration.

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010086
Status: Excess
Reason: Extensive deterioration.

Bldg. 32927
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010087
Status: Excess
Reason: Extensive deterioration.

Bldg. 130167
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010088
Status: Excess
Reason: Extensive deterioration.

Bldg. 130175
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010089
Status: Excess
Reason: Extensive deterioration.

Bldg. 201076
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010090
Status: Excess
Reason: Extensive deterioration.

Bldg. 201487
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010091

Status: Excess
Reason: Extensive deterioration.

Bldg. 1684
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010092
Status: Excess
Reason: Extensive deterioration.

Bldg. 16146
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010093
Status: Excess
Reason: Extensive deterioration.

Bldg. 43332
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010094
Status: Excess
Reason: Extensive deterioration.

Bldg. 43333
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010095
Status: Excess
Reason: Extensive deterioration.

Bldg. 43334
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010096
Status: Excess
Reason: Extensive deterioration.

Bldg. 43335
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010097
Status: Excess
Reason: Extensive deterioration.

Bldg. 43336
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010098
Status: Excess
Reason: Extensive deterioration.

Bldg. 43337
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010099
Status: Excess
Reason: Extensive deterioration.

Bldg. 52651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010100
Status: Excess
Reason: Extensive deterioration.

Bldg. 17A
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200020001
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 62327
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020034
Status: Excess
Reason: Extensive deterioration.

Bldg. 3314
Marine Corps Air Station
Miramar Co: CA 94145–
Landholding Agency: Navy
Property Number: 77200020035
Status: Excess
Reason: Extensive deterioration.

Bldg. 5157, 5158
Construction Battalion
Center
Port Hueneme: CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020045
Status: Unutilized
Reason: Secured Area.

Facility 13181
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020046
Status: Unutilized
Reasons: Secured Area Extensive deterioration.

Facility 14220
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020047
Status: Unutilized
Reasons: Secured Area Extensive deterioration.

Facility 24151
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020048
Status: Unutilized
Reasons: Secured Area Extensive deterioration.

Bldg. 22074
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020092
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 62324
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020093
Status: Unutilized
Reason: Extensive deterioration.

Bldg. H–62
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020094
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1442
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020106
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 13162
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020108
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 14100
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020109
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020110
Status: Unutilized
Reason: Extensive deterioration.

Connecticut

DG1–DG8, DG10–DG–27
Dolphin Gardens
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199930025
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 480
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200010075
Status: Unutilized
Reason: Secured Area.

10 Bldgs./84.62 acres
Naval Weapons Ind. Rsv. Pl.
Bloomfield Co: Hartford CT 06002–0002
Landholding Agency: Navy
Property Number: 77200020096
Status: Unutilized
Reason: Secured Area.

Florida

Bldg. 648
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920087
Status: Unutilized
Reason: Secured Area.

Bldg. 1882
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920088
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 3228
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920089
Status: Unutilized
Reason: Secured Area.

Bldg. 3604
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920090
Status: Unutilized
Reason: Secured Area.

Bldg. 3605
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920091
Status: Unutilized
Reason: Secured Area.

Bldg. 3626
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920092
Status: Unutilized
Reason: Secured Area.

Bldg. 3674
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920093
Status: Unutilized
Reason: Secured Area.

Bldg. A–146
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930027
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–232
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–4020
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930029
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3451
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199940066
Status: Unutilized
Reason: Secured Area.

Bldg. 1558
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 592
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 610
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7L
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7M
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7N
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 70
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. A–952
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010034
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–962
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–1105
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010036
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 44
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010038
Status: Unutilized
Reason: Secured Area.

Bldg. 58
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010039
Status: Unutilized
Reason: Secured Area.

Bldg. 365
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010040
Status: Unutilized
Reason: Secured Area.

Bldg. 455
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010041
Status: Unutilized
Reason: Secured Area.

Bldg. 467
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010042
Status: Unutilized
Reason: Secured Area.

Bldg. 475
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010043
Status: Unutilized
Reason: Secured Area.

Bldg. 605A
Naval Air Station
Pensacola Co: Escambia FL 43508–
Landholding Agency: Navy
Property Number: 77200010044
Status: Unutilized
Reason: Secured Area.

Bldg. 689
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010045
Status: Unutilized
Reason: Secured Area.

Bldg. 802A
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010046
Status: Unutilized
Reason: Secured Area.

Bldg. 835
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010047
Status: Unutilized
Reason: Secured Area.

Bldg. 859B
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010048
Status: Unutilized
Reason: Secured Area.

Bldg. 859C
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010049
Status: Unutilized
Reason: Secured Area.

Bldg. 869
Naval Air Station
Pensacola Co: Escambia FL 32598–
Landholding Agency: Navy
Property Number: 77200010050
Status: Unutilized
Reason: Secured Area.

Bldg. 1713
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010051
Status: Unutilized
Reason: Secured Area.

Bldg. 2437
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010052
Status: Unutilized
Reason: Secured Area.

Bldg. 2462
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010053
Status: Unutilized
Reason: Secured Area.

Bldg. 3446
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010054
Status: Unutilized
Reason: Secured Area.

Bldg. 3478
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010055
Status: Unutilized
Reason: Secured Area.

Bldg. 3878
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010056
Status: Unutilized
Reason: Secured Area.

Bldg. 7H
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020064
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 7J
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020065
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 7K
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020066
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 106
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020067
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 135
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020068
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 142
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020069
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 584
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020070
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 610
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020071
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 702
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020072
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 703
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020073
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 725
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020074
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 740A
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020075
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 54
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020076
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 211
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020077
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 62
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 94
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547
Landholding Agency: Navy
Property Number: 77199910001
Status: Unutilized
Reason: Extensive deterioration.

Facility 5001
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940016
Status: Unutilized
Reason: Secured Area.

Facility 5002
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940017
Status: Unutilized
Reason: Secured Area.

Facility 5003
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940018
Status: Unutilized
Reason: Secured Area.

Facility 5935
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940019
Status: Unutilized
Reason: Secured Area.

Guam

Structures 312, 1792
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930002
Status: Excess
Reason: Secured Area.

Structures 2020, 2021
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930003
Status: Excess
Reason: Secured Area.

Bldg. 3171
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930004
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 264
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area, Extensive deterioration.

Bldg. 4400
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4402
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930058
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4414
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930059
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 4425
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930060
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4426d–4428
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930061
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 26
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020049
Status: Unutilized
Reason: Secured Area.

Bldg. 264
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area, Extensive deterioration.

Bldg. 3112
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020051
Status: Unutilized
Reason: Secured Area.

Bldg. 3116
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020052
Status: Unutilized
Reason: Secured Area.

Bldg. 3117
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020053
Status: Unutilized
Reason: Secured Area.

Bldg. 3118
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020054
Status: Unutilized
Reason: Secured Area.

Bldg. 3120
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020055
Status: Unutilized
Reason: Secured Area.

Bldg. 3121
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020056
Status: Unutilized
Reason: Secured Area.

Bldg. 4400
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4402
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020058
Status: Unutilized
Reason: Secured Area.

Bldg. 4414
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020059
Status: Unutilized
Reason: Secured Area.

Bldg. 4425
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020060
Status: Unutilized
Reason: Secured Area.

Bldgs. 4426, 4427, 4428
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020061
Status: Unutilized
Reason: Secured Area.

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive Deterioration, Secured Area.

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area.

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area.

Bldg. 6, Pearl Harbor
Richardson Recreation Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area.

Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area.

Bldg. SX30

Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area.

Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration.

Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 40
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 50
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S380
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830032
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S381
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830033
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration.

Facility S–721
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840042
Status: Excess
Reason: Secured Area.

Facility S–897
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840043
Status: Excess
Reason: Secured Area.

Facility S–937
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840044
Status: Excess
Reason: Secured Area.

Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area.

Facility 63
Naval Computer & Telecomm. Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199920013
Status: Excess
Reason: Extensive deterioration.

Facility SX30
Navy Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Coral Rose Navy Housing
Former Naval Air Station
Kapolei Co: HI 96707–
Landholding Agency: Navy
Property Number: 77200020097
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area.

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured Area.

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured Area.

Bldg. 910
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area.

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area.

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area.

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area.

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area.

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area.

Bldg. 2600

Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area.

Indiana

Bldg. 3
Naval Surface Warfare
Naval Investigation Ofc.
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 Bldgs.
Naval Surface Warfare
157, 166, 171
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 Bldgs.
Naval Surface Warfare
#22, 2792, 2794
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010059
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

3 Bldgs.
Naval Surface Warfare
#158, 167, 172
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010060
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 162, 163
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010061
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

3 Bldgs. 169D, 169E
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010062
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

4 Bldgs.
Naval Surface Warfare
#173, 2171, 2172, 2179
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

5 Bldgs.
Naval Surface Warfare
2174, 2175, 2176, 2193, 2784
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010064
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 2500, 2501
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

3 Bldgs.
Naval Surface Warfare
#2502, 2503, 2715
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010066
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

10 Bldgs.
Naval Surface Warfare
#2803, 2855–2863
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010067
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 2905, 3074
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010068
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Maine

Aircraft Hangar #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199810015
Status: Excess
Reason: Extensive deterioration.

Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840005
Status: Excess
Reason: Extensive deterioration.

Bldg. 15
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840006
Status: Excess
Reason: Extensive deterioration.

Bldg. 16
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840007
Status: Excess
Reason: Extensive deterioration.

Bldg. 90
Naval Security Group Activity
Winter Harbor Co: ME 00000–
Landholding Agency: Navy
Property Number: 77200020098
Status: Excess
Reason: Extensive deterioration.

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 163
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010033
Status: Unutilized
Reason: Extensive deterioration.

Mississippi

Bldg. 78
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 113
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 147
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 187
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 75
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 179
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930012
Status: Unutilized

Reasons: Secured Area, Extensive deterioration.

Structure 262
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930013
Status: Unutilized
Reason: Secured Area.

Bldg. 279
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 326
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 412
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 49
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 130
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 368
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 390
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 43
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030076
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 44
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030077
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 164
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030078
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

New Hampshire

Bldg. 89
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830086
Status: Unutilized
Reason: Secured Area.

Bldg. 99
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830088
Status: Unutilized
Reason: Secured Area.

Bldg. 115
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830089
Status: Unutilized
Reason: Secured Area.

Bldg. 178
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830090
Status: Unutilized
Reason: Secured Area.

Bldg. 298
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830091
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. H–21
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840012
Status: Underutilized
Reasons: Secured Area.

Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840013
Status: Underutilized
Reason: Secured Area.

Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840014
Status: Underutilized
Reason: Secured Area.

Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840015
Status: Underutilized
Reason: Secured Area.

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration.

Bldg. 55
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940020
Status: Unutilized
Reason: Secured Area.

Bldg. 150
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940021
Status: Unutilized
Reason: Secured Area.

New Jersey

Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920024
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 474
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920025
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 220, 234, 236
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199930017
Status: Unutilized
Reason: Extensive deterioration.

28 Sheds
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77199940026
Status: Unutilized
Reason: Extensive deterioration.

Bldg. FA–1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. GB–1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010009
Status: Unutilized
Reason: Extensive deterioration.

Bldg. R–18
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010010
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–62
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010011
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–412
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–457
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010013
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. 96
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 97
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 169
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820113
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 196
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820114
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 477
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration.

Bldg. 3422
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820116
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. TC–849
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. TC–852
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920063
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 2159
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920146
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Structure 3758
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920147
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 8027
Marine Corps Air Station
Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930043
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 8028
Marine Corps Air Station
Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930044
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 1649
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199940022
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. TC–817
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200010101
Status: Excess
Reason: Extensive deterioration.

Bldg. BA114
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. H16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. TC816
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. TC818
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. SM145
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. BA113
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2067
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200020036
Status: Excess

Reasons: Secured Area, Extensive deterioration.

Bldg. 3146
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200020037
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Pennsylvania

Bldg. 524
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830023
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 152
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930018
Status: Excess
Reason: Extensive deterioration.

Bldg. 185
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930019
Status: Excess
Reason: Extensive deterioration.

Bldg. 603
Naval Support Station
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77199940015
Status: Unutilized
Reason: Extensive deterioration.

Facility 22
Naval Support Station
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77199940060
Status: Excess
Reason: Extensive deterioration.

Bldg. 85
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200010021
Status: Unutilized
Reason: Extensive deterioration.

Puerto Rico

Bldg. 433
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830066
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 434
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830067
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 464
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830068
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 762
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830069
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 763
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830070
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1927
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830071
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 175
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830072
Status: Unutilized
Reason: Extensive deterioration.

Former No. 2091
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830073
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 261/1692
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830074
Status: Unutilized
Reason: Extensive deterioration.

B–38
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 781
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1740
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1933
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1934
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910009
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1976
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910010
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2001
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910011
Status: Unutilized
Reason: Extensive deterioration.

4 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 440, 441, 442, 443
Landholding Agency: Navy
Property Number: 77199920120
Status: Underutilized
Reason: Secured Area.

Bldg. 444
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920121
Status: Underutilized
Reason: Secured Area.

Bldgs. 445–447
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920122
Status: Underutilized
Reason: Secured Area.

6 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 448, 449, 450, 451, 452, 455
Landholding Agency: Navy
Property Number: 77199920123
Status: Underutilized
Reason: Secured Area.

Bldg. 458
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920124
Status: Underutilized
Reason: Extensive deterioration.

Bldgs. 461, 2157
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920125
Status: Underutilized
Reason: Secured Area.

Bldgs. 28–29
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920126
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 30–31
STOP 7½ Compound, Naval Reservation

San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920127
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 104
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920128
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 459
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920129
Status: Unutilized
Reason: Extensive deterioration.

Structure 460
STOP 7½ Compound Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920130
Status: Underutilized
Reason: Secured Area.

Rhode Island

Bldg. 52
Gould Island, Naval Station
Newport Co: RI 00000–
Landholding Agency: Navy
Property Number: 77199930020
Status: Excess
Reasons: Not accessible by road, Extensive deterioration.

South Carolina

Bldg. 49
Naval Public Works Center
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 38
Naval Air Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020105
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

4 Industrial Bldgs.
Naval Weapons Station
Charleston
88, 92, 94, 354
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020113
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

4 Heat Plant Bldgs.
Naval Weapons Station
Charleston
89, 95, 355, 438
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

8 Security Bldgs.
Naval Weapons Station
Charleston
313, 859, 860, 897, 918, 1654, 1655, 3217
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

8 Storage Bldgs.
Naval Weapons Station
Charleston
307, 353, 799, 831, 861, 933, 984, 994
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020116
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

6 Bldgs.
Naval Weapons Station
Charleston
183, 855, 868, 968, 3238, 408
Goose Creek Co: Berkeley SC 29945–
Landholding Agency: Navy
Property Number: 77200020117
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

Tennessee

20 Bldgs.
Naval Support Activity
Millington Co: Shelby TN 38054–
Location: 766, 1597–1598, 5238, 435–446, S239, S75, 1211, 1379
Landholding Agency: Navy
Property Number: 77199940027
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint
Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1190
Naval Air Station Joint
Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reason: Secured Area.

Bldg. 1820
Naval Air Station Joint
Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facilities 105 and 105C
Naval Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 101
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940052
Status: Excess
Reason: Extensive deterioration.

Bldg. 198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940053
Status: Excess
Reason: Extensive deterioration.

Bldg. 1104
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940054
Excess
Reason: Extensive deterioration.

Bldg. 1198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940055
Status: Excess
Reason: Extensive deterioration.

Bldg. 1823
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940056
Status: Excess
Reason: Extensive deterioration.

Bldg. H–9
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940057
Status: Excess
Reason: Extensive deterioration.

Bldg. H–45
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940058
Status: Excess
Reason: Extensive deterioration.

Bldg. H–54
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940059
Status: Excess
Reason: Extensive deterioration.

Virginia

Bldg. 02
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration.

Bldg. 2208
Naval Medical Clinic
Quantico VA
Landholding Agency: Navy
Property Number: 77199820001
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 358, 359
Cheatham Annex

Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration.

Bldg. CAD–43
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820024
Status: Excess
Reason: Extensive deterioration.

Bldg. CAD–102
Naval Air Station
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration.

Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status Excess
Reason: Extensive deterioration.

Bldg. CAD–127
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820027
Status: Excess
Reason: Extensive deterioration.

CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3074
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199920026
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration.

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration.

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration.

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration.

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration.

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration.

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration.

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration.

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration.

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration.

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration.

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration.

Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration.

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration.

Bldg. 717
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration.

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration.

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration.

Bldg. 3170
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940064
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1252, 1277
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940065
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 7
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 12
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 24
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 34
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 108
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020013
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 299
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 400
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 436
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 442, 443
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 530
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 532
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 646–651
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 758, 759
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 764
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 784
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 786
Naval Weapons Station
Yorktown
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 788
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 790
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 814
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 1955–1957
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 1960, 1961, 1964
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020029
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 1980, 1981
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020030
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 160
Cheatham Annex
Williamsburg Co: VA 23185–5830
Landholding Agency: Navy
Property Number: 77200020031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

CEP–12
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020042
Status: Excess
Reason: Extensive deterioration.

CEP–62
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020043
Status: Excess
Reason: Extensive deterioration.

CEP–206
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020044
Status: Excess
Reason: Extensive deterioration.

Bldg. 1453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–5000
Landholding Agency: Navy
Property Number: 77200020063
Status: Unutilized
Reason: Secured Area Extensive deterioration.

Bldg. SP–76
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020078
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 101, 239
Norfolk Station
St. Julien's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020102
Status: Unutilized
Reason: Extensive deterioration.

Facility 189
Norfolk Station
St. Julien's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020103
Status: Unutilized
Reason: Extensive deterioration.

Facility 190
Norfolk Station
St. Juliens Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020104

Status: Unutilized
Reason: Extensive deterioration.

Washington

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilized
Reason: Secured Area.

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Coal Handling Facilities
Puget Sound Naval Shipyard
#908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: contamination.

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration.

Bldgs. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 97
Naval Air Station Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 15
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 166
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930101
Status: Excess
Reason: Secured Area.

Bldg. 287
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930102
Status: Excess
Reason: Secured Area.

Bldg. 418
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930103
Status: Excess
Reason: Secured Area.

Bldg. 858
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930104
Status: Excess
Reason: Secured Area.

Bldg. 17
Naval Radio Station
Jim Creek
Arlington Co: WA 98223–8599
Landholding Agency: Navy
Property Number: 77200010073
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 47
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy

Property Number: 77200010074
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive materials, Secured Area.

Whitney Point Complex
Brinnon Co: Jefferson WA 98320–9899
Landholding Agency: Navy
Property Number: 77200010102
Status: Excess
Reason: Extensive deterioration.

Bldg. 398
Naval Station
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200020038
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive materials, Secured Area.

Bldg. 976
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

8 Bldgs.
Naval Station
902, 903, 905, 907, 909–911, 915
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Land (by State)

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Land
Naval Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77199940001
Status: Underutilized
Reason: Secured Area.

PCL–4 (11.60 acres)
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020095
Status: Underutilized
Reason: Secured Area.

Maryland

6 Acres
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77199940023
Status: Unutilized
Reason: Secured Area.

Land—5000 sq. ft.
Naval Air Station
Patuxent River Co: MD 20670–1603
Landholding Agency: Navy
Property Number: 77200010023
Status: Unutilized
Reason: Secured Area.

New Hampshire

Parcel #4
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #5
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #6
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010030
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #7
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010031
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

North Carolina

0.85 parcel of land
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area.

0.1291 acres
Camp Lejeune
off Dogwood
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200010069
Status: Unutilized
Reason: Secured Area.

0.1291 acres
Camp Lejeune
off Brewster Rd.
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200010070
Status: Unutilized
Reason: Secured Area.

Washington

Land-Port Hadlock Detachment
Naval Ordnance Center
Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

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Federal Register

Friday,
October 6, 2000

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 434 and 435

Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 434 and 435

[Docket No. EE–RM–79–112–C]

RIN 1904–AA69

Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy today issues a rule that establishes building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to the requirements of the Energy Conservation and Production Act (ECPA). The final rule revises the current interim Federal standards to conform generally with the format of the current voluntary building energy codes. The final rule contains substantive changes from the interim rule in the areas of lighting, mechanical ventilation, motors, building envelopes, fenestration rating test procedures, and test procedures for heating and cooling equipment.

DATES: *Effective Date:* This regulation is effective October 8, 2001. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 8, 2001.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

A. Authority

Section 305(a)(1) of the Energy Conservation and Production Act, as amended (ECPA), 42 U.S.C. 6834(a)(1), requires the Department of Energy (''Department or ''DOE'') to establish by rule energy standards for new Federal buildings. In developing this final rule, the Department is directed to consult with other Federal agencies as well as private and State associations and other appropriate persons.

Section 305(a)(1) requires that the rule contain energy efficiency measures that are technologically feasible and economically justified. Since ECPA establishes that the new standards meet, at a minimum, the requirements of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1–1989 (hereinafter Standard 90.1–1989) (Section 305(a)(2)(A), the Department is not required to establish the technological feasibility and economic justification for these minimum statutorily prescribed requirements (otherwise referred to as the ''statutory baseline''). The Department is interpreting this minimum requirement to include those addenda to Standard 90.1–1989 which were in effect at the time the Energy Policy Act of 1992 (EPACT), which amended ECPA, was enacted. Since these addenda were part of Standard 90.1–1989 at the time EPACT was enacted, they are part of the baseline against which the final rule is compared for the purposes of assessing its energy and economic impacts.

Section 305(a)(2)(A) requires that the rule contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of Standard 90.1–1989 for commercial buildings and of the Model Energy Code (MEC), 1992, for residential buildings. MEC 1992 exempts multi-family high-rise residential buildings (over three stories in height above ground) which comply with Standard 90.1–1989. As a result, Standard 90.1–1989 is the applicable standard under section 305 of ECPA for high-rise residential buildings. The final rule complies with section 305(a)(2)(A).

The rule issued today is required to become effective no later than one year after it is issued. (Section 305(a)(1)). The effective date is October 8, 2001.

Section 305(a)(2)(B) requires that to the extent practicable, the new Federal building energy standards use the same format as the appropriate voluntary building energy code. The final rule revises the current interim Federal standards to conform generally with the format and language of the codified version of Standard 90.1–1989. The addenda to Standard 90.1–1989 included in the final rule are also generally incorporated in their codified form.

Section 305(a)(2)(C) further requires that the final rule be established in consultation with the Environmental

Protection Agency (EPA) and other Federal agencies and, where appropriate, contain measures with regard to radon and other indoor air pollutants.

Section 305(c) states that the standards issued in the final rule be reviewed and, if appropriate, updated at not less than five year intervals.

Section 306 addresses Federal compliance. Section 306(a) provides that each Federal agency must adopt procedures to assure that new Federal buildings will meet or exceed the Federal building energy standards established by this rule. Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal Building unless the building meets or exceeds the appropriate Federal building energy standards established under section 305. Under section 306, Federal agencies shall adopt procedures necessary to assure that new Federal buildings meet or exceed the Federal standard. For instance, a Federal agency might adopt a procedure allowing the use of local building codes that meet or exceed the Federal building standard in lieu of the Federal code. Or, if desired, the agency might adopt code inspection procedures to assure compliance with the Federal standard.

B. Background

On January 30, 1989, the Department issued an interim standard (10 CFR part 435, subpart A) establishing energy conservation voluntary performance standards for the design of new commercial and multi-family high rise residential buildings; these standards are mandatory for Federal buildings. The Department's interim standards and Standard 90.1–1989 were developed in conjunction with one another and contain similar energy efficiency provisions. ASHRAE and IESNA are professional engineering societies which have undertaken the responsibility of sponsoring a voluntary industry consensus standard for the design of energy efficient commercial and multi-family high rise residential buildings.

The Department's interim standard and Standard 90.1–1989 followed a parallel development track. ASHRAE/IESNA provided technical expertise that ensured the practicality of the interim standards and Standard 90.1–1989. The Department contributed technical expertise and research results in the development of these two standards.

The Department, in 1993 requested ASHRAE to assist the Department in producing a version of Standard 90.1–1989 and its addenda in code format. This joint effort was undertaken to assist States in responding to section 304(b) of ECPA and to assist the Department in establishing Federal building energy efficiency standards. The resulting code, published by ASHRAE/IESNA in November 1993 is entitled ''Energy Code for Commercial and High-Rise Residential Buildings'' (hereinafter, the codified version). This code has been approved by the Council of American Building Officials (CABO) as the basis for its requirements for non-residential buildings in the MEC and some of the regional model codes.

ASHRAE/IESNA periodically modifies the current edition of their standard through an addenda process. ASHRAE/IESNA has approved several addenda to Standard 90.1–1989 since it was published in 1989. The addenda applicable to this rule are: Addenda b, c, d, e, f, g, and i.

ASHRAE/IESNA is currently working to produce a new standard that will replace ASHRAE/IESNA Standard 90.1. The Department is also working to produce a new standard that is more stringent than the parameters of today's final rule. It is targeted to be 30 percent more energy efficient overall than the results of the 1985 Economic Assessment for the current interim standard, published in 10 CFR part 435, or 20–30 percent more efficient than today's final rule. The Department's decision to promulgate today's final rule is based on a need for Federal buildings to be in full compliance with EPACT requirements and to adopt all applicable addenda from Standard 90.1–1989 that improve energy efficiency. Federal construction will benefit in energy savings from the updated standards while the Department continues its work on a new standard that is more stringent than today's final rule. In developing a new standard, the Department will consider the updated ASHRAE/IESNA Standard 90.1 as well as other improvements that may be economically justified and technologically feasible.

On August 6, 1996, the Department published a notice of proposed rulemaking in the **Federal Register**, ''Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings,'' 61 FR 40882, to establish building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to the requirements of ECPA, as amended. On September 4, 1996, a public hearing was held in Washington, DC, at which time two commenters made oral presentations. The comment period closed November 4, 1996. Fourteen commenters submitted a total of 50 written comments during the public comment period.

C. Description of the Final Rule

The standards issued today specify a minimum level of energy efficiency for new Federal commercial and high-rise residential buildings based on Standard 90.1–1989. The final rule contains substantive changes from the interim standard in the areas of lighting, mechanical ventilation, motors, building envelopes, fenestration rating procedures, and heating and cooling equipment test procedures. It includes those addenda which were in effect at the time EPACT was enacted (Addendum 90.1b revising service water heating criteria and updating miscellaneous references to other standards, Addendum 90.1d addressing lighting controls, and Addendum 90.1e updating ventilation requirements).

The final rule also adopts a format that generally conforms to the format of the codified version of Standard 90.1–1989, providing provisions to the final rule that are similar to those being adopted by State and local jurisdictions. It does not address the design of residential single family or multi-family low rise buildings, currently addressed by subpart C of 10 CFR part 435. Such buildings will be addressed in a separate rulemaking.

The current interim standards for Federal commercial and multi-family high-rise residential buildings are found in subpart A of 10 CFR part 435. For clarity and ease of use, the Department is replacing subparts A and B of part 435 with the new 10 CFR part 434, containing the building energy efficiency requirements for new Federal commercial and multi-family high-rise residential buildings.

The final rule also includes several other addenda adopted by ASHRAE and IESNA after EPACT was enacted. These include Addenda g, i, and c, addressing building envelopes, heating and cooling equipment test procedures, motor efficiency, and procedures for calculating fenestration ratings, respectively.

The lighting standards in the final rule differ from both the interim standards and Standard 90.1–1989. Overall, the updated lighting provisions are more stringent than Standard 90.1–1989 and reflect new information concerning energy requirements needed to achieve adequate lighting levels.

The final rule provides minimum energy efficiency levels to be required in each new Federal commercial and high-rise residential building. The individual specifications for lighting, heating, ventilating and air-conditioning (HVAC)

equipment, envelope, and other aspects of buildings found in subpart D of the final rule determine the minimum level of energy efficiency required for a particular building. This ''prescriptive path'' provides a simple means of ensuring that design specifications meet the compliance requirements of the final rule.

Flexibility is also a key feature of the final rule. While some of the specific design requirements of subpart D apply in all cases, this final rule provides for flexibility in many other areas if building designers can show that the overall building energy use or energy cost compares favorably to the baseline energy use or energy cost based on Subparts E or F of the final rule. Tradeoffs among lighting systems and among building shell components can be made using the Department's version of the Envelope Standard (ENVSTD) software. Building-wide trade-offs among energy efficient features, including features not explicitly addressed in Subpart D, such as passive and active renewable energy source features, can be made as well. Subpart E allows building-wide flexibility as long as the net result equals or is below an energy cost budget based on the prescriptive path. Subpart F allows these trade-offs to be made if predicted total building energy use is at or below the level expected using the ''prescriptive path'' for a reference building. These alternative paths are especially valuable as a means for building designers to take advantage of the energy savings potential of new technologies.

ASHRAE and IESNA have published Standard 90.1–1989 in a code format that is generally consistent with the standard itself. The Department has based its rule on the format of the codified version of Standard 90.1–1989, published by ASHRAE and IESNA in 1993, and has adopted verbatim significant portions of it.

The codified version is widely used by State and local code making bodies as they update their codes. The designers and builders of Federal buildings, who also design and construct State and private sector buildings, will be familiar with the provisions of the codified version, their importance, and how to meet them. Therefore, the consistency of the format of the final rule with industry-wide practices facilitates implementation by Federal agencies of the final rule.

II. Discussion of Comments and Changes to the Proposed Rule

This section responds to significant comments and explains other changes to the proposed rule.

A. General Comments

(1) Incorporation By Reference

The Department proposed to include the entire Federal code in a new 10 CFR part 434, instead of incorporating provisions of Standard 90.1–1989 by reference. DOE invited comments as to whether Standard 90.1–1989, including appropriate addenda, should be incorporated by reference instead of publishing the rule in its entirety. One commenter (Society of Plastics Industry, Inc. (SPI), No. 6; 1) stated that it supported publishing the rule in its entirety so that all relevant requirements, including addenda, are together in one document. It stated that this would make the final rule more user-friendly. One commenter suggested that the Standard 90.1–1989 be incorporated by reference with appropriate addenda, and that the Department publish only the differences between the Standard 90.1–1989 and the final rule. Federal Interagency Energy Management Task Force (hereinafter New Space Working Group), (New Space Working Group, No. 14; 1).

The Department has concluded that there are a number of important substantive technical and administrative differences between Standard 90.1–1989 and the final rule which need to be included in one document for simplicity, ease, and availability. Administratively, these range from the scope of buildings and spaces covered (a number of Federal building types and space categories would not be covered if Standard 90.1–1989 were adopted by reference), to the terminology used in defining the relationship between owners, designers and code officials, as opposed to agencies and their design contractors. The differences range from significantly more stringent lighting criteria to the incorporation of metric units. It would be cumbersome and inefficient to require agencies to pull disparate elements from several sources and integrate them for use.

The Department believes that since 10 CFR part 434 is a code strictly for Federal commercial and high rise residential buildings, the entire code must be readily available to Federal managers who must comply with this code while designing and constructing new Federal facilities.

Publishing the document in its entirety will allow the complete code to be found in one location, in a unified form for easy access.

(2) Metric Units of Measurement

The proposed rule is stated only in English units of measurement. One commenter stated that the rule should reference metric as well as English units. (New Space Working Group, No. 14; 3)

The Department agrees with this comment. Executive Order 12770, ''Metric Usage in Federal Government Programs,'' 56 FR 35801 (July 25, 1991), directs executive branch departments and agencies of the United States Government to take all appropriate measures to implement the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. Therefore, in order to take a first step towards implementing this Executive Order, DOE has provided a soft metric conversion for the applicable tables throughout the final rule in order to increase understanding of the metric system and to support and encourage its use. The Department is also participating in the metric conversion of calculations, algorithms, formulas, and tables for the proposed revisions to the updated Standard 90.1–1989. All tables have not yet been converted, but the 90.1 Committee is working to reach consensus on a hard metric conversion for the entire updated Standard 90.1–1989. When this is complete, the Department will consider proposing inclusion in the Federal Code.

B. Section-by-Section Comments

(1) Compliance, Subpart A, Section 102

The Department received public comment on the application of Section 434.102 , ''Compliance,'' to certain subparts within the rule. Section 434.102, requires that when the alternative requirements of subparts E and F are used to design and construct buildings, such designs shall be certified by a registered architect or engineer. This requirement does not apply to subpart D. One commenter stated that there should be a provision requiring certification by a registered architect or engineer for buildings that are designed and constructed to meet the prescriptive specifications of subpart D (New Space Working Group, No. 14; 3). This certification requirement is included in subparts E and F, and in equivalent parts of Standard 90.1–1989, and the subsequent codified version of the standard, because these latter subparts require a comparative energy analysis of the proposed design to a prototype or

reference building. DOE believes that such an analysis requires the services of a registered architect or engineer. To the contrary, subpart D requires no such analysis. Subpart D is composed of a set of prescriptive and component performance requirements, most of which are straight forward. Such designs can be readily checked by a code inspector or, by the responsible facility manager.

The Department continues to believe that it is inappropriate to establish a blanket requirement for certification by an architect or engineer for all buildings utilizing the prescriptive requirements of subpart D. In most cases, compliance can be readily determined without this certification. ECPA Section 306(a) explicitly directs the head of each Federal agency to adopt procedures necessary to assure that their buildings meet or exceed the rule adopted today. The Department recommends that agencies consider establishing a procedure for certification by a registered architect or engineer in those cases where compliance with subpart D cannot be readily established.

(2) Default Values for Unlabeled Fenestration Products, Subpart D, Section 402

One commenter requested that this rule follow the lead of the MEC and fully and explicitly incorporate all of the standard National Fenestration Rating Council (NFRC) procedures. The commenter provided suggested text that would replace sections 402.1.1.1 and 402.1.2.4, requiring that U-values, Solar Heat Gain Coefficients (SHGC) and Visible Light Transmittance (VLT) would be determined in accordance with the applicable NFRC procedures by independent labs, and be certified and labeled by manufacturers. (Anderson Windows, No. 5; 1–2) This suggested change would include eliminating the use of shading coefficients, as well as adding to the testing and certification procedures required by the proposed rule.

At present, the explicit use of NFRC procedures is permissible only for those fenestration products that are designed, constructed, and tested in a quality controlled environment such as a manufacturing plant and/or warehouse. In commercial construction, fenestration units and skylights that are site-built because of size, weight, and transporting difficulties (*i.e.* mall atriums), are not covered by NFRC procedures and cannot be certified or properly labeled under these guidelines. The NFRC test procedures are specifically for off-the-shelf fenestration products, and do not appropriately cover site-built products.

Because site-built fenestration units can represent a significant portion of the window and skylight requirements for new Federal commercial buildings, the Department has retained the language of sections 402.1.1.1 and 402.1.2.4 in the final rule. The Department is working with the NFRC to develop guidelines that will adequately cover all fenestration products that are site-built as well as pre-manufactured.

(3) Solar Heat Gain and Shading Coefficients, Subpart D, Section 201 and 402

In the proposed rule, the Department uses Shading Coefficient (SC) in the Alternate Component Package Tables (ACP). Two commenters suggested that the Department adopt the alternative Solar Heat Gain Coefficient in place of the SC because it provides a more accurate representation of the passive solar heat gain properties of fenestration products, than do SC values. (Anderson Windows, No. 5; 1; Pella Corporation, No. 3; 1).

The Department agrees that the SHGC is a more accurate measure of solar heat gain and, therefore, encourages its use. The SHGC is the proportion of solar radiation striking a unit of glazing or fenestration (such as a window) that enters the space through the unit. This heat gain represents both the heat gain transmitted directly into the space and that absorbed by the unit and re-emitted, reradiated, conducted, or convected into the space. The solar heat gain coefficient may be measured with the radiation striking the unit normal (perpendicular) to it or striking it at an angle (general at 40, 50, 60 or 70 degrees).

In contrast, the SC is a calculated (not tested) multiplier that was created to adjust the solar heat gain values for clear glass (which has well characterized properties) to a value for tinted glass. It works well for single pane and tinted glass with heat and light transmittance paths the same as those of single pane clear glass. However, it has been found to give incorrect results in two significant cases: (1) when the path along which heat and light are transmitted through the actual glazing differs substantially from that of the referenced glazing (as for multi-pane glazing when solar radiance strikes it at above 60 degrees); and (2) when the solar gain is primarily (more than 60 percent) due to absorption and the wind speed is not close to the speed at which the SC was determined (7.5 mph). These limitations can seriously affect the accuracy of calculated building peak heat loads. The SC can overpredict the solar heat gain through a window at a given hour by as much as 35 percent.

The Department will continue to allow the use of SC values because they are still being used in simplified energy analysis programs and by some window and glazing manufacturers as the fenestration industry converts to SHGC values. However, SHGC values have been added to all applicable tables in this final rule. Furthermore, the definition of SC has been modified for accuracy and a definition of SHGC has been added to section 201, ''Definitions'' of the final rule. The references to NFRC–100–91, which contains manufacturer spectral data, and NFRC–200, which establishes the equations and procedures for using this data to calculate SHGC's, have been added to the reference standard section of this final rule.

(4) Interior Lighting Power Allowances Subpart D, Section 401

One commenter took the position that the particular values in the proposed rule for the interior lighting power allowances for whole-building categories are not stringent enough and that all of the lighting values should be reconsidered or reassessed. No specific recommended lighting values were provided. (New Space Working Group, No. 14; 2).

As noted in the preamble to the proposed rule, the Unit Power Density (UPD) values (W per ft^2) included in the rule are based on a detailed analysis of the technical and economic performance of the 1993 UPD values found in the interim rule. These 1993 values are substantively more efficient than the values in Standard 90.1–1989. The Department found that in 25 space types, the Standard 90.1–1989 UPD value is the most appropriate one for this rule. For 40 space types, a value at or below the 1993 interim UPD value was found to be economically justified and technologically feasible, and these more energy efficient values are included in today's final rule. In the remaining space types, the UPD value incorporated in today's rule falls between the 1989 and 1993 values, or there was no difference in the two values.

Therefore, in every case the lighting provisions in this rule meets or exceeds the energy efficiency of the provisions contained in Standard 90.1–1989. These provisions reflect the results of the demonstration phase of the 1993 interim lighting numbers. These values reflect a goal of progressive energy-conserving practice without prohibiting the design of quality lighting in interior environments. Details of this analysis

are found in the Technical Support Document (TSD).

The Department is aware that lighting technologies and design strategies are evolving rapidly. As the technical and economic justification for new UPD values are established, the Department will further update the code provisions for Federal buildings concerning lighting requirements. In addition, the Department through its Federal Energy Management Program is promoting highly efficient lighting design strategies for Federal buildings.

(5) Task Lighting Footnote, Subpart D, Section 401

One commenter recommended adding a footnote to one of the Building Space Activities entitled ''Offices'', in Table 401.3.2a. It was suggested that this footnote state ''include task lighting.'' (New Space Working Group, No 14; 2). No further elabortation was offered by this commenter.

Task lighting is not included in the calculation of interior lighting power allowances for office space. Task lighting is generally brought to the building after construction is completed. It is plugged into wall and floor outlets and is usually not hard wired into the buildings electrical system. It is regularly changed without code approval or the assistance of an electrician. It is, therefore, almost impossible to regulate through buildings codes. The Department, therefore, will not add a footnote concerning task lighting to the final rule.

(6) Ventilation Requirements for Enclosed Parking Garages, Subpart D, Section 403

Section 403.2.4.2 entitled ''Ventilation Controls for Enclosed Parking Garages,'' requires automatic control of fans that stage or modulate air volume as required to maintain carbon monoxide at or below the levels suggested in ASHRAE 62–1989. One commenter suggests that in addition to carbon monoxide control requirements, there should also be a requirement for automatic ventilation controls for nitrogen dioxide levels that exceed 5 parts per million where diesel-powered vehicles will be operated, parked and/or serviced in a building. (Virginia Electric and Power Co. (Vepco), No. 10; 1–2, 4). The commenter's proposed threshold exposure level is the same as the Occupational Safety and Health Administration's (OSHA's) regulatory standard codified at 29 CFR 1910.1000, subpart Z. Subpart Z sets forth the OSHA Permissible Exposure Levels (PELs). Table Z–1 contains limits for air contaminants, including nitrogen dioxide.

The OSHA Standard (29 CFR 1910.1000, subpart Z) is the applicable regulation for nitrogen dioxide exposure limits, and implicitly ventilation must be designed so that the exposure of nitrogen dioxide is no greater than 5 parts per million. If exposure levels of nitrogen dioxide exceed this permissible exposure limit, the OSHA standard, 29 CFR 1910.1000 (e) requires the employer to reduce exposures preferably using engineering controls (ventilation measures).

The commenter did not recommend particular ventilation controls or provide a basis for DOE prescribing such controls. Moreover, this subject was not discussed in DOE's Notice of Proposed Rulemaking. At this time, the Department has no basis to establish a requirement for nitrogen dioxide ventilation controls.

(7) Thermal Efficiency Requirements for Furnaces and Boilers, Subpart D, Section 403

Three commenters submitted remarks pertaining to the inclusion in Tables 403.1e, 403.1f and 404.1 of minimum efficiency requirements for furnaces and boilers operating at minimum capacity (Gas Appliance Manufacturers Association (GAMA), No. 8; 1–2; American Gas Association (AGA), No. 4; 4–5; Columbia Gas, No. 9; 3). One commenter objects to DOE's inclusion in this rule of minimum efficiency requirements for furnaces and boilers operating at minimum capacity and believes that the requirements in this rule should be identical to the standards for these products contained in the Energy Policy and Conservation Act (EPCA), as amended by EPACT. The commenter takes this position based on general language in the Preamble to the proposed rule that ''the provisions of today's proposed rule (based on the codified version of Standard 90.1) would be similar to those being adopted by State and local jurisdictions and widely used in the private sector.'' (61 FR 40883, August 6, 1996) The commenter argues that ''if DOE wants the Proposed Rule to be consistent with, or serve as a model for, updated State building codes, DOE should remember that State and local building codes must abide by the Federal preemption provisions of NAECA and EPACT.'' (GAMA, No. 8; 1–2) It argues that States cannot adopt requirements for the operation of furnaces and boilers at minimum capacity and, therefore, if consistency is a goal, the Federal Government should delete these minimum capacity requirements from its rule.

In addition, two other commenters took the position that DOE must review the minimum efficiency requirements in Tables 403.1e, 403.1f and 404 to assess whether or not they are cost effective, rather than rely upon their inclusion in ASHRAE 90.1–1989 as the basis for incorporation in the present rule. (AGA, No. 4; 4–5; Columbia Gas, No. 9; 3)

Concerning another subject, unit heaters and duct furnaces, both non-EPACT covered products, one commenter stated that the Department should delete the minimum capacity efficiency requirements from the proposed rule for this equipment because the requirements may discourage manufacturers from offering products that have more potential energy savings, such as products with modulating controls or two-stage operation. (GAMA, No. 8; 2)

The legislative requirements for this rule are contained in section 305 of ECPA, as amended, which clearly states that the rule for energy efficiency standards for new Federal buildings must meet or exceed ASHRAE Standard 90.1–1989. Section 305 of ECPA does not state that Federal building standards can be no more energy efficient than the provisions of section 342 of EPCA, or any other Federal minimum energy requirement. Nor does section 305 mention that the Federal requirements should be similar or identical to State and local building codes. Section 305 simply establishes that the new standards meet, at a minimum, the requirements of Standard 90.1–1989, thus establishing ASHRAE 90.1–1989 as the statutory baseline or minimum standard level. ASHRAE 90.1–1989 contains both minimum and maximum operating capacity efficiencies for furnaces and boilers. The minimum and maximum operating capacity efficiencies in this rule are identical to those found in Standard 90.1–1989. Accordingly, this rule meets the legislative requirements.

The Department's discussion in the Preamble concerning consistency between the proposed rule and industry-wide practices addressed generally the format and provisions of the proposed rule. It acknowledges that, in general, consistency with industry-wide practices would facilitate implementation by Federal agencies of the final rule. Consequently, the Department is adopting ''verbatim significant portions'' of the codified version of ASHRAE Standard 90.1–1989 and the format of the codified version. (61 FR 40884, August 6, 1996) The Department's statements, however, do

not lead to the conclusion that the Department intends that Federal standards be identical in every respect to requirements adopted by the States or those used in the private sector.

