AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

11–8–02 Friday
Vol. 67 No. 217 Nov. 8, 2002
Pages 68017–68492

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 67, No. 217

Friday, November 8, 2002

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Hanford Health Projects Inter-tribal Council et al., 68134
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 68135–68136

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Colorado, 68019–68021
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68087–68089

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Telephone Bank
NOTICES
Privacy Act:
Systems of records, 68086–68087

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Canadian border ports; Blaine and Lyden, WA; removal as ports of entry, 68021–68022

Antitrust Division
NOTICES
National cooperative research notifications:
Southwest Research Institute, 68177
VSI Alliance, 68177–68178

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
McNary-John Day Transmission Line Project, OR and WA, 68112

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68136–68139
Committees; establishment, renewal, termination, etc.:
Injury Prevention and Control Advisory Committee, 68139
Meetings:
Smoking and Health Interagency Committee, 68139

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 68139–68140
Medicaid:
State plan amendments, reconsideration; hearings—
Maryland, 68140–68142

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 68093

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 68093

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 68091–68093

Comptroller of the Currency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68228–68238

Consumer Product Safety Commission
NOTICES
Bunk bed cornerposts; safety standard petition, 68107

Customs Service
RULES
Bonded warehouses:
General order warehouses, 68027–68036
NOTICES
Automated program test:
National Customs Automated Commercial System Reconciliation prototype test; NAFTA Reconciliation entries; correction, 68238

Defense Department
See Navy Department
NOTICES
Meetings:
National Defense University Board of Visitors, 68107
Meetings; Sunshine Act, 68107

Delaware River Basin Commission
NOTICES
Meetings and hearings, 68109–68110

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 68110–68111
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
International Research and Studies Program, 68111

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Senior Community Service Employment Program, 68178–68200
NAFTA transitional adjustment assistance; eligibility certification investigations, 68201–68208

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 68208–68209

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Hanford Site, WA, 68112

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Secondary aluminum production
Correction, 68038–68039
Air pollution control; new motor vehicles and engines:
Nonroad large spark ignition engines and recreational engines (marine and land-based); emissions control, 68241–68447
Water pollution control:
Water quality standards—
Michigan; Federal water quality criteria withdrawn, 68039–68041
PROPOSED RULES
Water pollution control:
Water quality standards—
Michigan; Federal water quality criteria withdrawn, 68079
NOTICES
Air pollutants, hazardous; national emission standards:
Area source category list; revision, 68124–68128
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 68129–68130
Weekly receipts, 68128–68129
Reports and guidance documents; availability, etc.:
Cement kiln dust; report to Congress; additional data, 68130–68131

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 68026–68027
Titeflex Corp., 68024–68026
Turbomeca, 68022–68024
PROPOSED RULES
Airworthiness directives:
de Havilland, 68052–68054
Quality Aerospace, Inc., 68047–68051
NOTICES
Passenger facility charges; applications, etc.:
Niagara Falls International Airport, NY, 68224–68225

Federal Communications Commission
PROPOSED RULES
Radio services, special:
Private land mobile services—
Federal, State, and local public safety agency communications requirements in 700 MHz band, 68079–68085

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68228–68238
Meetings; Sunshine Act, 68131

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 68131–68132

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Calpine Energy Services, Inc., et al., 68118
Consolidated Edison Co. et al., 68118–68119
Georgia Power Co. et al., 68120–68121
Sithe/Independence Power Partners, L.P., et al.
Environmental statements; availability, etc.:
Greenbrier Pipeline Co., LLC, 68123
Hydroelectric applications, 68123–68124
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 68112–68114
California Public Utilities Commission, 68113–68114
Centerpoint Energy Gas Transmission Co., 68114
Colorado Interstate Gas Co., 68114–68115
Enbridge Pipelines (UTOS) L.L.C., 68115–68116
Great Lakes Gas Transmission L.P., 68116
Kinder Morgan Interstate Gas Transmission, LLC, 68116
Kinder Morgan Michigan, LLC, 68116–68117
Midwest Independent Transmission System Operator, Inc., 68117
Old Dominion Electric Cooperative, 68117
Texas Eastern Transmission, LP, 68117–68118

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Howard and Tipton Counties, IN, 68225

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 68132

Federal Railroad Administration
RULES
Railroad consolidations, mergers, and acquisitions of control:
Safety integration plans
Reconsideration petitions; response, 68041–68045

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68228–68238
Banks and bank holding companies:
Change in bank control, 68132
Formations, acquisitions, and mergers, 68132

Fish and Wildlife Service
RULES
Endangered and threatened species:
Florida manatee; protection areas, 68449–68489
PROPOSED RULES
Endangered and threatened species:
Florida manatee; protection areas, 68489–68491

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Approved new animal drugs; supplemental applications development, 68142

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas
Siemens Westinghouse Power Corp.; industrial power generation equipment processing; correction, 68093–68094

Forest Service
NOTICES
Environmental statements; notice of intent:
Six Rivers National Forest, CA, 68089–68091

Government Ethics Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 68132–68134

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 68152

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Shoalwater Indian Tribe, WA, 68152

Indian Health Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 68143

Industry and Security Bureau
NOTICES
Meetings:
Materials Processing Equipment Technical Advisory Committee, 68094
National Infrastructure Advisory Council, 68094

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68238–68239

International Trade Administration
NOTICES
Antidumping:
Barium chloride from—
China, 68094–68100
Sulfanilic acid from—
Hungary and Portugal, 68100–68101
Countervailing duties:
Sulfanilic acid from—
Hungary, 68101–68102

International Trade Commission
RULES
Practice and procedure:
Filing of documents in electronic form instead of in paper form, 68036–68037
NOTICES
Electronic Filing Procedures Handbook, 68168–68176
Import investigations:
Drams and dram modules from—
Korea, 68176–68177

Justice Department
See Antitrust Division

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Helium:
Amarillo, TX; Cliffside Field; Conservation Helium sale; comment request, 68152–68155
Protraction diagram plat filings:
Montana, 68155–68156

Maritime Administration
NOTICES
Marine hull insurance; foreign underwriters applications:
AXIS Specialty Ltd. of Bermuda, 68225–68226

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Space Science Advisory Committee, 68209–682102

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Molecular-targeted anticancer, antiviral, and antimicrobial drug leads; chemical optimization, 68143–68144
Inventions, Government-owned; availability for licensing, 68144–68147
Meetings:
Interagency Autism Coordinating Committee, 68147–68148

National Cancer Institute, 68148–68149
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 68149–68150
National Institute of Dental and Craniofacial Research, 68150–68151
National Institute on Aging, 68149
National Institute on Drug Abuse, 68149–68150
Scientific Review Center, 68151–68152

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna, 68045–68046
NOTICES
Committees; establishment, renewal, termination, etc.:
Monterey Bay National Marine Sanctuary Advisory Council, 68102–68103
Olympic Coast National Marine Sanctuary Advisory Council, 68103
Grants and cooperative agreements; availability, etc.:
Coastal Ocean Program, 68103–68106
Meetings:
North Pacific Fishery Management Council, 68106–68107

National Park Service
NOTICES
Boundary establishment, renewal, descriptions, etc.:
Harpers Ferry National Historical Park, WV, 68156–68157
Concession contracts and permits:
Expiring contracts—
Extension for up to one year, 68157–68158
Environmental statements; notice of intent:
Golden Gate National Recreation Area, CA, 68158–68160
Meetings:
Cape Cod National Seashore Advisory Commission, 68160
National Register of Historic Places:
Pending nominations, 68161–68163
Native American human remains and associated funerary objects:
Oregon State Museum of Anthropology, OR—
Inventory from Whitman Mission National Historic Site, WA, 68160–68161
Whitman Mission National Historic Site, Walla Walla, WA—
Inventory from mission site, 68163–68164

Navy Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68108–68109

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
McGinn, Patricia A., 68210–68211

Presidential Documents
PROCLAMATIONS
Special observances:
West Wing of the White House Centennial (Proc. 7622), 68017–68018

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health

Railroad Retirement Board
NOTICES
Railroad Unemployment Insurance Act:
Experience rating proclamations, monthly compensation base, and other determinations (2003 CY), 68211–68213

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Central Arizona Project, AZ; Reach 11 Recreation Master Plan, 68164
Imperial Irrigation District Water Conservation and Transfer Project, CA, 68165–68166
Lower Colorado River, AZ, CA, and NV; implementation agreement; inadvertent overrun and payback policy and related Federal actions, 68166–68167

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 68091

Securities and Exchange Commission
PROPOSED RULES
Securities:
Off-balance sheet arrangements, contractual obligations, and contingent liabilities and commitments; disclosure requirements, 68054–68079
NOTICES
Investment Company Act of 1940:
Exemption applications—
Allstate Life Insurance Co. et al., 68213–68217
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 68217–68218
Chicago Stock Exchange, Inc., 68219–68221
National Association of Securities Dealers, Inc., 68221–68222
Philadelphia Stock Exchange, Inc., 68222–68224

State Department
NOTICES
Art objects; importation for exhibition:
Old Master Galleries, 68224

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 68168

Surface Transportation Board
NOTICES
Railroad services abandonment:
Canadian Pacific Railway, 68226
R.J. Corman Railroad Co./Allentown Lines, Inc., 68226–68227

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See Surface Transportation Board

See Transportation Security Administration

Transportation Security Administration
NOTICES
Aircraft weighing 12,500 pounds or more; security programs; comment request, 68227

Treasury Department
See Comptroller of the Currency
See Customs Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Minority Veterans Advisory Committee, 68239
Prosthetics and Special-Disabilities Programs Advisory Committee, 68239

Separate Parts In This Issue

Part II
Environmental Protection Agency, 68241–68447

Part III
Interior Department, Fish and Wildlife Service, 68449–68491

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

7622 68017

7 CFR

948 68019

9 CFR

93 68021
98 68021

14 CFR

39 (3 documents) 68022, 68024, 68026

Proposed Rules:

39 (2 documents) 68047, 68052

17 CFR

Proposed Rules:

228 68054
229 68054
249 68054

19 CFR

4 68027
19 68027
122 68027
123 68027
127 68027
141 68027
142 68027
178 68027
201 68036

40 CFR

63 68038
89 68242
90 68242
91 68242
94 68242
131 68039
1048 68242
1051 68242
1065 68242
1068 68242

Proposed Rules:

131 68079

47 CFR

Proposed Rules:

27 68079
90 68079

49 CFR

244 68041

50 CFR

17 68450
635 68045

Proposed Rules:

17 68490

Federal Register
Vol. 67, No. 217
Friday, November 8, 2002

Presidential Documents

Title 3—

The President

Proclamation 7622 of November 5, 2002

In Celebration of the Centennial of the West Wing of the White House, 2002

By the President of the United States of America

A Proclamation

For 100 years, the West Wing of the White House has served as the workplace of the President of the United States and his staff. Now housing the Oval Office, the Roosevelt Room, Cabinet Room, offices of the President's senior staff, and the James C. Brady Press Briefing Room, the West Wing has become the center of executive branch operation.

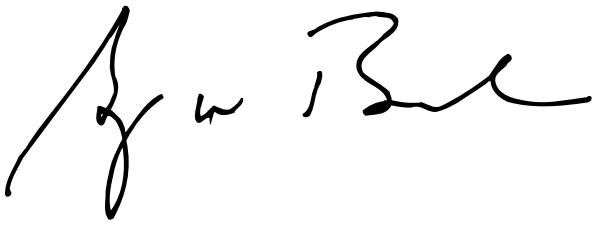
Prior to 1902, the President and his staff worked out of offices housed in the White House Residence, causing crowded staff conditions and a lack of privacy for the President's family. This overcrowding prompted planning for the construction of a new wing to serve as offices for the President and his staff. While plans were reviewed during several Administrations, construction did not begin until Theodore Roosevelt's presidency. The wing was completed in 1902, and the Presidential Offices were then moved from the Residence to the new addition. The wing underwent a major expansion in 1909, doubling its size, and further renovations were done in 1929, 1934, and 1969.

Following a Christmas Eve fire in 1929, renovations and restoration displaced Herbert Hoover for several months while new and improved facilities were built. In 1934 the Oval Office was moved to its current location on the southeast corner, over looking the Rose Garden. In the 1940's, the building became known as the ''West Wing.''

For a century, the West Wing has served as the headquarters of White House staff members who work to address national and international concerns, advance democracy, and secure a future of opportunity for all. Government and military leaders, Olympic athletes, college champions, artists, entertainers, and citizens from around the world have been welcomed to the West Wing to attend briefings, meetings, bill signing ceremonies, and countless activities that have contributed to the prosperity and security of our Nation and the world. As we celebrate its 100th anniversary, I encourage all Americans to recognize the vital role the West Wing has played in the ongoing work to ensure that the United States of America remains a beacon of freedom, and symbol of hope.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Wednesday, November 6, 2002, as West Wing Centennial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities, thereby celebrating this important part of our American heritage and the values it represents and upholds for our Nation and the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–28711
Filed 11–7–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 217
Friday, November 8, 2002

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV02–948–2 FR]

Irish Potatoes Grown in Colorado; Reduction of Membership on the Area No. 3 Colorado Potato Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the number of members on the Area No. 3 Colorado Potato Administrative Committee (Committee) established under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Committee. This rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. The number of producers and handlers in Area No. 3 has decreased significantly in recent years and the industry has been unable to fill several positions on the Committee. Reducing Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

EFFECTIVE DATE: This final rule becomes effective November 9, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This final rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position will continue to have an alternate. The Committee has been unable to fill several positions on the Committee and has been unable to conduct business at some meetings because of the lack of a quorum. Reducing Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

Section 948.50 of the order establishes three areas within the State of Colorado and provides authority for the establishment of a committee to be the administrative agency for each area. This section further provides that each area committee shall be comprised of members and alternates as set forth in that section or as reestablished by § 948.53. Section 948.53 provides authority for the reestablishment of each area committee.

Section 948.150 of the order's administrative rules and regulations prescribes the membership on each area committee. Prior to this final rule, the Area No. 3 Committee consisted of five producers and four handlers. Three producers and two handlers were from Weld County, and two producers and two handlers were from all other counties in Area No. 3.

At its meeting on June 13, 2002, the Committee did not have enough members in attendance to constitute a quorum. Those members present recommended that a mail vote be held by the Committee to reduce the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. In addition, they recommended the removal of all requirements that positions be filled from nominees from certain counties. A subsequent mail vote to all Committee members and alternates was conducted. Seven Committee members voted in favor of this change and one member voted against it. The member who voted against the motion supported suspension of regulations because of the decline in the size of the industry. One handler member and alternate position was not voted as both positions were vacant.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing

production costs. With a total of only 13 producers and handlers (several producers are also handlers), the Committee was unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate positions were vacant. This resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. The Committee believed that the requirement that only producers and handlers from specific counties be nominated to certain positions did not serve any useful purpose. They believed that those requirements, in some instances, contributed to the difficulty the Committee had in filling positions. This reduction in Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

Final Regulatory Flexibility Analysis

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

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

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural firms are defined as those whose annual receipts are less than $5,000,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was $7.63 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately $491,533. Using Committee data regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average F.O.B. price during the 2001–2002 marketing year of $9.83 per hundredweight ($7.63 per hundredweight plus estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This final rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position will continue to have an alternate.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing production costs. With a total of only 13 producers and handlers, the Committee was unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate member positions were vacant. This resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. This reduction in Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

This rule is expected to slightly decrease the costs of administering the order. With a smaller Committee, meeting costs should decline slightly and the ability of the Committee to obtain a quorum and conduct business should increase. The benefits of this rule are not expected to be disproportionately greater or less for small producers or handlers than for larger entities.

The Committee discussed alternatives to this change, including not reducing the Committee membership. The Committee also considered suspension of all regulations and activities under Area No. 3. However, the Committee believes that the regulations issued under the order are beneficial to the Colorado Area No. 3 potato industry and the benefits of the program outweigh the costs.

This final rule decreases the number of positions on the Committee. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Area No. 3 Colorado potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 13, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on September 11, 2002 (67 FR 57537). Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 26, 2002, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in place as soon as possible so that the Colorado Area No. 3 potato industry can nominate members and alternates to the new Committee as soon as possible. Further, the Colorado Area No. 3 potato industry is aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.150 is amended by revising paragraph (b) to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(b) *Area No. 3:* Three producers and two handlers selected as follows: Three (3) producers and two (2) handlers from any county in Area No. 3.

Dated: November 4, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–28474 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 98

[Docket No. 02–064–1]

Canadian Border Ports; Blaine and Lynden, WA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the regulations by removing Blaine and Lynden, WA, from the lists of Canadian border ports designated as ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States. We are removing the ports of Blaine and Lynden, WA, from the lists of designated Canadian border ports for the importation of animals, birds, poultry, or germ plasm into the United States because neither port has been used for those purposes in approximately 4 years. This rule will update the regulations so that they accurately reflect the ports used for the importation of certain animals and animal semen into the United States.

DATES: This rule will be effective on January 7, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 9, 2002. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 02–064–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–064–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–064–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93 and 98 (referred to below as the regulations) restrict the importation of specified animals, birds, poultry, and their products into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations designate land border ports along the U.S.-Canadian border that have inspection facilities for the importation of certain animals, birds, poultry, and animal germ plasm requiring inspection.

The regulations in part 93 specify, among other things, the Canadian border ports through which certain animals may be imported into the United States. The designated Canadian border ports for ratites are listed in § 93.107(b)(2); for poultry, in § 93.203(b); for horses, in § 93.303(b)(1); for ruminants, in § 93.403(b); for swine, in § 93.503(b); and for miscellaneous animals, in § 98.703(a)(2). In part 98, § 98.6 provides that animal embryos regulated under subpart A of part 98 may be imported at the ports of entry listed in § 93.303 for horses, § 93.403 for ruminants, or § 93.503 for swine, and § 98.33(b) lists the Canadian border ports through which certain animal semen from Canada may be imported.

Blaine, Lynden, and Sumas, WA, which are in geographical proximity to one another, are among the ports of entry currently listed in the regulations. Of those three ports, Sumas, WA, is now used exclusively for the importation of certain animals, ratites, poultry, and animal germ plasm into the United States because Blaine and Lynden, WA, have not been used as ports of entry for those purposes in approximately 4 years. Therefore, in accordance with the procedures explained below under ''Dates,'' we are amending § 93.107(b)(2) by removing Blaine, WA, from the list of Canadian border ports for ratites from Canada, and by removing Blaine and Lynden, WA, from the lists of Canadian border ports in §§ 93.203(b), 93.303(b)(1), 93.403(b), 93.503(b), 93.703(a)(2), and 98.33(b).

Removing Blaine and Lynden, WA, from the lists of Canadian border ports will update the regulations so that they accurately reflect the ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on January 7, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 9, 2002.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written

notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register** before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule will remove Blaine, WA, as a port of entry for the importation of ratites into the United States. It will also remove Blaine and Lynden, WA, as ports of entry for the importation of poultry, horses, ruminants, swine, and animal germ plasm. We are taking these actions because neither port has been used for the importation of animals or animal germ plasm in over 4 years. These actions would update the regulations so that they accurately reflect the ports used for the importation of certain animals and germ plasm into the United States.

Since the ports of Blaine and Lynden, WA, have not been used to inspect animals and animal germ plasm imported into the United States in approximately 4 years, this action will have no economic effect on any entity. Small entities located at or around the ports of Blaine and Lynden, WA, will not be affected by this proposed rule for the same reason that no economic entity of any size will be affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases and Imports.

Accordingly, we are amending 9 CFR parts 93 and 98 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622, 8303, 8306–8308, 8310, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.107 [Amended]

2. In § 93.107, paragraph (b)(2) is amended by removing the words ''Blaine, WA;''.

§§ 93.203, 93.303, 93.403, 93.503, and 93.703 [Amended]

3. Sections 93.203(b), 93.303(b)(1), 93.403(b), 93.503(b), and 93.703(a)(2) are amended by removing the words ''Blaine, Lynden,'' and by removing the comma immediately after the word ''Oroville''.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

4. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622, 8303, 8306, 8307, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.33 [Amended]

5. In § 98.33, paragraph (b) is amended by removing the words ''Blaine, Lynden,'' and by removing the comma immediately after the word ''Oroville''.

Done in Washington, DC, this 5th day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–28476 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–33–AD; Amendment 39–12937; AD 2002–22–11]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Turbomeca Artouste III series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0 installed. That AD currently requires smoke emission checks after every ground engine shutdown. If smoke is detected, that AD requires inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which requires removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which requires removing the electric fuel cock from service and replacing with a serviceable part. This amendment has similar requirements as the original AD, except that the smoke emissions are to be checked after the last flight of the day, as opposed to after every flight, as required by the original AD. This amendment also requires inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement of these labyrinths if necessary. This amendment is prompted by reports and analyses of in-flight shutdowns (IFSD's) occurring since the issuance of AD 2000–06–12. The actions specified by this AD are intended to prevent injection wheel cracks and excessive central labyrinth wear, which could result in an IFSD.

DATES: Effective December 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00, fax +33 05 59 64 60 80. This information may be examined, by appointment, at the Federal Aviation Administration (FAA),

New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–06–12, Amendment 39–11653 (65 FR 19300, April 11, 2000), which is applicable to Turbomeca Artouste III B, B1, and D series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0 installed, was published in the **Federal Register** on May 10, 2002, 67 FR 31737). That action proposed to require in accordance with Turbomeca Artouste III alert service bulletin (ASB) No. A218 72 0099, Update 1, dated June 6, 2001, smoke emission checks after every ground engine shutdown. If smoke is detected, that action proposed to require inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing with a serviceable part. That action also proposed to require the smoke emissions to be checked after the last flight of the day as opposed to after every flight as required by the original AD. That action also proposed to require inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary, in accordance with Turbomeca Artouste III ASB No. A218 72 0100, Update 1, dated March 13, 2001. That action also proposed to require the removal of injection wheels at a new lower life limit.