As previously noted, this commenter suggests that the Department should adopt the same minimum efficiency standards for specified categories of furnaces and boilers with respect to their energy use at maximum rated capacity as provided for in section 342 of EPCA, as amended by section 122 of EPACT, ''Energy Conservation Requirements for Certain Commercial and Industrial Equipment.'' These latter requirements specifically apply to manufacturers of such equipment. While the minimum efficiency requirements in section 342 restrict the types of equipment available in the market place, they do not purport to limit the ability of the Federal Government to establish additional requirements for equipment purchased for new Federal buildings. Furthermore, because the requirements of this final rule are for newly constructed Federal commercial and high-rise residential buildings only, they do not affect or alter the requirements of section 342 of EPCA pertaining to the manufacture of certain furnaces and boilers.

The Department also believes that the adoption of efficiency requirements for minimum operating capacities in today's rule represents sound policy. This rule addresses the purchase of equipment by Federal agencies, and takes into account the expected applications of this equipment in Federal facilities. Due to variations in weather, occupancy, and comfort requirements, these types of equipment are not generally operated at maximum capacity in Federal facilities. By establishing minimum performance requirements at both minimum and maximum operating capacity, this rule takes into account the full range of operating conditions expected in Federal facilities. These minimum efficiency levels at minimum capacity promote energy savings and cut operating costs for Federal agencies. The Federal Government has the responsibility to procure equipment that best serves its requirements, while minimizing the cost to taxpayers. The inclusion of minimum efficiency requirements for furnaces and boilers operating at minimum capacity in this rule serves that purpose.

Moreover, the Department has considered and rejected the two above-referenced comments that request DOE to establish the cost-effectiveness of the minimum efficiency requirements in Tables 403.1e, 403.1f, and 404, instead of relying on their inclusion in Standard 90.1–1989 as the basis for incorporation in the final rule. The Department has determined that a cost analysis is unnecessary in light of the fact that the above-referenced requirements included in this rule are identical to the statutory baseline, ASHRAE 90.1–1989, thus meeting the minimum required by statute.

Therefore, the Department will retain the minimum efficiency requirements of sections 403 and 404 in their entirety in the final rule. The requirements in sections 403 and 404 meet the legislative requirements of section 305 of ECPA, as amended. Moreover, section 342 of EPCA, as amended, does not curtail the legislative mandate of section 305.

Lastly, the Department has considered and rejected the request that it delete the minimum capacity efficiency requirements for unit heaters and duct furnaces, as suggested by one commenter. The requirements the Department has adopted for this equipment are identical to those in ASHRAE Standard 90.1–1989. As discussed previously, section 305 of ECPA, as amended, establishes ASHRAE Standard 90.1–1989 as the statutory baseline or minimum standard level. Therefore, by adopting these requirements, the rule meets the legislative requirements. Moreover, the commenter did not provide any explanation or information that would cause the Department to be concerned that adopting these requirements would impact the availability of more efficient equipment, such as products with modulating controls and two-stage operation mentioned by the commenter. As a matter of fact, this type of equipment is already generally available. Accordingly, the Department will retain the minimum capacity efficiency requirements for unit heaters and duct furnaces.

(8) Integrated Part-Load Values for Cooling Equipment Efficiency, Subpart D, Section 403

One commenter argues that the Department cannot use Integrated Part-Load Values (IPLV) ratings for unitary air conditioners, condensing units, applied heat pumps, and water chilling packages in its Federal building energy code, arguing that the energy descriptors for products cannot be expanded to include various other rating conditions or energy descriptors, i.e. IPLV ratings, due to Federal preemption of State regulations. It also argued that Congress specifically excluded multiple rating points on standards for the manufacture of these products at the request of the manufacturers. (American Refrigeration Institute (AGA), No. 15; 1–2)

Section 342 of EPCA, as amended by section 122 of EPACT, sets minimum standards for the manufacture of certain equipment, thereby prohibiting the production or import of equipment that does not meet the standards.

Today's final rule governs the design and construction of new Federal buildings, not the manufacture of equipment. This rule implements section 305 of ECPA as amended, which requires the establishment of Federal energy efficiency standards for the design and construction of new Federal buildings. Section 305 directs Federal agencies to meet or exceed ASHRAE Standard 90.1–1989 in developing its standards. This rule includes the same part-load values found in ASHRAE Standard 90.1–1989, thereby meeting the legislative requirements of Section 305 of ECPA, as amended.

DOE rejects the argument that the Federal rule cannot contain part-load criteria due to Federal preemption. The preemption provision in section 345 of EPCA, as amended, does not apply to the procurement of equipment used in new Federal buildings. The Federal Government is, therefore, not mandated to delete the part-load minimum requirements from its standard by virtue of the preemption provision.

Finally, Federal agencies fund both the building and operation of their facilities. As such, they have a significant interest in both the first cost and operating costs of building equipment. Motorized equipment in buildings run at part-load for the majority of their use and operation. For example, cooling equipment is rarely operated at a maximum load value in the spring, winter, and fall, or at night. Integrated part-load value criteria in building energy codes limits the inefficiency of equipment at part-load conditions. These criteria have been a formal part of this requirement for Federal buildings since January 1989 (10 CFR part 435) and have helped Federal agencies operate their buildings more efficiently and at less cost. These requirements improve the energy efficiency of Federal buildings.

Accordingly, the Department will retain integrated part-load value criteria as part of its final rule.

(9) Two-Tiered Code, Subpart D, Section 403

One commenter suggested that a two-tier approach to selecting energy efficient HVAC equipment, similar to that originally proposed for the updated version of ASHRAE 90.1–1989, be added to the final rule (New Space

Working Group, No.14; 2). The Department recognizes that there are products on the market that have more efficient ratings than will be required by this final rule. This rule establishes minimum efficiency levels for HVAC equipment included in new Federal buildings.

Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, further directs agencies to purchase equipment that is in the upper 25 percent of energy efficiency for all similar products or at least 10 percent more efficient than the minimum level that meets Federal standards, if they are cost-effective and to the extent practicable (Section 507(a)(2)). In practice, Executive Order 12902 creates a second tier of efficiency levels for equipment purchased by Federal agencies. Therefore, the Department will not add a second tier of requirements to this rule.

(10) Equipment Absorption Cooling Requirements, Subpart D, Section 403

In the proposed rule, Table 403.1c contains absorption cooling minimum efficiency requirements. One commenter agrees that these efficiency requirements should be included in the rule, but argues they should be increased to reflect average fleet efficiencies. (Vepco, No. 10; 2,4).

An increase in the required minimum efficiency of these products would require an economic analysis indicating the cost-effectiveness of the higher standard to the Federal Government. While increased efficiencies might well be cost-effective, a reliable testing and rating procedure is required. The current rating method, RS–30, has been controversial and can lead to inaccurate results. The Department is working with industry to develop a rating method that would provide a reliable and verifiable measure of the energy performance of this equipment. The development of this method would allow the Department to determine the most cost-effective level of efficiency for this equipment.

The Department will retain the requirements in Table 403.1c for the absorption cooling minimum efficiency requirements.

(11) Heat Pump Supplementary Heat Operation, Subpart D, Section 403

Two commenters proposed deleting the Section 403.2.6.4 requirement that would prevent supplementary heat operation, when the heat pump alone is capable of handling the heating load (Edison Electric Institute (EEI), No. 11; 3–4, Vepco, No. 10; 3). The supplementary heat is usually electric resistance heat.

This requirement is included in Standard 90.1–1989 and has been in effect in 10 CFR part 435 since 1989. Under this provision, the supplemental heater operation is allowed during outdoor coil defrost cycles that do not exceed a running interval of fifteen minutes. Therefore, heat pumps with supplementary resistance heaters must have controls that prevent auxiliary heater operation when the heating load can be met by the heat pump alone. Contrary to the contention that this provision bans a class of products from the marketplace, the rule specifies performance requirements for these systems when purchased for use in new Federal buildings. If Section 403.2.6.4 were removed it would prevent the final rule from meeting the minimum requirements of Standard 90.1–1989, as required by EPACT. The Department will keep this provision in the final rule.

(12) Combined Water and Space Heating, Subpart D, Section 404

The proposed rule would allow use of a combination water and space heating unit when the energy input and the storage volume of the combination unit is less than twice the energy input or storage volumes of the smaller of the separate boilers or water heaters, or the input to the combined boiler is less than 150,000 Btu/h. Three commenters proposed that the limitation on combined water and space heating equipment, section 404.6, be deleted (Viessmann, No. 1; 1–2; AGA, No. 4; 4; Columbia Gas, No.9; 3). One of these commenters argued that this provision is not necessary and should be deleted to avoid confusion (Columbia Gas, No. 9; 3). Another believes that section 404.1 and section 404.6 appear to be working at cross purposes, the first setting requirements for combined water and space heating systems, while the latter restricts their use with exceptions (AGA, No. 4; 4). The third believes that the dual requirements opens a loophole leading to a reduction in fuel efficiency because boilers and water heaters are tested under quite different conditions. ''A water heater's thermal efficiency starting with cold water is far easier to attain than is a boiler's steady state combustion efficiency which raises water temperature over a limited, higher range.''(Viessmann, No. 1; 1–2). Finally, it was argued that, due to the lower price of water heaters relative to boilers, economic pressures will favor the less efficient equipment. It was stated that if a water heater that meets the minimum requirements of section 404.1 is used to supplant a boiler meeting the requirements of Table 403.1(f), then energy consumption will rise ($78\%E_t<80\%E_c$).

Section 404.1 requires that service water heating equipment used to produce additional functions of space heating as part of a combination (integrated) system shall satisfy all stated requirements for the service water heating equipment. Section 404.6 generally prohibits the use of combined service water heating and space heating equipment, but states the conditions when they can be used.

The Department believes that §§ 404.1 and 404.6 function together appropriately. The exceptions in § 404.6 were included in Standard 90.1–1989 to prevent inefficient use of such equipment. This means that the rated input capacity and the storage volume of the combined equipment will be such that neither the space heating nor the water heating loads dominate the other and are almost of equal magnitude, so that the combined equipment is likely to operate at least at 50% load or higher throughout the year. This prevents the equipment from operating at lower part-load conditions (with related very low efficiencies) during most of the non-heating months of the year. The exceptions in § 404.6 allow the use of combination service water heating and space heating equipment, if certain criteria are met. These have been incorporated into this rule to promote efficient use of such equipment. The separate efficiency requirements for a water heater in terms of a thermal efficiency (78%) and for a boiler, in terms of a combustion efficiency (80%), are virtually equivalent. This is because the thermal efficiency, by definition, is lower than the combustion efficiency by 2 or 3 percentage points (to account for the jacket losses) in most heating equipment. For these reasons, the Department does not adopt the commenters' view and will not require that combination equipment meet the separate efficiency requirements for both water heaters and boilers, and will retain the provisions of § 404.6 in the final rule.

(13) Lavatory Water Temperature, Subpart D, Section 404

In the proposed rule, the temperature for the lavatory outlet is specified at a maximum of 110 degrees F. A commenter suggested that the maximum level be revised to 120 degrees F due to the fact that ''American consumers are accustomed to this pre-determined water temperature, and satisfaction levels would drop if and when anything less would be mandated.'' (Plumbing Manufacturers Institute (PMI), No. 12;

3). The same commenter also argued that the Legionella Pneumophila organism was capable of colonizing in hot water systems at 115 degrees F, and could even reproduce at 110 degrees F. (PMI, No. 12; 3)

The Department does not accept the suggestion to revise the outlet temperature to 120 degrees F. As stated in the 1995 ASHRAE Applications Handbook (RS–47, pp. 44–12), the Legionella bacteria are killed at temperatures above 140 degrees F. Therefore, the commenter's suggestion would not improve water conditions as they recommend.

But more importantly, the maximum outlet temperature for lavatories is specified at 110 degrees F in Standard 90.1–1989. Section 305 of ECPA requires the Department to meet or exceed the energy savings of that standard. Therefore, the Department will not raise the lavatory outlet temperature from 110 to 120 degrees F because that would result in greater energy use than Standard 90.1–1989.

With regard to the health and safety aspects of lavatory outlet temperatures, the 1995 ASHRAE Applications Handbook (RS–47, pp. 44–13) indicates that revising the temperatures to 120 degrees F would not kill Legionella bacteria. The Department is concerned however, that a temperature of 120 degrees F could scald users.

(14) Shower Heads and Lavatory Faucets, Subpart D, Section 404

Section 404.4, Water Conservation, provides that shower heads and lavatory faucets meet the requirements of 10 CFR 430.32. One commenter suggested aligning the water conservation section (Standard 404.4) with established consensus standards flow rate requirements already established by the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI). It also suggested that rather than basing the criteria on whether the water system was circulating or noncirculating, it be based on whether a metering valve is used. Finally it was suggested that the criteria not restrict the use of hot water only. (PMI, No. 12; 3).

The Department published a final rule entitled ''Energy Conservation Program for Consumer Products: Test Procedures and Certification and Enforcement Requirements for Plumbing Products; and Certification and Enforcement Requirements for Residential Appliances,'' 63 FR 13308 (March 18, 1998) (codified at 10 CFR Part 430). This rule codified the water conservation standards established in EPCA for showerheads, water closets and urinals. It also incorporated by reference the ASME/ANSI standards for these products which are identical to the statutory standards. For lavatory faucets, the Department incorporated by reference the revised ASME/ASNI faucet standard A112.181M–1996 which established a maximum flow rate of 2.2 gpm. For metering faucets, the rule also established a maximum flow rate of 0.25 gallons per cycle regardless of whether they are used in circulating or noncirculating systems and with hot or cold water.

The Department has changed the language of today's rule to clarify the appropriate water conservation standard that applies to showerheads and lavatory faucets, namely, 10 CFR 430.32. Moreover, since 10 CFR part 430 incorporates by reference the appropriate ASME/ANSI standards, DOE has aligned its rule with consensus standards flow rate/metering requirements as requested by the commenter. This language change in today's final rule conforms this rule to existing Federal requirements. Since this change addresses flow rate requirements for both hot and cold water, it effectively incorporates the commenter's suggestion to address both hot and cold water usage.

(15) Equipment for Prototype or Reference Buildings, Subpart E, Section 518

In the proposed rule, subpart E contains a building energy cost compliance alternative wherein the proposed design is compared to either a prototype building if the design is one of nine recognized building types, or a reference building if the building design is particularly unique. Subpart E, § 518.2, requires that a prototype or reference building use either an electric heat pump or natural gas for service water heating, unless electric resistance is preferable to the heat pump water heater (HPWH), pursuant to the criteria of section 404. One commenter pointed out that section 404 contained no such criteria and suggested that the final rule should include criteria for determining when electric resistance service water heating is preferable to an HPWH. (Vepco, No. 10; 3)

The Department agrees with the commenter that section 404 does not list the criteria that would allow the designer to determine if it is preferable to use electric resistance over the HPWH.

Standard 90.1–1989, Section 11.5.5, Additional Equipment Efficiency Measures, requires the designer to perform an economic analysis that compares the potential benefits of using one system type over the other. The results of the comparison allow for the determination of the more cost-effective system. This latter provision was omitted from the codified version of Standard 90.1–1989 (Section 404). Since, by statute, this rule uses Standard 90.1–1989 as the minimum baseline, the Department has added the language from Section 11.5.5 of Standard 90.1–1989 into the final rule so that users have the method to determine if it is preferable to use electric resistance over the HPWH.

(16) Determination of Energy Cost Budget (ECB), Subpart E, Section 501

Under subpart E, a building is in compliance with the rule if its annual energy costs or Energy Cost Budget (ECB) is equal to or less than what it would have been if built under subpart D. Subpart E compliance has two steps. Step one determines the ECB, assuming the equipment and energy types that would produce either (a) the lowest annual energy costs or (b) the lowest lifecycle costs if the building were built under subpart D. Fuel types are not actually chosen in this step. In step two, any desired building and equipment ''trade-offs'' are made, so long as the overall ECB does not exceed the level set in step one. These trade-offs can include changes in equipment and fuel type.

Subpart E is designed to ensure that buildings built under this subpart do not use more energy than would have been allowed under subpart D. Because different energy types are measured in different units, a common unit of measure is needed for ensuring that trade-offs do not result in increased energy usage. Subpart E uses energy costs as its common measure of energy usage.

Two commenters suggest that subpart E be revised to reflect greater reliance on building life cycle costs. (Vepco, No. 10; 1; EEI, No. 11; 2–3). One commenter (Vepco) proposes allowing only the use of life cycle costs, and not also annual energy costs, in the step one determination of the ECB. The other commenter (EEI) proposes using life cycle costs, rather than the ECB, as the basis for determining compliance with subpart E overall.

The Department agrees that life cycle cost is an essential component in the development and implementation of building codes. Life cycle cost analysis was used in the development of this rule. Moreover, Executive Order 12902 requires the use of life cycle cost analysis in making federal building energy choices. Subpart E, drawn from Standard 90.1–1989, explicitly provides

for life cycle cost analysis in step one. Life cycle cost analysis can and should be used in making tradeoffs under step two. Indeed, the primary purpose of allowing trade-offs is to provide opportunities to utilize more cost-effective means of improving energy efficiency.

Although life cycle cost analysis could be the basis for determining the ECB in step one, removal of the energy cost approach would remove the most stringent option found in subpart E of Standard 90.1–1989. Therefore, life cycle cost analysis cannot be the basis for determining subpart E compliance with the energy requirements of the rule since this method does not ensure that energy usage under this subpart would not exceed that allowed in subpart D. Based on these considerations, the Department is retaining the energy cost budget (ECB) components of this subpart.

(17) Conversion Factors for Electricity, Subpart F, Section 601, 602

As is the case with subpart E, compliance with subpart F, the Building Energy Compliance Alternative, is a two-step process, although the components of each step are somewhat different. In step one of subpart F, life cycle cost analysis is used to select the energy sources and equipment types to be used in the building. The Energy Use Budget (EUB) is developed based on the amount of energy these energy sources and equipment types would require if the building were built according to subpart D requirements. In step two, any desired trade-offs are made so long as (a) the EUB is not exceeded and (b) the energy types utilized are not changed. The common unit of measure in making EUB trade-offs is the British thermal unit (Btu) content at the building site.

Two commenters suggested that the conversion factors used in this subpart take off-site energy losses into account and recommended a factor of 11,600 Btus per kWh for electricity, rather than the 3,412 Btu/kWh provided for in Table 602.2. These commenters support the source-based method as indicating the total amount of energy consumed in order to provide for the building's energy needs and to encourage environmentally preferable building choices. (AGA, No. 4; 1, 5; Columbia Gas, No. 9; 2). One commenter requested a study to determine the environmental impacts of the section 602 conversion factors (AGA, No. 4; 1–3).

The Department agrees that source-based conversion factors are generally more accurate in reflecting energy conservation potential. However, the limited provision in step two utilizing site-based conversion factors can have little or no discernable impact on the types of energy used since that choice is already made in step one. The conversion factor chosen can only have a limited impact on trade-offs involving interactions among subsystems employing different energy sources. The Subpart D equipment efficiency levels are already set at federal minimum standards. As a result, tradeoffs generally cannot be made among different types of equipment.

The Department recognizes that ''site'' fuel conversion factors are widely used by architects, engineers, and builders in heat flow and other calculations. Given this standard approach, and the limited potential impact of selecting site rather than source energy as the basis for conversion, the Department has retained the conversion factors set forth in Table 602.2.

C. Other Changes

DOE has made other changes to the proposed rule. It has added to § 434.201 the definition of building set forth in 42 U.S.C. 6832. This definition was inadvertently omitted in the proposed rule.

In addition, DOE has deleted section 101.2 and reworded section 101 to clarify the extent to which additions and renovations are covered by this rule consistent with the statutory provisions of section 305 of ECPA, as amended. Non-substantive changes, such as the renumbering of paragraphs, typographical errors, and minor language changes are not discussed.

III. Consultation

In developing today's rule, the Department consulted with outside parties, including State and local code officials, private sector representatives, and other Federal agencies, as required by section 305(a)(1) of ECPA.

IV. Energy Impacts

This rule applies only to the energy efficiency of new construction for Federal buildings, representing about 2 percent of all new commercial building construction. New Federal construction will constitute less than 1/2 of one percent of the total commercial building stock in 2010. Furthermore, this rule applies only to that portion of building energy use related to heating, cooling, ventilation, water heating, and lighting, or about 60% of the energy used in commercial buildings, or roughly 0.3% of expected commercial buildings energy use in 2010.

This rule saves about 5% of energy usage compared to Standard 90.1–1989 at the time EPACT was adopted. This additional energy savings is consistent with the legislative requirement that energy savings in the rule be ''technologically feasible and economically justified.'' In addition, it reflects the requirement that DOE consider, in consultation with the Environmental Protection Agency and other Federal agencies, measures concerning indoor air pollutants and, where appropriate, adopt such measures. (Section 305(a)(2)(C).)

The additional 5% energy savings derives from the inclusion of addenda c, regarding motors, and the inclusion of lighting specifications that are not included in either Standard 90.1–1989 or any of its addenda. The Department estimates that Addendum c, addressing motor efficiency, provides 0.24 percent reduction in building energy use. This same reduction will be realized nationwide as the electric motor standards of section 342(b) of the EPCA, as amended, take effect. Also, the Department has determined that the lighting standards contained in the final rule will reduce total building energy use by about 4.7 percent compared to the statutory baseline. Finally, the Department has determined that other changes from the statutory baseline have no discernible impact on energy use. These other changes include ASHRAE addenda g, i, and f, previously discussed.

This rule retains the ventilation requirements of Standard 90.1–1989 intended to ensure adequate indoor air quality. The ventilation requirements found in Standard 90.1–1989 are the same as those found in ASHRAE Standard 62–1989 and reflect current industry practice. Ventilation requirements increase building energy use, both because energy is needed to operate the ventilation fans and other equipment, and because some additional heating and air conditioning is required for replacement air. Although removing these requirements could save energy in Federal buildings, it would not be consistent with current practices regarding protection of indoor air quality, nor would it be consistent with the legislative requirements in section 305 of ECPA.

Even though the final rule is more stringent that the statutory baseline, two components of the final rule technically increase allowed energy usage compared to the interim rule.

First, several lighting provisions found in the interim rule proved not to be technologically feasible. Second, the interim rule was never updated to include the indoor air quality ventilation requirements of ASHRAE

Standard 62–1989. As a result, these aspects of the interim rule would not have met the legislative requirements for this final rule. Technically, these two changes from the interim rule allow about 10 to 15 percent more building energy use, largely due to the change in ventilation requirements. In practice, however, these changes from the interim rule are not likely to have a significant effect on Federal building energy use. The non-technologically feasible lighting specifications found in the interim rule have proven difficult or impossible to implement. In addition, most Federal buildings are already being built to meet ASHRAE Standard 62–1989 ventilation requirements .

The energy estimates reported here are based on the minimum specifications found in subpart D of the final rule. Additional cost-effective energy efficiency improvements in new Federal commercial buildings are facilitated by this rule through use of Subparts E and F, the alternative paths which provide a means of documenting the energy savings and cost-effectiveness of more energy efficient building designs. Federal agencies may choose to adopt building energy requirements that exceed those contained in this rule. The final rule is specifically designed to operate in conjunction with several existing programs and policies which facilitate additional energy savings in Federal buildings. In essence, this rule provides a ''floor'' or a minimum level of energy savings for new Federal buildings. Section 306(a) of Executive Order 12902 (59 FR 11463, March 8, 1994), ''Executive Order on Energy Efficiency and Water Conservation at Federal Facilities,'' specifically requires that, ''Each agency involved in the construction of a new facility * * * shall: (1) Design and construct such facility to minimize the life cycle cost of the facility by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies.'' It also requires agencies to ''ensure that the design and construction of facilities meet or exceed the energy performance standards applicable to Federal residential or commercial buildings as set forth in 10 CFR part 435, local building standards, or a Btu-per-gross square-foot ceiling * * * whichever will result in a lower life cycle cost over the life of the facilities.'' Section 306(a)(2). Finally, this Executive Order directs agencies to purchase equipment for buildings that are in the upper 25 percent of energy efficiency for all similar products or at least 10 percent more efficient than the minimum level that meets Federal standards if they are cost-effective and to the extent practicable. Section 507(a)(2). Furthermore, 10 CFR part 436 allows agencies to determine when even greater energy savings would be cost effective. Programs within the Department's Office of Codes and Standards (OCS) and the Federal Energy Management Program (FEMP) provide agencies with assistance in utilizing life-cycle cost analysis and in identifying and procuring energy efficient shell and equipment options for Federal buildings.

V. Technological Feasibility and Economic Justification

The standards issued today are technologically feasible and cost effective to the Federal Government as required by section 305(a)(1) of ECPA. Those provisions included in the statutory baseline have been part of recommended professional practice since at least October 1992. Addenda approved or issued by ASHRAE and IESNA since EPACT was enacted (Addenda 90.1c, f, g, and i addressing motors, fenestration, metal framing in the building envelope, and heating and cooling equipment test procedures, respectively) are addressed specifically to explain their technological feasibility and cost effectiveness.

Addendum 90.1c, regarding motors, was developed in cooperation with the National Electrical Manufacturers Association (NEMA) and is based on its standards. Motors covered by this criteria are currently being actively marketed by manufacturers and regularly incorporated as cost effective retrofit measures in utility demand side management programs. See the Technical Support Document, page 3. Section 342(b) of EPCA, 42 U.S.C. 6313(b), specifies motor efficiency requirements that are equivalent to those in Addendum 90.1c. These requirements became mandatory for equipment manufactured after October 1997. Discussions with manufacturers led the Department to believe that these products will be cost effective for all new Federal buildings at the time this rule becomes effective.

Addendum 90.1f modifies the method of calculating the thermal transmittance of fenestration assemblies based on the updated procedures given in the 1989 ASHRAE Fundamentals Handbook for determining fenestration thermal performance. The Department believes that use of the U-values specified in the final rule based on Addendum 90.1f would not change the types of windows from those required to meet Standard 90.1–1989. See the Technical Support Document, pages 10–11.

Addendum 90.1g expands Table 402.1.2.1b, Parallel Path Correction Factors, Metal Framed Walls with Studs 16 Gauge or Lighter, to include a larger variety of available types of metal studs, spacing of framing members and cavity insulation values which are being used for exterior walls. This was done in light of recent increased interest in metal stud construction. The final rule only permits the use of metal studs if the exterior wall is properly insulated; it does not require the use of this technology. The Department believes this technology will be used only in cases where the builder finds it is cost effective to do so. *See,* Technical Support Document, pages 8–9.

Addendum 90.1i updates the test procedures for heating and cooling equipment. Their adoption by equipment manufacturers demonstrates their technological feasibility. Furthermore, since these are established test procedures used by industry, the Department believes their inclusion in the final rule will have no impact on cost. In addition, there is an exception provided for zone control of variable air volume (VAV) systems. The Department believes this will not increase energy use beyond the statutory baseline since addendum e, already allowed this practice and was adopted prior to October 24, 1992. See the Technical Support Document, pages 12–14.

This rule adopts 32 lighting specifications from the 1993 values in the interim rule that proved to be both technologically feasible and economically justified. (See TSD). For an additional 8 space types, the TSD analysis indicated that UPD values lower than the 1993 values would be technologically feasible and economically justified, and these have been adopted as well. In 14 cases, the TSD analysis justified values between the 1989 and 1993 levels. Finally, in 25 of 79 space types for which there was a difference between 1989 and 1993 values, the TSD analysis resulted in the 1989 UPD value being identified as the most appropriate. In determining the cost-effectiveness of the lighting provisions, the TSD analysis reflects the estimated cost of electricity to the Federal Government.

VI. Measures Concerning Radon and Other Indoor Air Pollutants

Section 305(a)(2)(C) of ECPA, requires the Department to consider, where appropriate, measures with regard to radon and other indoor air pollutants. The Department has consulted with the Environmental Protection Agency and

determined that there are no radon standards applicable to the types of buildings covered by this final rule.

Ventilation is the only change from the interim rule that has an effect on indoor air quality and thus, on habitability. The final rule, through its inclusion of Addendum 90.1e, adopts the minimum ventilation rates specified by ASHRAE Standard 62–1989, entitled ''Ventilation for Acceptable Indoor Air Quality,'' effectively increasing ventilation in new Federal buildings. Improving building ventilation conditions by adjustments to mechanical systems is widely used as a generic mitigation practice for indoor air quality problems. It is widely assumed that such adjustments increase ventilation rates and as a consequence decrease contaminant concentrations, reduce dissatisfaction with air quality and reduce symptom prevalence. A range of experimental and epidemiological studies have been carried out to evaluate these relationships. However, these study results are in dispute. The Department will continue to monitor this issue and update the rule if there is sufficient justification for a change.

VII. Procedural Determinations

A. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132 (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, DOE may not issue a regulation that has federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or DOE consults with State and local officials early in the process of the developing the proposed regulation. DOE also may not issue a regulation that has federalism implications and that preempts State law unless it consults with State and local officials early in the process of developing the proposed regulation.

DOE has examined today's rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

B. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and reducing burdens; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

C. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This regulatory action has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, the final rule was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) and OIRA has completed its review.

D. Review Under the Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities. A final regulatory flexibility analysis must be prepared and made available when a final rule is published. These requirements do not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' (5 U.S.C. 605).

In the notice of proposed rulemaking, DOE determined that this rule only would impose requirements on the Federal Government for the construction of new Federal commercial and multi-family high rise residential buildings. The rule imposes no requirements on the private sector. Therefore, the Department certified that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Department did not receive any comments on the certification.

E. Review Under the National Environmental Policy Act

The Department prepared an Environmental Assessment (EA) of the 1989 interim standards for Federal commercial and multi-family high rise residential buildings. (Environmental Assessment In Support of Proposed Interim Energy Conservation Standards for New Commercial and Multi-Family High Rise Residential Buildings, November 1986, DOE/CE–0166). The EA concluded that the effect of the final standards on a building's habitability as well as on the outdoor environment, the economy and Federal institutions, would be very small. Thus, the environmental effects from the standards for a minimum level of energy efficiency for new Federal commercial and multi-family high rise residential buildings were determined not to be a major Federal action significantly affecting the quality of the human environment, under the meaning of the National Environmental Policy Act. A Finding of No Significant Impact (FONSI) was published with the proposed rule in 52 FR 17052, 17064 (May 6, 1987) and referenced in the interim rule in 54 FR 4551 (January 30, 1989).

The 1989 interim rule that established building energy efficiency standards

was mandatory for Federal buildings and voluntary for all others. Today's final rule addresses solely Federal commercial construction, which represents only 2 percent of total new construction nationwide, and does not include voluntary standards for non-Federal construction.

The final rule will change energy consumption as compared to the interim rule in the areas of lighting, motors, and HVAC equipment. In conducting the analysis that supports this final rule, the Department found that final changes to the lighting level requirements would produce a 4.7 percent reduction in building energy consumption compared to the 1989 lighting criteria in the interim rule. The final rule also is expected to produce a 0.24 percent reduction in building energy consumption due to the increased efficiency requirements of motors as compared to the interim rule. The final rule, however, could increase energy use by 10–15 percent, because of the additional ventilation requirements of Addendum 90.1e, as compared to the interim rule. The net result is an approximate 5–10 percent increase in total building energy use as compared to the interim rule with the 1989 lighting levels. Since Federal construction represents only 2 percent of the total new commercial and multi-family high-rise residential construction nationally, the increase in energy consumption (0.1 to 0.2 percent) nationally will be negligible.

The Department believes that minimal environmental impacts will result from this final rule. Further, such effects fall within the range of impacts that are analyzed in the interim rule's EA. These effects are determined not to be significant in the FONSI published in 1987. Accordingly, the Department determines that after all the environmental effects of the final rule are considered, this final rule is bounded by the analysis in the EA. Therefore, the preparation of a new EA or an environmental impact statement is not required.

F. Paperwork Reduction Act Review

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531 *et seq.*, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

The final rule establishes building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to section 305 of the ECPA, as amended. 42 U.S.C. 6834. It does not include any Federal requirements that would result in the expenditure of money by State, local, and tribal governments. Therefore, the requirements of the Act do not apply to this rulemaking.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with section 32 of the Federal Energy Administration Act of 1974, 15 U.S.C. 788. The Department of Energy is required by section 32 to notify the public regarding the proposed use of commercial standards in a rulemaking and allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a notice of proposed rulemaking.

The Department included an invitation for public comment in the notice of proposed rulemaking. Several commenters, covering professional organizations, manufacturers, Government agencies, and utilities, endorsed the appropriateness of the use of the codified version of Standard 90.1–1989. No adverse comments were received.

In addition, section 32(c) precludes the Department from incorporating any commercial standard into a rule unless it has consulted with the Attorney General and the Chairman of the Federal Trade Commission (FTC) as to the impact of such standard on competition. Pursuant to section 32(c), the Department advised these individuals of its intention to incorporate portions of the above-referenced standards into this final rule. Neither recommended against such incorporation.

I. ''Takings'' Assessment Review

The Department has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Congressional Notification

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808, the Department will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a ''major rule'' under that Act. 5 U.S.C. 801, 804.

K. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, section 12(d), Pub. L. 104–113, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies to carry out their policy objectives or activities. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a Federal agency may elect to use technical standards that are not developed or adopted by voluntary consensus standards if the head of the agency transmits to the Office of Management and Budget (OMB) an explanation of the reasons for using such standards. If an agency issues or revises a regulation that contains a technical standard, the agency is required by OMB Circular A–119 to provide certain information about its choice of standard in the notices of proposed and final rulemaking. 63 FR 8546, 8557 (February 19, 1998). In a notice of final rulemaking, the agency must state if it is using a voluntary consensus standard and, if so, identify the standard and any alternative voluntary consensus standards that were identified. If a Government-unique standard is being used, the agency must explain why using a voluntary consensus standard would be inconsistent with applicable law or otherwise impractical.

This final rule closely parallels Standard 90.1–1989 and subsequent addenda to that voluntary consensus standard. Section 305(a)(2)(A) of ECPA, 42 U.S.C. 6834(a)(2)(A), requires DOE to establish commercial building standards for new Federal buildings that contain energy saving and renewable energy specifications that meet or exceed those in ASHRAE Standard 90.1–1989. Consistent with the statute, DOE did not consider alternative voluntary standards.

List of Subjects in 10 CFR Parts 434 and 435

Buildings, Energy conservation, Engineers, Federal buildings and facilities, Incorporation by reference.

Issued in Washington, D.C., on June 30, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, chapter II of title 10 of the Code of Federal Regulations is amended as set forth below:

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

1. The authority citation for Part 435 is revised to read as follows:

Authority: 42 U.S.C. 6831–6832; 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

Subpart A [Removed and reserved]

2. Subpart A (§§ 435.97 through 435.112) of part 435 is removed and reserved.

3. A new part 434 is added to chapter II of title 10 to read as follows:

PART 434—ENERGY CODE FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS

Sec.
434.99 Explanation of numbering system for codes.

Subpart A—Administration and Enforcement—General

434.100 Purpose.
434.101 Scope.
434.102 Compliance.
434.103 Referenced standards (RS).
434.105 Materials and equipment.

Subpart B—Definitions

434.201 Definitions.

Subpart C—Design Conditions

434.301 Design criteria.

Subpart D—Building Design Requirements—Electric Systems and Equipment

434.401 Electrical power and lighting systems.
434.402 Building envelope assemblies and materials.
434.403 Building mechanical systems and equipment.
434.404 Building service systems and equipment.

Subpart E—Building Energy Cost Compliance Alternative

434.501 General.
434.502 Determination of the annual energy cost budget.
434.503 Prototype building procedure.
434.504 Use of the prototype building to determine the energy cost budget.
434.505 Reference building method.
434.506 Use of the reference building to determine the energy cost budget.
434.507 Calculation procedure and simulation tool.
434.508 Determination of the design energy consumption and design energy cost.
434.509 Compliance.
434.510 Standard calculation procedure.
434.511 Orientation and shape.
434.512 Internal loads.
434.513 Occupancy.
434.514 Lighting.
434.515 Receptacles.
434.516 Building exterior envelope.
434.517 HVAC systems and equipment.
434.518 Service water heating.
434.519 Controls.
434.520 Speculative buildings.
434.521 The simulation tool.

Subpart F—Building Energy Compliance Alternative

434.601 General.
434.602 Determination of the annual energy budget.
434.603 Determination of the design energy use.
434.604 Compliance.
434.605 Standard calculation procedure.
434.606 Simulation tool.
434.607 Life cycle cost analysis criteria.

Subpart G—Reference Standards

434.701 General.

Authority: 42 U.S.C. 6831–6832, 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101, *et seq.*

§ 434.99 Explanation of numbering system for codes.

(a) For purposes of this part, a derivative of two different numbering systems will be used.

(1) For the purpose of designating a section, the system employed in the Code of Federal Regulations (CFR) will be employed. The number ''434'' which signifies part 434 in chapter II of Title 10, Code of Federal Regulations, is used as a prefix for all section headings. The suffix is a two or three digit section number. For example the lighting section of the standards is designated § 434.401.

(2) Within each section, a numbering system common to many national voluntary consensus standards is used. A decimal system is used to denote paragraphs and subparagraphs within a section. For example, in § 434.401, ''401.2.1'' refers to subsection 401, paragraph 2, subparagraph 1.

(b) The hybrid numbering system is used for two purposes:

(1) The use of the Code of Federal Regulations' numbering system allows the researcher using the CFR easy access to the standards.

(2) The use of the second system allows the builder, designer, architect or engineer easy access because they are familiar to this system numbering. This system was chosen because of its commonality among the building industry.

Subpart A—Administration and Enforcement—General

§ 434.100 Purpose.

The provisions of this part provide minimum standards for energy efficiency for the design of new Federal commercial and multi-family high rise residential buildings. The performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy. This rule is based upon the ASHRAE/IESNA Standard 90.1–1989 and addenda b, c, d, e, f, g, and i. (This document is available from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA.) It is not incorporated by reference in this document, but is mentioned for informational purposes only.

§ 434.101 Scope.

101.1 This part provides design requirements for the building envelope, electrical distribution systems and equipment for electric power, lighting, heating, ventilating, air conditioning, service water heating and energy management. It applies to new Federal multi-family high rise residential buildings and new Federal commercial buildings.

101.1.1 (a) Except as provided by section 101.2, the provisions of this part apply if an agency is constructing:

(1) A building that has never been in service;

(2) An addition that adds new space with provision for a heating or cooling system, or both, or for a hot water system; or

(3) A substantial renovation of a building, involving replacement of a heating or cooling system, or both, or hot water system, that is either in service or has been in service.

101.2 The provisions of this part do not apply to:

101.2.1 Buildings, or portions thereof separated from the remainder of the building, that have a peak energy usage for space conditioning, service water heating, and lighting of less than 3.5 Btu/(h•ft^2 of gross floor area.

101.2.2 Buildings of less than 100 square feet of gross floor area.

101.2.3 Heating, cooling, ventilating, or service hot water requirements for

those spaces where processes occur for purposes other than occupant comfort and sanitation, and which impose thermal loads in excess of 5% of the loads that would otherwise be required for occupant comfort and sanitation without the process;

101.2.4 Envelope requirements for those spaces where heating or cooling requirements are excepted in subsection 101.2.3 of this section.

101.2.5 Lighting for tasks not listed or encompassed by areas or activities listed in Tables 401.3.2b, 401.3.2c and 401.3.2d.

101.2.6 Buildings that are composed entirely of spaces listed in subsections 101.2.4 and 101.2.5.

101.2.7 Individual components of a building under renovation, if the building components are not in the scope of a renovation as defined by the agency.

§ 434.102 Compliance.

102.1 A covered building must be designed and constructed consistent with the provisions of subpart D of this part.

102.2 Buildings designed and constructed to meet the alternative requirements of subparts E or F of this part shall be deemed to satisfy the requirements of this part. Such designs shall be certified by a registered architect or engineer stating that the estimated energy cost or energy use for the building as designed is no greater than the energy cost or energy use of a prototype building or reference building as determined pursuant to subparts E or F of this part.

§ 434.103 Referenced standards (RS).

103.1 The standards, technical handbooks, papers and regulations listed in § 434.701, shall be considered part of this part to the prescribed extent of such reference. Where differences occur between the provisions of this part and referenced standards, the provisions of this part shall apply. Whenever a reference is made in this part to an RS standard it refers to the standards listed in § 434.701.

§ 434.105 Materials and equipment.

105.1 Building materials and equipment shall be identified in designs in a manner that will allow for a determination of their compliance with the applicable provisions of this part.

Subpart B—Definitions

§ 434.201 Definitions.

For the purposes of this part, the following terms, phrases, and words shall be defined as provided:

Accessible (as applied to equipment): admitting close approach; not guarded by locked doors, elevations, or other effective means. (See also ''readily accessible'')

Annual Fuel Utilization Efficiency (AFUE): the ratio of annual output energy to annual input energy that includes any non-heating season pilot input loss.

Area of the space (A): the horizontal lighted area of a given space measured from the inside of the perimeter walls or partitions, at the height of the working surface.

Automatic: self-acting, operating by its own mechanism when actuated by some impersonal influence, such as a change in current strength, pressure, temperature, or mechanical configuration. (See also''manual'')

Automatic flue damper device: an electrically operated device, in the flue outlet or in the inlet of or upstream of the draft hood of an individual automatically operated gas-fired appliance, which is designed to automatically open the flue outlet during appliance operation and to automatically close off the flue outlet when the appliance is in a standby condition.

Automatic vent damper device: a device intended for installation in the venting system, in the outlet of or downstream of the appliance draft hood, of an individual automatically operated gas-fired appliance, which is designed to automatically open the venting system when the appliance is in operation and to automatically close off the venting system when the appliance is in a standby or shutdown condition.

(1) *Electrically operated:* an automatic vent damper device that employs electrical energy to control the device.

(2) *Thermally actuated:* an automatic vent damper device dependent for operation exclusively upon the direct conversion of the thermal energy of the vent gases into mechanical energy.

Boiler capacity: the rated heat output of the boiler, in Btu/h, at the design inlet and outlet conditions and rated fuel or energy input.

Building: means any structure to be constructed which includes provision for a heating or cooling system, or both, or for a hot water system.

Building code: means a legal instrument which is in effect in a State or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered to be in conformance with law and suitable for occupancy and use.

Building envelope: the elements of a building that enclose conditioned spaces through which thermal energy may be transferred to or from the exterior or to or from unconditioned spaces.

Check metering: measurement instrumentation for the supplementary monitoring of energy consumption (electric, gas, oil, etc) to isolate the various categories of energy use to permit conservation and control, in addition to the revenue metering furnished by the utility.

Coefficient of performance (COP)—Cooling: the ratio of the rate of heat removal to the rate of energy input, in consistent units, for a complete cooling system or factory assembled equipment, as tested under a nationally recognized standard or designated operating conditions.

Coefficient of performance (COP) heat pump—Heating: the ratio of the rate of heat delivered to the rate of energy input, in consistent units, for a complete heat pump system under designated operating conditions.

Commercial building: a building other than a residential building, including any building developed for industrial or public purposes. Including but not limited to occupancies for assembly, business, education, institutions, food sales and service, merchants, and storage.

Conditioned floor area: the area of the conditioned space measured at floor level from the interior surfaces of the walls.

Conditioned space: a cooled space, heated space, or indirectly conditioned space.

Cooled space: an enclosed space within a building that is cooled by a cooling system whose sensible capacity:

(1) Exceeds 5 Btu/(h•ft^2); or

(2) Is capable of maintaining a space dry bulb temperature of 90°F or less at design cooling conditions.

Daylight sensing control (DS): a device that automatically regulates the power input to electric lighting near the fenestration to maintain the desired workplace illumination, thus taking advantage of direct or indirect sunlight.

Daylighted space: the space bounded by vertical planes rising from the boundaries of the daylighted area on the floor to the floor or roof above.

Daylighted zone:

(1) Under skylights: the area under each skylight whose horizontal dimension in each direction is equal to the skylight dimension in that direction plus either the floor-to-ceiling height or the dimension to an opaque partition, or one-half the distance to an adjacent skylight or vertical glazing, whichever is least.

(2) At vertical glazing: the area adjacent to vertical glazing that receives

daylighting from the glazing. For purposes of this definition and unless more detailed daylighting analysis is provided, the daylighting zone depth is assumed to extend into the space a distance of 15 ft or to the nearest opaque partition, whichever is less. The daylighting zone width is assumed to be the width of the window plus either 2 ft on each side, the distance to an opaque partition, or one half the distance to an adjacent skylight or vertical glazing, whichever is least.