Comments

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

Injection Wheels Not Life-Limited

One commenter, the manufacturer, states that injection wheels on Turbomeca Artouste III series turboshaft engines are not life-limited. The commenter requests that the FAA remove paragraph (c) and (d) of the proposal. Paragraph (c) states that injection wheels are now life-limited to no more than 3,000 flight hours time-since-new (TSN) or time-since-overhaul (TSO), or 6,000 cycles-since-new (CSN) or cycles-since overhaul (CSO), whichever occurs first. Paragraph (d) requires replacement of all injection wheels that are over the life limits, before further flight, and to replace all other injection wheels before reaching the new life limits.

The FAA agrees. The FAA misunderstood the intent of the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, regarding their reference in AD 2001–235(A) to the use of injection wheel limits. The 3,000 flight hours TSN or TSO, and 6,000 CSN or CSO limits are in the manufacturer's manual and are not mandated by the DGAC. Therefore, the FAA has removed the paragraphs for life limits from the final rule.

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 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.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it 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, 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 39–11653 (65 FR 19300, April 11, 2000) and by adding a new airworthiness directive, Amendment 39–12937, to read as follows:

2002–22–11 Turbomeca: Amendment 39–12937. Docket No. 99–NE–33–AD. Supersedes AD 2000–06–12, Amendment 39–11653.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca Artouste III B, B1, and D series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0. These engines are installed on, but not limited to Eurocopter SA 315 LAMA and SA 316 Alouette III helicopters.

Note 1: This AD applies to each engine 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 engines 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: Compliance with this AD is required as indicated, unless already done.

To prevent injection wheel cracks and excessive central labyrinth wear, which could result in an in-flight shutdown (IFSD), do the following:

Smoke Check

(a) Do the following in accordance with Turbomeca Artouste III Alert Service Bulletin (ASB) No. A218 72 0099, Update 1, dated June 6, 2001:

(1) After the last flight of every day, check for smoke emission through the exhaust pipe, air intake, or turbine casing drain during rundown.

(2) If smoke is detected, inspect for fuel flow in accordance with paragraph 2.B.(1) and 2.B.(2) of the ASB.

(i) If fuel flow is not detected, remove the engine from service and replace with a serviceable engine before further flight.

(ii) If fuel flow is detected, remove the electric fuel cock from service and replace with a serviceable part in accordance with section 2.B.(4) and 2.B.(5) of the referenced ASB.

(iii) Before entry into service, perform an engine ground run and check the fuel system again for smoke emission through the exhaust pipe, air intake, or turbine casing drain during engine rundown and after shutdown. If smoke emission still remains after replacement of the electric fuel cock, before further flight, remove the engine from service and replace with a serviceable engine.

Central Labyrinth Inspection

(b) If the central labyrinth has not been inspected or replaced since engine accumulation of 1,500 flight hours (FH) or more time-since-new (TSN) or time-since-last-overhaul (TSO), perform the checks and inspections, and, if necessary, replace the central labyrinth, in accordance with paragraph 2 of the Instructions of Turbomeca Artouste III ASB No. A218 72 0100, Update 1, dated March 13, 2001 and the following Table 1:

TABLE 1.—INSPECTION SCHEDULE

For engine hours TSN, or TSO that are:	And cycles/FH ratio is:	Then inspect central labyrinth:
(1) More than 1,500 but fewer than 2,000.	(i) Above 2 cycles	Within 250 FH time-in-service (TIS) after the effective date of this AD.
	(ii) Below or equal to 2 cycles	Within 500 FH TIS after the effective date of this AD.
(2) 2,000 or more	Not applicable	Within 50 FH TIS or 6 months after the effective date of this AD, whichever occurs first.

(c) For the purpose of this AD, a serviceable engine is defined as an engine that does not exhibit smoke emission.

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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

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 helicopter to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The checks, inspections, and replacements must be done in accordance with the following Turbomeca Artouste III alert service bulletins (ASB's):

Document No.	Pages	Revision	Date
ASB A218 72 0099 Total pages: 5	All	1	June 6, 2001.
ASB A218 72 0100 Total pages: 7	All	1	March 13, 2001.

These incorporations by reference were 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 Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00; fax +33 05 59 64 60 80. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 2001–235(A), dated June 13, 2001.

Effective Date

(g) This amendment becomes effective on December 13, 2002.

Issued in Burlington, Massachusetts, on October 28, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–28114 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–57–AD; Amendment 39–12938; AD 2002–22–12]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses. This amendment requires inspecting certain Titeflex hoses for a date of manufacture, and if necessary, replacing the hose with a serviceable part. This amendment is prompted by reports of hoses that failed to meet the fire test requirements during laboratory testing. The actions specified by this AD are intended to prevent failure of a hose when exposed to fire.

DATES: Effective December 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Titeflex Corporation, 603 Hendee

Street, P.O. Box 90054, Springfield, MA 01139; telephone (413) 271–8244. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses was published in the **Federal Register** on June 3, 2002 (67 FR 38212). That action proposed to require inspecting certain Titeflex hoses for a date of manufacture, and if necessary, replacing the hose with a serviceable part, in accordance with Titeflex Corporation service bulletin (SB) 73–2, dated November 27, 2000.

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.

Canadair Airplanes

Two commenters state that the only Canadair airplane having suspect hoses installed is the CL–600 1A11. The commenters request that the final rule applicability be corrected to list only the Canadair CL–600 1A11 airplane.

The FAA agrees and has revised the applicability accordingly.

CFM56–5C Engine

One commenter states that the only CFM56 engine having suspect hoses installed is the CFM56–5C. The commenter requests that the final rule applicability be corrected to list only the CFM56–5C engine.

The FAA agrees and has revised the applicability accordingly.

Boeing Airplanes

One commenter states that in accordance with the Titeflex Corporation service bulletin (SB) 73–2, the applicable Boeing airplane models stated in the NPRM should have been ''all Boeing models except 737–600, 737–700, 737–800, 737–900, and 777.''

The FAA agrees that the NPRM is in error and in addition has verified with Boeing Co. that the applicable Boeing models are DC–8, 707, 727, 737–200, 737–200C, 747, 757, and 767 airplanes. Therefore, the final rule has been revised to list these models.

One commenter approves of the AD as proposed.

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 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.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it 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, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–22–12 Titeflex Corporation: Amendment 39–12938. Docket No. 2000–NE–57–AD.

Applicability: This airworthiness directive (AD) is applicable to certain part number (P/N) Titeflex Corporation high-pressure and medium-pressure hoses that were fabricated at the Titeflex Springfield, MA, facility from January 1996 through June 2000. These hoses are installed on Airbus A300, A310, A340 airplanes, Boeing airplane models 707, 727, 737–200, 737–200C, 747, 757, and 767, Bombardier CL–600 1A11, BAE Avro 146 and BAE 146, McDonnell Douglas Corporation DC8 series, and Cessna 650 airplanes, and General Electric CF6–80C and CFM–56 series, and Honeywell International Inc., ALF502 and LF507 series turbofan engines.

Note 1: This AD applies to each engine 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 engines 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: Compliance with this AD is required within 48 months after the effective date of this AD, unless already done.

To prevent failure of a hose when exposed to fire, do the following:

(a) Perform a general visual inspection of all high-pressure and medium-pressure hoses, with a P/N specified in paragraph 1.A. of Titeflex Corporation service bulletin (SB) 73–2.

(b) If the hose has a brown, integral firesleeve, no further action is required. If the hose has an orange, slip-on firesleeve, then inspect the metal tag for the assembly location.

(1) If the assembly location on the metal tag is TITEFLEX/API, TITEFLEX/API LGB, TITEFLEX E, TITEFLEX EUROPE, or SHAC 1S353, no further action is required.

(2) If the assembly location on the metal tag is TITEFLEX, inspect for a date and disposition as specified in the following Table:

If the hose is	And the date is	Then
(i) High-pressure	(A) Before January 1996 or after June 2000	No further action is required.
	(B) January 1996 through June 2000	Replace hose with a serviceable part.
(ii) Medium-pressure	(A) Before February 2000 or after May 2000	No further action is required.
	(B) February 2000 through May 2000	Replace hose with a serviceable part.

Definition of a Serviceable Hose

(c) For the purposes of this AD, a serviceable hose is defined as a hose that has an assembly location listed in paragraph (b)(1) of this AD, that has an integral brown firesleeve, as a high-pressure hose that was fabricated before January 1996 or after June 2000, and as a medium-pressure hose that was fabricated before February 2000 or after May 2000.

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, Boston Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston 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 done.

Documents That Have Been Incorporated By Reference

(f) The inspections and replacements must be done in accordance with Titeflex Corporation service bulletin (SB) 73–2, dated November 27, 2000. 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 Titeflex Corporation, 603 Hendee Street, P.O. Box 90054, Springfield, MA 01139, telephone (413) 271–8244. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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 December 13, 2002.

Issued in Burlington, Massachusetts, on October 28, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–28113 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–42–AD; Amendment 39–12941; AD 2002–22–14]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B, 212, 214B, and 214B–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for specified Bell Helicopter Textron, Inc. (BHTI) model helicopters that requires reducing the retirement time for certain main rotor tension-torsion (TT) straps on those models and on the Model UH–1 series helicopters. This document contains the same requirements as the existing AD but removes the Model UH–1 series restricted category helicopters and adds the BHTI Model 205A and 205B helicopters to the applicability. This amendment is prompted by the issuance of a separate AD for the Model UH–1 series helicopters and the need to add the BHTI Model 205A and 205B helicopters to the applicability because the affected straps are eligible for installation on these model helicopters. The actions specified by this AD are intended to prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for specified model helicopters was published in the **Federal Register** on May 21, 2002 (67 FR 35763). On July 31, 1980, the FAA issued AD 80–17–09, Amendment 39–3876 (45 FR 54014, August 14, 1980), Docket No. 80–ASW–25. That AD requires replacing certain TT straps on or before attaining 1200 hours time in service (TIS) or 24 months, whichever occurs first, for the BHTI Model 204B, 205A–1, 212, 214B, 214B–1, and the Model UH–1 series military helicopters. That action was prompted by an offshore accident of a BHTI Model 212 helicopter in which a TT strap reportedly failed in flight after 2,140 hours TIS with resulting loss of the main rotor blade. The requirements of that AD are intended to prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since the issuance of that AD, a separate AD was issued (67 FR 61771, October 2, 2002) for the military surplus restricted category helicopters that includes the Model UH–1 series helicopters, hence the removal of the Model UH–1 series helicopters from the applicability of this AD. Also, further review indicates that the affected TT straps are eligible for installation on the BHTI Model 205A and 205B helicopters. Therefore, this AD includes those models in the applicability.