Dead band (dead zone): the range of values within which an input variable that can be varied without initiating any noticeable change in the output variable.

Degree-day, cooling: a unit, based upon temperature difference and time, used in estimating cooling energy consumption. For any one day, when the mean temperature is more than a reference temperature, typically 65°F, there are as many degree-days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual cooling degree-days (CDD) are the sum of the degree-days over a calendar year.

Degree-day, heating: a unit, based upon temperature difference and time, used in estimating heating energy consumption. For any one day, when the mean temperature is less than a reference temperature, typically 65°F, there are as many degree-days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual heating degree days (HDD) are the sum of the degree-days over a calendar year.

Dwelling unit: a single housekeeping unit comprised of one or more rooms providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Economizer, air: a ducting arrangement and automatic control system that allows a cooling supply fan system to supply outdoor (outside) air to reduce or eliminate the need for mechanical refrigeration during mild or cold weather.

Economizer, water: a system by which the supply air of a cooling system is cooled directly or indirectly or both by evaporation of water or by other appropriate fluid in order to reduce or eliminate the need for mechanical refrigeration.

Efficiency, HVAC system: the ratio of the useful energy output, at the point of use to the energy input in consistent units, for a designated time period, expressed in percent.

Emergency system (back-up system): a system that exists for the purpose of operating in the event of failure of a primary system.

Emergency use: electrical and lighting systems required to supply power automatically for illumination and equipment in the event of a failure of the normal power supply.

Energy efficiency ratio (EER): the ratio of net equipment cooling capacity in Btu/h to total rate of electric input in watts under designated operating conditions. When consistent units are used, this ratio becomes equal to COP. (See also ''coefficient of performance''.)

Fan system energy demand: the sum of the demand of all fans that are required to operate at design conditions to supply air from the heating or cooling source to the conditioned space(s) and return it back to the source or exhaust it to the outdoors.

Federal Agency: means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Federal Building: means any building to be constructed by, or for the use of, any Federal Agency which is not legally subject to State or local building codes or similar requirements.

Fenestration: any light-transmitting section in a building wall or roof. The fenestration includes glazing material (which may be glass or plastic), framing (mullions, muntins, and dividers), external shading devices, internal shading devices, and integral (between glass) shading devices.

Fenestration area: the total area of fenestration measured using the rough opening and including the glass or plastic, sash, and frame. For doors where the glazed vision area is less than 50% of the door area, the fenestration area is glazed vision area. For all other doors, the fenestration area is the door area.

Flue damper: a device, in the flue outlet or in the inlet of or upstream of the draft hood of an individual automatically operated gas-fired appliance, which is designed to automatically open the flue outlet during appliance operation and to automatically close off the flue outlet when the appliance is in a standby condition.

Gross floor area: the sum of the floor areas of the conditioned spaces within the building, including basements, mezzanine and intermediate-floor tiers, and penthouses of headroom height 7.5 ft or greater. It is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings (excluding covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features).

Gross lighted area (GLA): the sum of the total lighted areas of a building measured from the inside of the perimeter walls for each floor of the building.

Heat capacity (HC): the amount of heat necessary to raise the temperature of a given mass 1°F. Numerically, the mass expressed per unit of wall surface multiplied by the specific heat Btu/(ft^2•°F).

Heat trap: device or piping arrangement that effectively restricts the natural tendency of hot water to rise in vertical pipes during standby periods. Examples are the U-shaped arrangement of elbows or a 360-degree loop of tubing.

Heated space: an enclosed space within a building that is heated by a heating system whose output capacity

(1) Exceeds 10 Btu/(h•ft^2), or

(2) Is capable of maintaining a space dry-bulb temperature of 50°F or more at design heating conditions.

Heating seasonal performance factor (HSPF): the total heating output of a heat pump during its normal annual usage period for heating, in Btu, divided by the total electric energy input during the same period, in watt-hours.

High rise residential building: hotels, motels, apartments, condominiums, dormitories, barracks, and other residential-type facilities that provide complete housekeeping or transient living quarters and are over three stories in height above grade.

Humidistat: an automatic control device responsive to changes in humidity.

HVAC system: the equipment, distribution network, and terminals that provide either collectively or individually the processes of heating, ventilating, or air conditioning to a building.

Indirectly conditioned space: an enclosed space within the building that is not a heated or cooled space, whose area-weighted heat transfer coefficient to heated or cooled spaces exceeds that to the outdoors or to unconditioned spaces; or through which air from heated or cooled spaces is transferred at a rate exceeding three air changes per hour. (See also ''heated space'', ''cooled space'', and ''unconditioned space''.)

Infiltration: the uncontrolled inward air leakage through cracks and crevices

in any building element and around windows and doors of a building.

Integrated part-load value (IPLV): a single-number figure of merit based on part-load EER or COP expressing part-load efficiency for air-conditioning and heat pump equipment on the basis of weighted operation at various load capacities for the equipment.

Lumen maintenance control: a device that senses the illumination level and causes an increase or decrease of illuminance to maintain a preset illumination level.

Manual: action requiring personal intervention for its control. As applied to an electric controller, manual control does not necessarily imply a manual controller but only that personal intervention is necessary. (See automatic.)

Marked rating: the design load operating conditions of a device as shown by the manufacturer on the nameplate or otherwise marked on the device.

Multi-family high rise residential: a residential building containing three or more dwelling units and is designed to be 3 or more stories above grade.

Occupancy sensor: a device that detects the presence or absence of people within an area and causes any combination of lighting, equipment, or appliances to be adjusted accordingly.

Opaque areas: all exposed areas of a building envelope that enclose conditioned space except fenestration areas and building service openings such as vents and grilles.

Orientation: the directional placement of a building on a building site with reference to the building's longest horizontal axis or, if there is no longest horizontal axis, then with reference to the designated main entrance.

Outdoor air: air taken from the exterior of the building that has not been previously circulated through the building. (See ''ventilation air'')

Ozone depletion factor: a relative measure of the potency of chemicals in depleting stratospheric ozone. The ozone depletion factor potential depends upon the chlorine and the bromine content and atmospheric lifetime of the chemical. The depletion factor potential is normalized such that the factor for CFC–11 is set equal to unity and the factors for the other chemicals indicate their potential relative to CFC–11.

Packaged terminal air conditioner (PTAC): a factory-selected wall sleeve and separate unencased combination of heating and cooling components, assemblies, or sections (intended for mounting through the wall to serve a single room or zone). It includes heating capability by hot water, steam, or electricity.

Packaged terminal heat pump: a PTAC capable of using the refrigeration system in a reverse cycle or heat pump mode to provide heat.

Plenum: an enclosure that is part of the air-handling system and is distinguished by having a very low air velocity. A plenum often is formed in part or in total by portions of the building.

Private driveways, walkways, and parking lots: exterior transit areas that are associated with a commercial or residential building and intended for use solely by the employees or tenants and not by the general public.

Process energy: energy consumed in support of a manufacturing, industrial, or commercial process other than the maintenance of comfort and amenities for the occupants of a building.

Process load: the calculated or measured time-integrated load on a building resulting from the consumption or release of process energy.

Programmable: capable of being preset to certain conditions and having self-initiation to change to those conditions.

Projection factor: the exterior horizontal shading projection depth divided by the sum of the height of the fenestration and the distance from the top of the fenestration to the bottom of the external shading projection in units consistent with the projection depth.

Prototype building: a generic building design of the same size and occupancy type as the proposed design that complies with the prescriptive requirements of subpart D of this part and has prescribed assumptions used to generate the energy budget concerning shape, orientation, and HVAC and other system designs.

Public driveways, walkways, and parking lots: exterior transit areas that are intended for use by the general public.

Public facility restroom: a restroom used by the transient public.

Readily accessible: capable of being reached quickly for operation, renewal, or inspections without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See also accessible.)

Recooling: lowering the temperature of air that has been previously heated by a heating system.

Reference building: a specific building design that has the same form, orientation, and basic systems as the prospective design that is to be evaluated for compliance and meets all the criteria listed in subsection 501.2 or subsection 601.2.

Reheating: raising the temperature of air that has been previously cooled either by refrigeration or an economizer system.

Reset: adjustment of the controller setpoint to a higher or lower value automatically or manually.

Roof: those portions of the building envelope, including all opaque surfaces, fenestration, doors, and hatches, that are above conditioned space and are horizontal or tilted at less than 60° from horizontal. (See also''walls'')

Room air conditioner: an encased assembly designed as a unit to be mounted in a window or through a wall or as a console. It is designed primarily to provide free delivery of conditioned air to an enclosed space, room, or zone. It includes a prime source of refrigeration for cooling and dehumidification and means for circulating and cleaning air and may also include means for ventilating and heating.

Seasonal energy efficiency ratio (SEER): the total cooling output of an air conditioner during its normal annual usage period for cooling, in Btu, divided by the total electric energy input during the same period, in watt-hours.

Service systems: all energy-using or energy-distributing components in a building that are operated to support the occupant or process functions housed therein (including HVAC, service water heating, illumination, transportation, cooking or food preparation, laundering, or similar functions).

Service water heating: the supply of hot water for purposes other than comfort heating and process requirements.

Shading coefficient (SC): the ratio of solar heat gain through fenestration under a specific set of conditions, with or without integral shading devices, to that occurring through unshaded ⅛-in-thick clear double-strength glass under the same conditions.

Shell Building: a building for which the envelope is designed, constructed, or both prior to knowing the occupancy type. (See also ''speculative building'')

Single-Line Diagram: a simplified schematic drawing that shows the connection between two or more items. Common multiple connections are shown as one line.

Skylight: glazing that is horizontal or tilted less than 60° from horizontal.

Solar energy source: natural daylighting or thermal, chemical, or electrical energy derived from direct conversion of incident solar radiation at the building site.

Solar heat gain coefficient (SHGC): the ratio of the solar heat gain entering the space through the fenestration area to the incident solar radiation. Solar heat gain includes directly transmitted solar heat and absorbed solar radiation, which is then reradiated, conducted, or convected into the space. (See fenestration area)

Speculative building: a building for which the envelope is designed, constructed, or both prior to the design of the lighting, HVAC systems, or both. A speculative building differs from a shell building in that the intended occupancy is known for the speculative building. (See also ''shell building'')

System: a combination of equipment and/or controls, accessories, interconnecting means, and terminal elements by which energy is transformed so as to perform a specific function, such as HVAC, service water heating, or illumination.

Tandem wiring: pairs of luminaries operating with lamps in each luminaire powered from a single ballast contained in one of the luminaires.

Task lighting: lighting that provides illumination for specific functions and is directed to a specific surface or area.

Task location: an area of the space where significant visual functions are performed and where lighting is required above and beyond that required for general ambient use.

Terminal element: a device by which the transformed energy from a system is finally delivered. Examples include registers, diffusers, lighting fixtures, and faucets.

Thermal conductance (C): the constant time rate of heat flow through the unit area of a body induced by a unit temperature difference between the surfaces, expressed in Btu/(h•ft^2•°F). It is the reciprocal of thermal resistance. (See ''thermal resistance'')

Thermal mass: materials with mass heat capacity and surface area capable of affecting building loads by storing and releasing heat as the interior or exterior temperature and radiant conditions fluctuate. (See also ''heat capacity'' and ''wall heat capacity'')

Thermal mass wall insulation position:

(1) Exterior insulation position: a wall having all or nearly all of its mass exposed to the room air with the insulation on the exterior of that mass.

(2) Integral insulation position: a wall having mass exposed to both room and outside (outside) air with substantially equal amounts of mass on the inside and outside of the insulation layer.

(3) Interior insulation position: a wall not meeting either of the above definitions, particularly a wall having most of its mass external to an insulation layer.

Thermal resistance (R): the reciprocal of thermal conductance 1/C, l/H, 1/U; expressed in (h•ft$^{2.}$°F)/Btu.

Thermal transmittance (U): the overall coefficient of heat transfer from air to air. It is the time rate of heat flow per unit area under steady conditions from the fluid on the warm side of the barrier to the fluid on the cold side, per unit temperature difference between the two fluids, expressed in Btu/(h•ft$^{2.}$°F).

Thermal transmittance, overall (U_o): the gross overall (area weighted average) coefficient of heat transfer from air to air for a gross area of the building envelope, Btu/(h•ft$^{2.}$°F). The U_o value applies to the combined effect of the time rate of heat flows through the various parallel paths, such as windows, doors, and opaque construction areas, composing the gross area of one or more building envelope components, such as walls, floors, and roof or ceiling.

Thermostat: an automatic control device responsive to temperature.

Unconditioned space: space within a building that is not a conditioned space. (See ''conditioned space'')

Unitary cooling equipment: one or more factory-made assemblies that normally include an evaporator or cooling coil, a compressor, and a condenser combination (and may also include a heating function).

Unitary heat pump: one or more factory-made assemblies that normally include an indoor conditioning coil, compressor(s), and outdoor coil or refrigerant-to-water heater exchanger, including means to provide both heating and cooling functions.

Variable-air-volume (VAV) HVAC system: HVAC systems that control the dry-bulb temperature within a space by varying the volume of heated or cooled supply air to the space.

Vent damper: a device intended for installation in the venting system, in the outlet of or downstream of the appliance draft hood, of an individual automatically operating gas-fired appliance, which is designed to automatically open the venting system when the appliance is in operation and to automatically close off the venting system when the appliance is in a standby or shutdown condition.

Ventilation: the process of supplying or removing air by natural or mechanical means to or from any space. Such air may or may not have been conditioned.

Ventilation air: that portion of supply air which comes from the outside, plus any recirculated air, to maintain the desired quality of air within a designated space. (See also ''outdoor air'')

Visible light transmittance: the fraction of solar radiation in the visible light spectrum that passes through the fenestration (window, clerestory, or skylight).

Walls: those portions of the building envelope enclosing conditioned space, including all opaque surfaces, fenestration, and doors, which are vertical or tilted at an angle of 60* from horizontal or greater. (See also ''roof'')

Wall heat capacity: the sum of the products of the mass of each individual material in the wall per unit area of wall surface times its individual specific heat, expressed in Btu/(ft^2•°F). (See'' thermal mass'')

Window to wall ratio (WWR): the ratio of the wall fenestration area to the gross exterior wall area.

Zone: a space or group of spaces within a building with any combination of heating, cooling, or lighting requirements sufficiently similar so that desired conditions can be maintained throughout by a single controlling device.

Subpart C—Design Conditions

§ 434.301 Design criteria.

301.1 The following design parameters shall be used for calculations required under subpart D of this part.

301.1.1 *Exterior Design Conditions*. Exterior Design Conditions shall be expressed in accordance with Table 301.1.

TABLE 301.1.—EXTERIOR DESIGN CONDITIONS

Winter Design Dry-Bulb (99%)		Degrees F.
Summer Design Dry-Bulb (2.5%)		Degrees F.
Mean Coincident Wet-Bulb (2.5%)		Degrees F.
Degree-Days, Heating (Base 65)		HDD Base 65° F.
Degree-Days, Cooling (Base 65)		CDD Base 65°F.

TABLE 301.1.—EXTERIOR DESIGN CONDITIONS—Continued

Annual Operting Hours, 8 a.m. to 4 p.m. when 55°F≤T≤69°F		Hours.

[The exterior design conditions shall be added to Table 301.1 from the city-specific Shading Coefficient table from Appendix A of RS–1 (incorporated by reference, see § 434.701). Copies of specific tables contained in Appendix A of RS–1 (incorporated by reference, see § 434.701). can be obtained from the Energy Code for Federal Commercial Buildings, Docket No. EE–RM–79–112–C, EE–43, Office of Building Research and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127. Adjustments may be made to reflect local climates which differ from the tabulated temperatures or local weather experience as determined by the building official. Where local building site climatic data are not available, climate data from a nearby location included in RS–1, Appendix C, (incorporated by reference, see § 434.701) and RS–4 Chapter 24, Table 1, (incorporated by reference, see § 434.701) shall be used as determined by the building official.]

301.2 *Indoor Design Conditions*. Indoor design temperature and humidity conditions shall be in accordance with the comfort criteria in RS–2 (incorporated by reference, see § 434.701), except that humidification and dehumidification are not required.

Subpart D—Building Design Requirements—Electric Systems and Equipment

§ 434.401 Electrical power and lighting systems.

Electrical power and lighting systems, other than those systems or portions thereof required for emergency use only, shall meet these requirements.

401.1 *Electrical Distribution Systems*.

401.1.1 *Check Metering*. Single-tenant buildings with a service over 250 kVA and tenant spaces with a connected load over 100 kVA in multiple-tenant buildings shall have provisions for check metering of electrical consumption. The electrical power feeders for which provision for check metering is required shall be subdivided as follows:

401.1.1.1 Lighting and receptacle outlets

401.1.1.2 HVAC systems and equipment

401.1.1.3 Service water heating (SWH), elevators, and special occupant equipment or systems of more than 20 kW.

401.1.1.4 Exception to 401.1.1.1 through 401.1.1.3: 10 percent or less of the loads on a feeder may be from another usage or category.

401.1.2 Tenant-shared HVAC and service hot water systems in multiple tenant buildings shall have provision to be separately check metered.

401.1.3 Subdivided feeders shall contain provisions for portable or permanent check metering. The minimum acceptable arrangement for compliance shall provide a safe method for access by qualified persons to the enclosures through which feeder conductors pass and provide sufficient space to attach clamp-on or split core current transformers. These enclosures may be separate compartments or combined spaces with electrical cabinets serving another function. Dedicated enclosures so furnished shall be identified as to measuring function available.

401.1.4 *Electrical Schematic*. The person responsible for installing the electrical distribution system shall provide the Federal building manager a single-line diagram of the record drawing for the electrical distribution system, which includes the location of check metering access, schematic diagrams of non-HVAC electrical control systems, and electrical equipment manufacturer's operating and maintenance literature.

401.2 *Electric Motors*. All permanently wired polyphase motors of 1 hp or more shall meet these requirements:

401.2.1 *Efficiency*. NEMA design A & B squirrel-cage, foot-mounted, T-frame induction motors having synchronous speeds of 3600, 1800, 1200, and 900 rpm, expected to operate more than 1000 hours per year shall have a nominal full-load efficiency no less than that shown in Table 401.2.1 or shall be classified as an ''energy efficient motor'' in accordance with RS–3 (incorporated by reference, see § 434.701). The following are not covered:

(a) Multispeed motors used in systems designed to use more than one speed.

(b) Motors used as a component of the equipment meeting the minimum equipment efficiency requirements of subsection 403, provided that the motor input is included when determining the equipment efficiency.

TABLE 401.2.1.—MINIMUM ACCEPTABLE NOMINAL FULL-LOAD EFFICIENCY FOR SINGLE-SPEED POLYPHASE SQUIRREL-CAGE INDUCTION MOTORS HAVING SYNCHRONOUS SPEEDS OF 3600, 1800, 1200 AND 900 RPM [1]

HP	2-Pole		4-Pole		6-Pole		8-Pole	
	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency
Full-Load Efficiencies—Open Motors								
1.0			82.5	81.5	80.0	78.5	74.0	72.0
1.5	82.5	81.5	84.0	82.5	84.0	82.5	75.5	74.0
2.0	84.0	82.5	84.0	82.5	85.5	84.0	85.5	84.0
3.0	84.0	82.5	86.5	85.5	86.5	85.5	86.5	85.5
5.0	85.5	84.0	87.5	86.5	87.5	86.5	87.5	86.0
7.5	87.5	86.5	88.5	87.5	88.5	87.5	88.5	87.5
10.0	88.5	87.5	89.5	88.5	90.2	89.5	89.5	88.5
15.0	89.5	88.5	91.0	90.2	90.2	89.5	89.5	88.5
20.0	90.2	89.5	91.0	90.2	91.0	90.2	90.2	89.5
25.0	91.0	90.2	91.7	91.0	91.7	91.0	90.2	89.5
30.0	91.0	90.2	92.4	91.7	92.4	91.7	91.7	90.2
40.0	91.7	91.0	93.0	92.4	93.0	92.4	91.0	90.2
50.0	92.4	91.7	93.0	92.4	93.0	92.4	91.7	91.0
60.0	93.0	92.4	93.6	93.0	93.6	93.0	92.4	91.7
75.0	93.0	92.4	94.1	93.6	93.6	93.0	93.6	93.0

TABLE 401.2.1.—MINIMUM ACCEPTABLE NOMINAL FULL-LOAD EFFICIENCY FOR SINGLE-SPEED POLYPHASE SQUIRREL-CAGE INDUCTION MOTORS HAVING SYNCHRONOUS SPEEDS OF 3600, 1800, 1200 AND 900 RPM [1]—Continued

HP	2-Pole		4-Pole		6-Pole		8-Pole	
	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency	Nominal efficiency	Minimum efficiency
100.0	93.0	92.4	94.1	93.6	94.1	93.6	93.6	93.0
125.0	93.6	93.0	94.5	94.1	94.1	93.6	93.6	93.0
150.0	93.6	93.0	95.0	94.5	94.5	94.1	93.6	93.0
200.0	94.5	94.1	95.0	94.5	94.5	94.1	93.6	93.0
Full-Load Efficiencies—Enclosed Motors								
1.0	75.5	74.5	82.5	81.5	80.0	78.5	74.0	72.0
1.5	82.5	81.5	84.0	82.5	85.5	84.0	77.0	75.5
2.0	84.0	82.5	84.5	82.5	86.5	85.5	82.5	81.5
3.0	85.5	84.0	87.5	86.5	87.5	86.5	84.0	82.5
5.0	87.5	86.5	87.5	86.5	87.5	86.5	85.5	84.0
7.5	88.5	87.5	89.5	88.5	89.5	88.5	85.5	84.0
10.0	89.5	88.5	89.5	88.5	89.5	88.5	88.5	87.5
15.0	90.2	89.5	91.0	90.2	90.2	89.5	88.5	87.5
20.0	90.2	89.5	91.0	90.2	90.2	89.5	89.5	88.5
25.0	91.0	90.2	92.4	91.7	91.7	91.0	89.5	88.5
30.0	91.0	90.2	92.4	91.7	91.7	91.0	91.0	90.2
40.0	91.7	91.0	93.0	92.4	93.0	92.4	91.0	90.2
50.0	92.4	91.7	93.0	92.4	93.0	92.4	91.7	91.0
60.0	93.0	92.4	93.6	93.0	93.6	93.0	91.7	91.0
75.0	93.0	92.4	94.1	93.6	93.6	93.0	93.0	92.4
100.0	93.6	93.0	94.5	94.1	94.1	93.6	93.0	92.4
125.0	94.5	94.1	94.5	94.1	94.1	93.6	93.6	93.0
150.0	94.5	94.1	95.0	94.5	94.5	94.1	94.1	93.0
200.0	95.0	94.5	95.0	94.5	95.0	94.5	94.1	93.6

[1] For many applications, efficiencies greater than those listed are likely to be cost-effective. Guidance for evaluating the cost effectiveness of energy efficient motor applications is given in RS–43 and RS–44 (incorporated by reference, see § 434.701).

401.3 Lighting Power Allowance. The lighting system shall meet the provisions of subsections 401.3.1 through 401.3.5.

401.3.1 Building Exteriors. The total connected exterior lighting power for the building, or a facility containing multiple buildings, shall not exceed the total exterior lighting power allowance, which is the sum of the individual allowances determined from Table 401.3.1. The individual allowances are determined by multiplying the specific area or length of each area description times the allowance for that area. Exceptions are as follows: Lighting for outdoor manufacturing or processing facilities, commercial greenhouses, outdoor athletic facilities, public monuments, designated high-risk security areas, signs, retail storefronts, exterior enclosed display windows, and lighting specifically required by local ordinances and regulations.

TABLE 401.3.1.—EXTERIOR LIGHTING POWER ALLOWANCE

Area description	Allowance
Exit (with or without canopy)	25 W/lin ft of door opening.
Entrance (without canopy)	30 W/lin ft of door opening.
Entrance (with canopy):	
High Traffic (retail, hotel, airport, theater, etc.)	10 W/ft^2 of canopied area.
Light Traffic (hospital, office, school, etc.)	4 W/ft^2 of canopied area.
Loading area	0.40 W/ft^2.
Loading door	20 W/lin ft of door opening.
Building exterior surfaces/facades	0.25 W/ft^2 of surface area to be illuminated.
Storage and non-manufacturing work areas	0.20 W/ft^2.
Other activity areas for casual use such as picnic grounds, gardens, parks, and other landscaped areas.	0.10 W/ft^2.
Private driveways/walkways	0.10 W/ft^2.
Public driveways/walkways	0.15 W/ft^2.
Private parking lots	0.12 W/ft^2.
Public parking lots	0.18 W/ft^2.

401.3.1.1 Trade-offs of exterior lighting budgets among exterior areas shall be allowed provided the total connected lighting power of the exterior area does not exceed the exterior lighting power allowance. Trade-offs between interior lighting power allowances and exterior lighting power allowances shall not be allowed.

401.3.2 *Building interiors.* The total connected interior lighting power for a building, including adjustments in accordance with subsection 401.3.3, shall not exceed the total interior

lighting power allowance explained in this paragraph. Using Table 401.3.2a, multiply the interior lighting power allowance value by the gross lighted area of the most appropriate building or space activity. For multi-use buildings, using Table 401.3.2a, select the interior power allowance value for each activity using the column for the gross lighted area of the whole building and multiply it by the associated gross area for that activity. The interior lighting power allowance is the sum of all the wattages for each area/activity. Using Table 401.3.2b, c, or d, multiply the interior lighting power allowance values of each individual area/activity by the area of the space and by the area factor from Figure 401.3.2e, based on the most appropriate area/activity provided. The interior lighting power allowance is the sum of the wattages for each individual space. When over 20% of the building's tasks or interior areas are undefined, the most appropriate value for that building from Table 401.3.2a shall be used for the undefined spaces. Exceptions are as follows:

(a) Lighting power that is an essential technical element for the function performed in theatrical, stage, broadcasting, and similar uses.

(b) Specialized medical, dental, and research lighting.

(c) Display lighting for exhibits in galleries, museums, and monuments.

(d) Lighting solely for indoor plant growth (between the hours of 10:00 pm and 6:00 am).

(e) Emergency lighting that is automatically off during normal building operation.

(f) High-risk security areas.

(g) Spaces specifically designed for the primary use by the physically impaired or aged.

(h) Lighting in dwelling units.

401.3.2.1 Trade-offs of the interior lighting power budgets among interior spaces shall be allowed provided the total connected lighting power within the building does not exceed the interior lighting power allowance. Trade-offs between interior lighting power allowances and exterior lighting power allowances shall not be allowed.

401.3.2.2 *Building/Space Activities.* Definitions of buildings/space activity as they apply to Table 401.3.2a are as follows. These definitions are necessary to characterize the activities for which lighting is provided. They are applicable only to Table 401.3.2a. They are not intended to be used elsewhere in place of building use group definitions provided in the Building Code. They are not included in § 434.201, ''Definitions,'' to avoid confusion with ''Occupancy Type Categories.''

(a) *Food service, fast food, and cafeteria:* This group includes cafeterias, hamburger and sandwich stores, bakeries, ice cream parlors, cookie stores, and all other kinds of retail food service establishments in which customers are generally served at a counter and their direct selections are paid for and taken to a table or carried out.

(b) *Garages:* This category includes all types of parking garages, except for service or repair areas.

(c) *Leisure dining and bar:* This group includes cafes, diners, bars, lounges, and similar establishments where orders are placed with a wait person.

(d) *Mall concourse, multi-store service:* This group includes the interior of multifunctional public spaces, such as shopping center malls, airports, resort concourses and malls, entertainment facilities, and related types of buildings or spaces.

(e) *Offices:* This group includes all kinds of offices, including corporate and professional offices, office/laboratories, governmental offices, libraries, and similar facilities, where paperwork occurs.

(f) *Retail:* A retail store, including departments for the sale of accessories, clothing, dry goods, electronics, and toys, and other types of establishments that display objects for direct selection and purchase by consumers. Direct selection means literally removing an item from display and carrying it to the checkout or pick-up at a customer service facility.

(g) *Schools:* This category, subdivided by pre-school/elementary, junior high/high school, and technical/vocational, includes public and private educational institutions, for children or adults, and may also include community centers, college and university buildings, and business educational centers.

(h) *Service establishment:* A retail-like facility, such as watch repair, real estate offices, auto and tire service facilities, parts departments, travel agencies and similar facilities, in which the customer obtains services rather than the direct selection of goods.

(i) *Warehouse and storage:* This includes all types of support facilities, such as warehouses, barns, storage buildings, shipping/receiving buildings, boiler or mechanical buildings, electric power buildings, and similar buildings where the primary visual task is large items.

401.3.2—Tables and Figures

TABLE 401.3.2A.—INTERIOR LIGHTING POWER ALLOWANCE W/FT^2

Building space activity [1]	Gross lighted area of total building					
	0 to 2,000 ft^2	2,001 to 10,000 ft^2	10,001 to 25,000 ft^2	25,001 to 50,000 ft^2	50,001 to 250,000 ft^2	250,000 ft^2
Food Service:						
Fast Food/Cafeteria	1.50	1.38	1.34	1.32	1.31	1.30
Leisure Dining/Bar	2.20	1.91	1.71	1.56	1.46	1.40
Offices	1.90	1.81	1.72	1.65	1.57	1.50
Retail [3]	3.30	3.08	2.83	2.50	2.28	2.10
Mall Concourse Multi-store Service	1.60	1.58	1.52	1.46	1.43	1.40
Service Establishment	2.70	2.37	2.08	1.92	1.80	1.70
Garages	0.30	0.28	0.24	0.22	0.21	0.20
Schools:						
Preschool/Elementary	1.80	1.80	1.72	1.65	1.57	1.50
Jr. High/High School	1.90	1.90	1.88	1.83	1.76	1.70
Technical/Vocational	2.40	2.33	2.17	2.01	1.84	1.70
Warehouse/Storage	0.80	0.66	0.56	0.48	0.43	0.40

[1] If at least 10% of the building area is intended for multiple space activities, such as parking, retail, and storage in an office building, then calculate for each separate building type/space activity.

[2] The values in the categories are building wide allowances which include the listed activity and directly related facilities such as conference rooms, lobbies, corridors, restrooms, etc.

[3] Includes general, merchandising, and display lighting.

TABLE 401.3.2B.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

Common area/activity [1]	UPD W/ft [2]
Auditorium [2]	1.4
Corridor [3]	0.8
Classroom/Lecture Hall	2.0
Electrical/Mechanical Equipment Room:	
General [3]	0.7
Control Rooms [3]	1.5
Food Service:	
Fast Food/Cafeteria	1.3
Leisure Dining [4]	1.4
Bar/Lounge [4]	2.5
Kitchen	1.4
Recreation/Lounge	0.7
Stair:	
Active Traffic	0.6
Emergency Exit	0.4
Toilet & Washroom	0.8
Garage:	
Auto & Pedestrian Circulation Area	0.3
Parking Area	0.2
Laboratory	2.2
Library:	
Audio Visual	1.1
Stack Area	1.1
Card File & Cataloging	0.8
Reading Area	1.1
Lobby (General):	
Reception & Waiting	1.0
Elevator Lobbies	0.4
Atrium (Multi-Story):	
First 3 Floors	0.7
Each Additional Floor	0.2
Locker Room & Shower	0.8
Office Category 1	
Enclosed offices, all open plan offices w/o partitions or w/partitions [6] lower than 4.5 ft below the ceiling. [5]	
Reading, Typing and Filing	1.5
Drafting	1.9
Accounting	1.6
Office Category 2:	
Open plan offices 900 ft [2] or larger w/partitions	
1 3.5 to 4.5 ft below the ceiling..	
Offices less than 900 ft2 shall use category 1 [3]	
Reading, Typing and Filing	1.5
Drafting	2.0
Accounting	1.8
Office Category 3:	
Open plan offices 900 ft [2] or larger w/partitions [6] higher than 3.5 ft below the ceiling.	
Offices less than 900 ft /2 shall use category 1. [3]	
Reading, Typing and Filing	1.7
Drafting	2.3
Accounting	1.9
Common Activity Areas	
Conference/Meeting Room [2]	1.3
Computer/Office Equipment	1.1
Filing, Inactive	1.0
Mail Room	1.8
Shop (Non-Industrial):	
Machinery	2.5
Electrical/Electronic	2.5
Painting	1.6
Carpentry	2.3
Welding	1.2
Storage and Warehouse;	
Inactive Storage	0.2
Active Storage, Bulky	0.3
Active Storage, Fine	0.9
Material Handling	1.0
Unlisted Space	0.2

[1] Use a weighted average UPD in rooms with multiple simultaneous activities, weighted in proportion to the area served.
[2] A 1.5 power adjustment factor is applicable for multi-function spaces when a supplementary system having independent controls is installed that has installed power ≤ 33% of the adjusted lighting power for that space.
[3] Area factor of 1.0 shall be used for these spaced.
[4] UPD includes lighting power required for clean-up purposes.

[5] Area factor shall not exceed 1.55.
[6] Not less than 90 percent of all work stations shall be individually enclosed with partitions of at least the height described.

TABLE 401.3.2C.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

Specific building area/activity [1]	UPD W/ft [2]
Airport, Bus and Rail Station:	
Baggage Area	0.8
Concourse/Main Thruway	0.9
Ticket Counter	2.0
Waiting & Lounge Area	0.8
Bank:	
Customer Area	1.0
Banking Activity Area	2.2
Barber & Beauty Parlor	1.6
Church, Synagogue, Chapel:	
Worship/Congregational	1.7
Preaching & Sermon/Choir	1.8
Dormitory:	
Bedroom	1.0
Bedroom w/Study	1.3
Study Hall	1.2
Fire & Police Department:	
Fire Engine Room	0.7
Jail Cell	0.8
Hospital/Nursing Home:	
Corridor [3]	1.3
Dental Suite/Examination/Treatment	1.6
Emergency	2.0
Laboratory	1.7
Lounge/Waiting Room	0.9
Medical Supplies	2.4
Nursery	1.6
Nurse Station	1.8
Occupational Therapy/Physical Therapy	1.4
Patient Room	1.2
Pharmacy	1.5
Radiology	1.8
Surgical & Obstetrics Suites:	
General Area	1.8
Operating Room	6.0
Recovery	2.0
Hotel/Conference Center:	
Banquet Room/Multipurpose [2]	1.7
Bathroom/Powder Room	1.2
Guest Room	0.9
Public Area	1.0
Exhibition Hall	1.8
Conference/Meeting [2]	1.5
Lobby	1.5
Reception Desk	2.4
Laundry:	
Washing	0.9
Ironing & Sorting	1.3
Museum & Gallery:	
General Exhibition	1.9
Inspection/Restoration	3.0
Storage (Artifacts):	
Inactive	0.6
Active	0.7
Post Office:	
Lobby	1.1
Sorting & Mailing	2.1
Service Station/Auto Repair	0.8
Theater:	
Performance Arts	1.3
Motion Picture	1.0
Lobby	1.3
Retail Establishments—Merchandising & Circulation Area (Applicable to all lighting, including accent and display lighting, installed in merchandising and circulation areas):	
Type 1: Jewelry merchandising, where minute examination of displayed merchandise is critical.	5.6
Type 2: Fine merchandising, such as fine apparel and accessories, china, crystal, and silver art galleries and where the detailed display and examination of merchandising is important.	2.9
Type 3: Mass merchandising, such as general apparel, variety goods, stationary, books, sporting goods, hobby materials, cameras, gifts, and luggage, displayed in a warehouse type of building, where focused display and detailed examination of merchandise is important.	2.7

TABLE 401.3.2C.—UNIT INTERIOR LIGHTING POWER ALLOWANCE—Continued

Specific building area/activity [1]	UPD W/ft [2]
Type 4: General merchandising, such as general apparel, variety goods, stationary, books, sporting goods, hobby materials, cameras, gifts, and luggage, displayed in a department store type of building, where general display and examination of merchandise is adequate.	2.3
Type 5: Food and miscellaneous such as bakeries, hardware and housewares, grocery stores, appliance and furniture stores, where pleasant appearance is important.	2.4
Type 6: Service establishments, where functional performance is important.	2.6
Mall Concourse	1.4
Retail Support Areas	2.1
Tailoring	1.1
Dressing/Fitting Rooms	.....

[1] Use a weighted average UPD in rooms with multiple simultaneous activities, weighted in proportion to the area served.
[2] A 1.5 power adjustment factor is applicable for multi-function spaces when a supplementary system having independent controls is installed that has installed power ≤ 33% of the adjusted lighting power for that space.
[3] Area factor shall not exceed 1.55.

TABLE 401.3.2D.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

Indoor athletic area/activity [1] [2]	UPD W/ft [2]
Seating Area, All Sports	0.4
Badminton:	
Club	0.5
Tournament	0.8
Basketball/Volleyball:	
Intramural	0.8
College	1.3
Professional	1.9
Bowling:	
Approach Area	0.5
Lanes	1.1
Boxing or Wrestling (platform):	
Amateur	2.4
Professional	4.8
Gymnasium:	
General Exercising and Recreation Only	1.0
Handball/Racquetball/Squash:	
Club	1.3
Tournament	2.6
Hockey, Ice:	
Amateur	1.3
College or Professional	2.6
Skating Rink:	
Recreational	0.6
Exhibition/Professional	2.6
Swimming:	
Recreational	0.9
Exhibition	1.5
Underwater	1.0
Tennis:	
Recreational (Class III)	1.3
Club/College (Class II)	1.9
Professional (Class I)	2.6
Tennis, Table:	
Club	1.0
Tournament	1.6

[1] Area factor of 1.0 shall be used for these spaces.
[2] Consider as 10 ft. beyond playing boundaries but less than or equal to the total floor area of the sports space minus spectator seating area.

Figure 401.3.2e—Area Factor Formula

$$\text{where } n = \frac{10.21\,(CH - 2.5)}{\sqrt{A_r}} - 1$$

Area Factor Formula:

Area Factor (AF) = $0.2 + 0.8(1/0.9^n)$

Where:

AF = area factor,

CH = ceiling height (ft),

A_r = space area (ft^2).

If AF <1.0 use 1.0; if AF >1.8 use 1.8

401.3.3 *Lighting Power Control Credits.* The interior connected lighting power determined in accordance with § 434.401.3.2 can be decreased for luminaries that are automatically controlled for occupancy, daylight, lumen maintenance, or programmable timing. The adjusted interior connected lighting power shall be determined by subtracting the sum of all lighting power control credits from the interior connected lighting power. Using Table 401.3.3, the lighting power control credit equals the power adjustment factor times the connected lighting power of the controlled lighting. The

lighting power adjustment shall be applied with the following limitations:

(a) It is limited to the specific area controlled by the automatic control device.

(b) Only one lighting power adjustment may be used for each building space or luminaire, and 50 percent or more of the controlled luminaire shall be within the applicable space.

(c) Controls shall be installed in series with the lights and in series with all manual switching devices.

(d) When sufficient daylight is available, daylight sensing controls shall be capable of reducing electrical power consumption for lighting (continuously or in steps) to 50 percent or less of maximum power consumption.

(e) Daylight sensing controls shall control all luminaires to which the adjustment is applied and that direct a minimum of 50 percent of their light output into the daylight zone.

(f) Programmable timing controls shall be able to program different schedules for occupied and unoccupied days, be readily accessible for temporary override with automatic return to the original schedule, and keep time during power outages for at least four hours.

TABLE 401.3.3.—LIGHTING POWER ADJUSTMENT FACTORS

Automatic control devices	PAF
(1) Daylight Sensing controls (DS), continuous dimming	0.30
(2) DS, multiple step dimming	0.20
(3) DS, ON/OFF	0.10
(4) DS continuous dimming and programmable timing	0.35
(5) DS multiple step dimming and programmable timing	0.25
(6) DS ON/OFF and programmable timing	0.15
(7) DS continuous dimming, programmable timing, and lumen maintenance	0.40
(8) DS multiple step dimming, programmable timing, and lumen maintenance	0.30
(9) DS ON/OFF, programmable timing, and lumen maintenance	0.20
(10) Lumen maintenance control	0.10
(11) Lumen maintenance and programmable timing control	0.15
(12) Programmable timing control	0.15
(13) Occupancy sensor (OS)	0.30
(14) OS and DS, continuous dimming	0.40
(15) OS and DS, multiple-step dimming	0.35
(16) OS and DS, ON/OFF	0.35
(17) OS, DS continuous dimming, and lumen maintenance	0.45
(18) OS, DS multiple-step dimming and lumen maintenance	0.40
(19) OS, DS ON/OFF, and lumen maintenance	0.35
(20) OS and lumen maintenance	0.35
(21) OS and programmable timing control	0.35

401.3.4 *Lighting controls.*

401.3.4.1 *Type of Lighting Controls.* All lighting systems shall have controls, with the exception of emergency use or exit lighting.

401.3.4.2 *Number of Manual Controls.* Spaces enclosed by walls or ceiling-high partitions shall have a minimum of one manual control (on/off switch) for lighting in that space. Additional manual controls shall be provided for each task location or for each group of task locations within an area of 450 ft^2 or less. For spaces with only one lighting fixture or with a single ballast, one manual control is required. Exceptions are as follows:

401.3.4.2.1 Continuous lighting for security;

401.3.4.2.2 Systems in which occupancy sensors, local programmable timers, or three-level (including OFF) step controls or preset dimming controls are substituted for manual controls at the rate of one for every two required manual controls, providing at least one control is installed for every 1500 watts of power.

401.3.4.2.3 Systems in which four-level (including OFF) step controls or preset dimming controls or automatic or continuous dimming controls are substituted for manual controls at a rate of one for every three required manual controls, providing at least one control is installed for every 1500 watts of power.

401.3.4.2.4 Spaces that must be used as a whole, such as public lobbies, retail stores, warehouses, and storerooms.

401.3.4.3 *Multiple Location Controls.* Manual controls that operate the same load from multiple locations must be counted as one manual control.

401.3.4.4 *Control Accessibility.* Lighting controls shall be readily accessible from within the space controlled. Exceptions are as follows: Controls for spaces that are to be used as a whole, automatic controls, programmable controls, controls requiring trained operators, and controls for safety hazards and security.

401.3.4.5 *Hotel and Motel Guest Room Control.* Hotel and motel guest rooms and suites shall have at least one master switch at the main entry door that controls all permanently wired lighting fixtures and switched receptacles excluding bathrooms. The following exception applies: Where switches are provided at the entry to each room of a multiple-room suite.

401.3.4.6 *Switching of Exterior Lighting.* Exterior lighting not intended for 24-hour use shall be automatically switched by either timer or photocell or a combination of timer and photocell. When used, timers shall be capable of seven-day and seasonal daylight schedule adjustment and have power backup for at least four hours.

401.3.5 *Ballasts.*

401.3.5.1 *Tandem Wiring.* One-lamp or three-lamp fluorescent luminaries that are recess mounted within 10 ft center-to-center of each other, or pendant mounted, or surface mounted within 1 ft of each other, and within the same room, shall be tandem wired, unless three-lamp ballasts are used.

401.3.5.2 *Power Factor.* All ballasts shall have a power factor of at least 90%, with the exception of dimming ballasts, and ballasts for circline and compact fluorescent lamps and low wattage high intensity discharge (HID) lamps not over 100 W.

434.402 Building envelope assemblies and materials.

The building envelope and its associated assemblies and materials shall meet the provisions of this section.

402.1 *Calculations and Supporting Information.*

402.1.1 *Material Properties.* Information on thermal properties, building envelope system performance, and component heat transfer shall be obtained from RS–4. When the information is not available from RS–4, (incorporated by reference, see § 434.701) the data shall be obtained from manufacturer's information or laboratory or field test measurements using RS–5, RS–6, RS–7, or RS–8 (incorporated by reference, see § 434.701).

402.1.1.1 The shading coefficient (SC) for fenestration shall be obtained from RS–4 (incorporated by reference, see § 434.701) or from manufacturer's test data. The shading coefficient of the fenestration, including both internal and external shading devices, is SC_X and excludes the effect of external shading projections, which are calculated separately. The shading coefficient used for louvered shade screens shall be determined using a profile angle of 30 degrees as found in Table 41, Chapter 27 of RS–4 (incorporated by reference, see § 434.701).