To further address this unsafe condition that is likely to exist or develop on other helicopters of these same type designs, this AD supersedes AD 80–17–09. This AD contains the requirements of AD 80–17–09 but changes the applicability by removing the restricted category Model UH–1 series helicopters and adding the BHTI Model 205A and 205B helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial changes. These changes will neither increase the economic burden on operators nor increase the scope of the AD.

The FAA estimates that this AD will affect 168 helicopters of U.S. registry. The FAA also estimates that it will take 8 work hours to replace the TT straps at an average labor rate of $60 per work hour. The TT straps will cost approximately $10,484 per helicopter. Based on these figures, the total cost

impact of the AD on U.S. operators is estimated to be $1,840,352.

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 FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 removing Amendment 39–3876 (45 FR 54014, August 14, 1980) and by adding a new airworthiness directive (AD), Amendment 39–12941, to read as follows:

2002–22–14 Bell Helicopter Textron, Inc.: Amendment 39–12941. Docket No. 2001–SW–42–AD. Supersedes AD 80–17–09, Amendment 39–3876, Docket No. 80–ASW–25.

Applicability: Model 204B, 205A, 205A–1, 205B, 212, 214B, and 214B–1 helicopters, with main rotor tension-torsion (TT) strap, part number (P/N) 204–012–122–1, –5, or 214–010–179–1, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 separation of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove and replace any TT strap with 1,200 or more hours time-in-service (TIS) or 24 or more months since initial installation on any helicopter, whichever occurs first.

(b) This AD revises the Limitations section of the maintenance manual by establishing a life limit for the TT straps, P/N 204–012–122–1, –5, or 214–010–179–1, of 1200 hours TIS or 24 months since initial installation on any helicopter, whichever occurs first.

(c) Special flight permits will not be issued.

(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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

(e) This amendment becomes effective on December 13, 2002.

Issued in Fort Worth, Texas, on October 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–28411 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 19, 122, 123, 127, 141, 142 and 178

[T.D. 02–65]

RIN 1515–AC57

General Order Warehouses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This amendment of the Customs Regulations is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are made to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Sushil, Office of Field Operations, 202–927–0564.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103–182; December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

Some of these amendments affected the treatment of general order merchandise. General order merchandise is merchandise that is required to be deposited in a bonded warehouse at the risk and expense of the consignee because it is not timely entered as provided by law or regulation, entry for it is incomplete because estimated duties, fees or interest has not been paid, entry cannot be made for it due to lack of proper documentation or other cause, or because it is not correctly or legally invoiced. *See* 19 U.S.C. 1490(a). Customs has denominated the type of bonded warehouse in which this type of merchandise must be deposited as a general order warehouse. *See* 19 CFR 127.1.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the

owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse is then responsible for arranging for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the **Federal Register** (63 FR 51283) on September 25, 1998, as T.D. 98–74.

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unlading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in §§ 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by a document published in the **Federal Register** (65 FR 42893) on July 12, 2000, Customs proposed that a new class of bonded warehouse, a class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in § 127.1, Customs Regulations (19 CFR 127.1).

It was further proposed that a class 3, 4, or 5 bonded warehouse, as described in § 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), could likewise be used for the deposit of general order merchandise, but only if there were no class 11 warehouse otherwise available to receive the merchandise, and provided the class 3, 4, or 5 warehouse had also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2).

To this end, § 19.1 was proposed to be amended to include provisions for general order warehouses. Matters relating to inventory control and minimum space requirements for general order warehouses were also addressed in the proposed rule, in §§ 19.2 and 19.12, respectively.

Additionally, an amendment to § 19.2(f) was proposed to allow the port director to require a business entity seeking approval to establish a Customs bonded warehouse to submit fingerprints, as part of the application process, for all its employees, as opposed to only those of all officers and managing officials of the business entity, as is currently the case; this proposed change would pertain to an application by a business entity to establish any Customs bonded warehouse, including a general order warehouse.

Furthermore, the proposed rule put forth amendments to §§ 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), that would make it the responsibility of the warehouse proprietor to prepare a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, that covered the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise had been transferred by a Customs-authorized permit to transfer or in-bond entry). This was intended to recognize and specifically implement the existing requirement described above that the warehouse proprietor be responsible for the transportation and storage in general order status of unentered merchandise following due notification by the arriving carrier or other bonded carrier of the presence of such merchandise.

Moreover, §§ 4.37, 122.50 and 123.10 were to be amended to provide that if a carrier or other party to whom the original carrier had properly transferred unclaimed and abandoned goods refused to relinquish custody over the goods to a general order warehouse proprietor, the carrier or other party would be liable for liquidated damages under the international carrier or custodial bond, as applicable; and §§ 4.37, 122.50 and 123.10 were to be further amended to provide that in cases where the warehouse proprietor was unable to accept goods into general order because the goods were required to be exported or destroyed, or for other good cause, the carrier or other party to whom the original carrier had properly transferred the goods would be responsible under bond for exporting or destroying the goods, as necessary. It was further proposed that § 127.13, Customs Regulations (19 CFR 127.13), be changed consistent with §§ 4.37, 122.50 and 123.10.

Also, the proposed rule would revise § 127.14 to require that the warehouse proprietor assume the responsibility and expense for the destruction of general order merchandise, in the event that such destruction were found to be warranted under the circumstances (*i.e.*, where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)); however, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction.

Mod Act Changes; Title to Unclaimed Merchandise Vesting in Government

In addition, under the proposed rule, § 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made by section 659 of the Mod Act to 19 U.S.C. 1491 concerning the provision that under certain conditions title to unclaimed and abandoned merchandise could vest in the United States, as an alternative to the Government having to sell such merchandise at public auction.

Time Limit Within Which To Make Entry; Conforming Changes

Finally, in conformance with the changes already made under T.D. 98–74 to §§ 4.37, 122.50, and 123.10, as

discussed above, the proposed rule would similarly revise §§ 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

Discussion of Comments

Six commenters responded to the notice of proposed rulemaking. A description of the issues raised by these commenters, and Customs response to each issue, is set forth below.

It is initially noted, however, that one commenter made certain suggestions during the proposed rulemaking comment period that were outside the scope of the notice, in particular: in connection with the unentered merchandise described in §§ 4.37(b), 122.50(b) and 123.10(b), to require that a carrier notify a general order warehouse of the presence of such unentered merchandise within the 15-day period, as opposed to the 20-day period, described in those sections; and to add a requirement in part 127 that carriers provide all information to the warehouse that they have on the consignee of unclaimed merchandise in order to facilitate the preparation of notices of sale for the merchandise. Such recommendations which, while related, fell outside the scope of the original notice of proposed rulemaking, are not addressed in this document. If found warranted, they would need to be the subject of another rulemaking document.

General Order Warehouses; Part 19

Comment

One commenter objected to the provision in proposed § 19.1(c) requiring that an available class 11 (General Order) warehouse be used to handle general order merchandise, in preference to another available general order (G.O.) warehouse of class 3, 4, or 5. The commenter asserted that a mandatory requirement to this effect would be unfair, would competitively disadvantage G.O. warehouses of class 3, 4 or 5, and would eliminate choice for the importing public in this area.

Customs Response

Customs agrees. Section 19.1(c) is revised to eliminate any requirement to use a class 11 warehouse over an existing class 3, 4 or 5 warehouse that has been approved to handle general order merchandise. Carriers and the importing community should, and will, continue to have a choice as to the particular G.O. warehouse to which their shipments may be sent.

Comment

One commenter suggested that class 11 G.O. warehouses be allowed to rent or lease additional space for the storage of G.O. merchandise.

Customs Response

Section 19.1(c) already provides for this. Any warehouse eligible to receive general order merchandise (a class 3, 4, 5, or 11 warehouse) may rent or lease suitable premises for the storage of such merchandise, if there is no space at the warehouse otherwise available.

Comment

Several commenters requested that Customs elaborate on the provision in proposed § 19.2(d) regarding minimum space requirements and other criteria for becoming a G.O. facility. In particular, one commenter asked that Customs impose regulatory limits on the number of G.O. warehouses that could operate in a port and, furthermore, that Customs specify in its regulations those parties that could not qualify to operate a G.O. warehouse.

Customs Response

Customs does not believe that further elaboration upon these matters in the regulations is warranted. Both the number of facilities and the space required for G.O. merchandise will vary from port to port; therefore no one standard can or should be applied.

Comment

One commenter objected to proposed § 19.2(f) which provided that the port director ''may'' require a business entity seeking to establish a Customs bonded warehouse to submit fingerprints from all its employees, as part of the application process, instead of limiting the submission of fingerprints to those of all officers and managing officials of the business entity, as is currently the case. On the other hand, several commenters wanted the word ''may'' in proposed § 19.2(f) replaced with ''should''.

Customs Response

Customs disagrees with both views. The port director should have the discretion to determine the extent of scrutiny that is called for in given circumstances with respect to a business entity that is applying for approval to establish a Customs bonded warehouse, including the ability to require fingerprints from all employees of the business entity.

Comment

In proposed § 19.12(a), one commenter was concerned about the expense of an automated inventory system that would be a requirement for a general order warehouse. The commenter requested that small warehouses be allowed to continue with a manual system. In the alternative, it was suggested that Customs should bear some of the costs associated with an automated inventory system.

Customs Response

Customs has concluded that the requirement for an automated inventory system should apply to all general order warehouses. Most warehouses already have an automated system that could likewise be extended to include G.O. merchandise; against this backdrop, automation should not impose an unreasonable cost. In addition, it is noted that in § 19.12(a) existing G.O. warehouses will be given a phase-in period of 2 years within which to automate their recordkeeping. This time frame should be adequate and provide ample time especially for smaller operators to defray some of the costs that they incur with automation. In this regard, Customs will not be involved in the cost, support, or maintenance of an automated inventory system. It is properly the responsibility of the warehouse proprietor to choose an automated system that best suits the particular needs of the warehouse and that fulfills Customs regulatory requirements.

Comment

In proposed § 19.12(a), several commenters thought that the ''phase-in'' period for automation was overly long.

Customs Response

Customs finds that this two-year phase-in allowance is reasonable and prudent. As already observed, it will afford some of the smaller G.O. warehouses needed time to acquire and install an automated record system and to defray their cost in so doing.

Transferring Unentered Merchandise to a G.O. Warehouse; Sections 4.37, 122.50 and 123.10

Comment

One commenter asked that an explicit statement be included in §§ 4.37(b), 122.50(b) and 123.10(b) limiting to 15 calendar days the period during which unentered merchandise may remain in the custody of the arriving carrier or other bonded carrier to whom such merchandise was properly transferred.

Customs Response

Customs believes that this 15 calendar-day limitation is already clearly set forth in the cited regulatory provisions and that no change is needed.

Comment

Two commenters objected to the provision in proposed §§ 4.37(c), 19.9(a), 122.50(c) and 123.10(c) making it the responsibility of the G.O. warehouse proprietor to prepare the transfer documentation (CF 6043 or other approved form or an electronic equivalent) to cover the proprietor's receipt of unentered merchandise and its transport to the G.O. warehouse from the custody of the arriving carrier (or other bonded carrier).

Customs Response

Customs agrees. The preparation of the transfer documentation (CF 6043 or other approved form or electronic equivalent) should remain with the bonded carrier (or other party to which the bonded carrier has properly transferred the merchandise). Customs acknowledges that this is the existing procedure in most ports. As a practical matter, the G.O. warehouse proprietor does not have sufficient information as to the identity and quantity of the unentered cargo to expeditiously and knowledgeably prepare such transfer documentation prior to acceptance of the goods. Thus, shifting the responsibility for preparation of the delivery ticket from the arriving carrier (or other bonded carrier) to the warehouse proprietor would unnecessarily delay the transfer of unentered merchandise to general order. Sections 4.37(c), 19.9(a), 122.50(c) and 123.10(c) are changed accordingly.

Comment

Two commenters suggested that the phrase ''Customs-approved bonded warehouse'' appearing in proposed §§ 4.37(d), 122.50(d), and 123.10(d) should be replaced by ''Customs-approved bonded General Order warehouse''.

Customs Response

Customs agrees. Sections 4.37(d), 122.50(d), and 123.10(d) are changed accordingly.

Comment

One commenter requested clarification as to the difference between the liquidated damages provision in proposed § 4.37(d) and the penalties authorized under § 4.37(a). This commenter also requested that the phrase ''carrier or other party may be liable for* * *'' in proposed § 4.37(d) be changed to ''the carrier shall, as determined by the port director, be liable for* * *''.

Customs Response

The penalty contained in § 4.37(a) (also *see* §§ 122.50(a) and 123.10(a)) may be assessed against the master or owner of an arriving vessel, or the agent of the master or owner, for failing to timely notify Customs of the presence of unclaimed merchandise that has been unladen from the vessel. The penalty is up to $1,000 per bill of lading; however, if the value of the unclaimed merchandise on the bill is less than $1,000, the penalty will simply be equal to the value of such merchandise.

Liquidated damages in § 4.37(d) (also *see* §§ 122.50(d) and 123.10(d)) may be assessed against an arriving carrier or other party to whom the arriving carrier has properly transferred the unentered, unreleased merchandise if the carrier or other party fails to timely relinquish custody over the merchandise to a warehouse authorized to receive it. To this end, § 4.37(d) is changed to make clear that liquidated damages would only apply if the carrier fails to ''timely'' relinquish custody over the subject merchandise. Sections 122.50(d) and 123.10(d) are likewise changed. However, Customs finds that the change suggested by the commenter is not needed. If applicable, liquidated damages would be assessed under the international carrier bond of the arriving carrier or the custodial bond of the other party, as appropriate.

Comment

With respect to proposed §§ 4.37(e), 122.50(e) and 123.10(e), several commenters wanted to give G.O. warehouse proprietors the right to refuse any shipments that they did not want to accept. One commenter wanted a right to return merchandise to the carrier, and asked that a provision be added to the regulations that the carrier must accept the return of such merchandise, if the merchandise was sent to the warehouse improperly because it was hazardous material or was otherwise required to be exported or destroyed.

Customs Response

A bonded warehouse proprietor may not lawfully decline to accept general order merchandise that the warehouse is eligible to receive and is capable of storing. The underlying general order statute (19 U.S.C. 1490(a)) does not envision an unfettered right on the part of the warehouse proprietor to refuse general order goods. However, as already stated in §§ 4.37(e), 122.50(e) and 123.10(e), if the port director finds that the warehouse proprietor cannot accept goods because they are required by law to be exported or destroyed, or for other good cause, such goods will remain in the custody of the arriving carrier or other bonded carrier for purposes of export or destruction. It is incumbent upon the warehouse proprietor to take reasonable steps to inquire about and ascertain the nature and condition of the goods before accepting them. Once goods are accepted into the custody of the warehouse proprietor, the appropriate disposition of the goods would at that point accordingly become the responsibility of the proprietor.

Title to Unclaimed Merchandise Vesting in Government; Part 127

Comment

Several commenters objected to the provisions in proposed subpart E of part 127 regarding unclaimed merchandise the title to which vests in the U.S. Government. In particular, they wanted to be compensated by the Government for their storage and transportation charges on cargo to which the Government decides to take title and retain for its own use. These commenters contended that not being reimbursed for any expenses they incurred for the six-month G.O. period would impose a great financial burden upon them.

Customs Response

Customs believes that the commenters' concerns are unfounded. It is true that under the conditions specified in 19 U.S.C. 1491(b), the title to unclaimed merchandise may vest in the U.S. Government free and clear of any liens or encumbrances. Yet, while the Government may retain title to unclaimed merchandise free and clear of any liens or encumbrances, all transfer and storage charges or expenses accruing on the merchandise are, nevertheless, required to be paid by the Federal, State or local government agency that receives the merchandise, pursuant to 19 U.S.C. 1491(c). Such transfer and storage charges would include those accruing with respect to the merchandise while subject to general order. Section 127.42(b) is revised to make this clear.

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the

modifications discussed above and the additional changes discussed below should be adopted as a final rule.

Additional Changes

Section 19.1(b) is amended to provide that a class 11 (general order) warehouse may be designated as a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

Also, § 127.21 is changed to grant port directors the authority to defer sales of unclaimed and abandoned (general order) merchandise. Currently, § 127.21 requires that unclaimed and abandoned merchandise be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment on selling it is authorized by the Commissioner of Customs. Customs has decided that this deferral authority be at the port level.

Furthermore, § 127.28(a) is changed so as to more clearly emphasize the necessity that drugs, seeds, plants, nursery stock and other articles, when so required, must be inspected by a representative of the Department of Agriculture to determine whether the articles comply with the law and regulations administered by that Department, especially given that, where found to be in noncompliance, such articles would need to be immediately destroyed.

Finally, Customs has decided that § 127.41(a) should be revised to state that the port director may provide for the vesting of title to unclaimed and abandoned merchandise in the United States, with the concurrence of the Assistant Commissioner, Office of Field Operations, rather than with the concurrence of the Commissioner of Customs, as initially proposed.

Regulatory Flexibility Act and Executive Order 12866

The amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this final rule document had in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515–0220 (Notification regarding imported merchandise or baggage for which entry has not been made). This document restates these collections of information without material change.

The remaining collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0224. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

This latter collection of information is contained in §§ 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to: Expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers and carriers. The estimated average annual burden associated with this information collection is 33 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is appropriately revised to reflect this additional information collection.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 19, 122, 123, 127, 141, 142 and 178, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141, 142 and 178), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * *

2. Section 4.37 is amended as follows:

a. By adding a sentence after the third sentence in paragraph (c),

b. By redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d), and

c. By adding two sentences at the end of redesignated paragraph (e).

The additions and revisions read as follows:

§ 4.37 General order.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the arriving carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receiptof the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). * * *

(d) If a carrier or any other party to whom custody of the unentered merchandise has been transferred by means of a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse operator cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general and relevant specific authority citations for part 19 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

* * * * *

2. Section 19.1 is amended as follows:

a. By adding a heading to paragraph (a),

b. By revising paragraph (a)(1),

c. By reserving paragraph (a)(10) and adding a new paragraph (a)(11),

d. By revising paragraph (b), and

e. By adding a new paragraph (c).

The additions and revisions read as follows:

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* * * *

(1) *Class 1.* Premises that may be owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Merchandise will be stored in such premises only at Customs direction and will be held under ''general order.''

* * * * *

(11) *Class 11.* Bonded warehouses, known as ''general order warehouses,'' established for the storage and disposition exclusively of general order merchandise as described in § 127.1 of this chapter.

(b) *Manipulation.* The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, 7, or 11 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) *General order.* General order merchandise as described in § 127.1 of this chapter may be stored and disposed of in a class 11 warehouse or a warehouse of class 3, 4, or 5, provided the class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under § 19.2. So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. Section 19.2 is amended by adding a new paragraph (d) and by revising the second sentence of paragraph (f) to read as follows:

§ 19.2 Applications to bond.

* * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on form FD 258 or electronically, of all employees of the business entity.

* * * * *

4. Section 19.9 is amended by revising paragraph (a) to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A

joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Within two working days of the joint determination, the warehouse proprietor will report to the port director any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

* * * * *

5. Section 19.12 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor of a class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing class 3, 4, or 5 warehouses as described in § 19.1 certified before December 9, 2002, to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from December 9, 2002. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.50 is amended as follows:

a. By revising the heading,

b. By adding a sentence after the third sentence in paragraph (c),

c. By redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and

d. By adding two sentences at the end of redesignated paragraph (e).

The revisions and additions read as follows:

§ 122.50 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. Section 123.10 is amended as follows:

a. By revising the heading,

b. By adding a sentence after the third sentence in paragraph (c),

c. By redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and

d. By adding two sentences at the end of redesignated paragraph (e).

The revisions and additions read as follows:

§ 123.10 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 127—GENERAL ORDER, UNCLAIMED AND ABANDONED MERCHANDISE

1. The general authority citation for part 127 is revised, and specific sectional authority citations are added, to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. Part 127 is amended by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 127.1, 127.2, 127.11 through 127.14, 127.21, 127.23 through 127.29, and 127.31 through 127.37.

3. Section 127.13 is amended by revising paragraph (a) to read as follows:

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A class 11 bonded warehouse or warehouse of class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * *

4. Section 127.14 is amended by revising paragraph (a) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition.*—(1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.*—(i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (*see* § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (*see* § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (*see* § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * *

5. Section 127.21 is amended by revising its first sentence to read as follows:

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise will be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the port director. * * *

6. Section 127.28 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture.* Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture must be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. * * *

* * * * *

7. Part 127 is amended by adding a new subpart E to read as follows:

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

Sec.
127.41 Government title to unclaimed and abandoned merchandise.
127.42 Disposition of merchandise owned by Government.
127.43 Petition of party for surplus proceeds had merchandise been sold.

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11 of this part, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Assistant Commissioner, Office of Field Operations, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

(1) Importer, if known;

(2) Consignee, if name and address can be ascertained;

(3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and

(4) Any other known interested parties.

(c) *Appraisement of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency. Such transfer and storage charges or expenses will include those accruing with respect to the merchandise while subject to general order.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the amount that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactoryproof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (*see* § 127.36 of this part). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.5 is revised to read as follows:

§ 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.2 is amended by revising paragraph (a) to read as follows:

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding new listings in the table in appropriate numerical order to read as follows:

§ 178.2 Listing of OMB numbers.

19 CFR section	Description	OMB control No.
*	*	*
§ 4.37(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
*	*	*
§ 19.9(a)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
*	*	*
§ 122.50(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
*	*	*
§ 123.10(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
*	*	*

Approved: November 4, 2002.

Robert C. Bonner,

Commissioner of Customs.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–28346 Filed 11–7–02; 8:45 am]

BILLING CODE 4820–02–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The United States International Trade Commission (Commission) hereby amends its rules of practice and procedure (rules) to permit persons the option of filing certain documents with the Commission in electronic form instead of in paper form only. The Commission also amends its rules of practice and procedure to allow electronic service of documents in limited circumstances and to require persons to complete and submit a standard cover sheet when filing documents, either in paper form or in electronic form, with the Commission.