402.1.2 *Thermal Performance Calculations.* The overall thermal transmittance of the building envelope shall be calculated in accordance with Equation 402.1.2:

$$U_o = \sum U_i A_i / A_o = \left(U_1 A_1 + U_2 A_2 + \ . \ . \ . \ + U_n A_n\right) / A_o \qquad (402.1.2)$$

Where:

U_o = the area-weighted average thermal transmittance of the gross area of the building envelope; *i.e.,* the exterior wall assembly including fenestration and doors, the roof and ceiling assembly, and the floor assembly, Btu/(h•ft²•°F)

A_o =the gross area of the building envelope, ft²

U_i =the thermal transmittance of each individual path of the building envelope, *i.e.,* the opaque portion or the fenestration, Btu/(h•ft²•°F)

U_i =1/R_i (where R_i is the total resistance to heat flow of an individual path through the building envelope)

A_i =the area of each individual element of the building envelope, ft²

The thermal transmittance of each component of the building envelope shall be determined with due consideration of all major series and parallel heat flow paths through the elements of the component and film coefficients and shall account for any compression of insulation. The thermal transmittance of opaque elements of assemblies shall be determined using a series path procedure with corrections for the presence of parallel paths within an element of the envelope assembly (such as wall cavities with parallel paths through insulation and studs). The thermal performance of adjacent ground in below-grade applications shall be excluded from all thermal calculations.

402.1.2.1 Envelope Assemblies Containing Metal Framing. The thermal transmittance of the envelope assembly containing metal framing shall be determined from one of three methods:

(a) Laboratory or field test measurements based on RS–5, RS–6, RS–7, or RS–8 (incorporated by reference, see § 434.701).

(b) The zone method described in Chapter 22 of RS–4 (incorporated by reference, see § 434.701) and the formulas on page 22.10.

(c) For metal roof trusses or metal studs covered by Tables 402.1.2.1a and b, the total resistance of the series path shall be calculated in accordance with the following Equations:

$$U_i = 1/R_t \qquad R_t = R_i + R_e \qquad \text{Equation 402.1.2.1a}$$

Where:

R_t=the total resistance of the envelope assembly

R_i=the resistance of the series elements (for i = 1 to n) excluding the parallel path element(s)

R_e=the equivalent resistance of the element containing the parallel path (R-value of insulation × F_c). Values for F_c and equivalent resistances shall be taken from Tables 402.1.2.1a or b.

TABLE 402.1.2.1A.—PARALLEL PATH CORRECTION FACTORS—METAL ROOF TRUSSES SPACED 4 FT. O.C. OR GREATER THAT PENETRATE THE INSULATION

Effective framing cavity R-values	Correction factor F_c	Equivalent resistance R_e [1]
R–0	1.00	R–0
R–5	0.96	R–4.8
R–10	0.92	R–9.2
R–15	0.88	R–13.2
R–20	0.85	R–17.0
R–25	0.81	R–20.3
R–30	0.79	R–23.7
R–35	0.76	R–26.6
R–40	0.73	R–29.2
R–45	0.71	R–32.0
R–50	0.69	R–34.5
R–55	0.67	R–36.0

[1] Based on 0.66-inch-diameter cross members every one foot.

TABLE 402.1.2.1B.—PARALLEL PATH CORRECTION FACTORS—METAL FRAMED WALLS WITH STUDS 16 GA. OR LIGHTER

Size of members	Spacing of framing, in.	Cavity insulation R-Value	Correction factor F_c	Equivalent resistance R_e
2 × 4	16 O.C.	R–11	0.50	R–5.5
		R–13	0.46	R–6.0
		R–15	0.43	R–6.4
2 × 4	24 O.C.	R–11	0.60	R–6.6
		R–13	0.55	R–7.2
		R–15	0.52	R–7.8
2 × 6	16 O.C.	R–19	0.37	R–7.1
		R–21	0.35	R–7.4
2 × 6	24 O.C.	R–19	0.45	R–8.6
		R–21	0.43	R–9.0
2 × 8	16 O.C.	R–25	0.31	R–7.8
2 × 8	24 O.C.	R–25	0.38	R–9.6

402.1.2.2 *Envelope Assemblies Containing Nonmetal Framing.* The thermal transmittance of the envelope assembly shall be determined from laboratory or field test measurements based on RS–5, RS–6, RS–7, or RS–8 (incorporated by reference, see § 434.701) or from the series-parallel (isothermal planes) method provided in page 23.2 of Chapter 23 of RS–4 (incorporated be reference, see § 434.701).

402.1.2.3 *Metal Buildings.* For elements with internal metallic structures bonded on one or both sides to a metal skin or covering, the calculation procedure specified in RS–9 (incorporated by reference, see § 434.701) shall be used.

402.1.2.4 *Fenestration Assemblies.* Determine the overall thermal transmittance of fenestration assemblies in accordance with RS–18 and RS–19 (incorporated by reference, see § 434.701) or by calculation. Calculation of the overall thermal transmittance of fenestration assemblies shall consider the center-of-glass, edge-of-glass, and frame components.

(a) The following equation 402.1.2.4a shall be used.

$$U_{of} = \left[\sum_{i=1}^{n}\left(U_{cg,i} \times A_{cg,i} + U_{eg,i} \times A_{eg,i} + U_{f,i} \times A_{f,i}\right)\right] \Big/ \left[\sum_{i=1}^{n}\left(A_{cg,i} + A_{eg,i} + A_{f,i}\right)\right]$$

$$= \left(U_{cg,1} \times A_{cg,1} + U_{eg,1} \times A_{eg,1} + U_{f,1} \times A_{f,1} + U_{cg,2} \times A_{cg,2} + U_{eg,2} \times A_{eg,2} + U_{f,2} \times A_{f,2} + \ldots U_{cg,n} \times A_{cg,n} + U_{eg,n} \times A_{eg,n} + U_{f,n} \times A_{f,n}\right) \Big/ \left(A_{cg,1} + A_{eg,1} + A_{f,1} + A_{cg,2} + A_{eg,2} + A_{f,2} + \ldots A_{cg,n} + A_{eg,n} + A_{f,n}\right)$$

$$U_{of} = \left[\sum_{i=1}^{n}\left(U_{cg,i} \times A_{cg,i} + U_{eg,i} \times A_{eg,i} + U_{f,i} \times A_{f,i}\right)\right] \Big/ \left[\sum_{i=1}^{n}\left(A_{cg,i} + A_{eg,i} + A_{f,i}\right)\right] \qquad \text{Equation 402.1.2.4a}$$

$$= \left(U_{cg,1} \times A_{cg,1} + U_{eg,1} \times A_{eg,1} + U_{f,1} \times A_{f,1} + U_{cg,2} \times A_{cg,2} + U_{eg,2} \times A_{eg,2} + U_{f,2} \times A_{f,2} + \ldots U_{cg,n} \times A_{cg,n} + U_{eg,n} \times A_{eg,n} + U_{f,n} \times A_{f,n}\right) \Big/ \left(A_{cg,1} + A_{eg,1} + A_{f,1} + A_{cg,2} + A_{eg,2} + A_{f,2} + \ldots A_{cg,n} + A_{eg,n} + A_{f,n}\right)$$

Where:

U_{of} = the overall thermal transmittance of the fenestration assemblies, including the center-of-glass, edge-of-glass, and frame components, Btu/(h·ft²·°F)

i = numerical subscript (1, 2, . . .n) refers to each of the various fenestration types present in the wall

n = the number of fenestration assemblies in the wall assembly

U_{cg} = the thermal transmittance of the center-of-glass area, Btu/(h·ft²·°F)

A_{cg} = the center of glass area, that is the overall visible glass area minus the edge-of-glass area, ft²

U_{eg} = the thermal transmittance of the edge of the visible glass area including the effects of spacers in multiple glazed units, Btu/(h·ft²·°F)

A_{eg} = the edge of the visible glass area, that is the 2.5 in. perimeter band adjacent to the frame, ft²

U_f = the thermal transmittance of the frame area, Btu/(h·ft²·°F)

A_f = the frame area that is the overall area of the entire glazing product minus the center-of-glass area and minus the edge-of-glass area, ft²

(b) Values of U_{of} shall be based on one of the following methods:

(1) Results from laboratory test of center-of-glass, edge-of-glass, and frame assemblies tested as a unit at winter conditions. One of the procedures in Section 8.3.2 of RS–1 (incorporated by reference, see § 434.701) shall be used.

(2) Overall generic product C (commercial) in Table 13, Chapter 27, of the RS–4 (incorporated by reference, see § 434.701). The generic product C in Table 13, Chapter 27, is based on a product of 24 ft². Larger units will produce lower U-values and thus it is recommended to use the calculation procedure detailed in Equation 402.1.2.4a.

(3) Calculations based on the actual area for center-of-glass, edge-of-glass, and frame assemblies and on the thermal transmittance of components derived from 402.1.2.4a, 402.1.2.4b or a combination of the two.

402.1.3 *Gross Areas of Envelope Components.*

402.1.3.1 *Roof Assembly.* The gross area of a roof assembly shall consist of the total surface of the roof assembly exposed to outside air or unconditioned spaces and is measured from the exterior faces of exterior walls and centerline of walls separating buildings. The roof assembly includes all roof or ceiling components through which heat may flow between indoor and outdoor environments, including skylight surfaces but excluding service openings. For thermal transmittance purposes when return air ceiling plenums are employed, the roof or ceiling assembly shall not include the resistance of the ceiling or the plenum space as part of the total resistance of the assembly.

402.1.3.2 *Floor Assembly.* The gross area of a floor assembly over outside or unconditioned spaces shall consist of the total surface of the floor assembly exposed to outside air or unconditioned space and is measured from the exterior face of exterior walls and centerline of walls separating buildings. The floor assembly shall include all floor components through which heat may flow between indoor and outdoor or unconditioned space environments.

402.1.3.3 *Wall Assembly.* The gross area of exterior walls enclosing a heated or cooled space is measured on the exterior and consists of the opaque walls, including between-floor spandrels, peripheral edges of flooring, window areas (including sash), and door areas but excluding vents, grilles, and pipes.

402.2 *Air Leakage and Moisture Mitigation.* The requirements of this section shall apply only to those building components that separate interior building conditioned space from the outdoors or from unconditioned space or crawl spaces. Compliance with the criteria for air leakage through building components shall be determined by tests conducted in accordance with RS–10 (incorporated by reference, see § 434.701).

402.2.1 *Air Barrier System.* A barrier against leakage shall be installed to prevent the leakage of air through the

building envelope according to the following requirements:

(a) The air barrier shall be continuous at all plumbing and heating penetrations of the building opaque wall.

(b) The air barrier shall be sealed at all penetrations of the opaque building wall for electrical and telecommunications equipment.

TABLE 402.2.1.—AIR LEAKAGE FOR FENESTRATION AND DOORS MAXIMUM ALLOWABLE INFILTRATION RATE

Component	Reference standard	cfm/lin ft Sash crack or cfm/ft² of area
Fenestration		
Aluminum:		
Operable	RS–11*	0.37 cfm/lin ft.
Jalousie	RS–11*	1.50 cfm/ft².
Fixed	RS–11*	0.15 cfm/ft².
Poly Vinyl Chloride (PVC):		
Prime Windows	RS–12*	0.37 cfm/ft².
Wood:		
Residential	RS–13*	0.37 cfm/ft².
Light Commercial	RS–13*	0.25 cfm/ft².
Heavy Commercial	RS–13*	0.15 cfm/ft².
Sliding Glass Doors:		
Aluminum	RS–11*	0.37 cfm/ft².
PVC	RS–12*	0.37 cfm/lin ft.
Doors—Wood:		
Residential	RS–14*	0.34 cfm/ft².
Light Commercial	RS–14*	0.25 cfm/ft².
Heavy Commercial	RS–14*	0.10 cfm/ft².
Commercial Entrance Doors	RS–10*	1.25 cfm/ft².
Residential Swinging Doors	RS–10*	0.50 cfm/ft².
Wall Sections Aluminum	RS–10*	0.06 cfm/ft².

Note:
[The ''Maximum Allowable Infiltration Rates'' are from current standards to allow the use of available products.]
* Incorporated by reference, see § 434.701.

402.2.2 *Building Envelope.* The following areas of the building envelope shall be sealed, caulked, gasketed, or weatherstripped to limit air leakage:

(a) Intersections of the fenestration and door frames with the opaque wall sections.

(b) Openings between walls and foundations, between walls and roof and wall panels.

(c) Openings at penetrations of utility service through, roofs, walls, and floors.

(d) Site built fenestration and doors.

(e) All other openings in the building envelope.

Exceptions are as follows: Outside air intakes, exhaust outlets, relief outlets, stair shaft, elevator shaft smoke relief openings, and other similar elements shall comply with subsection 403.

402.2.2.1 Fenestration and Doors Fenestration and doors shall meet the requirements of Table 402.2.1.

402.2.2.2 *Building Assemblies Used as Ducts or Plenums.* Building assemblies used as ducts or plenums shall be sealed, caulked, and gasketed to limit air leakage.

402.2.2.3 *Vestibules.* A door that separates conditioned space from the exterior shall be equipped with an enclosed vestibule with all doors opening into and out of the vestibule equipped with self-closing devices. Vestibules shall be designed so that in passing through the vestibule, it is not necessary for the interior and exterior doors to open at the same time. Exceptions are as follows: Exterior doors need not be protected with a vestibule where:

(a) The door is a revolving door.

(b) The door is used primarily to facilitate vehicular movement or material handling.

(c) The door is not intended to be used as a general entrance door.

(d) The door opens directly from a dwelling unit.

(e) The door opens directly from a retail space less than 2,000 ft² in area, or from a space less than 1,500 ft² for other uses.

(f) In buildings less than three stories in building height in regions that have less than 6,300 heating degree days base 65°F.

402.2.2.4 *Compliance Testing.* All buildings shall be tested after completion using the methodology in RS–11, (incorporated by reference, see § 434.701) or an equivalent approved method to determine the envelope air leakage. A standard blower door test is an acceptable technique to pressurize the building if the building is 5,000 ft² or less in area. The buildings's air handling system can be used to pressurize the building if the building is larger than 5,000 ft². The following test conditions shall be:

(a) The measured envelope air leakage shall not exceed 1.57 pounds per square foot of wall area at a pressure difference of 0.3 inches water.

(b) At the time of testing, all windows and outside doors shall be installed and closed, all interior doors shall be open, and all air handlers and dampers shall be operable. The building shall be unoccupied.

(c) During the testing period, the average wind speed during the test shall be less than 6.6 feet per second, the average outside temperature greater than 59°F, and the average inside-outside temperature difference is less than 41°F.

402.2.2.5 *Moisture Migration.* The building envelope shall be designed to limit moisture migration that leads to deterioration in insulation or equipment performance as determined by the following construction practices:

(a) A vapor retarder shall be installed to retard, or slow down the rate of water vapor diffusion through the building envelope. The position of the vapor retarder shall be determined taking into account local climate and indoor humidity levels. The methodologies presented in Chapter 20 of RS–4 (incorporated by reference, see § 434.701) shall be used to determine temperature and water vapor profiles

through the envelope systems to assess the potential for condensation within the envelope and to determine the position of the vapor retarder within the envelope system.

(b) The vapor retarder shall be installed over the entire building envelope.

(c) The perm rating requirements of the vapor retarder shall be determined using the methodologies contained in Chapter 20 of RS–4, (incorporated by reference, see § 434.701) and shall take into account local climate and indoor humidity level. The vapor retarder shall have a performance rating of 1 perm or less.

402.3 *Thermal Performance Criteria.*

402.3.1 *Roofs; Floors and Walls Adjacent to Unconditioned Spaces.* The area weighted average thermal transmittance of roofs and also of floors and walls adjacent to unconditioned spaces shall not exceed the criteria in Table 402.3.1a. Exceptions are as follows: Skylights for which daylight credit is taken may be excluded from the calculations of the roof assembly U_{or} if all of the following conditions are met:

(a) The opaque roof thermal transmittance is less than the criteria in Table 402.3.1b.

(b) Skylight areas, including framing, as a percentage of the roof area do not exceed the values specified in Table 402.3.1b. The maximum skylight area from Table 402.3.1b may be increased by 50% if a shading device is used that blocks over 50% of the solar gain during the peak cooling design condition. For shell buildings, the permitted skylight area shall be based on a light level of 30 foot candles and a lighting power density (LPD) of less than 1.0 w/ft^2. For speculative buildings, the permitted skylight area shall be based on the unit lighting power allowance from Table 401.3.2a and an illuminance level as follows: for LPD < 1.0, use 30 footcandles; for 1.0 < LPD < 2.5, use 50 footcandles; and for LPD ≥ 2.5, use 70 footcandles.

(c) All electric lighting fixtures within daylighted zones under skylights are controlled by automatic daylighting controls.

(d) The U_o of the skylight assembly including framing does not exceed Btu/(h•ft^2•°F) [Use 0.70 for ≤ 8000 HDD65 and 0.45 for >8000 HDD65 or both if the jurisdiction includes cities that are both below and above 8000 HDD65.]

(e) Skylight curb U-value does not exceed 0.21 Btu/(h•ft^2•°F).

(f) The infiltration coefficient of the skylights does not exceed 0.05 cfm/ft^2.

402.3.2 *Below-Grade Walls and Slabs-on-Grade.* The thermal resistance (R-value) of insulation for slabs-on-grade, or the overall thermal resistance of walls in contact with the earth, shall be equal to or greater than the values in Table 402.3.2.

402.4 *Exterior Walls.* Exterior walls shall comply with either 402.4.1 or 402.4.2.

402.4.1 *Prescriptive Criteria.* (a) The exterior wall shall be designed in accordance with subsections 402.4.1.1 and 402.4.1.2. When the internal load density range is not known, the 0–1.50 W/ft^2 range shall be used for residential, hotel/motel guest rooms, or warehouse occupancies; the 3.01–3.50 w/ft^2 range shall be used for retail stores smaller than 2,000 ft^2 and technical and vocational schools smaller than 10,000 ft^2; and the 1.51–3.00 W/ft^2 range shall be used for all other occupancies and building sizes. When the building envelope is designed or constructed prior to knowing the building occupancy type, an internal load density of W/ft^2 shall be used. [Use 3.0 W/ft^2 for HDD65 <3000, 2.25 W/ft^2 for 3000 < HDD65 < 6000, and 1.5 W/ft^2 for HDD65 > 6000.]

(b) When more than one condition exists, area weighted averages shall be used. This requirement shall apply to all thermal transmittances, shading coefficients, projection factors, and internal load densities rounded to the same number of decimal places as shown in the respective table.

402.4.1.1 *Opaque Walls.* The weighted average thermal transmittance (U-value) of opaque wall elements shall be less than the values in Table 402.4.1.1. For mass walls (HC ≥ 5), criteria are presented for low and high window/wall ratios and the criteria shall be determined by interpolating between these values for the window/wall ratio of the building.

402.4.1.2 *Fenestration.* The design of the fenestration shall meet the criteria of Table 402.4.1.2. When the fenestration columns labeled ''Perimeter Daylighting'' are used, automatic daylighting controls shall be installed in the perimeter daylighted zones of the building. These daylighting controls shall be capable of reducing electric lighting power to at least 50% of full power. Only those shading or lighting controls for perimeter daylighting that are shown on the plans shall be considered. The column labeled ''VLT > = SC'' shall be used only when the shading coefficient of the glass is less than its visible light transmittance.

Appendix A

The example Alternate Component Package tables illustrate the requirements of subsections 434.301.1, 434.402.3.1, 434.402.3.2, 434.402.4.1.1 and 434.402.4.1.2. Copies of specific tables contained in this Appendix A can be obtained from the Energy Code for Federal Commercial Buildings, Docket No. EE–RM–79–112–C, EE–43, Office of Building Research and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

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TABLE 301.1 EXTERIOR DESIGN CONDITIONS	
WINTER Design Dry Bulb: 44°F;	HDD65: 185
SUMMER Design Dry Bulb: 90°F; Mean Coincident Wet Bulb: 77°F;	CDD65: 4045
Annual Operating Hours, 8AM - 4PM when 55°F<=T<=69°F: 259	

TABLE 402.3.1(A) MAX. THERMAL TRANSMITTANCE (U)	
Roof	0.075
Wall adjacent to unconditioned space	1.000
Floor over unconditioned space	0.400

TABLE 402.3.1(B) MAX. EXEMPT SKYLIGHT AREA AS % OF ROOF AREA					
Visible Light Transmittance (VLT)	Light level Ft. Candles	Range of Lighting Power Densities			
		<1.00	1.00 - 1.50	1.51 - 2.00	>2.00
0.75	30	2.3	3.1	3.9	4.7
	50	3.1	4.3	5.5	6.7
	70	4.3	5.5	6.7	7.9
0.50	30	3.6	4.8	6.0	7.2
	50	4.8	6.6	8.4	10.2
	70	6.6	8.4	10.2	12.0

TABLE 402.3.2 MINIMUM THERMAL RESISTANCE (R-VALUE)			
Slab on grade: Unheated / Heated:	24 inches	36 inches	48 inches
Horizontal	R-0/R-2	R-0/R-2	R-0/R-2
Vertical	R-0/R-2	R-0/R-2	R-0/R-2
Wall below grade:	R-0		

TABLE 402.4.1.1 MAX. WALL THERMAL TRANSMITTANCE (Uow)				
			Insulation Position	
ILD Range	WWR	HC Range	Interior/Integral	Exterior
All	0 to 100	0.0 - 4.9	1.000	1.000
0.00 to 1.50	15	5.0 - 9.9	1.000	1.000
		10.0 - 14.9	1.000	1.000
		15.0 +	1.000	1.000
	99	5.0 - 9.9	1.000	1.000
		10.0 - 14.9	1.000	1.000
		15.0 +	1.000	1.000
1.51 to 3.00	12	5.0 - 9.9	1.000	1.000
		10.0 - 14.9	1.000	1.000
		15.0 +	1.000	1.000
	99	5.0 - 9.9	1.000	1.000
		10.0 - 14.9	1.000	1.000
		15.0 +	1.000	1.000
3.01 to 3.50	9	5.0 - 9.9	1.000	1.000
		10.0 - 14.9	1.000	1.000
		15.0 +	1.000	1.000
	93	5.0 - 9.9	1.000	1.000
		10.0 - 14.9	1.000	1.000
		15.0 +	1.000	1.000

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TABLE 402.4.1.2 MAXIMUM WINDOW WALL RATIO (WWR)							
			Fenestration U-Factor (Uof)				
			Base Case			Perimeter Daylighting	
							VLT>=SC
Internal Load Density (ILD) Range	Projection Factor (PF) Range	Shading Coefficient (SCx) Range	1.23 to 0.73	0.72 to 0.00	N/A	1.23 to 0.73	0.72 to 0.00	0.72 to 0.00
0.00 - 1.50	0.00 - 0.25	1.00 - 0.72	15	15		17	17	18
		0.71 - 0.61	19	18		22	21	22
		0.60 - 0.51	23	22		27	26	27
		0.50 - 0.39	29	28		34	32	34
		0.38 - 0.26	42	39		50	46	48
		0.25 - 0.00	82	70		99	81	84
	0.26 - 0.50	1.00 - 0.72	22	21		26	25	26
		0.71 - 0.61	29	27		34	32	33
		0.60 - 0.51	36	34		43	40	41
		0.50 - 0.39	46	42		56	50	52
		0.38 - 0.00	71	62		86	73	75
	0.50 +	1.00 - 0.72	31	30		37	35	36
		0.71 - 0.61	41	38		49	45	47
		0.60 - 0.51	53	48		64	57	58
		0.50 - 0.00	71	62		86	73	75
1.51 - 3.00	0.00 - 0.25	1.00 - 0.72	12	12		20	19	21
		0.71 - 0.61	16	15		26	25	27
		0.60 - 0.51	19	19		32	30	33
		0.50 - 0.39	24	23		41	38	41
		0.38 - 0.26	34	32		62	54	57
		0.25 - 0.00	66	57		99	90	99
	0.26 - 0.50	1.00 - 0.72	18	18		31	29	32
		0.71 - 0.61	24	23		41	37	40
		0.60 - 0.51	29	28		52	46	49
		0.50 - 0.39	37	35		68	59	62
		0.38 - 0.00	57	50		99	83	89
	0.50 +	1.00 - 0.72	25	24		45	41	44
		0.71 - 0.61	33	31		60	53	56
		0.60 - 0.51	42	39		77	67	70
		0.50 - 0.00	56	50		99	82	89
3.01 - 3.50	0.00 - 0.25	1.00 - 0.72	9	9		18	17	20
		0.71 - 0.61	12	12		23	22	26
		0.60 - 0.51	15	14		29	27	31
		0.50 - 0.39	18	17		37	34	39
		0.38 - 0.26	26	24		57	49	55
		0.25 - 0.00	48	43		99	83	93
	0.26 - 0.50	1.00 - 0.72	14	13		28	26	30
		0.71 - 0.61	18	17		37	34	38
		0.60 - 0.51	22	21		47	42	47
		0.50 - 0.39	28	26		63	54	60
		0.38 - 0.00	42	38		92	77	85
	0.50 +	1.00 - 0.72	19	18		41	37	41
		0.71 - 0.61	25	24		55	49	54
		0.60 - 0.51	31	29		71	62	67
		0.50 - 0.00	41	37		92	76	84

402.4.2 *System Performance Criteria.* The cumulative annual energy flux attributable to thermal transmittance and solar gains shall be less than the criteria determined using the ENVSTD24 computer program in

Standard 90.1–1989, or the equations in RS–1, (incorporated by reference, see § 434.701) Attachment 8–B. The cumulative annual energy flux shall be calculated using the ENVSTD24 computer program or the equations in RS–1, (incorporated by reference, see § 434.701) Attachment 8–B.

TABLE 402.4.2.—EQUIP DEFAULT VALUES FOR ENVSTD24

Occupancy	Default equipment power density [1]	Default occupant load adjustment [1]	Default adjusted equipment power density
Assembly	0.25	0.75	1.00
Health/Institutional	1.00	−0.26	0.74
Hotel/Motel	0.25	−0.33	0.00
Warehouse/Storage	0.10	−0.60	0.00
Multi-Family High Rise	0.75	N/A	0.00
Office	0.75	−0.35	0.40
Restaurant	0.10	0.07	0.17
Retail	0.25	−0.38	0.00
School	0.50	0.30	0.80

[1] Defaults as defined in Section 8.6.10.5, Table 8–4, and Sections 8.6.10.6 and 13.7.2.1, Table 13–2 from RS–1 (incorporated by reference, see § 434.701).

402.4.2.1 *Equipment Power Density (EQUIP).* The equipment power density used in the ENVSTD24 computer program shall use the actual equipment power density from the building plans and specifications or be taken from Table 402.4.2 using the column titled ''Default Adjusted Equipment Power Density'' or calculated for the building using the procedures of RS–1. (incorporated by reference, see § 434.701). The program limits consideration of the equipment power density to a maximum of 1 W/ft^2.

402.4.2.2 *Lighting Power Density (LIGHTS).* The lighting power density used in the ENVSTD24 computer program shall use the actual lighting power density from the building plans and specifications or the appropriate value from Tables 401.3.2a, b, c, or d.

402.4.2.3 *Daylighting Control Credit Fraction (DLCF).* When the daylighting control credit fraction is other than zero, automatic daylighting controls shall be installed in the appropriate perimeter zones(s) of the building to justify the credit.

§ 434.403 Building mechanical systems and equipment.

Mechanical systems and equipment used to provide heating, ventilating, and air conditioning functions as well as additional functions not related to space conditioning, such as, but not limited to, freeze protection in fire projection systems and water heating, shall meet the requirements of this section.

403.1 *Mechanical Equipment Efficiency.* When equipment shown in Tables 403.1a through 403.1f is used, it shall have a minimum performance at the specified rating conditions when tested in accordance with the specified reference standard. The reference standards listed in Tables 403.1a through 403.1f are incorporated by reference, see § 434.701. Omission of minimum performance requirements for equipment not listed in Tables 403.1a through 403.1f does not preclude use of such equipment.

TABLE 403.1A.—UNITARY AIR CONDITIONERS AND CONDENSING UNITS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum Efficiency [2]	Test procedure [1]
Air Conditioners, Air Cooled.	< 65,000 Btu/h	Split system	10.0 SEER	ARI 210/240
		Single Package	9.7 SEER	(RS–15)*
	≥ 65,000 Btu/h and < 135,00 Btu/h	Split System and Single Package	8.9 EER [3]	ARI 210/240
			8.3 IPLV [3]	(RS–15)*
	≥ 135,000 Btu/h and < 240,000 Btu/h.	Split System and Single Package	8.5 EER[3]	
			7.5 IPLV[3]	
	≥ 240,000 Btu/h and < 760,000 Btu/h.	Split System and Single Package	8.5 EER[3]	ARI–340/360
			7.5 IPLV[3]	(RS–16)*
	≥ 760,000 Btu/h	Split System and Package	8.3 EER[3]	ARI–340/360
			7.5 IPLV[3]	(RS–16)*
Air Conditioners, Water and Evaporatively Cooled.	< 65,000 Btu/h	Split System and Single Package	9.3 EER[3]	ARI 210/240
			8.4 IPLV[3]	(RS–15)*
	≥ 65,000 Btu/h and < 135,000 Btu/h.	Split System and Single Package	10.5 EER[c]	ARI 210/240
			9.7 IPLV[c]	(RS–15)*
	≥ 135,000 Btu/h and < 240,000 Btu/h.	Split System and Single Package	9.6 EER[c]	ARI–340/360
			9.0 IPLV[c]	(RS–16)*
	≥ 240,000 Btu/h	Split System and Single Package	9.6 EER[c]	ARI–340/360
			9.0 IPLV[c]	(RS–16)*
Condensing Units, Air Cooled.	135,000 Btu/h		9.9 EER	ARI 365
			11.0 IPLV	(RS–29)*

TABLE 403.1A.—UNITARY AIR CONDITIONERS AND CONDENSING UNITS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS—Continued

Equipment type	Size category	Subcategory or rating condition	Minimum Efficiency [2]	Test procedure [1]
Condensing Units, Water or Evaporatively Cooled.	135,000 Btu/h		12.9 EER 12.9 IPLV	ARI 365 (RS–29)*

[1] See Subpart E for detailed references
[2] IPLVs are only applicable to equipment with capacity modulation.
[3] Deduct 0.2 from the required EERs and IPLVs for units that have a heating section.
* Incorporation by reference, see § 434.701

TABLE 403.1B.—UNITARY AND APPLIED HEAT PUMPS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [2]	Test procedure [1]
Air Cooled (Cooling Mode).	<65,000 Btu/h	Split System	10.0 SEER	ARI 210/240 (RS–15)*
		Single Package	9.7 SEER	
	≥65,000 Btu/h and <135,000 Btu/h.	Split System and Single Package	8.9 EER [3] 8.3 IPLV [3]	ARI 210/240 (RS–15)*
	≥135,000 Btu/h and <240,000 Btu/h.	Split System and Single Package	8.5 EER [3] 7.5 IPLV [3]	ARI–340/360 (RS–16)*
	≥240,000 Btu/h	Split System and Single Package	8.5 EER [3] 7.5 IPLV [3]	ARI–340/360 (RS–16)*
Water Source (Cooling Mode)	<65,000 Btu/h	85 °F Entering Water	9.3 EER	ARI–320 (RS–27)*
		75 °F Entering Water	10.2 EER	
	≥65,000 Btu/h and <135,000 Btu/h	85 °F Entering Water	10.5 EER	ARI–320 (RS–27)*
		75 °F Entering Water	11.0 EER	
Groundwater-Source (Cooling Mode).	<135,000 Btu/h	70 F Entering Water	11.0 EER	ARI 325 (RS–28)*
		50 F Entering Water	11.5 EER	
Ground Source (Cooling Mode).	<135,000 Btu/h	77 F Entering Water	10.0 EER	ARI 325 (RS–28)*
		70 F Entering Water	10.4 EER	
Air Cooled (Heating Mode).	<65,000 Btu/h (Cooling Capacity)	Split System	6.8 HSPF	ARI 210/240 (RS–15)*
		Single Package	6.6 HSPF	
	65,000 Btu/h and <135,000 Btu/h (Cooling Capacity).	47 F db/43 F wb Outdoor Air	3.00 COP	ARI 210/240 (RS–15)*
		17 F db/15 F wb Outdoor Air	2.00 COP	
	135,000 Btu/h (Cooling Capacity)	47 F db/43 F wb Outdoor Air	2.90 COP	ARI–340/360 (RS–1/)*
		17 F db/15 F wb Outdoor	2.00 COP	
Water-Source (Heating Mode).	<135,000 Btu/h (Cooling Capacity).	70 F Entering Water	3.80 COP	ARI–320 (RS–27)*
		75 F Entering Water	3.90 COP	
Groundwater-Source (Heating Mode).	<135,000 Btu/h (Cooling Capacity).	70 F Entering Water	3.40 COP	ARI 325 (RS–28)*
		50 F Entering Water	3.00 COP	
Ground Source (Heating Mode).	<135,000 Btu/h (Cooling Capacity).	32 F Entering Water	2.50 EER	ARI–330 (RS–45)*
		41 F Entering Water	2.70 EER	

[1] See Subpart E for detailed references.
[2] IPLVs are only applicable to equipment with capacity modulation.
[3] Deduct 0.2 from the required EERs and IPLVs for units that have a heating section.
* Incorporation by reference, see § 434.701.

TABLE 403.1C.—WATER CHILLING PACKAGES, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [2]	Test procedure [1]
Air-Cooled, With Condenser, Electrically Operated.	<150 Tons ≥150 Tons	2.70 COP 2.80 IPLV	2.50 COP 2.50 IPLV	ARI 550 Centrifugal/Rotary Screw (RS–30)* or ARI 590 Reciprocating (RS–31)*
Air-Cooled, Without Condenser, Electrically Operated.	All Capacities		3.10 COP 3.20 IPLV	
Water Cooled, Electrically Operated, Positive Displacement (Reciprocating).	All Capacities		3.80 COP 3.90 IPLV	
Water Cooled, Electrically Operated, Positive Displacement (Rotary Screw and Scroll).	<150 Tons ≥150 Tons and <300 Tons. ≥300 Tons	.	3.80 COP 3.90 IPLV 4.20 COP 4.50 IPLV 5.20 COP 5.30 IPLV	

TABLE 403.1C.—WATER CHILLING PACKAGES, MINIMUM EFFICIENCY REQUIREMENTS—Continued

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [2]	Test procedure [1]
Water-Cooled, Electrically Operated, Centrifugal.	<150 Tons		3.80 COP	ARI 550
	150 Tons and <300 Tons.		3.90 IPLV	(RS–30)*
	300 Tons		4.20 COP	
			4.50 IPLV	
			5.20 COP	
			5.30 IPLV	
Absorption Single Effect	All Capacities		0.48 COP.	
Absorption Double Effect, Indirect-Fired.	All Capacities		0.95 COP	ARI 560
			1.00 IPLV	(RS–46)*
Absorption Double-Effect, Direct-Fired.	All Capacities		0.95 COP	
			1.00 IPLV	

[1] See Subpart E for detailed references.
[2] Equipment must comply with all efficiencies when multiple efficiencies are indicated.
*Incorporation by reference, see § 434.701.

TABLE 403.1D.—PACKAGED TERMINAL AIR CONDITIONERS, PACKAGED TERMINAL HEAT PUMPS, ROOM AIR CONDITIONERS, AND ROOM AIR-CONDITIONER HEAT PUMPS ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency [2]	Test procedure [1]
PTAC (Cooling Mode)	All Capacities	95°F db Outdoor Air	10.0– (0.16 × Cap/1,000) [3]EER.	ARI 310/380 (RS–17)*
		82°F db Outdoor Air	12.2–(0.20 × Cap/1,000) [3]EER.	ARI 310/380 (RS–17)*
PTHP (Cooling Mode)	All Capacities	95°F db Outdoor Air	10.0–(0.16 × Cap/1,000) [3] EER.	
		82°F db Outdoor Air	12.2–(0.20 × Cap/1,000) EER.	
PTHP (Heating Mode)	All Capacities		2.90–(0.026 × CAP/1,000) [3] COP.	
Room Air Conditioners, With Louvered Sides.	<6,000 Btu/h		8.0 EER	ANSI/AHAM RAC–1 (RS–40)*
	≥6,000 Btu/h and <8,000 Btu/h.		8.5 EER	
	≥8,000 Btu/h and lt;14,000 Btu/h.		9.0 EER	
	≥14,000 Btu/h and <20,000 Btu/h.		8.8 EER	
	≥20,000 Btu/h		8.2 EER	
Room Air Conditioner, Without Louvered Sides.	<6,000 Btu/h		8.0 EER	ANSI/AHAM RAC–1 (RS–40)*
	≥6,000 Btu/h and <20,000 Btu/h.		8.5 EER	
	≥20,000 Btu/h		8.2 EER	
Room Air-Conditioner Heat Pumps With Louvered Sides.	All Capacities		8.5 EER	ANSI/AHAM RAC–1 (RS–40)*
Room Air-Conditioner Heat Pumps Without Louvered Sides.	All Capacities		8.0 EER	ANSI/AHAM RAC–1 (RS–40*

[1] See Subpart E for detailed references.
[2] Equipment must comply with all efficiencies when multiple efficiencies are indicated. (Note products covered by the 1992 Energy Policy Act have no efficiency requirement for operation at other than standard rating conditions for products manufactured after 1/1/94).
[3] Cap means the rated capacity of the product in Btu/h. If the unit's capacity is less than 7,000 Btu/h, use 7,000 Btu/h in the calculation. If the unit's capacity is greater than 15,000 Btu/h, use 15,000 Btu/h in the calculation.
* Incorporation by reference, see § 434.701.

TABLE 403.1E.—WARM AIR FURNACES AND COMBINATION WARM AIR FURNACES/AIR CONDITIONING UNITS, WARM AIR DUCT FURNACES AND UNIT HEATERS, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency[b],[e]	Test procedure[a]
Warm Air-Furnace, Gas-Fired	< 225,000 Btu/h		78% AFUE or 80% E_t	DOE 10 CFR 430 Appendix N
	≥ 225,000 Btu/h	Maximum Capacity [c]	80% E_t	ANSI Z21.47
		Minimum Capacity[c]	78% E_t	(RS–21)*
Warm Air-Furnace, Oil-Fired	< 225,000 Btu/h		78% AFUE or 80% E_t[d].	DOE 10 CFR 430 Appendix N
	≥ 225,000 But/h	Maximum Capacity [c]	81% E_t	U.L. 727
		Minimum Capacity	81% E_t	(RS–22)*

TABLE 403.1E.—WARM AIR FURNACES AND COMBINATION WARM AIR FURNACES/AIR CONDITIONING UNITS, WARM AIR DUCT FURNACES AND UNIT HEATERS, MINIMUM EFFICIENCY REQUIREMENTS—Continued

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency[b,e]	Test procedure[a]
Warm Air Duct Furnaces, Gas-Fired.	All Capacities	Maximum Capacity[c]	78% E_t	ANSI Z83.9
		Minimum Capacity	75% E_t	(RS–23)
Warm Air Unit Heaters, Gas Fired	All Capacities	Maximum Capacity[c]	78% E_t	ANSI Z83.8
		Minimum Capacity	74% E_t	(RS–24)*
Oil-Fired	All Capacities	Maximum Capacity[c]	81% E_t	U.L. 731
		Minimum Capacity	81% E_t	(RS–25)*

[a] See Subpart E for detailed references.
[b] Minimum and maximum ratings as provided for and allowed by the unit's controls.
[c] Combination units not covered by NAECA (Three-phase power or cooling capacity ≥ 65,000 Btu/h) may comply with either rating.
[d] E_t = thermal efficiency. See referenced document for detailed discussion.
[e] E_c = combustion efficiency. Units must also include an IID and either power venting or a flue damper. For those furnaces where combustion air is drawn from the conditioned space, a vent damper may be substituted for a flue damper.
* Incorporation by reference, see § 434.701

TABLE 403.1F—BOILERS, GAS- AND OIL-FIRED, MINIMUM EFFICIENCY REQUIREMENTS

Equipment type	Size category	Subcategory or rating condition	Minimum efficiency[b]	Test procedure[a]
Boilers, Gas-Fired	<300,000 Btu/h	Hot Water	80% AGUE	DOE 10 CFR 430 Appendix N
		Steam	75% AGUE	DOE 10 CFR 430 Appendix N
	<300,000 Btu/h	Maximum Capacity[c]	80% E_c	ANSI Z21.13
		Minimum Capacity	80% E_c	(RS–32)*
Boilers, Oil-Fired	<300,000 Btu/h		80% AGUE	DOE 10 CFR 430 (RS–20)*
	<300,000 Btu/h	Maximum Capacity[c]	83% E_c	U.L. 726
		Minimum Capacity	83% E_c	(RS–33)*
Oil-Fired (Residual)	<3000,000 Btu/h	Maximum Capacity[c]	83% E_c	
		Minimum Capacity	83% E_c.	

[a] See Subpart E for detailed references.
[b] Minimum and maximum ratings as provided for and allowed by the unit's controls.
[c] E_c = combustion efficiency (100% less flue losses). See reference document for detailed information.
* Incorporation by reference, see §434.701.

403.1.1 Where multiple rating conditions and/or performance requirements are provided, the equipment shall satisfy all stated requirements.

403.1.2 Equipment used to provide water heating functions as part of a combination integrated system shall satisfy all stated requirements for the appropriate space heating or cooling category.

403.1.3 The equipment efficiency shall be supported by data furnished by the manufacturer or shall be certified under a nationally recognized certification program or rating procedure.

403.1.4 Where components, such as indoor or outdoor coils, from different manufacturers are used, the system designer shall specify component efficiencies whose combined efficiency meets the standards herein.

403.2 *HVAC Systems.*

403.2.1 *Load Calculations.* Heating and cooling system design loads for the purpose of sizing systems and equipment shall be determined in accordance with the procedures described in RS–1 (incorporated by reference, see § 434.701) using the design parameters specified in subpart C of this part.

403.2.2 *Equipment and System Sizing.* Heating and cooling equipment and systems shall be sized to provide no more than the loads calculated in accordance with subsection 403.2.1. A single piece of equipment providing both heating and cooling must satisfy this provision for one function with the other function sized as small as possible to meet the load, within available equipment options. Exceptions are as follows:

(a) When the equipment selected is the smallest size needed to meet the load within available options of the desired equipment line.

(b) Standby equipment provided with controls and devices that allow such equipment to operate automatically only when the primary equipment is not operating.

(c) Multiple units of the same equipment type with combined capacities exceeding the design load and provided with controls that sequence or otherwise optimally control the operation of each unit based on load.

403.2.3 *Separate Air Distribution System.* Zones with special process temperature and/or humidity requirements shall be served by air distribution systems separate from those serving zones requiring only comfort conditions or shall include supplementary provisions so that the primary systems may be specifically controlled for comfort purposes only. Exceptions: Zones requiring only comfort heating or comfort cooling that are served by a system primarily used for process temperature and humidity control need not be served by a separate system if the total supply air to these comfort zones is no more than 25% of the total system supply air or the total conditioned floor area of the zones is less than 1000 ft2.

403.2.4 *Ventilation and Fan System Design.* Ventilation systems shall be designed to be capable of reducing the supply of outdoor air to the minimum ventilation rates required by Section 6.1.3 of RS–41 (incorporated by reference, see § 434.701) through the use of return ducts, manually or

automatically operated control dampers, fan volume controls, or other devices. Exceptions are as follows: Minimum outdoor air rates may be greater if:

(a) Required to make up air exhausted for source control of contaminants such as in a fume hood.

(b) Required by process systems.

(c) Required to maintain a slightly positive building pressure. For this purpose, minimum outside air intake may be increased up to no greater than 0.30 air changes per hour in excess of exhaust quantities.

403.2.4.1 *Ventilation controls for variable or high occupancy areas.* Systems with design outside air capacities greater than 3,000 cfm serving areas having an average design occupancy density exceeding 100 people per 1,000 ft² shall include means to automatically reduce outside air intake to the minimum values required by RS–41 (incorporated by reference, see § 434.701) during unoccupied or low-occupancy periods. Outside air shall not be reduced below 0.14 cfm/ft². Outside air intake shall be controlled by one or more of the following:

(a) A clearly labeled, readily accessible bypass timer that may be used by occupants or operating personnel to temporarily increase minimum outside air flow up to design levels.

(b) A carbon dioxide (CO_2) control system having sensors located in the spaces served, or in the return air from the spaces served, capable of maintaining space CO_2 concentrations below levels recommended by the manufacturer, but no fewer than one sensor per 25,000 ft² of occupied space shall be provided.

(c) An automatic timeclock that can be programmed to maintain minimum outside air intake levels commensurate with scheduled occupancy levels.

(d) Spaces equipped with occupancy sensors.

403.2.4.2 *Ventilation Controls for enclosed parking garages.* Garage ventilation fan systems with a total design capacity greater than 30,000 cfm shall have automatic controls that stage fans or modulate fan volume as required to maintain carbon monoxide (CO) below levels recommended in RS–41.

403.2.4.3 *Ventilation and Fan Power.* The fan system energy demand of each HVAC system at design conditions shall not exceed 0.8 W/cfm of supply air for constant air volume systems and 1.25 W/cfm of supply air for variable-air-volume (VAV) systems. Fan system energy demand shall not include the additional power required by air treatment or filtering systems with pressure drops over 1 in. w.c. Individual VAV fans with motors 75 hp and larger shall include controls and devices necessary for the fan motor to demand no more than 30 percent of design wattage at 50 percent of design air volume, based on manufacturer's test data. Exceptions are as follows:

(a) Systems with total fan system motor horsepower of 10 hp or less.

(b) Unitary equipment for which the energy used by the fan is considered in the efficiency ratings of subsection 403.1.

403.2.5 *Pumping System Design.* HVAC pumping systems used for comfort heating and/or comfort air conditioning that serve control valves designed to modulate or step open and closed as a function of load shall be designed for variable fluid flow and capable of reducing system flow to 50 percent of design flow or less. Exceptions are as follows:

(a) Systems where a minimum flow greater than 50% of the design flow is required for the proper operation of equipment served by the system, such as chillers.

(b) Systems that serve no more than one control valve.

(c) Systems with a total pump system horse power ≤10 hp.

(d) Systems that comply with subsection 403.2.6.8 without exception.

403.2.6 *Temperature and Humidity Controls.*

403.2.6.1 *System Controls.* Each heating and cooling system shall include at least one temperature control device.

403.2.6.2 *Zone Controls.* The supply of heating and cooling energy to each zone shall be controlled by individual thermostatic controls responding to temperature within the zone. For the purposes of this section, a dwelling unit is considered a zone. Exceptions are as follows: Independent perimeter systems that are designed to offset building envelope heat losses or gains or both may serve one or more zones also served by an interior system when the perimeter system includes at least one thermostatic control zone for each building exposure having exterior walls facing only one orientation for at least 50 contiguous ft and the perimeter system heating and cooling supply is controlled by thermostat(s) located within the zone(s) served by the system.

403.2.6.3 *Zone Thermostatic Control Capabilities.* Where used to control comfort heating, zone thermostatic controls shall be capable of being set locally or remotely by adjustment or selection of sensors down to 55°F or lower. Where used to control comfort cooling, zone thermostatic controls shall be capable of being set locally or remotely by adjustment or selection of sensors up to 85°F or higher. Where used to control both comfort heating and cooling, zone thermostatic controls shall be capable of providing a temperature range or deadband of at least 5°F within which the supply of heating and cooling energy to the zone is shut off or reduced to a minimum. Exceptions are as follows:

(a) Special occupancy or special usage conditions approved by the building official or

(b) Thermostats that require manual changeover between heating and cooling modes.

403.2.6.4 *Heat Pump Auxiliary Heat.* Heat pumps having supplementary electric resistance heaters shall have controls that prevent heater operation when the heating load can be met by the heat pump. Supplemental heater operation is permitted during outdoor coil defrost cycles not exceeding 15 minutes.

403.2.6.5 *Humidistats.* Humidistats used for comfort purposes shall be capable of being set to prevent the use of fossil fuel or electricity to reduce relative humidity below 60% or increase relative humidity above 30%.

403.2.6.6 *Simultaneous Heating and Cooling.* Zone thermostatic and humidistatic controls shall be capable of operating in sequence the supply of heating and cooling energy to the zone. Such controls shall prevent: Reheating; recooling; mixing or simultaneous supply of air that has been previously mechanically heated and air that has been previously cooled, either by mechanical refrigeration or by economizer systems; and other simultaneous operation of heating and cooling systems to the same zone. Exceptions are as follows:

(a) Variable-air-volume systems that, during periods of occupancy, are designed to reduce the air supply to each zone to a minimum before heating, recooling, or mixing takes place. This minimum volume shall be no greater than the larger of 30% of the peak supply volume, the minimum required to meet minimum ventilation requirements of the Federal agency. (0.4 cfm/ft² of zone conditioned floor area, and 300 cfm).

(b) Zones where special pressurization relationships or cross-contamination requirements are such that variable-air-volume systems are impractical, such as isolation rooms, operating areas of hospitals and clean rooms.

(c) At least 75% of the energy for reheating or for providing warm air in mixing systems is provided from a site-recovered or site-solar energy source.

(d) Zones where specified humidity levels are required to satisfy process needs, such as computer rooms and museums.

(e) Zones with a peak supply air quantity of 300 cfm or less.

403.2.6.7 *Temperature Reset for Air Systems.* Air systems supplying heated or cooled air to multiple zones shall include controls that automatically reset supply air temperatures by representative building loads or by outside air temperature. Temperature shall be reset by at least 25% of the design supply air to room air temperature difference. Zones that are expected to experience relatively constant loads, such as interior zones, shall be designed for the fully reset supply temperature. Exception are as follows: Systems that comply with subsection 403.2.6.6 without using exceptions (a) or (b).

403.2.6.8 *Temperature Reset for Hydronic Systems.* Hydronic systems of at least 600,000 Btu/hr design capacity supplying heated and/or chilled water to comfort conditioning systems shall include controls that automatically reset supply water temperatures by representative building loads (including return water temperature) or by outside air temperature. Temperature shall be reset by at least 25% of the design supply-to-return water temperature difference. Exceptions are as follows:

(a) Systems that comply with subsection 403.2.5 without exception or

(b) Where the design engineer certifies to the building official that supply temperature reset controls cannot be implemented without causing improper operation of heating, cooling, humidification, or dehumidification systems.

403.2.7 *Off Hour Controls.*

403.2.7.1 *Automatic Setback or Shutdown Controls.* HVAC systems shall be equipped with automatic controls capable of accomplishing a reduction of energy use through control setback or equipment shutdown. Exceptions are as follows:

(a) Systems serving areas expected to operate continuously or

(b) Equipment with full load demands not exceeding 2 kW controlled by readily accessible, manual off-hour controls.

403.2.7.2 *Shutoff Dampers.* Outdoor air supply and exhaust systems shall be provided with motorized or gravity dampers or other means of automatic volume shutoff or reduction. Exceptions are as follows:

(a) Systems serving areas expected to operate continuously.

(b) Individual systems which have a design airflow rate or 3000 cfm or less.

(c) Gravity and other non-electrical ventilation systems controlled by readily accessible, manual damper controls.

(d) Where restricted by health and life safety codes.

403.2.7.3 Zone Isolation systems that serve zones that can be expected to operate nonsimultaneously for more than 750 hours per year shall include isolation devices and controls to shut off or set back the supply of heating and cooling to each zone independently. Isolation is not required for zones expected to operate continuously or expected to be inoperative only when all other zones are inoperative. For buildings where occupancy patterns are not known at the time of system design, such as speculative buildings, the designer may predesignate isolation areas. The grouping of zones on one floor into a single isolation area shall be permitted when the total conditioned floor area does not exceed 25,000 ft^2 per group.

403.2.8 *Economizer Controls.*

403.2.8.1 Each fan system shall be designed and capable of being controlled to take advantage of favorable weather conditions to reduce mechanical cooling requirements. The system shall include either: A temperature or enthalpy air economizer system that is capable of automatically modulating outside air and return air dampers to provide up to 85% of the design supply air quantity as outside air, or a water economizer system that is capable of cooling supply air by direct and/or indirect evaporation and is capable of providing 100% of the expected system cooling load at outside air temperatures of 50°F dry-bulb/45°F wet-bulb and below. Exceptions are as follows:

(a) Individual fan-cooling units with a supply capacity of less than 3000 cfm or a total cooling capacity less than 90,000 Btu/h.

(b) Systems with air-cooled or evaporatively cooled condensers that include extensive filtering equipment provided in order to meet the requirements of RS–41 (incorporated by reference, see § 434.701).

(c) Systems with air-cooled or evaporatively cooled condensers where the design engineer certifies to the building official that use of outdoor air cooling affects the operation of other systems, such as humidification, dehumidification, and supermarket refrigeration systems, so as to increase overall energy usage.

(d) Systems that serve envelope-dominated spaces whose sensible cooling load at design conditions, excluding transmission and infiltration loads, is less than or equal to transmission and infiltration losses at an outdoor temperature of 60°F.

(e) Systems serving residential spaces and hotel or motel rooms.

(f) Systems for which at least 75% of the annual energy used for mechanical cooling is provided from a site-recovered or site-solar energy source.

(g) The zone(s) served by the system each have operable openings (windows, doors, etc.) with an openable area greater than 5% of the conditioned floor area. This applies only to spaces open to and within 20 ft of the operable openings. Automatic controls shall be provided that lock out system mechanical cooling to these zones when outdoor air temperatures are less than 60°F.

403.2.8.2 Economizer systems shall be capable of providing partial cooling even when additional mechanical cooling is required to meet the remainder of the cooling load. Exceptions are as follows:

(a) Direct-expansion systems may include controls to reduce the quantity of outdoor air as required to prevent coil frosting at the lowest step of compressor unloading. Individual direct-expansion units that have a cooling capacity of 180,000 Btu/h or less may use economizer controls that preclude economizer operation whenever mechanical cooling is required simultaneously.

(b)Systems in climates with less than 750 average operating hours per year between 8 a.m. and 4 p.m. when the ambient dry-bulb temperatures are between 55 °F and 69 °F inclusive.

403.2.8.3 System design and economizer controls shall be such that economizer operation does not increase the building heating energy use during normal operation.

403.2.9 *Distribution System Construction and Insulation.*

403.2.9.1 *Piping Insulation.* All HVAC system piping shall be thermally insulated in accordance with Table 403.2.9.1. Exceptions are as follows:

(a) Factory-installed piping within HVAC equipment tested and rated in accordance with subsection 403.1.

(b) Piping that conveys fluids that have a design operating temperature range between 55°F and 105°F.

(c) Piping that conveys fluids that have not been heated or cooled through the use of fossil fuels or electricity.

TABLE 403.2.9.1.—MINIMUM PIPE INSULATION (IN.) [a]

Fluid Design Operating Temp. Range (F)	Insulation conductivity [a]		Nominal pipe diameter (in.)				
	Conductivity Range Btu in./(h ft² F)	Mean Temp. F	<1.0	1.0 to 1.25	1.5 to 3.0	4.0 to 6.0	8.0
Heating systems (Steam, Steam Condensate, and Hot Water) [b, c]							
>350	0.32–0.34	250	1.0	1.5	1.5	2.0	2.5
251–350	0.29–0.32	200	1.0	1.0	1.5	2.0	2.0
201–250	0.27–0.30	150	1.0	1.0	1.0	1.5	1.5
141–200	0.25–0.29	125	1.0	1.0	1.0	1.5	1.5
105–140	0.22–0.28	100	0.5	0.5	0.75	1.0	1.0
Domestic and Service Hot Water Systems							
105 and Greater	0.22–0.28	100	0.5	0.5	0.75	1.0	1.0
Cooling Systems (Chilled Water, Brine, and Refrigerant) [d]							
40–55	0.22–0.28	100	0.5	0.5	0.5	0.5	0.5
Below 40	0.22–0.28	100	0.5	0.5	0.5	0.5	0.5

[a] For insulation outside the stated conductivity range, the minimum thickness (T) shall be determined as follows: $T=r\{1+t/r)^{K/k}-1\}$

Where T = minimum insulation thickness (in), r = actual outside radius of pipe (in), t = insulation thickness listed in this table for applicable fluid temperature and pipe size, K = conductivity of alternate material at mean rating temperature indicated for the applicable fluid temperature (Btu in/h ft² F); and k = the upper value of the conductivity range listed in this table for the applicable fluid temperature.

[b] These thicknesses are based on energy efficiency considerations only. Safety issues, such as insulation surface temperatures, have not been considered.

[c] Piping insulation is not required between the control valve and coil on run-outs when the control valve is located within four feet of the coil and the pipe diameter is 1 inch or less.

[d] Note that the required minimum thickness does not take water vapor transmission and possible surface condensation into account.

TABLE 403.2.9.2.—MINIMUM DUCT INSULATION R-VALUE [a]

Duct location	Cooling supply ducts				Heating supply ducts				Return ducts
	CDD65 ≤500	500< CDD65 ≤1,000	1,000< CDD65 ≤2,000	CDD65 ≥2,000	HDD65 ≤1,500	1,500< HDD65 ≤4,500	4,500< HDD65 ≤7,500	HDD65 ≥7,500	
Exterior of Building	R–3.3	R–5.0	R–6.5	R–8.0	R–3.3	R–5.0	R–6.5	R–8.0	R–5.0
Ventilated Attic	R–3.3	R–3.3	R–3.3	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–3.3
Unvented Attic	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–5.0	R–3.3
Other Conditioned Spaces [b]	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3
Indirectly Conditioned Spaces [c]	none	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	R–3.3	none
Buried	none	none	none	none	R–5.0	R–5.0	R–5.0	R–5.0	R–3.3

[a] Insulation R-values, measured in (h.ft².°F)/Btu, are for the insulation as installed and do not include film resistance. The required minimum thickness do not consider water vapor transmission and possible surface condensation. The required minimum thicknesses do not consider water vapor transmission and condensation. For ducts that are designed to convey both heated and cooled air, duct insulation shall be as required by the most restrictive condition. Where exterior walls are used as plenum walls, wall insulation shall be as required by the most restrictive condition of this section or subsection 402. Insulation resistance measured on a horizontal plane in accordance with RS–6 (incorporated by reference, see § 434.701) at a mean temperature of 75 °F. RS–6 is in incorporated by reference at § 434.701.

[b] Includes crawl spaces, both ventilated and non-ventilated.

[c] Includes return air plenums, with and without exposed roofs above.

403.2.9.2 *Duct and Plenum Insulation.* All supply and return air ducts and plenums installed as part of an HVAC air distribution system shall be thermally insulated in accordance with Table 403.2.9.1. Exceptions are as follows:

(a) Factory-installed plenums, casings, or ductwork furnished as a part of the HVAC equipment tested and rated in accordance with subsection 403.1

(b) Ducts within the conditioned space that they serve. (incorporated by reference, see § 434.701)ca a06oc0.186

403.2.9.3 *Duct and Plenum Construction.* All air-handling ductwork and plenums shall be constructed and erected in accordance with RS–34, RS–35, and RS–36 (incorporated by reference, see § 434.701). Where supply ductwork and plenums designed to operate at static pressures from 0.25 in. wc to 2 in. wc, inclusive, are located outside of the conditioned space or in return plenums, joints shall be sealed in accordance with Seal Class C as defined in RS–34 (incorporated by reference, see § 434.701). Pressure sensitive tape shall not be used as the primary sealant where such ducts are designed to operate at static pressures of 1 in. wc, or greater.

403.2.9.3.1 Ductwork designed to operate at static pressures in excess of 3 in. wc shall be leak-tested in accordance with Section 5 of RS–35, (incorporated by reference, see § 434.701), or equivalent. Test reports shall be provided in accordance with Section 6 of RS–35, (incorporated by reference, see § 434.701)m or equivalent. The tested duct leakage class at a test pressure equal to the design duct pressure class rating shall be equal to or less than leakage Class 6 as defined in Section 4.1 of RS–35 (incorporated by reference, see § 434.701). Representative sections totaling at least 25% of the total installed duct area for the designated pressure class shall be tested.

403.2.10 *Completion.*

403.2.10.1 *Manuals.* Construction documents shall require an operating and maintenance manual provided to the Federal Agency. The manual shall include, at a minimum, the following:

(a) Submittal data stating equipment size and selected options for each piece of equipment requiring maintenance, including assumptions used in outdoor design calculations.

(b) Operating and maintenance manuals for each piece of equipment requiring maintenance. Required maintenance activity shall be specified.

(c) Names and addresses of at least one qualified service agency to perform the required periodic maintenance shall be provided.

(d) HVAC controls systems maintenance and calibration information, including wiring diagrams, schematics, and control sequence descriptions. Desired or field determined setpoints shall be permanently recorded on control drawings, at control devices, or, for digital control systems, in programming comments.

(e) A complete narrative, prepared by the designer, of how each system is intended to operate shall be included with the construction documents.

403.2.10.2 *Drawings.* Construction documents shall require that within 30 days after the date of system acceptance, record drawings of the actual installation be provided to the Federal agency. The drawings shall include details of the air barrier installation in every envelope component, demonstrating continuity of the air barrier at all joints and penetrations.

403.2.10.3 *Air System Balancing.* Construction documents shall require that all HVAC systems be balanced in accordance with the industry accepted procedures (such as National Environmental Balancing Bureau (NEBB) Procedural Standards, Associated Air Balance Council (AABC) National Standards, or ANSI/ASHRAE Standard 111). Air and water flow rates shall be measured and adjusted to deliver final flow rates within 10% of design rates, except variable flow distribution systems need not be balanced upstream of the controlling device (VAV box or control valve).

403.2.10.3.1 Construction documents shall require a written balance report be provided to the Federal agency for HVAC systems serving zones with a total conditioned area exceeding 5,000 ft^2.

403.2.10.3.2 Air systems shall be balanced in a manner to first minimize throttling losses, then fan speed shall be adjusted to meet design flow conditions or equivalent procedures. Exceptions are as follows: Damper throttling may be used for air system balancing;

(a) With fan motors of 1 hp (0.746 kW) or less, or

(b) Of throttling results in no greater than ⅓ hp (0.248 kW) fan horsepower draw above that required if the fan speed were adjusted.

403.2.10.4 *Hydronic System Balancing.* Hydronic systems shall be balanced in a manner to first minimize throttling losses; then the pump impeller shall be trimmed or pump speed shall be adjusted to meet design flow conditions. Exceptions are as follows:

(a) Pumps with pump motors of 10 hp (7.46 kW) or less.

(b) If throttling results in no greater than 3 hp (2.23 kW) pump horsepower draw above that required if the impeller were trimmed.

(c) To reserve additional pump pressure capability in open circuit piping systems subject to fouling. Valve throttling pressure drop shall not exceed that expected for future fouling.

403.2.10.5 *Control System Testing.* HVAC control systems shall be tested to assure that control elements are calibrated, adjusted, and in proper working condition. For projects larger than 50,000 ft2 conditioned area, detailed instructions for commissioning HVAC systems shall be provided by the designer in plans and specifications.

§ 434.404 Building service systems and equipment.

404.1 *Service Water Heating Equipment Efficiency.* Equipment must satisfy the minimum performance efficiency specified in Table 404.1 when tested in accordance with RS–37, RS–38, or RS–39 (incorporated by reference, see § 434.701). Omission of equipment from Table 404.1 shall not preclude the use of such equipment. Service water heating equipment used to provide additional function of space heating as part of a combination (integrated) system shall satisfy all stated requirements for the service water heating equipment. All gas-fired storage water heaters that are not equipped with a flue damper and use indoor air for combustion or draft hood dilution and that are installed in a conditioned space, shall be equipped with a vent damper listed in accordance with RS–42 (incorporated by reference, see § 434.701). Unless the water heater has an available electrical supply, the installation of such a vent damper shall not require an electrical connection.

TABLE 404.1.—MINIMUM PERFORMANCE OF WATER HEATING EQUIPMENT

Category	Type	Fuel	Input rating	V_T	Input to V_T ratio Btuh/gal	Test Method [a]	Energy factor	Thermal efficiency E_t%	Standby loss %/HR
NAECA Covered Water Heating Equipment[b]	all storage instantaneous storage instantaneous pool heater	electric gas gas oil oil gas/oil	12 kW 75,000 Btuh 200,000 Btuh[c] 105,000 Btuh 210,000 Btuh all	all[c] all[c] all all all all		DOE Test Procedure 10 CFR Part 430 430 Appendix E ANSI Z21.56 (RS–38) *	0.93–0.00132V 0.62–0.0019V 0.62–0.0019V 0.59–0.0019V 0.59–0.0019V	78	
Other Water Heating equipment[d]	storage storage/ instantaneous	electric gas/oil	all 155m999 Btuh >155,000 Btuh	all all all <10 10	<4,000 <4,000 4,000 4,000	ANSI Z21.10.3 (RS–39)*		78 78 80 77	.030+27/V_T 1.3+114//V_T 1.3+95/V_T 2.3+67/V_T
Unfired Storage Tanks					all				6.5 Btuh/ft^2

[a] For detailed references see Subpart E.
[b] Consistent with National Appliance Energy Conservation Act (NAECA) of 1987.
[c] DOE Test Procedures apply to electric and gas storage water heaters with rated volumes 20 gallons and gas instantaneous water heaters with input ratings of 50,000 to 200,000 Btuh.
[d] All except those water heaters covered by NAECA.
* Incorporated by reference, see § 434.701.

404.1.1 *Testing Electric and Oil Storage Water Heaters for Standby Loss.*

(a) When testing an electric storage water heater, the procedures of Z21.10.3–1990 (RS–39, incorporated by reference, see § 434.701), Section 2.9, shall be used. The electrical supply voltage shall be maintained with ±1% of the center of the voltage range specified on the water heater nameplate. Also, when needed for calculations, the thermal efficiency (E_t) shall be 98%. When testing an oil-fired water heater, the procedures of Z21.10.3–1990 (RS–39 incorporated by reference, see § 434.701), Sections 2.8 and 2.9, shall be used.

(b) The following modifications shall be made: A vertical length of flue pipe shall be connected to the flue gas outlet of sufficient height to establish the minimum draft specified in the manufacturer's installation instructions. All measurements of oil consumption shall be taken by instruments with an accuracy of ±1% or better. The burner rate shall be adjusted to achieve an hourly Btu input rate within ±2% of the manufacturer's specified input rate with the CO_2 reading as specified by the manufacturer with smoke no greater than 1 and the fuel pump pressure within ±1% of the manufacturer's specification.

404.1.2 *Unfired Storage Tanks.* The heat loss of the tank surface area Btu/(h•ft^2) shall be based on an 80°F water-air temperature difference.

404.1.3 *Storage Volume Symbols in Table 404.1.* The symbol ''V'' is the rated storage volume in gallons as specified by the manufacturer. The symbol ''V_T'' is the storage volume in gallons as measured during the test to determine the standby loss. V_T may differ from V, but it is within tolerances allowed by the applicable Z21 and Underwriters Laboratories standards. Accordingly, for the purpose of estimating the standby loss requirement using the rated volume shown on the rating plate, V_T should be considered as no less than 0.95V for gas and oil water heaters and no less than 0.90V for electric water heaters.

404.1.4 *Electric Water Heaters.* In applications where water temperatures not greater than 145°F are required, an economic evaluation shall be made on the potential benefit of using an electric heat pump water heater(s) instead of an electric resistance water heater(s). The analysis shall compare the extra installed costs of the heat pump unit with the benefits in reduced energy costs (less increased maintenance costs) over the estimated service life of the heat pump water heater. Exceptions are as follows: Electric water heaters used in conjunction with site-recovered or site-solar energy sources that provide 50% or more of the water heating load or off-peak heating with thermal storage.

404.2 *Service Hot Water Piping Insulation.* Circulating system piping and noncirculating systems without heat traps, the first eight feet of outlet piping from a constant-temperature noncirculating storage system, and the inlet pipe between the storage tank and a heat trap in a noncirculating storage system shall meet the provisions of subsection 403.2.9.

404.2.1 Vertical risers serving storage water heaters not having an integral heat trap and serving a noncirculating system shall have heat traps on both the inlet and outlet piping as close as practical to the water heater.

404.3 *Service Water Heating System Controls.* Temperature controls that allow for storage temperature adjustment from 110°F to a temperature compatible with the intended use shall be provided in systems serving residential dwelling units and from 90°F for other systems. When designed to maintain usage temperatures in hot water pipes, such as circulating hot water systems or heat trace, the system shall be equipped with automatic time switches or other controls that can be set to turn off the system.

404.3.1 The outlet temperature of lavatory faucets in public facility restrooms shall be limited to 110°F.

404.4 *Water Conservation.* Showerheads and lavatory faucets must meet the requirements of 10 CFR 430.32 (o)-(p).

404.4.1 Lavatory faucets in public facility restrooms shall be equipped with a foot switch, occupancy sensor, or similar device or, in other than lavatories for physically handicapped persons, limit water delivery to 0.25 gal/cycle.

404.5 *Swimming Pools.* All pool heaters shall be equipped with a readily accessible on-off switch.

404.5.1 Time switches shall be installed on electric heaters and pumps. Exceptions are as follows:

(a) Pumps required to operate solar or heat recovery pool heating systems.

(b) Where public health requirements require 24-hour pump operation.

404.5.2 Heated swimming pools shall be equipped with pool covers. Exception: When over 70% of the annual energy for heating is obtained from a site-recovered or site-solar energy source.

404.6 *Combined Service Water Heating and Space Heating Equipment.* A single piece of equipment shall not be used to provide both space heating and service water heating. Exceptions are as follows:

(a) The energy input or storage volume of the combined boiler or water heater is less than twice the energy input or storage volume of the smaller of the separate boilers or water heaters otherwise required or

(b) The input to the combined boiler is less than 150,000 Btuh.

Subpart E—Building Energy Cost Compliance Alternative

§ 434.501 General.

501.1 Subpart E permits the use of the Building Energy Cost Compliance Alternative as an alternative to many elements of subpart D. When this subpart is used, it must be used with subpart C and subpart D, 401.1, 401.2, 401.3.4 and in conjunction with the minimum requirements found in

subsections 402.1, 402.2, and 402.3., 403.1, 403.2.1–7, 403.2.9 and 404.

501.2 *Compliance.* Compliance under this method requires detailed energy analyses of the entire Proposed Design, referred to as the Design Energy Consumption; an estimate of annual energy cost for the proposed design, referred to as the Design Energy Cost; and comparison against an Energy Cost Budget. Compliance is achieved when the estimated Design Energy Cost is less than or equal to the Energy Cost Budget. This subpart provides instructions for determining the Energy Cost Budget and for calculating the Design Energy Consumption and Design Energy Cost. The Energy Cost Budget shall be determined through the calculation of monthly energy consumption and energy cost of a Prototype or Reference Building design configured to meet the requirements of subsections 401 through 404.

501.3 Designers are encouraged to employ the Building Energy Cost Budget compliance method set forth in this section for evaluating proposed design alternatives to using the elements prescribed in subpart D. The Building Energy Cost Budget establishes the relative effectiveness of each design alternative in energy cost savings, providing an energy cost basis upon which the building owner and designer may select one design over another. This Energy Cost Budget is the highest allowable calculated energy cost for a specific building design. Other alternative designs are likely to have lower annual energy costs and life cycle costs than those used to minimally meet the Energy Cost Budget.

501.4 The Energy Cost Budget is a numerical reference for annual energy cost. It's purpose is to assure neutrality with respect to choices such as HVAC system type, architectural design and fuel choice by providing a fixed, repeatable budget that is independent of any of these choices wherever possible (*i.e.,* for the prototype buildings). The Energy Cost Budget for a given building size and type will vary only with climate, the number of stories, and the choice of simulation tool. The specifications of the prototypes are necessary to assure repeatability, but have no other significance. They are not necessarily recommended energy conserving practice, or even physically reasonable practice for some climates or buildings, but represent a reasonable worst case of energy cost resulting from compliance with the provisions of subsections 401 through 404.

§ 434.502 Determination of the annual energy cost budget.

502.1 The annual Energy Cost Budgets shall be determined in accordance with the Prototype Building Procedure in § 434.503 and § 434.504 or the Reference Building Procedure in § 434.505. Both methods calculate an annual Energy Cost by summing the 12 monthly Energy Cost Budgets. Each monthly Energy Cost Budget is the product of the monthly Building Energy Consumption of each type of energy used multiplied by the monthly Energy Cost per unit of energy for each type of energy used.

502.2 The Energy Cost Budget shall be determined in accordance with Equation 502.2.a as follows:

$$ECB = ECB_{jan} + \ldots ECB_{m} + \ldots + ECB_{dec} \qquad \text{(Equation 502.2.a)}$$

Based on:

$$ECB_{m} = BECON_{m1} 1 \times ECOS_{m1} + \ldots + BECON_{mi} \times ECOS_{mi} \qquad \text{(Equation 502.2.b)}$$

Where:

ECB=The annual Energy Cost Budget

ECB_m=The monthly Energy Cost Budget

$BECON_{mi}$=The monthly Budget Energy Consumption of the i_{th} type of energy

$ECOS_{mi}$=The monthly Energy Cost, per unit of the i_{th} type of energy

502.3 The monthly Energy Cost Budget shall be determined using current rate schedules or contract prices available at the building site for all types of energy purchased. These costs shall include demand charges, rate blocks, time of use rates, interruptible service rates, delivery charges, taxes, and all other applicable rates for the type, location, operation, and size of the proposed design. The monthly Budget Energy Consumption shall be calculated from the first day through the last day of each month, inclusive.

§ 434.503 Prototype building procedure.

503.1 The Prototype Building procedure shall be used for all building types listed below. For mixed-use buildings the Energy Cost Budget is derived by allocating the floor space of each building type within the floor space of the prototype building. For buildings not listed below, the Reference Building procedure of § 434.505 shall be used. Prototype buildings include:

(a) Assembly;
(b) Office (Business);
(c) Retail (Mercantile);
(d) Warehouse (Storage);
(e) School (Educational);
(f) Hotel/Motel;
(g) Restaurant;
(h) Health/Institutional; and
(i) Multi-Family.

§ 434.504 Use of the prototype building to determine the energy cost budget.

504.1 Determine the building type of the Proposed Design using the categories in subsection 503.1. Using the appropriate Prototype Building characteristics from all of the tables contained in Subpart E, the building shall be simulated using the same gross floor area and number of floors for the Prototype Building as in the Proposed Design.

504.2 The form, orientation, occupancy and use profiles for the Prototype Building shall be fixed as described in subsection 511. Envelope, lighting, other internal loads and HVAC systems and equipment shall meet the requirements of subsection 301, 401, 402, 403, and 404 and are standardized inputs.

§ 434.505 Reference building method.

505.1 The Reference Building procedure shall be used only when the Proposed Design cannot be represented by one or a combination of the Prototype Building listed in subsection 503.1 or the assumptions for the Prototype Building in Subsection 510, such as occupancy and use-profiles, do not reasonably represent the Proposed Design.

§ 434.506 Use of the reference building to determine the energy cost budget.

506.1 Each floor shall be oriented in the same manner for the Reference Building as in the Proposed Design. The form, gross and conditioned floor areas of each floor and the number of floors shall be the same as in the Proposed Design. All other characteristics, such as

lighting, envelope and HVAC systems and equipment, shall meet the requirements of subsections 301, 401, 402, 403 and 404.

§ 434.507 Calculation procedure and simulation tool.

507.1 The Prototype or Reference Buildings shall be modeled using the criteria of subsections 510 and 521. The modeling shall use a climate data set appropriate for both the site and the complexity of the energy conserving features of the design. ASHRAE Weather Year for Energy Calculations (WYEC) data or bin weather data shall be used in the absence of other appropriate data.

§ 434.508 Determination of the design energy consumption and design energy cost.

508.1 The Design Energy Consumption shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Cost Budget, except as explicitly stated in 509 through 534. The Design Energy Cost shall be calculated per Equation 508.1.

Equation 508.1

$$DECOS = DECOS_{jan} + \ldots DECOS_{m} \ldots + DECOS_{dec} \qquad \text{Equation 508.1}$$

Based on:

$$DECOS_{m} = DECON_{ml} \times ECOS_{ml} + \ldots + DECON_{mi} \times ECOS_{mi} \qquad \text{(Equation 508.1.2)}$$

Where:

DECOS=The annual Design Energy Cost

$DECOS_m$=The monthly Design Energy Cost

$DECON_{mi}$=The monthly Design Energy Consumption of the i_{th} type of energy

$ECOS_{mi}$=The monthly Energy Cost per unit of the i_{th} type of energy

The $DECON_{mi}$ shall be calculated from the first day through the last day of the month, inclusive.

§ 434.509 Compliance.

509.1 If the Design Energy Cost is less than or equal to the Energy Cost Budget, and all of the minimum requirements of subsection 501.2 are met, the Proposed Design complies with the standards.

§ 434.510 Standard calculation procedure.

510.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Cost Budget for the Prototype or Reference Building and the Design Energy Consumption and Design Energy Cost of the Proposed Design. In order to maintain consistency between the Energy Cost Budget and the Design Energy Cost, the input assumptions to be used are stated below. These inputs shall be used to determine the Energy Cost Budget and the Design Energy Consumption.

510.2 Prescribed assumptions shall be used without variation. Default assumptions shall be used unless the designer can demonstrate that a different assumption better characterizes the building's energy use over its expected life. The default assumptions shall be used in modeling both the Prototype or Reference Building and the Proposed Design, unless the designer demonstrates clear cause to modify these assumptions. Special procedures for speculative buildings are discussed in subsection 503. Shell buildings may not use subpart E.

§ 434.511 Orientation and shape.

511.1 The Prototype Building shall consist of the same number of stories, and gross and conditioned floor area as the Proposed Design, with equal area per story. The building shape shall be rectangular, with a 2.5:1 aspect ratio. The long dimensions of the building shall face East and West. The fenestration shall be uniformly distributed in proportion to exterior wall area. Floor-to-floor height for the Prototype Building shall be 13 ft. except for dwelling units in hotels/motels and multi-family high-rise residential buildings where floor-to-floor height shall be 9.5 ft.

511.2 The Reference Building shall consist of the same number of stories, and gross floor area for each story as the Proposed Design. Each floor shall be oriented in the same manner as the Proposed Design. The geometric form shall be the same as the Proposed Design.

§ 434.512 Internal loads.

512.1 The systems and types of energy specified in this section are provided only for purposes of calculating the Energy Cost Budget. They are not requirements for either systems or the type of energy to be used in the Proposed Design or for calculation of Design Energy Cost.

512.2 Internal loads for multi-family high-rise residential buildings are prescribed in Tables 512.2.a and b, Multi-Family High Rise Residential Building Schedules. Internal loads for other building types shall be modeled as noted in this subsection.

TABLE 512.2.A.— MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS SCHEDULES—ONE-ZONE DWELLING UNIT

[Internal loads per dwelling unit Btu/h]

Hour	Occupants		Lights	Equipment	
	Sensible	Latent	Sensible	Sensible	Latent
1	300	260	0	750	110
2	300	260	0	750	110
3	300	260	0	750	110
4	300	260	0	750	110
5	300	260	0	750	110
6	300	260	0	750	110
7	300	260	0	750	110
8	210	260	980	1250	190

TABLE 512.2.A.— MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS SCHEDULES—ONE-ZONE DWELLING UNIT—Continued

[Internal loads per dwelling unit Btu/h]

Hour	Occupants		Lights	Equipment	
	Sensible	Latent	Sensible	Sensible	Latent
9	100	80	840	2600	420
10	100	80	0	1170	180
11	100	80	0	1270	190
12	100	80	0	2210	330
13	100	80	0	2210	330
14	100	80	0	1270	190
15	100	80	0	1270	190
16	100	80	0	1270	190
17	100	80	0	1270	190
18	300	260	0	3040	450
19	300	260	0	3360	500
20	300	260	960	1490	220
21	300	260	960	1490	220
22	300	260	960	1490	220
23	300	260	960	1060	160
24	300	260	960	1060	160

TABLE 512.2.B.—MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDING SCHEDULES-TWO-ZONE DWELLING UNIT

[Internal loads per dwelling unit Btu/h]

Hour	Bedrooms & bathrooms					Other rooms				
	Occupants		Lights	Equipment		Occupants		Lights	Equipment	
	Sensible	Latent	Sensible	Sensible	Latent	Sensible	Latent	Sensible	Sensible	Latent
1	300	260	0	100	20	0	0	0	650	90
2	300	260	0	100	20	0	0	0	650	90
3	300	260	0	100	20	0	0	0	650	90
4	300	260	0	100	20	0	0	0	650	90
5	300	260	0	100	20	0	0	0	650	90
6	300	260	0	100	20	0	0	0	650	90
7	200	180	680	200	40	100	80	300	1050	150
8	110	120	240	200	40	100	80	600	2400	380
9	0	0	0	100	20	100	80	0	1070	160
0	0	0	0	100	20	100	80	0	1170	170
0	0	0	0	100	20	100	80	0	1170	170
0	0	0	0	100	20	100	80	0	2110	310
0	0	0	0	100	20	100	80	0	2110	310
14	0	0	0	100	20	100	80	0	1170	170
15	0	0	0	100	20	100	80	0	1170	170
16	0	0	0	100	20	100	80	0	1170	170
17	0	0	0	100	20	100	80	0	1170	170
18	0	0	0	100	20	300	260	0	2940	430
19	0	0	0	100	20	300	260	0	3260	480
20	100	80	320	300	60	200	180	640	1190	160
21	100	80	320	300	60	200	180	640	1190	160
22	150	130	480	700	90	150	130	480	790	130
23	300	260	640	410	70	0	0	320	650	90
24	300	260	640	410	70	0	0	320	650	90

513.1 Occupancy.

5131 Occupancy schedules are default assumptions. The same assumptions shall be made in computing Design Energy Consumption as were used in calculating the Energy Cost Budget.

513.2 Table 513.2.a, Occupancy Density, establishes the density, in ft^2 person of conditioned floor area, to be used for each building type. Table 513.2.b, Building Schedule Percentage Multipliers, establishes the percentage of total occupants in the building by hour of the day for each building type.

TABLE 513.2.A.—OCCUPANCY DENSITY

Building type	Conditioned floor area Ft^2 person
Assembly	50
Office	275
Retail	300
Warehouse	15000
School	75
Hotel/Motel	250

TABLE 513.2.A.—OCCUPANCY DENSITY—Continued

Building type	Conditioned floor area Ft^2 person
Restaurant	100
Health/Institutional	200
Multi-family High-rise Residential	2 per unit .[1]

[1] Heat generation: Btu/h per person: 230 Btu/h per person sensible, and 190 Btu/h per person latent. See Tables 512.2 a and b.

TABLE 513.2.b
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
1. ASSEMBLY																									
	WEEKDAY:	0	0	0	0	0	0	0	0	20	20	20	20	80	80	80	80	80	80	20	20	20	20	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	0	20	20	20	20	60	60	60	60	60	60	60	60	60	60	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	10	10	10	10	10	70	70	70	70	70	70	70	70	70	0	0
ASSEMBLY	WEEKDAY:	0	0	0	0	0	0	40	40	40	75	75	75	75	75	75	75	75	75	75	75	75	75	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	30	30	50	50	50	50	50	50	50	50	50	50	50	50	50	0	0
	SUNDAY:	0	0	0	0	0	0	0	30	30	30	30	30	65	65	65	65	65	65	65	65	65	65	0	0
ASSEMBLY	WEEKDAY:	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off
HVAC	SATURDAY:	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off
	SUNDAY:	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off
ASSEMBLY	WEEKDAY:	0	0	0	0	0	0	0	0	0	5	5	35	5	5	5	5	5	0	0	0	0	0	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	0	0	5	5	20	0	0	0	0	0	0	0	65	30	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	5	5	10	0	0	0	0	0	0	0	65	30	0	0	0
2. OFFICE																									
	WEEKDAY:	0	0	0	0	0	0	0	10	20	95	95	45	45	95	95	95	95	95	30	10	10	10	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	10	10	30	30	30	30	10	10	10	10	10	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE	WEEKDAY:	0	0	0	0	0	0	10	30	90	90	90	80	90	90	90	90	90	90	30	30	20	20	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	10	30	30	30	30	15	15	15	15	15	15	15	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OFFICE	WEEKDAY:	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off
HVAC	SATURDAY:	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off
	SUNDAY:	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off
OFFICE	WEEKDAY:	0	0	0	0	0	0	0	15	30	35	35	45	55	50	30	30	40	20	20	10	15	5	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	10	10	20	15	20	15	15	10	10	10	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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Table 513.2.b
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS (cont.)

3. RETAIL		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
	WEEKDAY:	0	0	0	0	0	0	0	0	20	20	20	20	80	80	80	80	80	80	20	20	20	20	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	0	20	20	20	20	60	60	60	60	60	60	60	60	60	60	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	10	10	10	10	10	70	70	70	70	70	70	70	70	70	0	0
RETAIL	WEEKDAY:	0	0	0	0	0	0	40	40	40	75	75	75	75	75	75	75	75	75	75	75	75	75	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	30	30	50	50	50	50	50	50	50	50	50	50	50	50	50	0	0
	SUNDAY:	0	0	0	0	0	0	0	30	30	30	30	30	65	65	65	65	65	65	65	65	65	65	0	0
RETAIL	WEEKDAY:	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off	Off	Off
HVAC	SATURDAY:	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	Off	Off
	SUNDAY:	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off
RETAIL	WEEKDAY:	0	0	0	0	0	0	0	10	20	30	40	55	60	60	45	40	45	45	40	30	30	0	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	15	20	25	40	50	55	55	45	45	45	45	40	35	25	20	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	10	25	30	35	35	30	30	35	30	20	0	0	0	0	0
	WEEKDAY:	0	0	0	0	0	0	0	15	70	90	90	90	50	85	85	85	20	0	0	0	0	0	0	0
4. WAREHOUSE																									
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	0	20	20	20	20	10	10	10	10	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WAREHOUSE	WEEKDAY:	0	0	0	0	0	0	0	40	70	90	90	90	90	90	90	90	90	0	0	0	0	0	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	0	10	25	25	25	10	10	10	10	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WAREHOUSE	WEEKDAY:	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off	Off
HVAC	SATURDAY:	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	Off	Off	Off	Off	Off	Off	Off	Off
	SUNDAY:	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off
WAREHOUSE	WEEKDAY:	0	0	0	0	0	0	0	5	25	35	35	45	55	50	35	50	15	0	0	0	0	0	0	0
SWH	SATURDAY:	0	0	0	0	0	0	0	0	0	10	10	15	0	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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Table 513.2.b
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS (cont.)

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
5. SCHOOL																									
	WEEKDAY:	0	0	0	0	0	0	0	5	75	90	90	80	80	80	80	45	15	5	15	20	20	10	0	0
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	0	10	10	10	10	10	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SCHOOL	WEEKDAY:	0	0	0	0	0	0	0	30	85	95	95	95	80	80	80	70	50	50	35	35	35	30	0	0
LTNG&RECEP	SATURDAY:	0	0	0	0	0	0	0	0	15	15	15	15	15	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SCHOOL	WEEKDAY:	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HVAC	SATURDAY:	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY:	Off	Off	Off	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On
SCHOOL	WEEKDAY:	0	0	0	0	0	0	0	5	30	55	60	70	75	80	60	60	5	5	15	20	20	20	20	0
SWH	SATURDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	WEEKDAY:	90	90	90	90	90	90	70	40	40	20	20	20	20	20	20	30	50	50	50	70	70	80	90	90
6. HOTEL/MOTEL																									
OCCUPANCY	SATURDAY	90	90	90	90	90	90	70	50	50	30	30	30	30	30	30	30	30	50	60	60	60	70	70	70
	SUNDAY:	70	70	70	70	70	70	70	70	50	50	50	30	20	20	20	20	30	40	40	60	60	80	80	80
HOTEL/MOTEL	WEEKDAY:	20	15	10	10	10	20	40	50	40	40	25	25	25	25	25	25	25	25	60	80	90	80	60	30
LTNG&RECEP	SATURDAY	20	20	10	10	10	10	30	30	40	40	30	25	25	25	25	25	25	25	60	70	70	70	60	30
	SUNDAY:	30	30	20	20	20	20	30	40	40	30	30	30	30	20	20	20	20	20	50	70	80	60	50	30
HOTEL/MOTEL	WEEKDAY:	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HVAC	SATURDAY:	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY:	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HOTEL/MOTEL	WEEKDAY:	20	15	15	15	20	25	50	60	55	45	40	45	40	35	30	30	30	40	55	60	50	55	45	25
SWH	SATURDAY:	20	15	15	15	20	25	40	50	50	50	45	50	50	45	40	40	34	40	55	55	50	55	40	25
	SUNDAY:	25	20	20	20	20	30	50	50	50	55	50	50	40	40	40	30	30	40	50	50	40	50	40	30

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Table 513.2.b
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS (cont.)