DATES: The effective date of these amendments is December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2002, the Commission published a notice of proposed rulemaking (NOPR) in the **Federal Register**. 67 FR 20709, April 26, 2002. In the NOPR, the Commission proposed amending its rules of practice and procedure to (a) permit persons the option of filing certain documents electronically instead of just in paper form; (b) allow electronic service of documents in limited circumstances; and (c) require persons to complete and submit a standard cover sheet, whether filing electronically or in paper form. In its NOPR, the Commission invited public comment on its proposed rule amendments and the EDIS–II cover sheet (cover sheet) for use in filing documents in the Commission's Electronic Document Information System (EDIS–II). The Commission received a total of three sets of comments from the ITC Trial Lawyers Association (ITCTLA) and two law firms. The Commission carefully considered all comments that it received. The Commission's response to those comments that relate to the rule amendments is provided below in a section-by-section analysis. Since the NOPR was published, the Office of Management and Budget (OMB) has determined that the cover sheet does not require OMB approval because of the minimal paperwork burden on the public; nevertheless, the Commission has summarized below comments to the cover sheet and its response thereto. The Commission appreciates the time and effort the commenters took to present their views, and believes that the comments have improved the amendments and the cover sheet. The Commission is also publishing a notice containing the Handbook on Electronic Filing Procedures (Handbook) referenced in amended § 201.8 of the rules, which includes information regarding registration for electronic filing and the list of documents that may be filed electronically. Please review the Handbook in its entirety prior to registering for electronic filing.

Regulatory Analysis

The Commission has determined that these amended rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 13, 2002) are inapplicable to this rulemaking because it is not one for which a NOPR is required under 5 U.S.C. 553(b) of the APA or any other statute. Although the Commission published a NOPR, these proposed regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). These amended rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999). No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et. seq.*) because the amended rules 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 will not significantly or uniquely affect small governments. The amended rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Section-by-Section Analysis of the Regulations

Section 201.8

The Commission has amended § 201.8 by adding paragraphs 201.8(f) and (g). Section 201.8(f) provides that persons may file certain documents electronically at the Commission's Internet website without violating the relevant provisions of the rules that govern paper filing of documents. The Commission did not receive any specific comments with respect to § 201.8(f). Section 201.8(g) requires that persons filing documents either in paper form or electronically must complete a cover sheet to be submitted to the Commission along with their filings. The law firm of Adduci, Mastriani & Schaumberg, L.L.P. proposed amending § 201.8 to state that filings without a cover sheet will be accepted, and that cover sheets may be submitted the following business day. The Commission has determined to retain the requirement that filers must complete and submit a cover sheet with their filings, whether the filings are in electronic or paper form, because the information in the cover sheet is required for EDIS–II to docket filings. The Commission has revised § 201.8(g) to require parties submitting paper filings to fill-out the cover sheet on-line and print it out for submission to the Office of the Secretary with the paper filing. Persons filing documents electronically are required to complete and submit the cover sheet on-line with the electronic filing. This cover sheet requirement is to ensure accurate processing of filings.

Section 201.16

The Commission has amended § 201.16 by adding paragraph (e) to permit persons the option of serving documents on other parties electronically, if the Secretary consents to such electronic service. However, electronic service is not permitted in

proceedings under section 337 of the Tariff Act of 1930 unless parties obtain the prior permission of the presiding administrative law judge. The ITCTLA proposed amending the final sentence of the proposed Rule to require a party who participates in electronic service to notify all parties if it withdraws its consent to electronic service. The Commission has incorporated the comment of the ITCTLA into § 201.16(e). The law firm of Collier Shannon Scott, PLLC, commented that the Commission should not leave all disputes regarding electronic service of documents to be resolved among the parties themselves; rather, the Commission should establish procedures and remedies to address electronic service failures. Because electronic service is on a voluntary basis, the Commission has determined, in the initial phase of electronic filing, to retain the requirement that electronic service disputes should be resolved by the parties themselves, without the Commission's involvement. Collier Shannon Scott, PLLC, commented that § 201.16(e) should be amended to state that, even if a dispute regarding electronic service of a document arises among parties in a Commission proceeding, such a dispute will not affect the Commission's acceptance of the document for filing. Because § 201.16(e) already provides that electronic service disputes must be resolved by the parties themselves, without the Commission's involvement, any such disputes will not affect the Commission's acceptance or rejection of a document for filing. Therefore, the Commission finds that it is not necessary to make any further amendments to § 201.16(e).

EDIS–II Cover Sheet

The ITCTLA suggested three changes to the cover sheet that appeared in the NOPR. First, the ITCTLA commented that the name of the ''Security'' field on the cover sheet should be changed to ''Confidential or Public.'' Second, the ITCTLA commented that the name of the ''Document Type'' field on the cover sheet should be changed to include a list of document types typically received by the Commission. Third, the ITCTLA recommended that the ''Add Attachments'' field on the cover sheet should include a citation to the ''Document'' definition in section II(A) of the Handbook to clarify that this field only applies to electronic filings. As to the first comment, the Commission has determined not to make the proposed change because the ''drop-down'' list next to the ''Security'' field also contains a reference to ''privileged documents for internal use.'' As to the second comment, the Commission has adopted the ITCTLA's recommendation by including a list of document types normally filed with the Commission in the ''Document Type'' field of the cover sheet. The public is advised, however, that the ''drop-down'' menu of document types may be altered as experience dictates. The Commission also has adopted the ITCTLA's third comment to the cover sheet by adding a reference to the EFP Handbook's ''document'' definition in the ''Add Attachments'' field.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends 19 CFR part 201 as follows:

PART 201—RULES OF GENERAL APPLICATION

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Amend § 201.8 to add paragraphs (f) and (g) to read as follows:

§ 201.8 Filing of documents.

* * * * *

(f) *Electronic filing.* Notwithstanding the relevant provisions of §§ 201.8, 201.12, 201.13, 201.16, 206.8, 207.3, 207.10, 207.15, 207.25, 207.30, 207.62, 207.67, 207.68, 207.93, 210.4, and 210.8 of the Commission's rules of practice and procedure (19 CFR 201.8, 201.12, 201.13, 201.16, 206.8, 207.25, 207.3, 207.10, 207.15, 207.30, 207.62, 207.67, 207.68, 207.93, 210.4, and 210.8) governing the filing of documents in paper form with the Commission, a person may instead or in addition choose to file electronically certain documents at *http://edis.usitc.gov.* A person so choosing shall comply with the procedures set forth in the Commission's Handbook on Electronic Filing Procedures, which is available at the Office of the Secretary and at *http://edis.usitc.gov.* The Commission's Handbook on Electronic Filing Procedures will include a description of documents that are permitted to be filed with the Commission in electronic form.

(g) *Cover Sheet.* When making a paper filing, parties must complete the cover sheet on-line at *http://edis.usitc.gov* and print out the cover sheet for submission to the Office of the Secretary with the paper filing. For documents that are filed electronically, parties must complete the cover sheet for such filing on-line at *http://edis.usitc.gov* at the time of the electronic filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of business proprietary information or confidential information under § 201.6 and §§ 206.8, 206.17, 207.3, and 207.7 of this chapter.

3. Amend § 201.16 to add paragraph (e) to read as follows:

§ 201.16 Service of process and other documents.

* * * * *

(e) *Electronic Service.* With the prior consent of the Secretary, parties may serve documents by electronic means in all matters before the Commission, except for proceedings conducted under section 337 of the Tariff Act of 1930 that are before an administrative law judge. In the case of proceedings under section 337 of the Tariff Act of 1930, parties may serve documents by electronic means with the prior consent of the presiding administrative law judge while the proceeding is before an administrative law judge. Parties may only effect electronic service on recipients who have provided written consent thereto to the Secretary or the presiding administrative law judge. If electronic service is permitted, paragraphs (a), (b) and (d) of this section shall not apply. However, any dispute that arises among parties regarding electronic service must be resolved by the parties themselves, without the Commission's involvement.

A party may, upon notice to all parties, withdraw its consent to electronic service and require service under paragraphs (a) and (b) of this section.

By Order of the Commission.

Issued: November 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28404 Filed 11–7–02; 8:45 am]

BILLING CODE 7020–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7406–6]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date.

SUMMARY: On September 24, 2002, EPA promulgated final rule amendments to the national emission standards for hazardous air pollutants for secondary aluminum production at 65 FR 59787. Due to errors in the composition of the notice, an incorrect effective date of November 25, 2002 was published. However, under Clean Air Act (CAA) section 112(d)(10), the final rule amendments published on September 24, 2002 were legally effective upon promulgation, and the correct effective date for those amendments was September 24, 2002. This document corrects the erroneous effective date.

EFFECTIVE DATE: November 8, 2002.

ADDRESSES: Docket A–2002–06, containing supporting information used in developing the final rule to which this correction notice refers, is available for public inspection and copying between 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding Federal holidays, at the following address: U.S. EPA, Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, U.S. EPA, Minerals and Inorganic Chemicals Group (C504–05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0296, facsimile number (919) 541–5600, electronic mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of the administrative record compiled by EPA in the development of the final rule to which this correction document refers. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. Other material related to this rulemaking is available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN help line at (919) 541–5384.

Regulated Entities. Regulated categories and entities are secondary aluminum production facilities and include:

Category	NAICS code	SIC code	Examples of regulated entities
Industry	331314	3341	Secondary smelting and alloying of aluminum facilities.
			Secondary aluminum production facility affected sources that are collocated at:
	331312	3334	Primary aluminum production facilities.
	331315	3353	Aluminum sheet, plate, and foil manufacturing facilities.
	331316	3354	Aluminum extruded product manufacturing facilities.
	331319	3355	Other aluminum rolling and drawing facilities.
	331521	3363	Aluminum die casting facilities.
	331524	3365	Aluminum foundry facilities.
State/local/tribal governments	.....	.....	Not affected.
Federal government	.....	.....	Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the Agency is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1500 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

SUPPLEMENTARY INFORMATION: We promulgated final rule amendments to the national emission standards for hazardous air pollutants for secondary aluminum production, 40 CFR part 63, subpart RRR, on September 24, 2002 at 65 FR 59787. However, due to errors in the composition of the those amendments, an incorrect effective date of November 25, 2002 was published in two places. Under CAA section 112(d)(10), those amendments became legally effective on the date of promulgation—September 24, 2002. Today's document corrects the effective date of those amendments.

In the **EFFECTIVE DATE** section of the published document, the date was published as November 25, 2002. The correct effective date is September 24, 2002. We also incorrectly identified the effective date in the *Congressional Review Act* section of the final rule. The correct language for that section should have read as follows:

''J. *Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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**. These final rule amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2). These amendments will be effective on September 24, 2002.''