7. RESTAURANT		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
	WEEKDAY:	15	15	5	0	0	0	0	5	5	5	20	50	80	70	40	20	25	50	80	80	80	50	35	20
OCCUPANCY	SATURDAY:	30	25	5	0	0	0	0	0	5	5	20	45	50	50	35	30	30	30	70	90	70	65	55	35
	SUNDAY:	20	20	5	0	0	0	0	0	0	0	0	20	25	25	15	20	25	35	55	65	70	35	20	20
RESTAURANT	WEEKDAY:	15	15	15	15	15	20	40	40	60	60	90	90	90	90	90	90	90	90	90	90	90	90	50	30
LTNG & RECEP	SATURDAY:	20	15	15	15	15	15	30	30	60	60	80	80	80	80	80	80	80	90	90	90	90	90	50	30
	SUNDAY:	20	15	15	15	15	15	30	30	50	70	70	70	70	70	70	70	60	60	60	60	60	60	50	30
RESTAURANT	WEEKDAY:	On	On	On	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HVAC	SATURDAY:	On	On	On	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY:	On	On	On	Off	Off	Off	Off	Off	Off	Off	On	On	On	On	On	On	On	On	On	On	On	On	On	On
RESTAURANT	WEEKDAY:	20	15	15	0	0	0	0	60	55	45	40	45	40	35	30	30	30	40	55	60	50	55	45	25
SWH	SATURDAY:	20	15	15	0	0	0	0	0	0	50	45	50	50	45	40	40	35	40	55	55	50	55	40	30
	SUNDAY:	25	20	20	0	0	0	0	0	0	0	50	50	40	40	30	30	30	40	50	50	40	50	40	20
	WEEKDAY:	0	0	0	0	0	0	0	10	50	80	80	80	80	80	80	80	80	50	30	30	20	20	0	0
8. HEALTH																									
OCCUPANCY	SATURDAY:	0	0	0	0	0	0	0	10	30	40	40	40	40	40	40	40	40	10	10	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	5	5	5	5	5	5	5	5	5	0	0	0	0	0	0	0
HEALTH	WEEKDAY:	0	0	0	0	0	0	0	50	90	90	90	90	90	90	90	90	90	30	30	30	30	30	0	0
LTNG & RECEP	SATURDAY:	0	0	0	0	0	0	0	20	40	40	40	40	40	40	40	40	40	40	10	0	0	0	0	0
	SUNDAY:	0	0	0	0	0	0	0	0	10	10	10	10	10	10	10	10	0	0	0	0	0	0	0	0
	WEEKDAY:	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SATURDAY:	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
	SUNDAY:	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On	On
HEALTH	WEEKDAY:	0	0	0	5	5	5	80	70	50	40	20	20	25	25	50	50	70	70	35	20	15	15	5	0
SWH	SATURDAY:	0	0	0	0	0	0	20	45	50	50	35	30	30	30	70	90	70	65	55	35	30	25	5	0
	SUNDAY:	0	0	0	0	0	0	0	20	25	25	15	20	25	35	55	65	70	35	20	20	20	20	5	0

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Table 513.2.b
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS (cont.)

NOTES FOR TABLE 513.2.b

(1) Reference: Recommendations for Energy Conservation Standards and Guidelines for New Commercial Buildings, Vol. III, App. A Pacific Northwest Laboratory, PNL-4870-8, 1983."

(2) Table 513.2.b contains multipliers for converting the nominal values for building occupancy (Table 515.2), receptacle power density (Table 516.2) service hot water (Table), and lighting energy (§434.515) into time series data for estimating building loads under the Standard Calculation Procedure."

(3) "For each standard building profile there are three series - one each for weekdays, Saturday and Sunday. There are 24 elements per series. These represent the multiplier that should be used to estimate building loads from 12 a.m. to 1 a.m. (series element #1) through 11 p.m. to 12 a.m. (series element #24). The estimated load for any hour is simply the multiplier from the appropriate standard profile multiplied by the appropriate value from the tables cited above."

(4) The Building HVAC System Schedule listed in Table 517.1.1 lists the hours when the HVAC system shall be considered "on" or "off" in accordance with §434.514."

§ 434.514 Lighting.

514.1 Interior Lighting Power Allowance (ILPA), for calculating the Energy Cost Budget shall be determined from subsection 401.3.2. The lighting power used to calculate the Design Energy Consumption shall be the actual adjusted power for lighting in the Proposed Design. If the lighting controls in the Proposed Design are more effective at saving energy than those required by subsection 401.3.1 and 401.3.2, the actual installed lighting power shall be used along with the schedules reflecting the action of the controls to calculate the Design Energy Consumption. This actual installed lighting power shall not be adjusted by the Power Adjustment Factors listed in Table 514.1.

TABLE 514.1.—POWER ADJUSTMENT FACTOR (PAF)

Automatic control device(s)	Standard PAF
(1) Occupancy Sensor	0.30
(2) Daylight Sensing Continuous Dimming	0.30
(3) Daylight Sensing Multiple Step Dimming	0.20
(4) Daylight Sensing On/Off	0.10
(5) Lumen Maintenance	0.10

514.2 Table 513.2.b establishes default assumptions for the percentage of the lighting load switched-on in each Prototype or Reference Building by hour of the day. These default assumptions can be changed when calculating the Energy Cost Budget to provide, for example, a 12-hour rather than an 8-hour workday.

§ 434.515 Receptacles.

515.1 Receptacle loads and profiles are default assumptions. The same assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

515.2 Receptacle loads include all general service loads that are typical in a building. These loads exclude any process electrical usage and HVAC primary or auxiliary electrical usage. Table 515.2, Receptacle Power Densities, establishes the density, in W/ft^2, to be used for each building type. The receptacle energy profiles shall be the same as the lighting energy profiles in Table 513.2.b. This profile establishes the percentage of the receptacle load that is switched on by hour of the day and by building type.

TABLE 515.2.—RECEPTACLE POWER DENSITIES

Building type	W/ft^2 of conditioned floor area
Assembly	0.25
Office	0.75
Retail	0.25
Warehouse	0.1
School	0.5
Hotel/Motel	0.25
Restaurant	0.1
Health	1.0
Multi-family High Rise Residential	

Included in Lights and Equipment portions of Tables 512.2 a and b.

§ 434.516 Building exterior envelope.

516.1 *Insulation and Glazing.* The insulation and glazing characteristics of the Prototype and Reference Building envelope shall be determined by using the first column under ''Base Case'', with no assumed overhangs, for the appropriate Alternate Component Tables (ACP) in Table 402.4.1.2, as defined by climate range. The insulation and glazing characteristics from this ACP are prescribed assumptions for Prototype and Reference Buildings for calculating the Energy Cost Budget. In calculating the Design Energy Consumption of the Proposed Design, the envelope characteristics of the Proposed Design shall be used.

516.2 *Infiltration.* For Prototype and Reference Buildings, the infiltration assumptions in subsection 516.2.1 shall be prescribed assumptions for calculating the Energy Cost Budget and default assumptions for the Design Energy Consumption. Infiltration shall impact perimeter zones only.

516.2.1 When the HVAC system is switched ''on,'' no infiltration shall be assumed. When the HVAC system is switched ''off,'' the infiltration rate for buildings with or without operable windows shall be assumed to be 0.038 cfm/ft^2 of gross exterior wall. Hotels/motels and multi-family high-rise residential buildings shall have infiltration rates of 0.038 cfm/ft^2 of gross exterior wall area at all times.

516.3 *Envelope and Ground Absorptivities.* For Prototype and Reference Buildings, absorptivity assumptions shall be prescribed assumptions for computing the Energy Cost Budget and default assumptions for computing the Design Energy Consumption. The solar absorptivity of opaque elements of the building envelope is assumed to be 70%. The solar absorptivity of ground surfaces is assumed to be 80% (20% reflectivity).

516.4 *Window Management.* For the Prototype and Reference Building, window management drapery assumptions shall be prescribed assumptions for setting the Energy Cost Budget. No draperies shall be the default assumption for computing the Design Energy Consumption. Glazing is assumed to be internally shaded by medium-weight draperies, closed one-half time. The draperies shall be modeled by assuming that one-half the area in each zone is draped and one-half is not. If manually-operated draperies, shades, or blinds are to be used in the Proposed Design, the Design Energy Consumption shall be calculated by assuming they are effective over one-half the glazing area in each zone.

516.5 *Shading.* For Prototype and Reference buildings and the Proposed Design, shading by permanent structures, terrain, and vegetation shall be taken into account for computing energy consumption, whether or not these features are located on the building site. A permanent fixture is one that is likely to remain for the life of the Proposed Design.

§ 434.517 HVAC systems and equipment.

517.1 The specifications and requirements for the HVAC systems of the Prototype and Reference Buildings shall be those in Table 517.1.1, HVAC Systems for Prototype and Reference Buildings. For the calculation of the Design Energy Consumption, the HVAC systems and equipment of the Proposed Design shall be used.

517.2 The systems and types of energy presented in Table 517.1.1 are assumptions for calculating the Energy Cost Budget. They are not requirements for either systems or the type of energy to be used in the Proposed Building or for the calculation of the Design Energy Cost.

TABLE 517.1.1.—HVAC SYSTEMS OF PROTOTYPE AND REFERENCE BUILDINGS [1,2]

Building/space occupancy	System No. (Table 517.4.1)	Remarks (Table 517.4.1)
Assembly:		
a. Churches (any size)	1	

TABLE 517.1.1.—HVAC SYSTEMS OF PROTOTYPE AND REFERENCE BUILDINGS [1 2]—Continued

Building/space occupancy	System No. (Table 517.4.1)	Remarks (Table 517.4.1)
b. ≤50,000 ft² or ≤3 floors	1 or 3	Note 1.
c. >50,000 ft² or >3 floors	3	
Office:		
a. ≤20,000 ft²	1	
b. ≤50,000 ft² and either ≤3 floors or ≤75,000 ft²	4	
c. <75,000 ft² or >3 floors	5	
Retail:		
a. ≤50,000 ft²	1 or 3	Note 1.
b. >50,000 ft²	4 or 5	Note 1.
Warehouse	1	Note 1.
School:		
a. ≤75,000 ft² or ≤3 floors	1	
b. >75,000 ft² or >3 floors	3	
Hotel/Motel:		
a. ≤3 stories	2 or 7	Note 5, 7.
b. >3 stories	6	Note 6.
Restaurant	1 or 3	Note 1.
Health:		
a. Nursing Home (any size)	2 or 7	Note 7.
b. ≤15,000 ft²	1	
c. <15,000 ft² or ≤50,000 ft²	4	Note 2.
d. >50,000 ft²	5	Note 2, 3.
Multi-family High Rise Residential >3 stories	7	

[1] Space and Service Water Heating budget calculations shall be made using both electricity and natural gas. The Energy Cost Budget shall be the lower of these two calculations. If natural gas is not available at the rate, electricity and #2 fuel oil shall be used for the budget calculations.

[2] The system and energy types presented in this Table are not intended as requirements or recommendations for the proposed design. Floor areas below are the total conditioned floor areas for the listed occupancy type in the building. The number of floors indicated below is the total number of occupied floors for the listed occupancy type.

517.3 *HVAC Zones.* HVAC zones for calculating the Energy Cost Budget of the Prototype or Reference Building shall consist of at least four perimeter and one interior zones per floor. Prototype Buildings shall have one perimeter zone facing each cardinal direction. The perimeter zones of Prototype and Reference Buildings shall be 15 ft in width, or one-third the narrow dimension of the building, when this dimension is between 30 ft and 45 ft inclusive, or one-half the narrow dimension of the building when this dimension is less than 30 ft. Zoning requirements shall be a default assumption for calculating the Energy Cost Budget. For multi-family high-rise residential buildings, the prototype building shall have one zone per dwelling unit. The proposed design shall have one zone per unit unless zonal thermostatic controls are provided within units; in this case, two zones per unit shall be modeled. Building types such as assembly or warehouse may be modeled as a single zone if there is only one space.

517.4 For calculating the Design Energy Consumption, no fewer zones shall be used than were in the Prototype and Reference Buildings. The zones in the simulation shall correspond to the zones provided by the controls in the Proposed Design. Thermally similar zones, such as those facing one orientation on different floors, may be grouped together for the purposes of either the Design Energy Consumption or Energy Cost Budget simulation.

TABLE 517.4.1.—HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS [1, 2]

HVAC component	System #1	System #2	System #3	System #4
System Description	Packaged rooftop single room, one unit per zone.	Packaged terminal air conditioner with space heater or heat pump, one heating/cooling unit per zone.	Air handler per zone with central plant.	Packaged rooftop VAV w/ perimeter reheat.
Fan system—Design supply circulation rate.	Note 9	Note 10	Note 9	Note 9.
Supply fan total static pressure.	1.3 in. W.C	N/A	2.0 in. W.C	3.0 in. W.C.
Combined supply fan, motor, and drive efficiency.	40%	N/A	50%	45%.
Supply fan control	Constant volume	Fan Cycles with call for heating or cooling.	Constant volume	VAV w/forward curved contrifugal fan and variable inlet vanes.
Return fan total static pressure.	N/A	N/A	0.6 in. W.C.	0.6 in. W.C.
Combined return fan, motor, and drive efficiency.	N/A	N/A	25%	25%.

TABLE 517.4.1.—HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS [1, 2]—Continued

HVAC component	System #1	System #2	System #3	System #4
Return fan control	N/A	N/A	Constant volume	VAV w/forward curved centrifugal fan and discharge dampers.
Cooling System	Direct expansion air cooled.	Direct expansion air cooled.	Chilled water (Note 1)	Direct expansion air cooled.
Heating System	Furnace, heat pump, or electric resistance (Note 8).	Heat pump w/electric resistance auxiliary or air conditioner w/space heater (Note 8).	Hot water (Note 8, 12)	Hot water (Note 12) or electric resistance (Note B).
Remarks	Dry bulb economizer per Section 7.4.3 (barometric relief).	No economizer	Dry bulb economizer per Section 434.514.	Dry bulb economizer per Section 434.514. Minimum VAV setting per 434.514 exception 1. Supply air reset by zone of greatest cooling demand.

[1] The systems and energy types presented in this Table are not intended as requirements or recommendations for the proposed design.
[2] For numbered notes see end of Table 517.4.1.

TABLE 517.4.1.—HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS [1]

HVAC component	Systems #5	System #6	System #7
System Description	Built-up central VAV with perimeter reheat.	Fourpipe fan coil per zone with central plant.	Water source heat pump
Fan system—Design supply circulation rate.	Note 9	Note 9	Note 10.
Supply fan total static pressure	4.0 in W.C	0.5 in W.C	0.5 in. W.C.
Combined supply fan, motor, and drive efficiency.	55%	25A	25%.
Supply fan control	VAV w/air-foil centrifugal fan and AC frequency variable speed drive.	Fan Cycles with call for heating or cooling.	Fan cycles w/call for heating or cooling.
Return fan total static pressure	1.0 in W.C	N/A	N/A.
Combined return fan, motor, and drive efficiency.	30%	N/A	N/A.
Return fan control	VAV with air-foil centrifugal fan and AC frequency variable speed drive.	N/A	N/A.
Cooling System	Chilled water (Note 11)	Chilled water (Note 11)	Closed circuit, centrifugal blower type cooling tower sized per Note 11. Circulating pump sized for 2.7 GPM per ton.
Heating System	Hot water (Note 12) or electric resistance (Note 8).	Hot water (Note 12) or electric resistance (Note 8).	Electric or natural draft fossil fuel boiler (Note 8).
Remarks	Dry bulb economizer per Section 7.4.3. Minimum VAV setting per Section 7.4.4.3. Supply air reset by zone of greatest cooling demand.	No economizer	Tower fans and boiler cycled to maintain circulating water temperature between 60 and design tower leaving water temperature.

Numbered Notes for Table 517.4.1

HVAC System Descriptions for Prototype and Reference Buildings

Notes:

1. For occupancies such as restaurants, assembly and retail which are part of a mixed use building which, according to Table 517.4.1, includes a central chilled water plant (systems 3, 5, or 6), chilled water system type 3 or 5, as indicated in the Table, shall be used.

2. Constant volume may be used in zones where pressurization relationships must be maintained by code. VAV shall be used in all other areas, in accordance with § 517.4

3. Provide run-around heat recovery systems for all fan systems with minimum outside air intake greater than 75%. Recovery effectiveness shall be 0.60.

4. If a warehouse is not intended to be mechanically cooled, both the Energy Cost Budgets and Design Energy Costs, may be calculated assuming no mechanical cooling.

5. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by system 4. Other areas such as offices and retail shall be served by the systems listed in Table 517.4.1 for those occupancy types.

6. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by System 5. Other areas such as offices and retail shall be served by the systems listed in Table 517.4.1.1 for those occupancy types.

7. System 2 shall be used for Energy Cost Budget calculation except in areas with design heating outside air temperatures less than 10°F.

8. Prototype energy budget cost calculations shall be made using both electricity and natural gas. If natural gas is not available at the site, electricity and #2 fuel oil shall be used. The Energy Cost Budget shall be the lower of these results. Alternatively, the Energy Cost Budget may be based on the fuel source that minimizes total operating, maintenance, equipment, and installation costs for the prototype over the building lifetime. Equipment and installation cost estimates shall be prepared using professionally recognized cost estimating tools, guides, and techniques. The methods

of analysis shall conform to those of Subpart A of 10 CFR part 436. Energy costs shall be based on actual costs to the building as defined in this Section.

9. Design supply air circulation rate shall be based on a supply air to room air temperature differences of 20°F. A higher supply air temperature may be used if required to maintain a minimum circulation rate of 4.5 air changes per hour or 15 cfm per person at design conditions to each zone served by the system. If return fans are specified, they shall be sized from the supply fan capacity less the required minimum ventilation with outside air, or 75% or the supply air capacity, whichever is larger. Except where noted, supply and return fans shall be operated continually during occupied hours.

10. Fan System Energy when included in the efficiency rating of the unit as defined in § 403.2.4.3 need not be modeled explicitly for this system. The fan shall cycle with calls for heating or cooling.

11. Chilled water systems shall be modeled using a reciprocating chiller for systems with total cooling capacities less than 175 tons, and centrifugal chillers for systems with cooling capacities of 175 tons or greater. For systems with cooling or 600 ton or more, the Energy Cost Budget shall be calculated using two centrifugal chillers lead/lag controlled. Chilled water pumps shall be sized using a 12°F temperature rise, from 44°F to 56°F operating at 65 feed of head and 65% combined impeller and motor efficiency. Condenser water pumps shall be sized using a 10°F temperature rise, operating at 60 feet of head and 60% combined impeller and motor efficiency. The cooling tower shall be an open circuit, centrifugal blower type sized for the larger of 85°F leaving water temperature or 10°F approach to design wet bulb temperature. The tower shall be controlled to provide a 65°F leaving water temperature whenever weather conditions permit, floating up to design leaving water temperature at design conditions. Chilled water supply temperature shall be reset in accordance with § 434.518.

12. Hot water system shall include a natural draft fossil fuel or electric boiler per Note 8. The hot water pump shall be sized based on a 30°F temperature drop, for 18°F to 150°F, operating at 60 feet of head and a combined impeller and motor efficiency of 60%. Hot water supply temperature shall be reset in accordance with § 434.518.

517.5 *Equipment Sizing and Redundant Equipment.* For calculating the Energy Cost Budget of Prototype or Reference Buildings, HVAC equipment shall be sized to meet the requirements of subsection 403.2.2, without using any of the exceptions. The size of equipment shall be that required for the building without process loads considered. Redundant or emergency equipment need not be simulated if it is controlled so that it will not be operated during normal operations of the building. The designer shall document the installation of process equipment and the size of process loads.

517.6 For calculating the Design Energy Consumption, actual air flow rates and installed equipment size shall be used in the simulation, except that excess capacity provided to meet process loads need not be modeled unless the process load was not modeled in setting Energy Cost Budget. Equipment sizing in the simulation of the Proposed Design shall correspond to the equipment actually selected for the design and the designer shall not use equipment sized automatically by the simulation tool.

517.6.1 Redundant or emergency equipment need not be simulated if it is controlled to not be operated during normal operations of the building.

§ 434.518 Service water heating.

518.1 The service water loads for Prototype and Reference Buildings are defined in terms of Btu/h per person in Table 518.1.1, Service Hot Water Quantities. The service water heating loads from Table 518.1.1 are prescribed assumptions for multi-family high-rise residential buildings and default assumptions for all other buildings. The same service water heating load assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

TABLE 518.1.1.—SERVICE HOT WATER QUANTITIES

Building type	Btu/person-hour[1]
Assembly	215
Office	175
Retail	135
Warehouse	225
School	215
Hotel/Motel	1110
Restaurant	390
Health	135
Multi-family High Rise Residential	[2] 1700

[1] This value is the number to be multiplied by the percentage multipliers of the Building Profile Schedules in Table 513.2.b. See Table 513.2.a for occupancy levels.

[2] Total hot water use per dwelling unit for each hour shall be 3,400 Btu/h times the multi-family high rise residential building SWH system multiplier from Table 513.2.b.

518.2 The service water heating system, including piping losses for the Prototype Building, shall be modeled using the methods of the RS–47 (incorporated by reference, see § 434.701) using a system that meets all requirements of subsection 404. The service water heating equipment for the Prototype or Reference Building shall be either an electric heat pump or natural gas, or if natural gas is not available at the site, #2 fuel oil. Exception: If electric resistance service water heating is preferable to an electric heat pump when analyzed according to the criteria of §434.404.1.4 or when service water temperatures exceeding 145°F are required for a particular application, electric resistance water heating may be used.

§ 434.519 Controls.

519.1 All occupied conditioned spaces in the Prototype, Reference and Proposed Design Buildings in all climates shall be simulated as being both heated and cooled. The assumptions in this subsection are prescribed assumptions. If the Proposed Design does not include equipment for cooling or heating, the Design Energy Consumption shall be determined by the specifications for calculating the Energy Cost Budget as described in Table 517.4.1 HVAC System Description for Prototype and Reference Buildings. Exceptions to 519.1 are as follows:

519.1.1 If a building is to be provided with only heating or cooling, both the Prototype or Reference Building and the Proposed Design shall be simulated, using the same assumptions. Such an assumption cannot be made unless the building interior temperature meets the comfort criteria of RS–2 (incorporated by reference, see § 434.701) at least 98% of the occupied hours during the year.

519.1.2 If warehouses are not intended to be mechanically cooled, both the Energy Cost Budget and Design Energy Consumption shall be modeled assuming no mechanical cooling; and

519.1.3 In climates where winter design temperature (97.5% occurrence) is greater than 59°F, space heating need not be modeled.

519.2 Space temperature controls for the Prototype or Reference Building, except multi-family high-rise residential buildings, shall be set at 70°F for space heating and 75°F for space cooling with a deadband per subsection 403.2.6.3. The system shut off during off-hours shall be according to the schedule in Table 515.2, except that the heating system shall cycle on if any space should drop below the night setback setting of 55°F. There shall be no similar setpoint during the cooling season. Lesser deadband ranges may be used in calculating the Design Energy Consumption. Exceptions to 519.2 are as follows:

(a) Setback shall not be modeled in determining either the Energy Cost Budget or Design Energy Cost if setback is not realistic for the Proposed Design, such as 24-hour/day operations. Health facilities need not have night setback during the heating season; and

(b) Hotel/motels and multi-family high-rise residential buildings shall have a night setback temperature of 60°F from 11:00 p.m. to 6:00 a.m. during the heating season; and

(c) If deadband controls are not to be installed, the Design Energy Cost shall be calculated with both heating and cooling thermostat setpoints set to the same value between 70°F and 75°F inclusive, assumed to be constant for the year.

519.2.1 For multi-family buildings, the thermostat schedule for the dwelling units shall be as in Table 519.1.2, Thermostat Settings for Multi-Family High-rise Buildings. The Prototype Building shall use the single zone schedule. The Proposed Design shall use the two-zone schedule only if zonal thermostatic controls are provided. For Proposed Designs that use heat pumps employing supplementary heat, the controls used to switch on the auxiliary heat source during morning warm-up periods shall be simulated accurately. The thermostat assumptions for multi-family high-rise buildings are prescribed assumptions.

519.3 When providing for outdoor air ventilation in calculating the Energy Cost Budget, controls shall be assumed to close the outside air intake to reduce the flow of outside air to 0 cfm during setback and unoccupied periods. Ventilation using inside air may still be required to maintain scheduled setback temperature. Outside air ventilation, during occupied periods, shall be as required by RS–41, (incorporated by reference, see § 434.701) or the Proposed Design, whichever is greater.

519.4 If humidification is to be used in the Proposed Design, the same level of humidification and system type shall be used in the Prototype or Reference Building. If dehumidification requires subcooling of supply air, then reheat for the Prototype or Reference Building shall be from recovered waste heat such as condenser waste heat.

TABLE 519.1.2.—THERMOSTAT SETTINGS FOR MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

Time of day	Single zone dwelling unit		Two zone dwelling unit			
	Heat	Cool	Bedrooms/bathrooms		Other rooms	
			Heat	Cool	Heat	Cool
Midnight–6 a.m. ...	60	78	60	78	60	85
6 a.m.–9 a.m.	70	78	70	78	70	78
9 a.m.–5 p.m.	70	78	60	85	70	78
5 p.m.–11 p.m.	70	78	70	78	70	78
11 p.m.–Midnight	60	78	60	78	60	78

§ 434.520 Speculative buildings.

520.1 Lighting. The interior lighting power allowance (ILPA) for calculating the Energy Cost Budget shall be determined from Table 401.3.2a. The Design Energy Consumption may be based on an assumed adjusted lighting power for future lighting improvements.

520.2 The assumption about future lighting power used to calculate the Design Energy Consumption must be documented so that the future installed lighting systems may be in compliance with these standards. Documentation must be provided to enable future lighting systems to use either the Prescriptive method or the Systems Performance method of subsection 401.3.

520.3 Documentation for future lighting systems that use subsection 401.3 shall be stated as a maximum adjusted lighting power for the tenant spaces. The adjusted lighting power allowance for tenant spaces shall account for the lighting power provided for the common areas of the building.

520.4 Documentation for future lighting systems that use subsection 401.3 shall be stated as a required lighting adjustment. The required lighting adjustment is the whole building lighting power assumed in order to calculate the Design Energy Consumption minus the ILPA value from Table 401.3.2c that was used to calculate the Energy Cost Budget. When the required lighting adjustment is less than zero, a complete lighting design must be developed for one or more representative tenant spaces, demonstrating acceptable lighting within the limits of the assumed lighting power allowance.

520.5. HVAC Systems and Equipment. If the HVAC system is not completely specified in the plans, the Design Energy Consumption shall be based on reasonable assumptions about the construction of future HVAC systems and equipment. These assumptions shall be documented so that future HVAC systems and equipment may be in compliance with these standards.

§ 434.521 The simulation tool.

521.1 Annual energy consumption shall be simulated with a multi-zone, 8760 hours per year building energy model. The model shall account for:

521.1.1 The dynamic heat transfer of the building envelope such as solar and internal gains;

521.1.2 Equipment efficiencies as a function of load and climate;

521.1.3 Lighting and HVAC system controls and distribution systems by simulating the whole building;

521.1.4 The operating schedule of the building including night setback during various times of the year; and

521.1.5 Energy consumption information at a level necessary to determine the Energy Cost Budget and Design Energy Cost through the appropriate utility rate schedules.

521.1.6 While the simulation tool should simulate an entire year on an hour by hour basis (8760 hours), programs that approximate this dynamic analysis procedure and provide equivalent results are acceptable.

521.1.7 Simulation tools shall be selected for their ability to simulate accurately the relevant features of the building in question, as shown in the tool's documentation. For example, a single-zone model shall not be used to simulate a large, multi-zone building, and a steady-state model such as the degree-day method shall not be used to simulate buildings when equipment efficiency or performance is significantly affected by the dynamic patterns of weather, solar radiation, and occupancy. Relevant energy-related features shall be addressed by a model such as daylighting, atriums or sunspaces, night ventilation or thermal storage, chilled water storage or heat recovery, active or passive solar systems, zoning and controls of heating and cooling systems, and ground-coupled buildings. In addition, models shall be capable of translating the Design Energy Consumption into energy cost using actual utility rate schedules with the coincidental electrical demand of a building. Examples of public domain models capable of handling

such complex building systems and energy cost translations available in the United States are DOE—2.1C and BLAST 3.0 and in Canada, Energy Systems Analysis Series.

521.1.8 All simulation tools shall use scientifically justifiable documented techniques and procedures for modeling building loads, systems, and equipment. The algorithms used in the program shall have been verified by comparison with experimental measurements, loads, systems, and equipment.

Subpart F—Building Energy Compliance Alternative

§ 434.601 General.

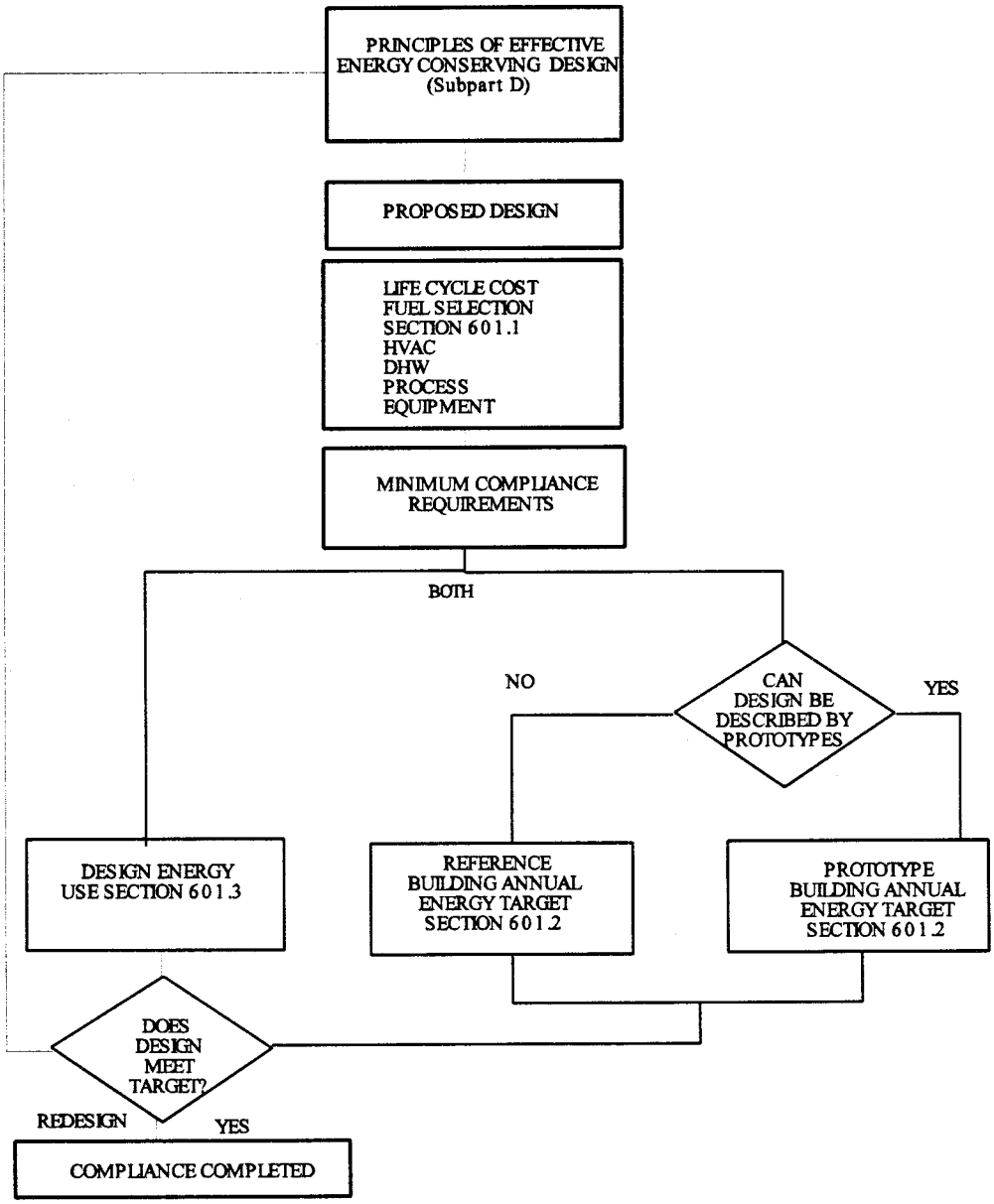
601.1 This subpart provides an alternative path for compliance with the standards that allow for greater flexibility in the design of energy efficient buildings using an annual energy use method. This path provides an opportunity for the use of innovative designs, materials, and equipment such as daylighting, passive solar heating, and heat recovery, that may not be adequately evaluated by methods found in Subpart D.

601.2 The Building Energy Compliance Alternative shall be used with subpart C and subpart D, 401.1, 401.2, 401.3.4 and in conjunction with the minimum requirements found in subsections 402.1, 402.2, and 402.3., 403.1, 403.2.1–7, 403.2.9 and 404.

601.3 Compliance under this section is demonstrated by showing that the calculated annual energy usage for the Proposed Design is less than or equal to a calculated Energy Use Budget. (See Figure 601.3, Building Energy Compliance Alternative). The analytical procedures in this subpart are only for determining design compliance, and are not to be used either to predict, document or verify annual energy consumption.

Figure 601.3

Building Energy Compliance Alternative



601.4 Compliance under the Building Energy Use Budget method requires a detailed energy analysis, using a conventional simulation tool, of the Proposed Design. A life cycle cost analysis shall be used to select the fuel source for the HVAC systems, service hot water, and process loads from available alternatives. The Annual Energy Consumption of the Proposed Design with the life cycle cost-effective fuel selection is calculated to determine the modeled energy consumption, called the Design Energy Use.

601.5 The Design Energy Use is defined as the energy that is consumed within the five foot line of a proposed building per ft² over a 24-hour day, 365-day year period and specified operating hours. The calculated Design Energy Use is then compared to a calculated Energy Use Budget.

601.6 *Compliance.* The Energy Use Budget is determined by calculating the annual energy usage for a Reference or Prototype Building that is configured to comply with the provisions of Subpart E for such buildings, except that the fuel source(s) of the Prototype or Reference Building shall be the same life cycle cost-effective source(s) selected for the Proposed Design. If the Design Energy Use is less than or equal to the Energy Use Budget then the proposed design complies with these standards.

601.7 This section provides instructions for determining the Design Energy Use and for calculating the Energy Use Budget. The Energy Use Budget is the highest allowable calculated annual energy consumption for a specified building design. Designers are encouraged to design buildings whose Design Energy Use is lower than the Energy Use Budget.

§ 434.602 Determination of the annual energy budget.

602.1 The Energy Use Budget shall be calculated for the appropriate Prototype or Reference Building in accordance with the procedures prescribed in subsection 502 with the following exceptions: The Energy Use Budget shall be stated in units of Btu/ft²/yr and the simulation tool shall segregate the calculated energy consumption by fuel type producing an Energy Use Budget for each fuel (the fuel selections having been made by a life cycle cost analysis in determining the proposed design).

602.2 The Energy Use Budget is calculated similarly for the Reference or Prototype Building using equation 602.2.

$$EUB = EUB_1 x f_1 + EUB_2 x f_2 + ... + EUB_i x f_i \qquad \text{Equation 602.2}$$

Where EUB_1, EUB_2, EUB_i are the calculated annual energy targets for each fuel used in the Reference or Prototype building and f_1, f_2, . . . f_i are the energy conversion factors given in Table 602.2, Fuel Conversion Factors for Computing Design Annual Energy Uses. In lieu of case by case calculation of the Energy Use Budget, the designer may construct Energy Use Budget tables for the combinations of energy source(s) that may be considered in a set of project designs, such as electric heating, electric service water, and gas cooling or oil heating, gas service water and electric cooling. The values in such optional Energy Use Budget tables shall be equal to or less than the corresponding Energy Use Budgets calculated on a case by case basis according to this section. Energy Use Budget tables shall be constructed to correspond to the climatic regions and building types in accordance with provisions for Prototype or Reference Building models in subpart E of this part.

TABLE 602.2.—FUEL CONVERSION FACTORS, FOR COMPUTING DESIGN ANNUAL ENERGY USES

Fuels	Conversion factor
Electricity	3412 Btu/kilowatt hour.
Fuel Oil	138,700 Btu/gallon.
Natural Gas	1,031,000 Btu/1000 ft².
Liquified Petroleum (including Propane and Butane)	95,5000 Btu/gallon.
Anthracite Coal	28,300,000 Btu/short ton.
Bituminous Coal	24,580,000 Btu/short ton.
Purchase Steam and Steam from Central Plants	1,000 Btu/Pound.
High Temperature or Medium Temperature Water from Central Plants	Use the heat value based on the water actually delivered at the building five foot line.

Note: At specific locations where the energy source Btu content varies significantly from the value presented above then the local fuel value may be used provided there is supporting documentation from the fuel source supplier stating this actual energy value and varifying that this value will remain consistent for the foreseeable future. The fuel content for fuels not given this table shall be determined from the best available source.

§ 434.603 Determination of the design energy use.

603.1 The Design Energy Use shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Use Budget, but with the design features that will be used in the final building design. The simulation tool used shall segregate the calculated energy consumption by fuel type giving an annual Design Energy Use for each fuel. The sum of the Design Energy Uses multiplied by the fuel conversion factors in Table 602.2 yields the Design Energy Use for the proposed design:

$$DEU = DEU_1 x f_1 + DEU_2 x f_2 + ... + DEU_i x f_i \qquad \text{Equation 603.1}$$

Where f_1, f_2, * * * f_i are the fuel conversion factors in Table 602.2.

603.2 *Required Life Cycle Cost Analysis for Fuel Selection*

603.2.1 Fuel sources selected for the Proposed Design and Prototype or Reference buildings shall be determined

by considering the energy cost and other costs and cost savings that occur during the expected economic life of the alternative.

603.2.2 The designer shall use the procedures set forth in subpart A of 10 CFR part 436 to make this determination. The fuel selection life cycle cost analysis shall include the following steps:

603.2.2.1 Determine the feasible alternatives for energy sources of the Proposed Design's HVAC systems, service hot water, and process loads.

603.2.2.2 Model the Proposed Design including the alternative HVAC and service water systems and conduct an annual energy analysis for each fuel source alternative using the simulation tool specified in this section. The annual energy analysis shall be computed on a monthly basis in conformance with subpart E with the exception that all process loads shall be included in the calculation. Separate the output of the analysis by fuel type.

603.2.2.3 Determine the unit price of each fuel using information from the utility or other reliable local source. During rapid changes in fuel prices it is recommended that an average fuel price for the previous twelve months be used in lieu of the current price. Calculate the annual energy cost of each energy source alternative in accordance with procedures in subpart E for the Design Energy Cost. Estimate the initial cost of the HVAC and service water systems and other initial costs such as energy distribution lines and service connection fees associated with each fuel source alternative. Estimate other costs and benefits for each alternative including, but not necessarily limited to, annual maintenance and repair, periodic and one time major repairs and replacements and salvage of the energy and service water systems. Cost estimates shall be prepared using professionally recognized cost estimating tools, guides and techniques.

603.2.2.4 Perform a life cycle cost analysis using the procedure specified in subsection 603.2.

603.2.2.5 Compare the total life cycle cost of each energy source alternative. The alternative with the lowest total life cycle cost shall be chosen as the energy source for the proposed design.

§ 434.604 Compliance.

604.1 Compliance with this section is demonstrated if the Design Energy Use is equal to or less than the Energy Use Budget.

$$DEU < EUB \qquad \text{Equation 604.1}$$

604.2 The energy consumption shall be measured at the building five foot line for all fuels. Energy consumed from non-depletable energy sources and heat recovery systems shall not be included in the Design Energy Use calculations. The thermal efficiency of fixtures, equipment, systems or plants in the proposed design shall be simulated by the selected calculation tool.

§ 434.605 Standard Calculation Procedure.

605.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Use Budgets for Prototype and Reference Buildings and the Energy Use for the Proposed Design. In order to maintain consistency between the Energy Use Budgets and the Design Energy Use, the input assumptions stated in subsection 510.2 are to be used.

605.2 The terms Energy Cost Budget and Design Energy Cost or Design Energy Consumption used in subpart E of this part correlate to Energy Use Budget and Design Energy Use, respectively, in subpart F of this part.

§ 434.606 Simulation tool.

606.1 The criteria established in subsection 521 for the selection of a simulation tool shall be followed when using the compliance path prescribed in subpart F of this part.

§ 434.607 Life cycle cost analysis criteria.

607.1 The following life cycle cost criteria applies to the fuel selection requirements of this subpart and to option life cycle cost analyses performed to evaluate energy conservation design alternatives. The fuel source(s) selection shall be made in accordance with the requirements of subpart A of 10 CFR part 436. When performing optional life cycle cost analyses of energy conservation opportunities the designer may use the life cycle cost procedures of subpart A of 10 CFR part 436 or OMB Circular 1–94 or an equivalent procedure that meets the assumptions listed below:

607.1.1 The economic life of the Prototype Building and Proposed Design shall be 25 years. Anticipated replacements or renovations of energy related features and systems in the Prototype or Reference Building and Proposed Design during this period shall be included in their respective life cycle cost calculations.

607.1.2 The designer shall follow established professional cost estimating practices when determining the costs and benefits associated with the energy related features of the Prototype or Reference Building and Proposed Design.

607.1.3 All costs shall be expressed in current dollars. General inflation shall be disregarded. Differential escalation of prices (prices estimated to rise faster or slower than general inflation) for energy used in the life cycle cost calculations shall be those in effect at the time of the latest ''Annual Energy Outlook'' (DOE/EIA–0383) as published by the Department of Energy's Energy Information Administration.

607.1.4 The economic effects of taxes, depreciation and other factors not consistent with the practices of subpart A of 10 CFR part 436 shall not be included in the life cycle cost calculation.

Subpart G—Reference Standards

§ 434.701 General.

701.1 *General.* The standards, technical handbooks, papers, regulations, and portions thereof, that are referred to in the sections and subsections in the following list are hereby incorporated by reference into this part 434. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. A notice of any change in these materials will be published in the **Federal Register**. The standards incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC and the U.S. Department of Energy, Office of Energy Efficiency, Hearings and Dockets, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585. The standards may be purchased at the addresses listed at the end of each standard. The following standards are incorporated by reference in this part:

Ref. No.	Standard designation	CFR section
RS–1	ANSI/ASHRAE/IESNA 90.1–1989, Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings, and Addenda 90.1b–1992, 90.1c–1993, 90.1d–1992, 90.1e–1992, 90.1f–1995, 90.1g–1993, 90.1i–1993, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., ASHRAE 1791 Tullie Circle NE, Atlanta, GA 30329.	434.301.1; 434.402.1.2.4; 434.402.4.2; 434.403.2.1.
RS–2	ANSI/ASHRAE 55–1992 including addenda 55a–1995, Thermal Environmental Conditions for Human Occupancy, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329.	434.301.2; 434.519.1.1.
RS–3	NEMA MG1–1993, ''Motors and Generators,'' Revision No. 1, December 7, 1993, National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209.	434.401.2.1.
RS–4	ASHRAE, Handbook, 1993 Fundamentals Volume, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329.	434.402.1.1; 434.402.1.2.1; 434.402.1.2.2; 434.402.1.2.4; 434.402.2.2.5.
RS–5	ASTM C 177–85 (Reapproved 1993), Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.	434.402.1.1; 434.402.1.2.1; 434.402.1.2.2.
RS–6	ASTM C 518–91, Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.	434.402.1.1; 434.402.1.2.1; Table 402.1.2.2; Table 403.2.9.2.
RS–7	ASTM C 236–89 (Reapproved 1993), Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.	434.402.1.1; 434.402.1.2.1; 434.402.1.2.2.
RS–8	ASTM C 976–90, Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.	434.402.1.1; 434.402.1.2.1; 434.402.1.2.2.
RS–9	Report TVAHB–3007, 1981, ''Thermal Bridges in Sheet Metal Construction'' by Gudni Johannesson. Lund Institute of Technology, Lund, Sweden.	434.402.1.2.3.
RS–10	ASTM E 283–91, Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Difference Across the Specimen, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.	434.402.2; 434.402.2.1.
RS–11	ANSI/AAMA/NWWDA 101/I.S.2–97, Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors, American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 104, Schaumburg, IL 60173–4628.	434.402.2.1; 434.402.2.2.4.
RS–12	ASTM D 4099–95, Standard Specification for Poly (Vinyl Chloride) (PVC) Prime Windows/Sliding Glass Doors, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.	434.402.2.1.
RS–13	ANSI/AAMA/NWWDA 101/I.S.2–97, Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), 1400 East Toughy Avenue, Suite 470, Des Plaines, IL 60018.	434.402.2.1.
RS–14	ANSI/NWWDA I.S.3–95, Wood Sliding Patio Doors, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), 1400 East Toughy Avenue, Suite 470, Des Plaines, IL 60018.	434.402.2.2.1.
RS–15	ARI Standard 210/240–94, Unitary Air-Conditioning and Air-Source Heat Pump Equipment 1994. Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203.	434.403.1.
RS–16	ARI Standard 340/360–93, Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment 1993 edition. Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203.	434.403.1.
RS–17	ARI 310/380–93, Packaged Terminal Air-Conditioners and Heat Pumps, 1993 edition. Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203.	434.403.1.
RS–18	NFRC 100–97, Procedure for Determining Fenestration Product Thermal Properties, National Fenestration Rating Council, Inc., 1300 Spring Street, Suite 500, Silver Spring, MD 20910.	434.402.1.2.4.
RS–19	NFRC 200—Procedure for Determining Fenestration Product Solar Heat Gain Coefficients at Normal Incidence (1995) National Fenestration Rating Council, Inc., 1300 Spring Street, Suite 500, Silver Spring, MD 20910.	434.402.1.2.4.