We are taking this action to correct the erroneous effective date in the September 24, 2002 notice in part because the rule as it existed prior to the amendments might have been construed to impose certain compliance obligations on affected sources prior to November 25, 2002. Since one of the stated purposes of the amendments was to eliminate confusion concerning these same compliance obligations, failure to correct the erroneous effective date would frustrate this purpose. We do not believe that any affected source will be adversely impacted by correction of the effective date.

Administrative Requirements

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the 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 Executive Order defines ''significant regulatory action'' as one that is likely to result in standards 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this correction notice does not constitute a ''significant regulatory action'' because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: November 4, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–28501 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7406–1]

Withdrawal of Federal Human Health and Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Federal regulations to withdraw water quality criteria applicable to Michigan. In 1992, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for 12 States and two territories, including Michigan, that had not fully complied with Clean Water Act (CWA); these regulations are known as the ''National Toxics Rule'' or ''NTR''. Thereafter, EPA published regulations pursuant to section 118 of the CWA to establish consistent enforceable protections for the Great Lakes system (Water Quality Guidance for the Great Lakes System). In compliance with the Water Quality Guidance for the Great Lakes System, Michigan adopted water quality standards on July 29, 1997, which included numeric water quality criteria and methodologies for deriving numeric criteria for the same priority toxic pollutants included in the NTR. EPA approved these standards on August 4, 2000. Since Michigan now has criteria, effective under the CWA, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally promulgated criteria are no longer needed. In this direct final rule, EPA is withdrawing Michigan from the NTR without prior proposal because EPA views this action as noncontroversial and does not anticipate adverse comment.

DATES: This rule is effective on February 6, 2003 without further notice, unless EPA receives adverse comment by December 9, 2002. If EPA receives such comment, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. Comments postmarked after this date may not be considered.

ADDRESSES: Please send an original and three copies of comments and enclosures (including references) to W–01–15, WQCR Comment Clerk; Water Docket, U.S. EPA, 1200 Pennsylvania Ave NW, MC–4101T, Washington, DC 20460. Alternatively, comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats avoiding the use of special characters and any form of encryption to *OW–Docket@epa.gov*. Identify electronic comments by the docket number W–01–15. Submit hand delivered comments to W–01–15, EPA's Water Docket, U.S. EPA, EPA West, 1301 Constitution Ave NW, Room B135, Washington DC 20460. No facsimiles (faxes) will be accepted. Comments will be available at the Water Docket, 202–566–2426, Monday through Friday, excluding legal holidays, during normal business hours of 8:30 a.m. to 4:30 p.m.

The supporting record for this rulemaking may be inspected at EPA Region 5, Office of Water, 77 West Jackson Boulevard, 16th Floor, Chicago, IL 60604–3507, Monday through Friday, excluding legal holidays, during normal business hours of 9 a.m. to 5 p.m.. Please contact Dave Pfeifer, as listed in the **FOR FURTHER INFORMATION CONTACT** section, before arriving.

A copy of Michigan's water quality standards may be obtained electronically from EPA's Water Quality Standards Repository, at *http://www.epa.gov/waterscience/standards/wqslibrary/mi/mi.html*.

FOR FURTHER INFORMATION CONTACT: Manjali Gupta Vlcan at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave NW., Washington, DC., 20460 (tel: 202–566–0373, fax 202–566–0409) or email at *vlcan.manjali@epa.gov* , or Dave Pfeifer in EPA's Region 5 at 312–353–9024 or e-mail at *pfeifer.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

No one is regulated by this rule. This rule merely withdraws Federal water quality criteria applicable to Michigan.

Background

In 1992, EPA promulgated a final rule known as the ''National Toxics Rule,'' or ''NTR,'' to establish numeric water quality criteria for 12 States and two Territories, including Michigan, (hereafter ''States'') that had not complied fully with section 303(c)(2)(B) of the CWA (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in

those 14 States for all purposes and programs under the CWA effective February 5, l993.

As described in the preamble to the final NTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of section 303(c)(2)(B) of the CWA, EPA will issue a rule amending the NTR to withdraw the Federal criteria for that State. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment on the criteria is unnecessary (*see* 65 FR 19659). However, if a State adopts criteria that are less stringent than the federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the federally promulgated criteria. (*See* 57 FR 60860, December 22, 1992) Michigan adopted water quality standards, effective July 29, 1997, pursuant to the requirements of 40 CFR part 132, Water Quality Guidance for the Great Lakes System (60 FR 15366), hereafter referred to as the ''GLI.'' These standards include numeric criteria for the protection of aquatic life for 15 toxic pollutants and numeric criteria for the protection of human health for 18 toxic pollutants. Michigan also adopted a methodology to derive numeric criteria and values as needed to implement the State's narrative criteria of ''no toxic in toxic amounts''. EPA approved these water quality standards on August 4, 2000 (65 FR 47864–47874). All waters in the State of Michigan are within the Great Lakes drainage basin. Therefore, the standards that were adopted and approved to comply with 40 CFR part 132 (which applies to all waters in the Great Lakes basin) apply statewide.

In 1988, EPA published guidance to States on how to adopt water quality standards to comply with CWA section 303(c)(2)(B) (*see* Rebecca W. Hanmer memo, December 12, 1988, ''Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)'' at *www.epa.gov/waterscience/library/wqstandards/finalguidance.pdf)*. This guidance was reflected in the preamble to the National Toxics Rule (57 FR 60853, December 22, 1992). EPA described three options for satisfying the requirements of CWA section 303(c)(2)(B). These options are:

Option 1: Adopt statewide numeric criteria in State water quality standards for all section 307(a) toxic pollutants for which EPA has published criteria guidance.

Option 2: Adopt specific numeric criteria in State standards for section 307(a) toxic pollutants, as necessary, to protect the designated uses.

Option 3: Adopt a procedure to derive a numeric criterion, as necessary, from a narrative water quality standard provision that prohibits toxicity in receiving waters.

As described earlier, Michigan's water quality standards include a procedure to derive a numeric criterion from a narrative water quality criterion that prohibits toxicity in receiving waters. EPA's guidance describes numerous conditions that EPA indicated, if satisfied, would ensure acceptable scientific quality and full involvement of the public and EPA and therefore allow the State to use Option 3 to satisfy the requirements of section 303(c)(2)(B). Michigan has satisfied these conditions:

(1) Michigan adopted a procedure to calculate numeric criteria and values for the protection of designated uses.

(2) Michigan adopted the procedure identified in 40 CFR part 132. Therefore, EPA determines that Michigan's procedure results in numeric criteria that are sufficiently protective to meet the goals of the Act.

(3) Michigan provided full opportunity for public participation during the adoption of the procedure.

(4) The procedure was formally adopted as a State rule and is mandatory in application.

(5) The procedure was submitted to EPA for review and approval as part of the State's water quality standards regulation.

By adopting numeric criteria for some priority toxic pollutants and a methodology to translate the narrative criterion into numeric values for the remaining priority toxic pollutants, Michigan has complied with the requirements of section 303(c)(2)(B) of the CWA to have numeric criteria for priority toxic pollutants. As mentioned earlier, EPA approved these water quality standards on August 4, 2000 (65 FR 47864–47874). Since Michigan now has criteria, effective under the Clean Water Act, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally-promulgated criteria are no longer needed.

While EPA has determined that Michigan has fully complied with the requirements of CWA section 303(c)(2)(B), EPA recognizes that Michigan's standards differ from NTR criteria in certain respects because Michigan's standards reflect EPA's most recent guidance as published by EPA in the GLI. Under the procedures set out in the NTR, EPA would normally take comment prior to withdrawal from the NTR. However, as required by the GLI, EPA took comment on its decision to approve the portion of Michigan's standards relevant to today's action in a notice published in the **Federal Register** on September 14, 1999 (64 FR 49803). Because the public had the opportunity to comment both on the State's adoption of criteria and EPA's approval of the State's criteria, EPA does not anticipate any adverse comments on withdrawal of Michigan from the NTR. For this reason, EPA is taking this action in a direct final rule. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to withdraw Federal water quality criteria for toxic pollutants applicable to Michigan if adverse comments are filed. This rule will be effective on February 6, 2003 without further notice unless EPA receives adverse comment by December 9, 2002. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review

This action withdraws Federal requirements applicable to Michigan and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 because it is administratively withdrawing Federal requirements that no longer need to apply to Michigan.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is 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 significant

economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

Executive Order 13132—Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000).

Executive Order 13045—Protection of Children from Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer and Advancement Act

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 because this rule does not involve technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) and will be effective on February 6, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—land, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

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

§ 131.36 [Amended]

2. Section 131.36 is amended by removing and reserving paragraph (d)(7).

[FR Doc. 02–28497 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 244

[FRA Docket No. 1999–4985, Notice No. 5]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On March 15, 2002, the Federal Railroad Administration (''FRA'') and the Surface Transportation Board (''STB'' or ''Board'') published joint final rules on regulations on safety integration plans (''SIPs'' or ''plans'') governing railroad mergers, consolidations, and acquisitions of control, and procedures governing the STB's consideration of SIPs in cases involving these type of transactions. Two interested parties filed petitions for reconsideration of FRA's final rule, addressing certain issues and concerns relating to the agency's rule text or regulatory impact statement. (The Board received no petitions for reconsideration of its final rule.) In this document, FRA responds to the petitions and clarifies and amends discrete provisions of the final rule, where appropriate.

DATES: *Effective Date:* The amendments to the final rule are effective November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6053 and E-mail: *jonathan.kaplan@fra.dot.gov).*

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2002, FRA and the STB published joint final rules in the

Federal Register establishing procedures for developing and implementing SIPs by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. 67 FR 11582, 11604, and 11607, March 15, 2002. The effective date of the final rules was April 15, 2002. *Id.* at 11583. FRA and the STB invited interested persons to file petitions for reconsideration of the final rules, *id.*, with FRA requiring that a petition summarize the complaint and explain ''why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the pubic interest.'' 49 CFR 211.29(a).

Two parties—the Association of American Railroads (''AAR'') and the Canadian National Railway Company (''CN'') filed petitions with FRA, seeking amendments to FRA's final rule governing SIPs. (The STB received no petitions and accordingly, its final rule remains unchanged.) The parties request that FRA revise its regulations concerning the approval of SIPs and SIP amendments and personnel staffing information required in a SIP. (Collaterally, CN raises questions about the agency's Regulatory Impact Analysis (''RIA'') and information collection requirements (''ICRs'') under the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.*)

In response to the petitions, FRA agrees that certain amendments to its final rule are warranted. The changes, which are fully discussed in the ''Section-by-Section Analysis'' portion of the preamble, are practicable and consistent with the public interest. The agency, however, denies other aspects of the petitions for the reasons provided below.

Discussion of Petitions for Reconsideration

A. Disposition of Proposed SIPs and Amendments Thereto

1. Petitions for Reconsideration

As summarized earlier, the AAR and CN request that FRA reconsider the regulation governing the approval of SIPs and SIP amendments. Under § 244.19, FRA reviews and approves a railroad's SIP based on the plan's ''reasonable assurance of safety at every step of a transaction,'' and the company's execution of the elements in the plan, including any amendments thereto. *See* 49 CFR 244.19(a), (b) at 67 FR 11607. Both the AAR and CN take issue with the agency's formal review process codified in the rule text. They assert that FRA's authority to approve a SIP, and amendments to it, seems to duplicate the STB's approval of the transaction as a whole. The petitioners also claim that the paradigm invites confusion and uncertainty in the application process vis-a-vis FRA's and the STB's respective roles.