Ref. No.	Standard designation	CFR section
RS–20	RESERVED.	
RS–21	Z21.47–1993, Gas-Fired Central Furnaces, including addenda Z21.47a–1995, American Gas Association, 400 North Capitol Street, N.W. Washington, DC 20001.	434.403.1.
RS–22	U.L. 727, including addendum dated January 30, 1996, Oil-Fired Central Furnaces (Eighth Edition) 1994, available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704, Underwriters Laboratories, Northbrook, IL 60062, 1994..	434.403.1.
RS–23	ANSI Z83.9–90, Including addenda Z83.9a–1992, Gas-Fired Duct Furnaces, 1990. (Addendum 90.1b) available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704.	434.403.1.
RS–24	ANSI Z83.8–96, Gas Unit Heater and Gas-Fired Duct Furnaces, American National Standards Institute, 11 West 42nd Street, New York, NY 10036.	434.403.1.
RS–25	U.L. 731, Oil-Fired Unit Heaters (Fifth Edition) 1995 available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704, Underwriters Laboratories, Northbrook, IL 60062.	434.403.1.
RS–26	CTI Standard–201, Standard for the Certification of Water-Cooling Towers Thermal Performance, November 1996, Cooling Tower Institute, P.O. Box 73383, Houston, TX 77273.	434.403.1.
RS–27	ARI Standard 320–93, Water-Source Heat Pumps, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203.	434.403.1.
RS–28	ARI Standard 325–93, Ground Water-Source Heat Pumps, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203.	434.403.1.
RS–29	ARI Standard 365–94, Commercial and Industrial Unitary Air-Conditioning Condensing Units, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203.	434.403.1.
RS–30	ARI Standard 550–92, Centrifugal and Rotary Screw Water-Chilling Packages, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203.	434.403.1.
RS–31	ARI Standard 590–92, Positive Displacement Compressor Water-Chilling Packages, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203.	434.403.1.
RS–32	ANSI Z21.13–1991, including addenda Gas-Fired Low-Pressure Steam and Hot Water Boilers, Addenda Z21.13a–1993 and Z21–13b–1994, American National Standards Institute, 11 West 42nd Street, New York, NY 10036.	434.403.1.
RS–33	ANSI/U.L. 726 (7th edition, 1995), Oil-Fired Boiler Assemblies, available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704, Underwriters Laboratories, Northbrook, IL 60062.	434.403.1.
RS–34	HVAC Duct Construction Standards—Metal and Flexible, 2nd edition, 1995, Sheet Metal and Air-Conditioning Contractors' National Association, Inc., 4201 Lafayette Center Drive, Chantilly, VA 20151.	434.403.2.9.3.
RS–35	HVAC Air Duct Leakage Test Manual, 1st edition, 1985, Sheet Metal and Air-Conditioning Contractors' National Association, Inc., 4201 Lafayette Center Drive, Chantilly, VA 20151.	434.403.2.9.3; 434.403.1.
RS–36	Fibrous Glass Duct Construction Standards, 6th edition, 1992, Sheet Metal and Air-Conditioning Contractors National Association, Inc., 4201 Lafayette Center Drive, Chantilly, VA 20151.	434.403.2.9.3.
RS–37	RESERVED.	
RS–38	ANSI Z21.56–1994, Gas-Fired Pool Heaters; Addenda Z21.56a–1996, American National Standards Institute, 11 West 42nd Street, New York, NY 10036; American Gas Association, 1515 Wilson Boulevard, Arlington, VA 22209.	Table 404.1.
RS–39	ANSI Z21.10.3–1993, Gas Water Heaters, Volume III, Storage with Input Ratings above 75,000 Btu's per Hour, Circulating and Instantaneous Water Heaters, American National Standards Institute, 11 West 42nd Street, New York, NY 10036; American Gas Association, 1515 Wilson Boulevard, Arlington, VA 22209.	Table 404.1; 434.404.1.1.
RS–40	ANSI/AHAM RAC–1–1992, Room Air Conditioners, Association of Home Appliance Manufacturers, 20 North Wacker Drive, Chicago, IL 60606.	434.403.1.
RS–41	ASHRAE Standard 62–1989, Ventilation for Acceptable Indoor Air Quality, American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tulle Circle, Atlanta, GA 30329.	434.403.2.4; 434.403.2.8; 434.519.3.
RS–42	ANSI Z21.66–1996, Automatic Vent Damper Devices for Use with Gas-Fired Appliances, available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704..	434.404.1.
RS–43	NEMA MG 10–1994, Energy Management Guide for Selection and Use of Polyphase Motors, National Electric Manufacturers Association, National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209.	434.401.2.1.

Ref. No.	Standard designation	CFR section
RS–44	NEMA MG 11–1977 (Revised 1982, 1987, Energy Management Guide for Selection and Use of Single-Phase Motors, National Electrical Manufacturers Association, National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209.	434.401.2.1.
RS–45	ARI Standard 330–93, Ground-Source Closed-Loop Heat Pumps, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22209.	434.403.1.
RS–46	ARI Standard 560–92, Absorption Water Chilling and Water Heating Packages, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22209.	434.403.1.
RS–47	ASHRAE, Handbook, HVAC Applications; I–P Edition, 1995, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329.	434.518.2.

[FR Doc. 00–17120 Filed 10–5–00; 8:45 am]

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October 6, 2000

Part V

General Services Administration

41 CFR Parts 101–40 and 102–117
Transportation Management; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–40 and 102–117

[FPMR Amendment G–116]

RIN 3090–AH16

Transportation Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on transportation and traffic management into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Effective October 6, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Allison, Program Analyst, Transportation Management Policy, Office of Governmentwide Policy, General Services Administration, at 202–219–1729, or Internet e-mail at elizabeth.allison@gsa.gov

SUPPLEMENTARY INFORMATION:

A. Background

In response to President Clinton's mandate to Federal agencies to make communication with the public more understandable, General Services Administration (GSA) is revising and clarifying the transportation management policies by writing them in plain language and making other substantial changes. This rule adds a new part to the Federal Management Regulation (FMR) that will phase in the use of commercial transportation documents, such as bills of lading, and retire the corresponding Government transportation documents whenever possible.

The FMR is in the question and answer format. Question and answer format is an effective way to engage the reader and to break the information into manageable pieces. The FMR asks questions in the first person, as the user would. It then answers the questions in the second and third person. The FMR addresses the agency in the singular.

B. Substantive Changes

This final rule clarifies existing transportation management requirements. We incorporate the Treasury, Postal and General Government Appropriations Act of 1994 (see Public Law 103–123; 107 Stat. 1226, 1247) that changed GSA to a nonmandatory source of transportation services. The focus shifts the transportation regulations away from how agencies should use GSA's household goods and freight shipment programs as mandatory sources of these services. Changes are included to:

(a) Provide broad policy for agencies to develop transportation programs that best suit their needs;

(b) Require that all contracts and rate tenders include the terms and conditions formerly annotated on the Government bills of lading. All transportation documents must reference the applicable contract or rate tender;

(c) Include general business rules a transportation manager will consider before buying transportation services. These rules give a broad range of guidelines to ensure compliance with other Governmental directives and compliance with all Federal, State and local laws;

(d) Eliminate the use of the Optional Forms 1103 and 1203, Government Bill of Lading, for domestic freight and household goods shipments by September 30, 2001;

(e) Expand the choices for acquiring transportation and transportation related services and incorporate the terms and conditions previously noted on the paper GBL in all contracts and agreements;

(f) Expand the use of charge cards as an alternative payment method for transportation services. Agencies must set up their own administrative rules covering accountability, exceptions and limits of the charge card;

(g) Introduce performance measures to help agencies determine how well they perform the transportation function and support the agency mission;

(h) Introduce a section on transportation service provider's performance defining what transportation managers should expect in the contractual agreement and what recourse is available for nonperformance;

(i) Add a requirement for reports. Reporting transportation costs will help agencies collect information for forecasting and planning; and

(j) Add a separate section on representation before regulatory bodies to clarify the authority granted to GSA and how an agency may request help.

A proposed rule was published on February 28, 2000, at 65 FR 8817. Comments were received from six agencies and one member of the public. All comments were considered in the formulation of the final rule and, as a result, a number of changes were made to the proposed rule.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to internal agency management and will not have a significant effect on the public.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501–517.

F. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Parts 101–40 and 102–117

Freight, Government property management, Moving of household goods, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. Part 101–40 is revised to read as follows:

PART 101–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§101–40.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on transportation and traffic management previously contained in this part, see FMR part 117 (41 CFR part 102–117).

CHAPTER 102—[AMENDED]

2. Part 102–117 is added to subchapter D of chapter 102 to read as follows:

PART 102–117—TRANSPORTATION MANAGEMENT

Subpart A—General

Sec.
102–117.5 What is transportation management?
102–117.10 What is the scope of this part?
102–117.15 To whom does this part apply?
102–117.20 Are any agencies exempt from this part?
102–117.25 What definitions apply to this part?

Subpart B—Acquiring Transportation or Related Services

102–117.30 What choices do I have when acquiring transportation or related services?
102–117.35 What are the advantages and disadvantages to using GSA's tender of service?
102–117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?
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102–117.60 What is the importance of the terms and conditions in a rate tender or other transportation document?
102–117.65 What terms and conditions must all rate tenders or contracts include?
102–117.70 Where do I find more information on terms and conditions?
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102–117.85 What is the difference between a Government bill of lading (GBL) and a bill of lading?
102–117.90 May I use U.S. Government bill of lading (GBL) (Optional Forms 1103 and 1203), to acquire freight, household goods or other related transportation services?
102–117.95 After the GBLs retire for domestic shipments, what transportation documents must I use to acquire freight, household goods or other transportation services?

Subpart C—Business Rules To Consider Before Shipping Freight or Household Goods

102–117.100 What business rules must I consider before acquiring transportation or related services?
102–117.105 What does best value mean when routing a shipment?
102–117.110 What is satisfactory service?
102–117.115 How do I calculate total delivery costs?
102–117.120 To what extent must I equally distribute orders for transportation and related services among TSPs?
102–117.125 How detailed must I describe property for shipment when communicating to a TSP?
102–117.130 Must I select TSPs who use alternative fuels?

Subpart D—Restrictions That Affect International Transportation of Freight and Household Goods

102–117.135 What are the international transportation restrictions?
102–117.140 What is cargo preference?
102–117.145 What are coastwise laws?
102–117.150 What do I need to know about coastwise laws?
102–117.155 Where do I go for further information about coastwise laws?

Subpart E—Shipping Freight

102–117.160 What is freight?
102–117.165 What shipping process must I use for freight?
102–117.170 What reference materials are available to ship freight?
102–117.175 What factors do I consider to determine the mode of transportation?
102–117.180 What transportation documents must I use to ship freight?
102–117.185 Where must I send a copy of the transportation documents?
102–117.190 Where do I file a claim for loss or damage to property?
102–117.195 Are there time limits affecting filing of a claim?

Subpart F—Shipping Hazardous Material (HAZMAT)

102–117.200 What is HAZMAT?
102–117.205 What are the restrictions for transporting HAZMAT?
102–117.210 Where can I get guidance on transporting HAZMAT?

Subpart G—Shipping Household Goods

102–117.215 What are household goods (HHG)?
102–117.220 What choices do I have to ship HHG?
102–117.225 What is the difference between a contract or rate tender and a commuted rate system?
102–117.230 Must I compare costs between a contract or rate tender and the commuted rate system before choosing which method to use?
102–117.235 How do I get a cost comparison?
102–117.240 What is my agency's financial responsibility to an employee who chooses to move all or part of his/her HHG under the commuted rate system?
102–117.245 What is my responsibility in providing guidance to an employee who wishes to use the commuted rate system?
102–117.250 What are my responsibilities after shipping the household goods?
102–117.255 What actions may I take if the TSP's performance is not satisfactory?
102–117.260 What are my responsibilities to employees regarding the TSP's liability for loss or damage claims?
102–117.265 Are there time limits that affect filing a claim with a TSP for loss or damage?

Subpart H—Performance Measures

102–117.270 What are agency performance measures for transportation?

Subpart I—Transportation Service Provider (TSP) Performance

102–117.275 What performance must I expect from a TSP?
102–117.280 What aspects of the TSP's performance are important to measure?
102–117.285 What are my choices if a TSP's performance is not satisfactory?
102–117.290 What is the difference between temporary nonuse, suspension and debarment?
102–117.295 Who makes the decisions on temporary nonuse, suspension and debarment?
102–117.300 Do the decisions on temporary nonuse, suspension and debarment go beyond the agency?
102–117.305 Where do I go for information on the process for suspending or debarring a TSP?
102–117.310 What records must I keep on temporary nonuse, suspension or debarment of a TSP?
102–117.315 Who must I notify on suspension or debarment of a TSP?

Subpart J—Representation Before Regulatory Body Proceedings

102–117.320 What is a transportation regulatory body proceeding?
102–117.325 May my agency appear on its own behalf before a transportation regulatory body proceeding?
102–117.330 When, or under what circumstances, would GSA delegate authority to an agency to appear on its own behalf before a transportation regulatory body proceeding?
102–117.335 How does my agency ask for a delegation to represent itself in a regulatory body proceeding?
102–117.340 What other types of assistance may GSA provide agencies in dealing with regulatory bodies?

Subpart K—Reports

102–117.345 Is there a requirement for me to report to GSA on my transportation activities?
102–117.350 How will GSA use reports I submit?

Subpart L—Governmentwide Transportation Policy Council (GTPC)

102–117.355 What is the Governmentwide Transportation Policy Council (GTPC)?
102–117.360 Where can I get more information about the GTPC?

Authority: 31 U.S.C. 3726; 40 U.S.C. 481, *et seq.*

Subpart A—General

§ 102–117.5 What is transportation management?

Transportation management is agency oversight of the physical movement of commodities, household goods (HHG) and other freight from one location to another by a transportation service provider (TSP).

§ 102–117.10 What is the scope of this part?

This part addresses shipping freight and household goods worldwide.

Freight is property or goods transported as cargo. Household goods are not Government property, but are employees' personal property entrusted to the Government for shipment.

§ 102–117.15 To whom does this part apply?

This part applies to all agencies and wholly owned Government corporations as defined in 5 U.S.C. 101 *et seq.* and 31 U.S.C. 9101(3), except those indicated in § 102–117.20.

§ 102–117.20 Are any agencies exempt from this part?

(a) The Department of Defense is exempted from this part by an agreement under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481 *et seq.*), except for the rules to debar or suspend a TSP under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4).

(b) Subpart D of this part, covering household goods, does not apply to the uniformed service members, under Title 37 of the United States Code, ''Pay and Allowances of the Uniformed Services,'' including the uniformed service members serving in civilian agencies such as the U.S. Coast Guard, National Oceanic and Atmospheric Administration and the Public Health Service.

§ 102–117.25 What definitions apply to this part?

The following definitions apply to this part:

Accessorial charges are charges for services other than line-haul charges. Examples of accessorial charges are:

(1) Inside delivery, redelivery, reconsignment, and demurrage or detention for freight; and

(2) Packing, unpacking, appliance servicing, blocking and bracing, and special handling for household goods.

Agency is any executive agency, but does not include:

(1) A Government Controlled Corporation;

(2) The Tennessee Valley Authority;

(3) The Virgin Islands Corporation;

(4) The Atomic Energy Commission;

(5) The Central Intelligence Agency;

(6) The Panama Canal Commission; and

(7) The National Security Agency, Department of Defense.

Bill of lading, sometimes referred to as a commercial bill of lading (but includes GBLs), is the document used as a receipt of goods and documentary evidence of title.

Cargo preference is the legal requirement for all, or a portion of all, ocean-borne cargo to be transported on U.S. flag vessels.

Commuted rate system is the system under which an agency may allow its employees to make their own household goods shipping arrangements, and apply for reimbursement.

Consignee is the person or agent to whom freight or household goods are delivered.

Consignor is the person or firm that ships freight or household goods to a consignee.

Contract of carriage is a contract between the TSP and the agency to transport freight or household goods.

Debarment is an action to exclude a TSP, for a period of time, from providing services under a rate tender or any contract under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.406).

Demurrage is the penalty charge to an agency for delaying the agreed time to load or unload shipments by rail or ocean TSPs.

Detention is the penalty charge to an agency for delaying the agreed time to load or unload shipments by truck TSPs.

Electronic commerce is an electronic technique for carrying out business transactions (ordering and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, charge cards, electronic funds transfers, and electronic data interchange.

Foreign flag vessel is any vessel of foreign registry including vessels owned by U.S. citizens but registered in a foreign country.

Freight is property or goods transported as cargo.

Government bill of lading (GBL) is the Optional Form 1103 or 1203, the transportation document used as a receipt of goods, evidence of title, and a contract of carriage.

Governmentwide Transportation Policy Council (GTPC) is an interagency forum to help GSA formulate policy. It provides agencies managing transportation programs a forum to exchange information and ideas to solve common problems. For further information on this council, see web site: *http://www.policyworks.gov/transportation.*

Hazardous material is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety, and property when transported in commerce, and labels as hazardous under section 5103 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5103 *et seq.*). When transported internationally hazardous material may be classified as ''Dangerous Goods.'' All such freight must be marked in accordance with applicable regulations and the carrier must be notified in advance.

Household goods (HHG) are the personal effects of Government employees and their dependents.

Line-Haul is the movement of freight between cities excluding pickup and delivery service.

Mode is a method of transportation, such as rail, motor, air, water, or pipeline.

Rate schedule is a list of freight rates, taxes, and charges assessed against non-household goods cargo.

Rate tender is an offer a TSP sends to an agency, containing service rates and charges.

Receipt is a written or electronic acknowledgment by the consignee or TSP as to when and where a shipment was received.

Release/declared value is stated in dollars and is considered the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. The statement of released value must be shown on any applicable tariff, tender, or other document covering the shipment.

Reparation is a payment to or from an agency to correct an improper transportation billing involving a TSP. Improper routing, overcharges or duplicate payments may cause such improper billing. This is different from a payment to settle a claim for loss and damage.

Suspension is an action taken by an agency to disqualify a TSP from receiving orders for certain services under a contract or rate tender (48 CFR part 9, subpart 9.407).

Transportation document is any executed agreement for transportation service, such as bill of lading, Government bill of lading (GBL), Government travel request (GTR) or transportation ticket.

Transportation service provider (TSP) is any party, person, agent or carrier that provides freight or passenger transportation and related services to an agency. For a freight shipment this would include packers, truckers and storers. For passenger transportation this would include airlines, travel agents and travel management centers.

U.S. flag air carrier is an air carrier holding a certificate issued by the United States under 49 U.S.C. 41102 (49

U.S.C. 40118, 48 CFR part 47, subpart 47.4).

U.S. flag vessel is a commercial vessel, registered and operated under the laws of the U.S., owned and operated by U.S. citizens, and used in commercial trade of the United States.

Subpart B—Acquiring Transportation or Related Services

§ 102–117.30 What choices do I have when acquiring transportation or related services?

When you acquire transportation or related services you may:

(a) Use the GSA tender of service;

(b) Use another agency's contract or rate tender with a TSP only if allowed by the terms of that agreement or if the Administrator of General Services delegates authority to another agency to enter an agreement available to other Executive agencies;

(c) Contract directly with a TSP using the acquisition procedures under the Federal Acquisition Regulation (FAR) (48 CFR chapter 1); or

(d) Negotiate a rate tender under a Federal transportation procurement statute, 49 U.S.C. 10721 or 13712.

§ 102–117.35 What are the advantages and disadvantages of using GSA's tender of service?

(a) It is an advantage to use GSA's tender of service when you want to:

(1) Use GSA's authority to negotiate on behalf of the Federal Government and take advantage of the lower rates and optimum service that result from a larger volume of business;

(2) Use a uniform tender of service; and

(3) Obtain assistance with loss and damage claims.

(b) It is a disadvantage to use GSA's tender of service when:

(1) You want an agreement that is binding for a longer term than the GSA tender of service;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) You do not want to pay for the GSA administrative service charge as a participant in the GSA rate tender programs.

§ 102–117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?

It is advantageous to use another agency's contract or rate tender for transportation services when the contract or rate tender offers better or equal value than otherwise available to you.

§ 102–117.45 What other factors must I consider when using another agency's contract or rate tender?

When using another agency's contract or rate tender, you must:

(a) Assure that the contract or rate tender meets any special requirements unique to your agency;

(b) Pay any other charges imposed by the other agency for external use of their contract or rate tender; and

(c) Ensure the terms of the other agency's contract or rate tender allow you to use it.

§ 102–117.50 What are the advantages and disadvantages of contracting directly with a TSP under the FAR?

(a) The FAR is an advantage to use when:

(1) You ship consistent volumes in consistent traffic lanes;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) Your contract office is able to handle the requirement.

(b) The FAR may be a disadvantage when you:

(1) Cannot prepare and execute a FAR contract within your time frame; or

(2) Have recurring shipments between designated places, but do not expect sufficient volume to obtain favorable rates.

§ 102–117.55 What are the advantages and disadvantages of using a rate tender?

(a) Using a rate tender is an advantage when you:

(1) Have a shipment that must be made within too short a time frame to identify or solicit for a suitable contract; or

(2) Have shipments recurring between designated places, but do not expect sufficient volume to obtain favorable rates.

(b) Using a rate tender may be a disadvantage when:

(1) You have sufficient time to use the FAR and this would achieve better results;

(2) You require transportation service for which no rate tender currently exists; or

(3) A TSP may revoke or terminate the tender on short notice.

§ 102–117.60 What is the importance of terms and conditions in a rate tender or other transportation document?

Terms and conditions are important to protect the Government's interest and establish the performance and standards expected of the TSP. It is important to remember that terms and conditions are:

(a) Negotiated between the agency and the TSP before movement of any item; and

(b) Included in all contracts and rate tenders listing the services the TSP is offering to perform at the cost presented in the rate tender or other transportation document.

Note to § 102–117.60: You must reference the negotiated contract or rate tender on all transportation documents. For further information see § 102–117.65.

§ 102–117.65 What terms and conditions must all rate tenders or contracts include?

All rate tenders and contracts must include, at a minimum, the following terms and conditions:

(a) Charges cannot be prepaid.

(b) Charges are not paid at time of delivery.

(c) Interest shall accrue from the voucher payment date on overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury according to the Debt Collection Act of 1982, 31 U.S.C. 3717.

(d) To qualify for the rates specified in a rate tender filed under the provisions of the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712), property must be shipped by or for the Government and the rate tender must indicate the Government is either the consignor or the consignee and include the following statement:

Transportation is for the (agency name) and the total charges paid to the transportation service provider by the consignor or consignee are for the benefit of the Government.

(e) When using a rate tender for transportation under a cost-reimbursable contract, include the following statement in the rate tender:

Transportation is for the (agency name), and the actual total transportation charges paid to the transportation service provider by the consignor or consignee are to be reimbursed by the Government pursuant to cost reimbursable contract (number). This may be confirmed by contacting the agency representative at (name, address and telephone number).

(f) Other terms and conditions that may be specific to your agency or the TSP such as specialized packaging requirements or HAZMAT. For further information see the ''U.S. Government Freight Transportation Handbook,'' available by contacting:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://www.fss.gsa.gov/transtrav

§ 102–117.70 Where do I find more information on terms and conditions?

You may find more information about terms and conditions in part 102–118 of this chapter, or the ''U.S. Government

Freight Transportation Handbook'' (see § 102–117.65(f)).

§ 102–117.75 How do I reference the rate tender on transportation documents?

To ensure proper reference of a rate tender on all shipments, you must show the applicable rate tender number and carrier identification on all transportation documents, such as, section 13712 quotation, ''ABC Transportation Company, Tender Number * * *''.

§ 102–117.80 How are rate tenders filed?

(a) The TSP must file a written rate tender with your agency.

(b) You must send two copies of the rate tender to:

General Services Administration
Federal Supply Service, Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://www.fss.gsa.gov/transtrav

§ 102–117.85 What is the difference between a Government bill of lading (GBL) and a bill of lading?

(a) A Government bill of lading (GBL), Optional Forms 1103 and 1203, is a controlled document that conveys specific terms and conditions to protect the Government interest and serves as the contract of carriage.

(b) A bill of lading, sometimes referred to as a commercial bill of lading, is the document used as a receipt of goods and documentary evidence of title.

(c) Use a bill of lading for Government shipments if the specific terms and conditions of a GBL are included in any contract or rate tender (see § 102–117.65) and the bill of lading makes reference to that contract or rate tender (see § 102–117.75 and the ''U.S. Government Freight Transportation Handbook'').

§ 102–117.90 May I use U.S. Government bill of lading (GBL) (Optional Forms 1103 and 1203), to acquire freight, household goods or other related transportation services?

You may use the GBL, Optional Forms 1103 or 1203, to acquire transportation services offered under a contract or rate tender until September 30, 2001. The GBL will completely phase out for domestic shipments on September 30, 2001, and be replaced by commercial bills of lading. After September 30, 2001, you may use the GBL only for international shipments (including domestic offshore shipments).

§ 102–117.95 After the GBLs retire for domestic shipments, what transportation documents must I use to acquire freight, household goods or other transportation services?

Bills of lading and purchase orders are the transportation documents you use to acquire freight, household goods and other transportation services after the GBLs retire for domestic shipments. Terms and conditions in § 102–117.65 and the ''U.S. Government Freight Transportation Handbook'' will still be required. For further information on payment methods, see part 102–118 of this chapter.

Subpart C—Business Rules To Consider Before Shipping Freight or Household Goods

§ 102–117.100 What business rules must I consider before acquiring transportation or related services?

When acquiring transportation or related services you must:

(a) Use the mode or individual transportation service provider (TSP) that provides the overall best value to the agency. For more information, see §§ 102–117.105 through 102–117.130;

(b) Demonstrate no preferential treatment to any TSP when arranging for transportation services except on international shipments. Preference on international shipments must be given to United States registered commercial vessels and aircraft;

(c) Ensure that small businesses receive equal opportunity to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(d) Encourage minority-owned businesses and women-owned businesses, to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(e) Review the need for insurance. Generally, the Government is self-insured; however, there are instances when the Government will purchase insurance coverage for Government property. An example may be cargo insurance for international air cargo shipments to cover losses over those allowed under the International Air Transport Association (IATA) or for ocean freight shipments; and

(f) Consider the added requirements on international transportation found in subpart D of this part.

§ 102–117.105 What does best value mean when routing a shipment?

Best value to your agency when routing a shipment means using the mode or individual TSP providing the best combination of satisfactory service factors.

§ 102–117.110 What is satisfactory service?

You should consider the following factors in assessing whether a TSP offers satisfactory service:

(a) Availability and suitability of the TSP's equipment;

(b) Adequacy of shipping and receiving facilities at origin and destination;

(c) Adequacy of pickup and/or delivery service;

(d) Availability of accessorial and special services;

(e) Estimated time in transit;

(f) Record of past performance of the TSP including accuracy of billing;

(g) Capability of warehouse equipment and storage space; and

(h) Experience of company, management, and personnel to perform the requirements.

§ 102–117.115 How do I calculate total delivery costs?

You calculate total delivery costs for a shipment by considering all costs related to the shipping or receiving process, such as packing, blocking, bracing, drayage, loading and unloading, and transporting.

§ 102–117.120 To what extent must I equally distribute orders for transportation and related services among TSPs?

You must assure that small businesses, socially or economically disadvantaged and women-owned TSPs have equal opportunity to provide the transportation or related services.

§ 102–117.125 How detailed must I describe property for shipment when communicating to a TSP?

You must describe property in enough detail for the TSP to determine the type of equipment or any special precautions necessary to move the shipment. Details might include weight, volume, measurements, routing, hazardous cargo, or special handling designations.

§ 102–117.130 Must I select TSPs who use alternative fuels?

No, but, whenever possible, you are encouraged to select TSPs that use alternative fuel vehicles and equipment, under policy in the Clean Air Act Amendments of 1990 (42 U.S.C. 7612) or the Energy Policy Act of 1992 (42 U.S.C. 13212).

Subpart D—Restrictions That Affect International Transportation of Freight and Household Goods

§ 102–117.135 What are the international transportation restrictions?

Several statutes mandate the use of U.S. flag carriers for international shipments (see 48 CFR part 47, subparts 47.4 and 47.5). For example:

(a) Arrangements for international air transportation services must follow the Fly America Act (International Air Transportation Fair Competitive Practices Act of 1974) (49 U.S.C. 40118); and

(b) International movement of property by water is subject to the cargo preference laws (see 46 CFR part 381 and 48 CFR part 47, subpart 47.5), which require the use of a U.S. flag carrier when service is available. The Maritime Administration (MARAD) monitors agency compliance of these laws. All Government shippers must send a rated copy of the ocean carrier's bill of lading to MARAD within 30 days of loading aboard a vessel to:

Department of Transportation
Maritime Commission
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
http://www.marad.dot.gov/
Tel. 1–800–9US-FLAG
E-mail: cargo@marad.dot.gov

Note to § 102–117.135(b): Non-vessel Operations Common Carrier (NVOCC) or freight forwarder bills of lading are not acceptable (see 48 CFR part 47).

§ 102–117.140 What is cargo preference?

Cargo preference is the statutory requirement that all, or a portion of all, ocean-borne cargo that moves internationally be transported on U.S. flag vessels. Deviations or waivers from the cargo preference laws must be approved by:

Department of Transportation
Maritime Administration
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
http://www.marad.dot.gov/
Tel. 1–800–9US-FLAG
e-mail: cargo@marad.dot.go

§ 102–117.145 What are coastwise laws?

Coastwise laws refer to laws governing shipment of freight, household goods and passengers by water between points in the United States or its territories. The purpose of these laws is to assure reliable shipping service and the existence of a maritime capability in times of war or national emergency (see section 27 of the Merchant Marine Act of 1920, 46 App. U.S.C. 883, 19 CFR 4.80).

§ 102–117.150 What do I need to know about coastwise laws?

You need to know that:

(a) Goods transported entirely or partly by water between U.S. points, either directly or via a foreign port, must travel in U.S. Maritime Administration (MARAD) authorized U.S. Flag vessels;

(b) There are exceptions and limits for the U.S. Island territories and possessions in the Atlantic and Pacific Oceans (see § 102–117.155); and

(c) The Secretary of the Treasury is empowered to impose monetary penalties against agencies that violate the coastwise laws.

§ 102–117.155 Where do I go for further information about coastwise laws?

You may refer to 46 App. U.S.C. 883, 19 CFR 4.80, DOT MARAD, the U.S. Coast Guard or U.S. Customs Service for further information on exceptions to the coastwise laws.

Subpart E—Shipping Freight

§ 102–117.160 What is freight?

Freight is property or goods transported as cargo.

§ 102–117.165 What shipping process must I use for freight?

Use the following shipping process for freight:

(a) For domestic shipments you must:

(1) Identify what you are shipping;

(2) Decide if the cargo is HAZMAT, classified, or sensitive that may require special handling or placards;

(3) Decide mode;

(4) Check for applicable contracts or rate tenders within your agency or other agencies, including GSA;

(5) Select the most efficient and economical TSP that gives the best value;

(6) Prepare shipping documents; and

(7) Schedule pickup, declare released value and ensure prompt delivery with a fully executed receipt, and oversee shipment.

(b) For international shipments you must follow all the domestic procedures and, in addition, comply with the cargo preference laws. For specific information, see subpart D of this part.

§ 102–117.170 What reference materials are available to ship freight?

(a) The following is a partial list of handbooks and guides available from GSA:

(1) U.S. Government Freight Transportation Handbook;

(2) Limited Authority to Use Commercial Forms and Procedures;

(3) Submission of Transportation Documents; and

(4) Things to be Aware of When Routing or Receiving Freight Shipments.

(b) For the list in paragraph (a) of the section and other reference materials, contact:

(1) General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW., Washington, DC 20405, http://www.fss.gsa.gov/transtrav; or

(2) General Services Administration, Federal Supply Service, 1500 Bannister Road, Kansas City, MO 64131, http://www.kc.gsa.gov/fsstt.

§ 102–117.175 What factors do I consider to determine the mode of transportation?

Your shipping urgency and any special handling requirements determine which mode of transportation you select. Each mode has unique requirements for documentation, liability, size, weight and delivery time. HAZMAT, radioactive, and other specialized cargo may require special permits and may limit your choices.

§ 102–117.180 What transportation documents must I use to ship freight?

To ship freight:

(a) By land (domestic shipments), use a bill of lading;

(b) By land (international shipments), use the GBL;

(c) By ocean, use an ocean bill of lading, when suitable, along with the GBL; and

(d) By air, use a bill of lading.

§ 102–117.185 Where must I send a copy of the transportation documents?

(a) You must forward an original copy of all transportation documents to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405

(b) For all property shipments subject to the cargo preference laws (see § 102–117.140), a copy of the ocean carrier's bill of lading, showing all freight charges, must be sent to MARAD within 30 days of vessel loading.

§ 102–117.190 Where do I file a claim for loss or damage to property?

You must file a claim for loss or damage to property with the TSP.

§ 102–117.195 Are there time limits affecting filing of a claim?

Yes, several statutes limit the time for administrative or judicial action against a TSP. Refer to part 102–118 of this chapter for more information and the time limit tables.

Subpart F—Shipping Hazardous Material (HAZMAT)

§ 102–117.200 What is HAZMAT?

HAZMAT is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety and property when transported in commerce. Therefore, there are restrictions on transporting HAZMAT (49 U.S.C. 5103 *et seq.*).

§ 102–117.205 What are the restrictions for transporting HAZMAT?

Agencies that ship HAZMAT are subject to the Environmental Protection Agency and the Department of Transportation regulations, as well as applicable State and local government rules and regulations.

§ 102–117.210 Where can I get guidance on transporting HAZMAT?

The Secretary of Transportation prescribes regulations for the safe transportation of HAZMAT in intrastate, interstate, and foreign commerce in 49 CFR parts 171 through 180. The Environmental Protection Agency also prescribes regulations on transporting HAZMAT in 40 CFR parts 260 through 266. You may also call the HAZMAT information hotline at 1–800–467–4922 (Washington, DC area, call 202–366–4488).

Subpart G—Shipping Household Goods

§ 102–117.215 What are household goods (HHG)?

Household goods (HHG) are the personal effects of Government employees and their dependents.

§ 102–117.220 What choices do I have to ship HHG?

(a) You may choose to ship HHG by:

(1) Using the commuted rate system;

(2) GSA's Centralized Household Goods Traffic Management Program (CHAMP);

(3) Contracting directly with a TSP, (including a relocation company that offers transportation services) using the acquisition procedures under the Federal Acquisition Regulation (FAR) (see § 102–117.35);

(4) Using another agency's contract with a TSP (see § § 102–117.40 and 102–117.45);

(5) Using a rate tender under the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712) (see § 102–117.35).

(b) As an alternative to the choices in paragraph (a) of this section, you may request the Department of State to assist with shipments of HHG moving to, from, and between foreign countries or international shipments originating in the continental United States. The nearest U.S. Embassy or Consulate may assist with arrangements of movements originating abroad. For further information contact:

Department of State
Transportation Operations
2201 C Street, NW.
Washington, DC 20520

Note to § –117.220: Agencies must use the commuted rate system for civilian employees who transfer between points inside the continental United States unless it is evident from the cost comparison that the Government will incur a savings ($100 or more) using another choice listed. The use of household goods rate tenders is not authorized when household goods are shipped under the commuted rate system.

§ 102–117.225 What is the difference between a contract or a rate tender and a commuted rate system?

(a) Under a contract or a rate tender, the agency prepares the bill of lading and books the shipment. The agency is the shipper and pays the TSP the applicable charges. If loss or damage occurs, the agency may either file a claim on behalf of the employee directly with the TSP, or help the employee in filing a claim against the TSP.

(b) Under the commuted rate system an employee arranges for shipping HHG and is reimbursed by the agency for the resulting costs. Use this method only within the continental United States (not Hawaii or Alaska). The agency reimburses the employee according to the Commuted Rate Schedule published by the GSA. The Commuted Rate Schedule (without rate table) is available on the Internet at http://www.policyworks.gov.

(c) For rate table information or a subscription for the Commercial Relocation Tariff contact:

American Moving and Storage Association
1611 Duke Street
Alexandria, VA 22314–3482
Tel. 703–683–7410

(d) For further information or assistance, you may contact:

General Services Administration
National Customer Service Center
1500 Bannister Road
Kansas City, MO 64131
http://www.kc.gsa.gov/fsstt

§ 102–117.230 Must I compare costs between a contract or a rate tender and the commuted rate system before choosing which method to use?

Yes, you must compare the cost between a contract or a rate tender, and the commuted rate system before you make a decision.

§ 102–117.235 How do I get a cost comparison?

(a) You may calculate a cost comparison internally according to 41 CFR 302–8.3.

(b) You may request GSA to perform the cost comparison if you participate in the CHAMP program by sending GSA the following information as far in advance as possible (preferably 30 calendar days):

(1) Name of employee;

(2) Origin city, county and State;

(3) Destination city, county, and State;

(4) Date of household goods pick up;

(5) Estimated weight of shipments;

(6) Number of days storage-in-transit (if applicable); and

(7) Other relevant data.

(c) For more information on cost comparisons contact:

General Services Administration
Federal Supply Service
1500 Bannister Road
Kansas City, MO 64131
http://www.kc.gsa.gov/fsstt

Note to § 102–117.235(c): GSA may charge an administrative fee for agencies not participating in the CHAMP program.

§ 102–117.240 What is my agency's financial responsibility to an employee who chooses to move all or part of his/her HHG under the commuted rate system?

(a) Your agency is responsible for reimbursing the employee what it would cost the Government to ship the employee's HHG by the most cost-effective means available or the employee's actual moving expenses, whichever is less.

(b) The employee is liable for the additional cost when the cost of transportation arranged by the employee is more than what it would cost the Government.

Note to § 102–117.240: For more information on how to ship household goods, refer to 41 CFR 302–8.3.

§ 102–117.245 What is my responsibility in providing guidance to an employee who wishes to use the commuted rate system?

You must counsel employees that they may be liable for all costs above the amount reimbursed by the agency if they select a TSP that charges more than provided under the Commuted Rate Schedule.

§ 102–117.250 What are my responsibilities after shipping the household goods?

(a) Each agency should develop an evaluation survey for the employee to complete following the move.

(b) Under the CHAMP program, you must counsel employees to fill out their portion of the GSA Form 3080,

Household Goods Carrier Evaluation Report. This form reports the quality of the TSP's performance. After completing the appropriate sections of this form, the employee must send it to the bill of lading issuing officer who in turn will complete the form and forward it to:

General Services Administration
National Customer Service Center
1500 Bannister Rd.
Kansas City, MO 64131
http://www.kc.gsa.gov.fss/fsstt

§ 102–117.255 What actions may I take if the TSP's performance is not satisfactory?

If the TSP's performance is not satisfactory, you may place a TSP in temporary nonuse, suspended status, or debarred status. For more information on doing this, see subpart I of this part and the FAR (48 CFR 9.406–3 and 9.407–3).

§ 102–117.260 What are my responsibilities to employees regarding the TSP's liability for loss or damage claims?

Regarding the TSP's liability for loss or damage claims, you must:

(a) Advise employees on the limits of the TSP's liability for loss of and damage to their HHG so the employee may evaluate the need for added insurance;

(b) Inform the employee about the procedures to file claims for loss and damage to HHG with the TSP; and

(c) Counsel employees, who have a loss or damage to their HHG that exceeds the amount recovered from a TSP, on procedures for filing a claim against the Government for the difference. Agencies may compensate employees up to $40,000 on claims for loss and damage under 31 U.S.C. 3721, 3723 (41 CFR 302–8.2(f)).

§ 102–117.265 Are there time limits that affect filing a claim with a TSP for loss or damage?

Yes, several statutes limit the time for filing claims or taking other administrative or judicial action against a TSP. Refer to part 102–118 of this chapter for information on claims.

Subpart H—Performance Measures

§ 102–117.270 What are agency performance measures for transportation?

(a) Agency performance measures are indicators of how you are supporting your customers and doing your job. By tracking performance measures you can report specific accomplishments and your success in supporting the agency mission. The Government Performance and Results Act (GPRA) of 1993 (31 U.S.C. 1115) requires agencies to develop business plans and set up program performance measures.

(b) Examples of performance measurements in transportation would include how well you:

(1) Increase the use of electronic commerce;

(2) Adopt industry best practices and services to meet your agency requirements;

(3) Use TSPs with a track record of successful past performance or proven superior ability;

(4) Take advantage of competition in moving agency freight and household goods;

(5) Assure that delivery of freight and household goods is on time against measured criteria; and

(6) Create simplified procedures to be responsive and adaptive to the customer needs and concerns.

Subpart I—Transportation Service Provider (TSP) Performance

§ 102–117.275 What performance must I expect from a TSP?

You must expect the TSP to provide consistent and satisfactory service to meet your agency transportation needs.

§ 102–117.280 What aspects of the TSP's performance are important to measure?

Important TSP performance measures may include, but are not limited to the:

(a) TSP's percentage of on-time deliveries;

(b) Percentage of shipments that include overcharges or undercharges;

(c) Percentage of claims received in a given period;

(d) Percentage of returns received on-time;

(e) Percentage of shipments rejected;

(f) Percentage of billing improprieties;

(g) Average response time on tracing shipments;

(h) TSP's safety record (accidents, losses, damages or misdirected shipments) as a percentage of all shipments;

(i) TSP's driving record (accidents, traffic tickets and driving complaints) as a percentage of shipments; and

(j) Percentage of customer satisfaction reports on carrier performance.

§ 102–117.285 What are my choices if a TSP's performance is not satisfactory?

You may choose to place a TSP in temporary nonuse, suspension, or debarment if performance is unsatisfactory.

§ 102–117.290 What is the difference between temporary nonuse, suspension and debarment?

(a) Temporary nonuse is limited to your agency and initiated by the agency transportation officers for a period not to exceed 90 days for:

(1) Willful violations of the terms of the rate tender;

(2) Persistent or willful failure to meet requested packing and pickup service;

(3) Failure to meet required delivery dates;

(4) Violation of Department of Transportation (DOT) hazardous material regulations;

(5) Mishandling of freight, damaged or missing transportation seals, improper loading, blocking, packing or bracing of property;

(6) Improper routing of property;

(7) Subjecting your shipments to unlawful seizure or detention by failing to pay debts;

(8) Operating without legal authority;

(9) Failure to settle claims according to Government regulations; or

(10) Repeated failure to comply with regulations of DOT, Surface Transportation Board, State or local governments or other Government agencies.

(b) Suspension is disqualifying a TSP from receiving orders for certain services under a contract or rate tender pending an investigation or legal proceeding. A TSP may be suspended on adequate evidence of:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation;

(2) Violation of Federal or State antitrust statutes;

(3) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(4) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the TSP as a transporter of the Government's property or the HHG of its employees relocated for the Government.

(c) Debarment means action taken to exclude a contractor from contracting with all Federal agencies. The seriousness of the TSP's acts or omissions and the mitigating factors must be considered in making any debarment decisions. A TSP may be debarred for the following reasons:

(1) Failure of a TSP to take the necessary corrective actions within the period of temporary nonuse; or

(2) Conviction of or civil judgment for any of the causes for suspension.

§ 102–117.295 Who makes the decisions on temporary nonuse, suspension and debarment?

(a) The transportation officer may place a TSP in temporary nonuse for a period not to exceed 90 days.

(b) The serious nature of suspension and debarment requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Only the agency head or his/her designee may suspend or debar a TSP.

§ 102–117.300 Do the decisions on temporary nonuse, suspension and debarment go beyond the agency?

(a) Temporary nonuse does not go beyond the agency.

(b) GSA compiles and maintains a current list of all suspended or debarred TSPs and periodically distributes the list to all agencies and the General Accounting Office.

§ 102–117.305 Where do I go for information on the process for suspending or debarring a TSP?

Refer to the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4) for policies and procedures governing suspension and debarment of a TSP.

§ 102–117.310 What records must I keep on temporary nonuse, suspension or debarment of a TSP?

(a) You must set up a program consistent with your agency's internal record retention procedures to document the placement of TSPs in a nonuse, suspended or debarred status.

(b) For temporary nonuse, your records must contain the following information:

(1) Name, address, and Standard Carrier Alpha Code and Taxpayer Identification Number of each TSP placed in temporary nonuse status;

(2) The duration of the temporary nonuse status;

(3) The cause for imposing temporary nonuse, and the facts showing the existence of such a cause;

(4) Information and arguments in opposition to the temporary nonuse period sent by the TSP or its representative; and

(5) The reviewing official's determination about keeping or removing temporary nonuse status.

(c) For suspended or debarred TSPs, your records must include the same information as paragraph (b) of this section and you must:

(1) Assure your agency does not award contracts to a suspended or debarred TSP; and

(2) Notify GSA (see § 102–117.315).

§ 102–117.315 Who must I notify on suspension or debarment of a TSP?

Agencies must report monthly any suspension or debarment actions to:

General Services Administration
Office of Acquisition Policy (MV)
1800 F Street, NW.
Washington, DC 20405
http://www.epls.arnet.gov;

Subpart J—Representation Before Regulatory Body Proceedings

§ 102–117.320 What is a transportation regulatory body proceeding?

A transportation regulatory body proceeding is a hearing before a transportation governing entity, such as a State public utility commission, the Surface Transportation Board, or the Federal Maritime Commission. The proceeding may be at the Federal or State level depending on the activity regulated.

§ 102–117.325 May my agency appear on its own behalf before a transportation regulatory body proceeding?

Generally, no executive agency may appear on its own behalf in any proceeding before a transportation regulatory body, unless the Administrator of General Services delegates the authority to the agency. The statutory authority for the Administrator of General Services to participate in regulatory proceedings on behalf of all Federal agencies is in section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)(4)).

§ 102–117.330 When, or under what circumstances, would GSA delegate authority to an agency to appear on its own behalf before a transportation regulatory body proceeding?

GSA will delegate authority when it does not have the expertise, or when it is outside of GSA's purview, to make a determination on an issue such as a protest of rates, routings or excessive charges.

§ 102–117.335 How does my agency ask for a delegation to represent itself in a regulatory body proceeding?

You must send your request for delegation with enough detail to explain the circumstances surrounding the need for delegation of authority for representation to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405

§ 102–117.340 What other types of assistance may GSA provide agencies in dealing with regulatory bodies?

(a) GSA has oversight of all public utilities used by the Federal Government including transportation. There are specific regulatory requirements a TSP must meet at the State level, such as the requirement to obtain a certificate of public convenience and necessity.

(b) GSA has a list of TSPs, which meet certain criteria regarding insurance and safety, approved by DOT. You must furnish GSA with an affidavit to determine if the TSP meets the basic qualification to protect the Government's interest. As an oversight mandate, GSA coordinates this function. For further information contact:

General Services Administration
Federal Supply Service
Office of Transportation and Property Management
Travel and Transportation Management Division (FBL)
Crystal Mall Bldg. #4, Room 814
Washington, DC 20406

Subpart K—Reports

§ 102–117.345 Is there a requirement for me to report to GSA on my transportation activities?

(a) Currently, there is no requirement for reporting to GSA on your transportation activities. However, GSA will work with your agency and other agencies to develop reporting requirements and procedures. In particular, GSA will develop a Governmentwide transportation reporting system by October 1, 2002.

(b) Preliminary reporting requirements may include an electronic formatted report on the quantity shipped, locations (from and to) and cost of transportation. The following categories are examples:

(1) Dollar amount spent for transportation;

(2) Volume of weight shipped;

(3) Commodities shipped;

(4) HAZMAT shipped;

(5) Mode used for shipment;

(6) Location of items shipped (international or domestic); and

(7) Domestic subdivided by East and West (Interstate 85).

§ 102–117.350 How will GSA use reports I submit?

(a) Reporting on transportation and transportation related services will provide GSA with:

(1) The ability to assess the magnitude and key characteristics of transportation within the Government (*e.g.,* how much agencies spend; what type of commodity is shipped; *etc.*);

(2) Data to analyze and recommend changes to policies, standards, practices, and procedures to improve Government transportation; and

(3) A better understanding of how your activity relates to other agencies and your influence on the Governmentwide picture of transportation services.

(b) In addition, this information will assist you in showing your management the magnitude of your agency's transportation program and the effectiveness of your efforts to control cost and improve service.

Subpart L—Governmentwide Transportation Policy Council (GTPC)

§ 102–117.355 What is the Governmentwide Transportation Policy Council (GTPC)?

The Office of Governmentwide Policy sponsors a Governmentwide Transportation Policy Council (GTPC) to help agencies establish, improve, and maintain effective transportation management policies, practices and procedures. The council:

(a) Collaborates with private and public stakeholders to develop valid performance measures and promote solutions that lead to effective results; and

(b) Provides assistance in developing the Governmentwide transportation reporting system (see § 102–117.345).

§ 102–117.360 Where can I get more information about the GTPC?

For more information about the GTPC, contact:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
http://www.policyworks.gov/transportation

Dated: September 26, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–25130 Filed 10–5–00; 8:45 am]

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Federal Register

Friday,
October 6, 2000

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Hospice Wage Index; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1135–N]

[RIN 0938–AK13]

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual update to the hospice wage index as required by statute. This update is effective October 1, 2000 through September 30, 2001. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published in the **Federal Register** on August 8, 1997.

EFFECTIVE DATE: This notice is effective on October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Carol Blackford, (410) 786–5909.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute and Regulations

Hospice Care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

Our existing regulations under 42 CFR part 418 (issued on December 16, 1983, effective for hospice services furnished on or after November 1, 1983) establish eligibility requirements and payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Subpart G of Part 418 provides for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

The regulations at § 418.306(c), which require the rates to be adjusted by a wage index, were revised in the August 8, 1997 final rule (62 FR 42860). This rule implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The committee reached consensus on the methodology. We included the resulting committee statement, describing that consensus, as an appendix to the August 8, 1997 final rule (62 FR 42883). The provisions of the final hospice wage index rule are as follows:

- The revised hospice wage index will be calculated using the most current available hospital wage data.
- The revised hospice wage index was phased in over a 3-year transition period. For the first year of the transition period, October 1, 1997 through September 30, 1998, a blended index was calculated by adding two-thirds of the 1983 index value for an area to one-third of the revised wage index value for that area. During the second year of the transition period, October 1, 1998 through September 30, 1999, the calculation was similar, except that the blend was one-third of the 1983 index value and two-thirds of the revised wage index value for that area. We fully implemented the revised wage index during the third transition period, October 1, 1999 through September 30, 2000.
- All hospice wage index values of 0.8 or greater are subject to a budget-neutrality adjustment to ensure that we do not pay more in the aggregate than we would have paid under the original wage index. The budget-neutrality adjustment is calculated by multiplying the hospice wage index for a given area by the budget-neutrality adjustment factor. The budget-neutrality adjustment is to be applied annually, both during and after the transition period.
- All hospice wage index values below 0.8 receive the greater of the following adjustments: the wage index floor, a 15-percent increase, subject to a maximum wage index value of 0.8; or, the budget-neutrality adjustment.
- The wage index is to be updated annually, in the **Federal Register,** based on the most current available hospital wage data. These data will include any changes to the definitions of Metropolitan Statistical Areas (MSA).

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for fiscal years (FYs) 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. However, section 131(a) of the Balanced Budget Refinement Act of 1999 (BBRA) changed the payment rates for FYs 2001 and 2002 by increasing the FY 2001 rate by 0.5 percent and the FY 2002 rate by 0.75 percent. Section 131(b) of the BBRA states that any additional payments made under section 131(a) of the BBRA shall not be included in updating the hospice rates after those 2 years.

B. Update to the Hospice Wage Index

This annual update is effective October 1, 2000 through September 30, 2001. In accordance with the agreement signed by the Health Care Financing Administration (HCFA) and all other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current HCFA hospital data available, including any changes to the definitions of MSAs. The FY 2000 hospital wage index was the most current hospital wage data available when the FY 2001 wage index values were calculated. We used the pre-reclassified and pre-floor hospital area wage index data.

All wage index values are adjusted by a budget-neutrality factor of 1.065425 and are subject to the wage index floor adjustment, if applicable. We have completed all of the calculations described above and included them in the wage index values reflected in both Tables A and B below. A detailed description of the method used to compute the hospice wage index is contained in both the September 4, 1996 proposed rule (61 FR 46579) and the August 8, 1997 final rule (62 FR 42860).

After the publication of the FY 2000 hospice wage index updates, we received a number of questions about the methodology used to calculate the hospice wage indices. We would like to take this opportunity to further explain the methodology used in determining the hospice wage indices.

1. Metropolitan Statistical Areas

As explained in the September 4, 1996 hospice wage index proposed rule, each hospice=s labor market area would be established by the MSA definitions issued by the Office of Management and Budget (OMB) on December 28, 1992 based on the 1990 census, and updated periodically by OMB. Any changes to the MSA definitions would be effective annually and announced in the final rule updating the hospice wage index.

2. MSA Wage Index Values Lower Than Rural Values

As explained above, any area not included in an MSA is considered to be nonurban and receives the statewide rural rate. We are aware that in the past, a number of MSAs have had wage index values that were lower than their rural statewide value. This difference is due to variations in local wage data as compared to national wage data. The hospice wage index is computed by dividing the hourly wage rate for an MSA or nonurban area by a national hourly wage rate. Nonurban areas could receive a higher wage index value than urban areas in the same state if the hourly wage rate in the nonurban area increased at a greater rate.

C. Tables

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
0040	Abilene, TX	0.8715
	Taylor, TX	
0060	Aguadilla, PR	0.4386
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	1.0829
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.1052
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY.	0.9328
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.9056
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.8385
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA.	1.0897
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9954
	Blair, PA	
0320	Amarillo, TX	0.8929
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.3701
	Anchorage, AK	
0440	Ann Arbor, MI	1.2235
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.9017
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI.	0.9496
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.5537
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.9466
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	1.0340
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0709
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.2051
	Atlantic, NJ	
	Cape May, NJ	
0580	Aubrn-Opelika, AL	0.8256
	Lee, AL	
0600	Augusta-Aiken, GA–SC	0.9603
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9676
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	1.0248
	Kern, CA	
0720	Baltimore, MD	1.0539
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	1.0239
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA.	1.4173
	Barnstable, MA	
0760	Baton Rouge, LA	0.9278
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX.	0.9129
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.2141
	Whatcom, WA	
0870	Benton Harbor, MI	0.9011
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2816
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	1.0696
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.8383
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.9324
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9584
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.8267
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.9155
	Monroe, IN	
1040	Bloomington-Normal, IL	0.9582
	McLean, IL	
1080	Boise City, ID	0.9654
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.2102
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0596
	Boulder, CO	
1145	Brazoria, TX	0.9074
	Brazoria, TX	
1150	Bremerton, WA	1.1733
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX.	0.9816
	Cameron, TX	
1260	Bryan-College Station, TX.	0.9057
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY.	1.0233
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.1250
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.5245
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH ..	0.9346
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9802
	Natrona, WY	
1360	Cedar Rapids, IA	0.9609
	Linn, IA	
1400	Champaign-Urbana, IL	0.9764
	Champaign, IL	
1440	Charleston-North Charleston, SC.	0.9577
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.9691
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC.	1.0051
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.1267
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA ..	1.0369
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8711
	Laramie, WY	
1600	Chicago, IL	1.1585
	Cook, IL	
	DeKalb, IL	
	Du Page, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.1071
	Butte, CA	
1640	Cincinnati, OH–KY–IN ..	1.0035
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Dearborn, IN	
	Ohio, IN	
1660	Clarksville-Hopkinsville, TN–KY.	0.8619
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH.	1.0323
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO ..	0.9821
	El Paso, CO	
1740	Columbia, MO	0.9488
	Boone, MO	
1760	Columbia, SC	0.9970
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.9068
	Chattahochee, GA	
	Harris, GA	
	Muscogee, GA	
	Russell, AL	
1840	Columbus, OH	1.0556
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.9271
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, Oregon	1.1813
	Benton, OR	
1900	Cumberland, MD–WV ..	0.9378
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	1.0236
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9277
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL.	1.0080
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9576
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9248
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.9248
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8867
	Macon, IL	
2080	Denver, CO	1.0857
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.9328
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.1104
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.8309
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9947
	Kent, DE	
2200	Dubuque, IA	0.9079
	Dubuque, IA	
2240	Duluth-Superior, MN–WI.	1.0831
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY ..	1.1243
	Dutchess, NY	
2290	Eau Claire, WI	0.9544
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9533
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9994
	Elkhart, IN	
2335	Elmira, NY	0.9092
	Chemung, NY	
2340	Enid, OK	0.8474
	Garfield, OK	
2360	Erie, PA	0.9614
	Erie, PA	
2400	Eugene-Springfield, OR	1.1298
	Lane, OR	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
2440	Evansville-Henderson, IN–KY.	0.8847
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN.	0.9185
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.9051
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR.	0.8283
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.1026
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1742
	Genesee, MI	
2650	Florence, AL	0.8447
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.9183
	Florence, SC	
2670	Fort Collins-Loveland, CO.	1.0977
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0839
	Broward, FL	
2700	Fort Myers-Cape Coral, FL.	0.9537
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL.	1.0653
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	0.8357
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	0.9284
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9692
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Fort Worth-Arlington, TX.	1.0480
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0935
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.9258
	Etowah, AL	
2900	Gainesville, FL	1.0764
	Alachua, FL	
2920	Galveston-Texas City, TX.	1.0370
	Galveston, TX	
2960	Gary, IN	1.0005
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.9170
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8879
	Wayne, NC	
2985	Grand Forks, ND–MN ..	0.9693
	Grand Forks, ND	
	Polk, MN	
2995	Grand Junction, CO	0.9790
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI.	1.0799
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	1.1144
	Cascade, MT	
3060	Greeley, CO	1.0359
	Weld, CO	
3080	Green Bay, WI	0.9731
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC.	0.9629
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	1.0123
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC.	0.9790
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.9422
	Washington, MD	
3200	Hamilton-Middletown, OH.	0.9532
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA.	1.0567
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.2483
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.8134
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC.	0.9709
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.2228
	Honolulu, HI	
3350	Houma, LA	0.8350
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	1.0002
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH.	1.0396
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.9400
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	1.0434
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	1.0237
	Johnson, IA	
3520	Jackson, MI	0.9419
	Jackson, MI	
3560	Jackson, MS	0.8936
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.9164
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	0.9544
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.8367
	Onslow, NC	
3610	Jamestown, NY	0.8372
	Chautauqua, NY	
3620	Janesville-Beloit, WI	1.0289
	Rock, WI	
3640	Jersey City, NJ	1.2440
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA.	0.9433
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.9206
	Cambria, PA	
	Somerset, PA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
3700	Jonesboro, AR	0.8000
	Craighead, AR	
3710	Joplin, MO	0.8181
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI.	1.0635
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	0.9162
	Kankakee, IL	
3760	Kansas City, KS–MO	0.9932
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9625
	Kenosha, WI	
3810	Killeen-Temple, TX	1.0583
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.9802
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.9503
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.9519
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8886
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.9386
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.8488
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL.	0.9393
	Polk, FL	
4000	Lancaster, PA	0.9862
	Lancaster, PA	
4040	Lansing-East Lansing, MI.	1.0631
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8868
	Webb, TX	
4100	Las Cruces, NM	0.9153
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1996
	Mohave, AZ	
	Clarke, NV	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Nye, NV	
4150	Lawrence, KS	0.8761
	Douglas, KS	
4200	Lawton, OK	1.0157
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9482
	Androscoggin, ME	
4280	Lexington, KY	0.9090
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.9489
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	1.0304
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR.	0.9179
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.9311
	Gregg, TX	
	Harrison, TX	.....
	Upshur, TX	
4480	Los Angeles-Long Beach, CA.	1.2841
	Los Angeles, CA	
4520	Louisville, KY–IN	0.9996
	Clark, IN	
	Floyd, IN	.....
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.8962
	Lubbock, TX	
4640	Lynchburg, VA	0.9392
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.9089
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0367
	Dane, WI	
4800	Mansfield, OH	0.9031
	Crawford, OH	.....
	Richland, OH	
4840	Mayaguez, PR	0.5376
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	.....
	San German, PR	.....
4880	McAllen-Edinburg-Mission, TX.	0.8652

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.1180
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL.	0.9905
	Brevard, Fl	
4920	Memphis, TN–AR–MS	0.8784
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0950
	Merced, CA	
5000	Miami, FL	1.0904
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ.	1.1851
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI.	1.0490
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI.	1.1645
	Anoka, MN	
	Carver, MN	
	Chisago, MN Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherbune, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9681
	Missoula, MT	
5160	Mobile, AL	0.8809
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0774
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.1996
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8760
	Ouachita, LA	
5240	Montgomery, AL	0.8208
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	1.1544
	Delaware, IN	
5330	Myrtle Beach, SC	0.9088
	Horry, SC	
5345	Naples, FL	1.0484
	Collier, FL	
5360	Nashville, TN	1.0068
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Rutherford TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.4997
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.3166
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT.	1.3242
	New London, CT	
5560	New Orleans, LA	0.9685
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.5469
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.2409
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY–PA	1.1624
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8993
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	James City, VA	
	Isle of Wight, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.6044
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	1.0245
	Marion, FL	
5800	Odessa-Midland, TX	0.9455
	Ector, TX	
	Midland, TX	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
5880	Oklahoma City, OK	0.9150
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.1648
	Thurston, WA	
5920	Omaha, NE–IA	1.1140
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.2349
	Orange, CA	
5960	Orlando, FL	1.0437
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8635
	Daviess, KY	
6015	Panama City, FL	0.9770
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH.	0.8896
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8995
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.8896
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.1891
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	1.0084
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.8202
	Jefferson, AR	
6280	Pittsburgh, PA	1.0265
	Allegheny, PA	
	Beaver,PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0927
	Berkshire, MA	
6340	Pocatello, ID	0.9561
	Bannock, ID	
6360	Ponce, PR	0.5717
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Yauco, PR	
6403	Portland, ME	1.0096
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA.	1.1694
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI.	1.1391
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	1.0461
	Utah, UT	
6560	Pueblo, CO	0.9433
	Pueblo, CO	
6580	Punta Gorda, FL	0.9509
	Charlotte, FL	
6600	Racine, WI	0.9820
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC.	1.0170
	Chatham, NC	
	Durham, NC	.....
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8911
	Pennington, SD	
6680	Reading, PA	1.0054
	Berks, PA	
6690	Redding, CA	1.2002
	Shasta, CA	
6720	Reno, NV	1.1353
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA.	1.1959
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA.	1.0171
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA.	1.1945
	Riverside, CA	
	San Bernardino, CA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
6800	Roanoke, VA	0.8672
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.2178
	Olmsted, MN	
6840	Rochester, NY	0.9786
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.9359
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9307
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.3089
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI.	0.9895
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	1.0038
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.9529
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9645
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
7080	Salem, OR	1.0601
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.5674
	Monterey, CA	
7160	Salt Lake City-Ogden, UT.	1.0500
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.8359
	Tom Green, TX	
7240	San Antonio, TX	0.8862
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.2712
7360	San Francisco, CA	1.4918
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.4500
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.5357
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA.	1.1156
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA.	1.1528
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA.	1.4840
	Santa Cruz, CA	
7490	Santa Fe, NM	1.1121
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3852
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	1.0554
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	1.0605
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton—Wilkes-Barre—Hazleton, PA.	0.8921
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA.	1.2030
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.8826
	Mercer, PA	
7620	Sheboygan, WI	0.8740
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9940
	Grayson, TX	
7680	Shreveport-Bossier City, LA.	0.9642
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	0.9108
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.9351
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	1.0435
	St. Joseph, IN	
7840	Spokane, WA	1.1507
	Spokane, WA	
7880	Springfield, IL	0.9252
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.8515
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.1377
	Hampden, MA	
	Hampshire, MA	
8840	Washington, DC–MD–VA–WV.	1.1778
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA.	0.9075
	Black Hawk, IA	
8940	Wausau, WI	1.0064
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL.	1.0668
	Palm Beach, FL	
9000	Wheeling, WV–OH	0.8144
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	1.0038
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.8154
	Archer, TX	
	Wichita, TX	
8050	State College, PA	0.9737
	Centre, PA	
8080	Steubenville-Weirton, OH–WV.	0.9179
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.1207
	San Joaquin, CA	
8140	Sumter, SC	0.8778
	Sumter, SC	
8160	Syracuse, NY	1.1377
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.2230
	Pierce, WA	
8240	Tallahassee, FL	0.9040
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL.	0.9637
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.9132
	Clay, IN	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR–Texarkana, TX.	0.8668
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	1.0458
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9937
	Shawnee, KS	
8480	Trenton, NJ	1.0764
	Mercer, NJ	
8520	Tucson, AZ	0.9315
	Pima, AZ	
8560	Tulsa, OK	0.8616
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8593
	Tuscaloosa, AL	
8640	Tyler, TX	0.9983
	Smith	
8680	Utica-Rome, NY	0.8842
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA.	1.4220
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.2206
8750	Victoria, TX	0.8927
8760	Vineland-Millville-Bridgeton, NJ.	1.1206
	Cumberland, NJ	
8780	Visalia-Turlare-Porterville, CA.	1.1093
	Tulare, CA	
8800	Waco, TX	0.8604
	McLennan, TX	
9140	Williamsport, PA	0.9003
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD.	1.2013
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	1.0343
	Brunswick, NC	
	New Hanover, NC	
9260	Yakima, WA	1.1009
	Yakima, WA	
9270	Yolo, CA	1.0356
	Yolo, CA	

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
9280	York, PA	0.9919
	York, PA	
9320	Youngstown-Warren, OH.	1.0651
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.1361
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	1.0574
	Yuma, AZ	

[1] This column lists each MSA area name (in italics) and each county, or county equivalent, in the MSA area. Counties not listed in this Table are considered to be Rural Areas. Wage Index values for these areas are found in Table B.

[2] Wage index values are based on FY 1996 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.065425. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and included them in the wage index values reflected in this table.

TABLE B.—WAGE INDEX FOR RURAL AREAS

MSA code No.	Nonurban area	Wage index [1]
9901	Alabama	0.8000
9902	Alaska	1.2847
9903	Arizona	0.9104
9904	Arkansas	0.8000
9905	California	1.0603
9906	Colorado	0.9391
9907	Connecticut	1.3226
9908	Delaware	0.9767
9910	Florida	0.9575
9911	Georgia	0.8625
9912	Hawaii	1.1430
9913	Idaho	0.9218
9914	Illinois	0.8575
9915	Indiana	0.8946
9916	Iowa	0.8446

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

MSA code No.	Nonurban area	Wage index [1]
9917	Kansas	0.8000
9918	Kentucky	0.8569
9919	Louisiana	0.8000
9920	Maine	0.9205
9921	Maryland	0.9197
9922	Massachusetts	1.2114
9923	Michigan	0.9392
9924	Minnesota	0.9237
9925	Mississippi	0.8000
9926	Missouri	0.8229
9927	Montana	0.8945
9928	Nebraska	0.8532
9929	Nevada	0.9693
9930	New Hampshire	1.0554
9931	New Jersey [2]	.....
9932	New Mexico	0.8927
9933	New York	0.9202
9934	North Carolina	0.8832
9935	North Dakota	0.8148
9936	Ohio	0.9216
9937	Oklahoma	0.8000
9938	Oregon	1.0514
9939	Pennsylvania	0.9083
9940	Puerto Rico	0.4886
9941	Rhode Island [2]	.....
9942	South Carolina	0.8805
9943	South Dakota	0.8073
9944	Tennessee	0.8152
9945	Texas	0.8000
9946	Utah	0.9490
9947	Vermont	1.0024
9948	Virgin Islands	0.7252
9949	Virginia	0.8421
9950	Washington	1.1131
9951	West Virginia	0.8597
9952	Wisconsin	0.9333
9953	Wyoming	0.9440
9965	Guam	1.0240

[1] Wage index values are based on FY 1996 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.065425. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and have included them in the wage index values reflected in this table.

[2] All counties within the State are classified as urban.

II. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866, the Unfunded Mandate Reform Act, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). In this notice, we identified an impact on hospices as a result of changes in the way we compute the hospice wage index. The change in the methodology for computing the wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). We recognize that the BBRA adjusted hospice payments upward by 0.5 percent; however, we did not do a separate analysis of the impact of this payment adjustment. We used the new rates adjusted by the BBRA when estimating the payments to be made under the new wage index and when calculating the budget-neutrality adjustment factor. Overall, we believe the changes included in this notice to be insignificant.

1. Executive Order 12866 and RFA

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). We have determined that this notice is not an economically significant rule under this Executive Order. The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Approximately 73 percent of Medicare certified hospices are identified as voluntary, government, or other agencies, and, therefore, are considered small entities. Because the National Hospice Organization estimates that approximately 70 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, the estimated decreases in payment to hospices overall are very slight. The most significant change is an increase in estimated payments to rural areas in East and West South Central, at 4.8 and 9.1 percent, respectively. The effects of this notice on West South Central alone, indicate that 54 of the 85 hospices in urban West South Central can be considered small entities that will experience an 9.1-percent increase in Medicare payments. Therefore, we anticipate this notice will have a significant, albeit positive, impact on a substantial number of small entities. However, the methodology for the hospice wage index was previously determined by consensus through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on the options considered, the committee determined that the methodology described in the committee statement, and adopted into regulation in the August 8, 1997 final rule, was favorable for the hospice community as well as for beneficiaries. Therefore, we believe that mitigating any negative effects on small entities has been taken into consideration.

2. Congressional Review

Section 804(2) of Title 5, United States Code (U.S.C.) (as added by section 251 of Pub. L. 104–121), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

We estimate that the impact of this notice will not be $100 million or more; therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not being forwarded to the Congress for a 60-day review period.

3. Unfunded Mandate

The Unfunded Mandate Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below the threshold as well.

4. Rural Hospital Impact

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside an MSA and has fewer than 50 beds.

Because this notice has no direct impact on small hospitals, in accordance with 5 U.S.C. 604, the

Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

5. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

A. Anticipated Effects

We have compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2001 wage index and determined the current hospice rates to be budget-neutral. As mentioned above, the negotiated rulemaking committee agreement required that we not pay more under the new wage index in the aggregate than we would have paid under the original wage index.

This impact analysis compares hospice payments under the FY 2000 hospice wage index to the estimated payments using the FY 2001 wage index. The data used in developing the quantitative analysis for this notice were obtained from the March 2000 update of the national claims history file of all bills submitted during FY 1999. We deleted bills from hospices that have since closed.

Table C demonstrates the results of our analysis. In Column 2 of Table C, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 of Table C indicates payments that were made using the FY 2000 wage index. Column 4 of Table C is based on FY 1999 claims and estimates payments to be made to hospices using the FY 2001 wage index. The final column, which compares Columns 3 and 4, shows the percent change in estimated hospice payments made based on the category of the hospice.

Table C categorizes hospices by various geographic and provider characteristics. The first row displays the results of the impact analysis for all Medicare certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 1,351 hospices located in urban areas and 798 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The sixth grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 1999. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

The results of our analysis shows that the greatest increases in payment are for rural areas in the West and East South Central Regions, with a 9.1 percent and 4.8 percent increase, respectively. The greatest decreases in payment are for urban areas in the New England and Mountain regions, each with a 0.4 percent decrease, and for rural areas in the Middle Atlantic and Pacific regions, each with a 0.4 percent decrease.

The breakdown by size, type of ownership, and facility base showed an increase in payments to all hospice programs. Small hospice programs showed significant increases of about 10 percent, while larger programs experienced only a negligible increase. Government-owned hospices showed the greatest estimated increase of 2.7 percent, while payments to voluntary hospices are expected to increase by 0.4 percent. In terms of hospice base, freestanding hospices showed the greatest estimated payment increase while home health agencies showed the smallest amount of payment increase.

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE

	Number of hospices (1)	Number of routine home care days in thousands (2)	Payments using FY 2000 wage index in thousands (3)	Estimated payments using FY 2001 wage index in thousands (4)	Percent change in Hospice payments (5)
(By geographic location):					
All Hospices	2,149	21,354	2,490,702	2,504,439	0.6
Urban Hospices	1,351	18,120	2,185,780	2,190,590	0.2
Rural Hospices	798	3,234	304,922	313,849	2.9
By Region—Urban:					
New England	94	642	89,447	89,051	−0.4
Middle Atlantic	170	2,245	290,927	291,894	0.3
South Atlantic	185	4,030	509,079	511,583	0.5
East North Central	224	2,862	334,861	336,694	0.5
East South Central	94	1,169	123,023	123,530	0.4
West North Central	96	1,061	113,167	113,498	0.3
West South Central	188	2,408	261,632	261,287	−0.1
Mountain	88	1,135	149,035	148,443	−0.4
Pacific	183	2,325	298,138	298,086	0
Puerto Rico	29	243	16,470	16,524	0.3
By Region—Rural:					
New England	26	72	7,666	7,811	1.9
Middle Atlantic	35	168	17,282	17,214	−0.4
South Atlantic	117	681	63,904	65,005	1.7
East North Central	136	561	53,801	54,541	1.4
East South Central	81	524	48,159	50,481	4.8
West North Central	174	409	37,622	38,969	3.6
West South Central	85	362	29.640	32.351	9.1
Mountain	87	217	21.359	22,048	3.2
Pacific	54	217	24,012	23,922	−0.4

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE—Continued

	Number of hospices (1)	Number of routine home care days in thousands (2)	Payments using FY 2000 wage index in thousands (3)	Estimated payments using FY 2001 wage index in thousands (4)	Percent change in Hospice payments (5)
Puerto Rico	3	23	1,476	1,507	2.1
(Skilled)					
Routine home care days:					
0–1,754 days	437	390	36,700	40,609	10.6
1,754–4,373 days	502	1,504	150,829	154,399	2.4
4,373–9,681 days	556	3,669	388,427	390,269	0.5
9,681 + days	653	15,449	1,875,339	1,879,969	0.2
Type of ownership:					
Voluntary	1,351	13,975	1,638,339	1,644,677	0.4
Proprietary	573	6,714	784,488	790,194	0.7
Government	192	568	58,174	59,770	2.7
Other	33	97	9,701	9,797	1.0
Hospice base:					
Freestanding	874	12,368	1,451,898	1,461,421	0.7
Home health agency	716	5,357	625,165	627,440	0.4
Hospital	538	3,503	395,997	397,830	0.5
Skilled nursing facility	21	126	17,642	17,748	0.6

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Section 1814(i) of the Social Security Act (42 U.S.C. 1395f (i)(1)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 21, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: September 22, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–25547 Filed 10–2–00; 12:23 pm]

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Federal Register

Friday,
October 6, 2000

Part VII

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for Fiscal Year 2001 for Certain Areas; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4589–N–03]

Fair Market Rents for Fiscal Year 2001 for Certain Areas

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Proposed FMRs for Certain Areas.

SUMMARY: This notice proposes revised FMRs that reflect the 50th percentile rent levels for 39 areas, as determined by applying the criteria of HUD's interim rule amending its FMR regulations published on October 2, 2000, and trended to April 1, 2001.

DATES: *Comments Due Date:* November 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Operations Division, Office of Rental Assistance, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Lynn Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, Extension 5735 (e-mail: lynn_a._rodgers@hud.gov). Hearing -or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Section 8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1473f(c)) requires the Secretary to publish FMRs periodically, but not less than annually to be effective on October 1 of each year. FMRs are used (1) to establish payment standards for the Housing Choice Voucher program; (2) to determine initial contract rents in new commitments for Section 8 project-based assistance (*e.g.,* the project-based voucher program); (3) to determine whether comparability applies to adjustment of contracts rents for substantial rehabilitation and moderate rehabilitation programs; (4) as a limit on renewal rents for certain Section 8 projects (including mark-up-to-market projects); and (5) to determine maximum subsidy levels for HOME tenant-based rental assistance, and maximum rent levels in HOME multifamily rental housing. The FMRs also apply to any other programs requiring their use. Today's notice proposes revised FMRs that reflect the 50th percentile rent levels for 39 areas, as determined by applying the criteria of HUD's interim rule, published on October 2, 2000, and trended to April 1, 2001.

Raising FMRs for certain areas, which is part of HUD's new FMR policy, being implemented through HUD's interim rule, published on October 2, 2000, is designed to ensure that low-income families have access to a broad range of housing opportunities throughout a metropolitan area. FMRs will be increased to the 50th percentile in those metropolitan areas where a FMR increase is most needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty.

Publication of FMRs

Section 8(c) of the U.S. Housing Act of 1937 requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations reflect this statutorily required process. Section 888.115 provides that HUD will publish FMRs at least annually. Section 888.115 also provides that HUD first publish proposed FMRs and that HUD provide a comment period for the proposed FMRs of at least 30 days. After evaluating the public comments, HUD will publish the final FMRs (see 24 CFR 888.115).

New paragraph (c) of § 888.113, as added by the interim rule, published on October 2, 2000, provides as follows:

(c) *Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.*

(1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts;

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenant-based rental program participants in the FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term ''concentration measure'' means the percentage of tenant-based rental program participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMRs set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under § 982.503(f).

Schedule B of this document lists 39 areas for which HUD is proposing to adopt 50th percentile FMRs for all unit sizes on the basis of the criteria specified in § 888.113(c).

Method Used to Develop 50th Percentile FMRs

FMRs are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the area. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at either the 40th or 50th percentile rent—the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units falls. The 40th or 50th percentile rent is drawn from the

distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

Specifically, HUD is proposing to increase FMRs to the 50th percentile rent for all unit sizes in the 39 metropolitan FMR areas that HUD determined met the criteria in § 888.113(c) of the interim rule, published on October 2, 2000.

Manufactured Home Space FMRs

FMRs for the rental of manufactured home spaces in the Housing Choice Voucher program are now 40 percent of the applicable Section 8 existing housing program FMRs for two-bedroom units. This is unchanged, except that the manufactured home space rental FMRs for the 39 areas now are based on the 50th percentile two-bedroom FMR rather than the 40th percentile FMR. HUD will consider public comments requesting modifications of manufactured home space rental FMRs where the 40 percent FMRs are thought to be inadequate. To be considered as a basis for revising the FMRs, comments must contain statistically valid survey data that show the 50th percentile manufactured home space rent (including the cost of utilities) for the entire FMR area. Manufactured home space FMR revisions are published as final FMRs in Schedule D of this document. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the other FMRs, until they are superseded by rising FMRs for other housing assisted under the housing choice voucher program.

Request for Comments

Through this notice, HUD is proposing to set 50th percentile FMRs for 39 metropolitan FMR areas. HUD seeks public comments on revised FMR levels for the 39 areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the bedroom size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

HUD recommends the use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$12,000. Areas with 500 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual two-bedroom rents are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of $5,000 or less.

PHAs that plan to use the RDD survey technique should obtain a copy of the survey guide entitled ''Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments.'' The guide is available from HUD USER on 1–800–245–2691, or from HUD's Worldwide Web site, in Microsoft Word or Adobe Acrobat format, at the following address: http://www.huduser.org/datasets/fmr.html.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the survey guide intended for small PHAs along with the simplified RDD methodology. Other survey methodologies are acceptable as long as the surveys submitted provide statistically reliable, unbiased estimates of the 50th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means to verify whether the sample is representative of the FMR area's rental housing stock.

Local rental housing surveys conducted with alternative methods must include the following documentation:

- Identification of the 50th percentile gross rent (gross rent is rent including the cost of utilities) and the actual distribution (or distributions, if more than one bedroom size is surveyed) of the surveyed units, rank-ordered by gross rent.
- An explanation of how the rental housing sample was drawn and a copy of the survey questionnaire, transmittal letter, and any publicity materials.
- An explanation of how the contract rents of the individual units surveyed were converted to gross rents. (For RDD-type surveys, HUD requires use of the Section 8 utility allowance schedule.)
- An explanation of how the survey excluded units built within two years prior to the survey date.
- The date the rent data were collected so that HUD can apply a trending factor to update the estimate to the midpoint of the applicable fiscal year. If the survey has already been trended to this date, the date the survey was conducted and a description of the trending factor used.
- Copies of all survey sheets.

Since FMRs are based on standard quality units and units occupied by recent movers, both of which are difficult to identify and survey, HUD will accept surveys of all rental units and apply appropriate adjustments.

Most surveys cover only one- and two-bedroom units, in which case HUD will make the adjustments for other size units consistent with the differentials established on the basis of the 1990 Census data for the FMR area. When three- and four-bedroom units are surveyed separately to determine FMRs for these unit size categories, the commenter should multiply the 50th percentile survey rents by 1.087 and 1.077, respectively, to determine the FMRs. The use of these factors will produce the same upward adjustments in the rent differentials as those used in the HUD methodology.

Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Housing Choice Voucher Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(d).

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) certifies that this notice would not have a significant economic impact on a substantial number of small entities because the proposed FMRs will not change the rent from that which would be charged if the rental unit were not in the housing choice voucher program.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will be codified in 24

CFR part 888, are proposed to be amended as follows:

Dated: October 2, 2000.

Andrew Cuomo,

Secretary.

Fair Market Rents for the Housing Choice Voucher Program Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B incorporate OMB's most current definitions of metropolitan areas, with the exceptions discussed in paragraph (b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. Exceptions to OMB Definitions—The exceptions are counties deleted from three large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the ''Metropolitan FMR Areas'' listing:

Metropolitan Area and Counties Deleted

Chicago, IL—DeKalb, Grundy and Kendall Counties

Dallas, TX—Henderson County

Washington, DC–MD–VA–WV—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren Counties in Virginia

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4 bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

3. FMRs for Manufactured Home Spaces

FMRs for manufactured home spaces in the Housing Choice Voucher program are 40 percent of the two-bedroom Housing Choice Voucher program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the Housing Choice Voucher program FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

BILLING CODE 4210–32–P

SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

A R I Z O N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	536	636	757	1054	1245	Mohave
Phoenix-Mesa, AZ MSA	449	544	683	950	1119	Maricopa, Pinal

C A L I F O R N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oakland, CA PMSA	761	921	1155	1583	1891	Alameda, Contra Costa
Orange County, CA PMSA	774	845	1046	1455	1619	Orange
Sacramento, CA PMSA	486	547	685	950	1120	El Dorado, Placer, Sacramento
San Diego, CA MSA	627	716	896	1247	1470	San Diego
San Jose, CA PMSA	1052	1199	1481	2030	2280	Santa Clara
Ventura, CA PMSA	672	773	978	1301	1516	Ventura

C O L O R A D O

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Denver, CO PMSA	523	625	832	1154	1363	Adams, Arapahoe, Denver, Douglas, Jefferson

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	680	773	907	1236	1491	District of Columbia

F L O R I D A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Lauderdale, FL PMSA	517	609	754	1049	1233	Broward
Miami, FL PMSA	490	616	768	1054	1222	Dade
Tampa-St. Petersburg-Clearwater, FL MSA	468	557	690	917	1111	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	538	628	777	1032	1278	Palm Beach

G E O R G I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlanta, GA MSA	647	720	839	1119	1353	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091400

SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

I L L I N O I S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chicago, IL	593	711	848	1060	1186	Cook, Dupage, Kane, Lake, Mchenry, Will
St. Louis, MO-IL MSA	352	429	556	724	800	Clinton, Jersey, Madison, Monroe, St. Clair

K A N S A S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	418	526	633	875	970	Johnson, Leavenworth, Miami, Wyandotte
Wichita, KS MSA	353	424	567	767	829	Butler, Harvey, Sedgwick

L O U I S I A N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baton Rouge, LA MSA	326	404	502	696	822	Ascension, East Baton Rouge, Livingston, West Baton Rouge

M A R Y L A N D

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	680	773	907	1236	1491	Calvert, Charles, Frederick, Montgomery, Prince George's

M I C H I G A N

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Detroit, MI PMSA	441	598	723	904	1013	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Grand Rapids-Muskegon-Holland, MI MSA	421	492	601	752	842	Allegan, Kent, Muskegon, Ottawa

M I N N E S O T A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Minneapolis-St. Paul, MN-WI MSA	451	580	742	1004	1137	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright

M I S S O U R I

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	418	526	633	875	970	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Louis, MO-IL MSA	352	429	556	724	800	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091400

SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

N E V A D A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	536	636	757	1054	1245	Clark, Nye

N E W J E R S E Y

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bergen-Passaic, NJ PMSA	702	856	1003	1336	1648	Bergen, Passaic
Newark, NJ PMSA	608	777	936	1179	1489	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	535	657	812	1016	1274	Burlington, Camden, Gloucester, Salem

N E W M E X I C O

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	424	505	632	871	1028	Bernalillo, Sandoval, Valencia

N E W Y O R K

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Buffalo-Niagara Falls, NY PMSA	383	453	547	682	765	Erie, Niagara

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Norfolk-Virginia Beach-Newport News, VA-NC MSA	475	535	632	882	1036	Currituck

O H I O

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cleveland-Lorain-Elyria, OH PMSA	442	555	687	874	984	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina

O K L A H O M A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oklahoma City, OK MSA	388	422	547	760	850	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	358	427	559	778	918	Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091400

SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Philadelphia, PA-NJ PMSA	535	657	812	1016	1274	Bucks, Chester, Delaware, Montgomery, Philadelphia

T E X A S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Austin-San Marcos, TX MSA	533	645	858	1192	1409	Bastrop, Caldwell, Hays, Travis, Williamson
Dallas, TX	562	647	830	1148	1358	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
Fort Worth-Arlington, TX PMSA	479	521	675	943	1111	Hood, Johnson, Parker, Tarrant
Houston, TX PMSA	470	529	684	954	1124	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
San Antonio, TX MSA	399	461	596	829	980	Bexar, Comal, Guadalupe, Wilson

U T A H

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salt Lake City-Ogden, UT MSA	475	550	698	971	1138	Davis, Salt Lake, Weber

V I R G I N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Norfolk-Virginia Beach-Newport News, VA-NC MSA	475	535	632	882	1036	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city Suffolk city, Virginia Beach city, Williamsburg city
Richmond-Petersburg, VA MSA	509	576	671	933	1101	Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Washington, DC-MD-VA	680	773	907	1236	1491	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

W I S C O N S I N

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Minneapolis-St. Paul, MN-WI MSA	451	580	742	1004	1137	Pierce, St. Croix

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091400

Schedule D: FY 2001 50th Percentile Fair Market Rents for Manufactured Home Spaces in the Section 8 Housing Choice Voucher Program

Area Name	Space Rent
California	
Orange County, CA	$479
San Diego, CA	$441
Colorado	
Denver, CO	$344

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  - National priorities list update; published 8-7-00

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H.J. Res. 109/P.L. 106–275
Making continuing appropriations for the fiscal year 2001, and for other purposes. (Sept. 29, 2000; 114 Stat. 808)

S. 1638/P.L. 106–276
To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. (Oct. 2, 2000; 114 Stat. 812)

S. 2460/P.L. 106–277
To authorize the payment of rewards to individuals furnishing information relating to persons subject to indictment for serious violations of international humanitarian law in Rwanda, and for other purposes. (Oct. 2, 2000; 114 Stat. 813)

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