Concurrently, the AAR and CN maintain that the process does not promote flexibility in responding to new information and experience that an informal iteration process facilitates. During an application process, the parties assert that integration plans, targets, and programs are fluid based on new information received, experience of the parties that are participants in the transactions, and unforeseen circumstances. CN, for example, cites its mergers with the Illinois Central Railroad Company [1] and the Wisconsin Central Transportation Corporation [2] in support of establishing an informal ''collaborative relationship'' with FRA in developing and implementing SIPs rather than the formal approval process currently provided in FRA's SIP rules. Petition of Canadian National Railway Company for Reconsideration of Federal Railroad Administration Rules (''CN Petition'') 5 (filed April 5, 2002). Informal consultations, the petitioners reiterate, promote expeditious changes to a plan or its implementation, whereas the approval process invites delay in reviewing a SIP and correspondingly, imposes added costs on the applicant. At bottom, the AAR and CN suggest that FRA amend its rule to reflect the agency's consultative role on SIPs in past mergers.

In the event that FRA maintains the SIP approval requirement, the petitioners ask the agency to modify the procedures for handling SIP amendments. The parties submit that the current amendment process, which requires the agency to approve all amendments to a plan that are requested by an applicant before they take effect, should be changed to authorize approval of any amendment filed with FRA absent any objections by the agency. The AAR and CN propose that the amendment would promote flexibility in addressing a change in circumstances, reduce regulatory delay in the application process, conserve regulatory resources, and facilitate implementation of time-sensitive changes to a SIP while enabling the agency to reject an amendment within its discretion. This change, the parties contend, would prove beneficial to both the regulated community and FRA without any compromise to railroad safety.

2. FRA's Response to Request That FRA Adopt a Consultative Role Rather Than an Approval Role on SIPs

The basic arguments advanced by the petitions in support of their position that FRA should adopt the informal SIP consultative process used in the past were fully considered and rejected by the agency when it issued the final rule. The agency's reasoning was discussed in detail in the preamble to the final rule and is reaffirmed by this response to the petitions for reconsideration. Rather than fully restating this discussion, FRA will only lightly touch upon some of the points made in the preamble.

First, the agency restates that a SIP and its implementation present critical safety issues during the merger, consolidation, or acquisition of a Class I or Class II railroad. FRA's approval process provides a mechanism to oversee railroad operations subject to a transaction and enables the agency to exercise its expertise in the railroad disciplines—operating practices, motive power and equipment, signal and train control, track safety, and hazardous materials—that are the subject of those operations. *See* 67 FR 11585. FRA believes that its approval process will provide a forum for the agency to coordinate informally with an applicant in approving a SIP and monitoring its implementation, thereby meeting the flexibility needs of an applicant. *See id.* at 11586, 11599. FRA thus concludes that an approval process regulates the safety aspects of a SIP in a coordinated, consistent, and efficient manner.

Second, FRA disagrees with the petitioner's assertion that its approval process overlaps with the STB's approval process. As the agency explained in its final rule:

> FRA believes that it and the STB have so interpreted their respective statutes and jurisdiction as to reconcile them seamlessly, thereby serving the public interest by assuring that all parts of the affected statutes are given effect and the purposes of Congress are fully carried out.

Id. at 11585. FRA recognizes that it has ''primary jurisdiction, expertise, and oversight responsibility in rail safety

[1] *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company,* STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998) (hereinafter ''*CN/IC*'').

[2] *Canadian National Railway Company, et al.—Control—Wisconsin Central Transportation Corporation. et al.*, STB Finance Docket No. 34000, 66 FR 23757 (May 9, 2001) (hereinafter ''*CN/WCTC*'').

matters,'' *id.* at 11586, whereas the STB ''has sole authority to regulate * * * economic transactions.'' *Id.* at 11585. Within this rubric, the agencies have framed their respective roles in the SIP process, with FRA reviewing and approving or disapproving plans and the implementation thereof, and the STB approving or vetoing a proposed transaction. *See id.* at 11587. FRA's role is to ''provide expert advice to the STB on safety issues presented by a proposed transaction,'' *id.*, by filing its findings and conclusions on a SIP to the STB, which then independently reviews the transaction and plan. *See* 49 CFR 1106.4(b). Therefore, FRA's and the STB's final rules clearly define the roles and responsibilities of the respective agencies, obviating any confusion or duplication during the application process.

More important, FRA posits that the approval process is necessary to provide a baseline for enforcement. Contrary to the consultative process proposed, an approval process enables the agency to take enforcement action if a railroad fails either to obtain an approved SIP or implement the approved plan. *See* 67 FR 11586, 11599. Such remedies include assessing civil penalties, issuing compliance, disqualification, or emergency orders, seeking the issuance of an injunction, or referring certain matters to the Department of Justice for criminal investigation and prosecution. *See id.* at 11591–92; 63 FR 72225, 72229, Dec. 31, 1998. Put another way, the approval process ensures that an applicant ''obtain[s] agency approval of a proposed SIP before implementing a regulated transaction.'' 67 FR 11592. SIP compliance and railroad safety thus mandate that FRA retain the approval process. Accordingly, FRA reaffirms its approval process and denies the petitioners' request to eliminate the formal SIP approval provision from its regulations at § 244.19(b).

3. FRA's Response to Request That FRA Modify Its Procedures for Handling SIP Amendments

FRA agrees with the petitioners that amendments to a SIP should be presumed approved unless it rejects the changes because the modifications do not, *e.g.*, provide a logical and workable transition or are insufficiently detailed to provide ''a reasonable assurance of safety.'' *See id.* at 11586; 49 CFR 244.19(a). The AAR proposed that the amendments become effective 20 days after their submission to FRA unless rejected by the agency. This is too short of a time period for adequate agency review of amendments that may have serious safety consequences. Instead, FRA will amend § 244.19(c)(1) to provide for a 30-day review period before proposed amendments can become effective absent earlier FRA approval or disapproval.

B. Personnel Staffing

1. Petition for Reconsideration

The AAR requests that FRA modify the personnel staffing rule (49 CFR 244.13(j)). As currently worded, § 244.13(j) requires an applicant to identify in its SIP the number of current and proposed employees in each of eight job classification categories when there is a projected change of operations that will impact workforce duties or responsibilities. The AAR requests that § 244.13(j) be changed to require the applicant to provide information on personnel staffing with respect to only those job categories that are impacted by a transaction. The organization believes that this modification would narrow the safety issues of job categories that an applicant would be required to address, obviating the need to file extraneous or irrelevant personnel staffing information in a plan.

2. FRA's Response

FRA agrees with the AAR's suggestion that § 244.13(j) should be clarified, and has adopted the language proposed by the organization. The agency intended to require a railroad to ''only address the personnel staffing element when it project[ed] a change of operations that [would] impact workforce duties or responsibilities.'' 67 FR 11597. An applicant ''may omit this section if it expects operations will remain constant after the transaction is consummated.'' *Id.*

C. Regulatory Evaluation Concerns

1. Petition for Reconsideration

In its petition, CN questions FRA's RIA based on its experience in the *CN/IC* and *CN/WCTC* mergers. Specifically, CN argues that the agency erred in its cost/benefits analysis because the costs identified are based on transactions that were consummated before the final rule was effective, and the benefits identified do not show any material gain in adopting a formal rather than an informal review process. Consequently, CN contends that the agency's regulatory impact statement is arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. 706(2)(A).[3]

2. FRA's Response

FRA believes that CN's analysis is misplaced. Consistent with Executive Order 12866, the agency issued its RIA that evaluated the potential costs and benefits of its final rule, and addressed the assumptions, inferences, and conclusions employed in its assessment. *See* 67 FR 11600–01. The cost estimates are premised on the transactions cited in the final rules, namely, the *Conrail Acquisition*,[4] which was the first transaction in which the parties—Norfolk Southern Railway Company and CSX Transportation, Incorporated—prepared SIPs. The agency analyzed the railroads' individual and collective expenses in establishing the cost figures identified in its final rule. Evidence in the administrative record supports the cost estimates, which FRA incorporated in the preamble to its final rule. *See id.* at 11600.

Likewise, the benefits measured are founded on, for example, the merger of the Union Pacific Railroad Company and the Southern Pacific Transportation Company and societal losses associated with the service difficulties caused by the disruption of safety and operating practices during the merger. *See id.* The RIA also considered alternatives to the rulemaking action, but concluded that the SIP process ensured that safety programs were continued and closely monitored. *See id.* Accordingly, FRA's assessment satisfies the regulatory analysis requirements under the Executive Order.

Finally, FRA notes that CN's efforts to draw a distinction between voluntary and required information filed in a SIP is irrelevant. The model used in the RIA is predicated on a SIP/no SIP analysis because SIPs were not prepared as a matter of normal business practice before the *Conrail Acquisition* proceeding. *See* 63 FR 72228; *Conrail Acquisition*, STB Decision No. 52, served Nov. 3, 1997. This model provides the necessary analytical tools in determining the costs and benefits associated with the rule given the lack of any such planning before the *Conrail Acquisition*. *See* Administrative Conference of the United States Recommendation 85–02, *Agency Procedures for Performing Regulatory Analysis of Rules*, 50 FR 28364, July 12,

[3] CN also alleges in a footnote that FRA's costs associated with the ICRs in its final rule appear to be ''unrealistically low.'' *See* CN Petition at 9 n. 6. The railroad cites no authority and provides no basis for the allegation. Absent evidence to the contrary, FRA maintains that the ICRs, which the Office of Management and Budget reviewed and approved, are accurate and satisfy the requirements under the PRA.

[4] *CSX Corporation and CSXT Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (hereinafter ''*Conrail Acquisition*'').

1985 (agency should discuss selected set of models employed in regulatory analysis). FRA submits that this model comports with the Executive Order and thus withstands judicial review. *See Center for Auto Safety v. Peck*, 751 F.2d 1336, 1342 (D.C. Cir. 1985) (court will not substitute its judgment for that of an agency ''when the agency is called upon to weigh the costs and benefits of alternative policies, since such cost-benefit analyses epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency'') (internal quotations and citation omitted); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (''arbitrary and capricious'' standard of review requires an agency to ''examine the relevant data and articulate a satisfactory explanation for its action, [including] a rational connection between the facts found and the choice made''); *Western Coal Traffic League* v. *Surface Transportation Board*, 216 F.3d 1168, 1177 (D.C. Cir. 2000) (agency action is not arbitrary and capricious when it provides ''ample opportunity for public comment in its proceeding [and] ample justification for its decision''); *State of Louisiana* v. *Verity*, 853 F.2d 322, 327 (5th Cir. 1988) (''agency's decision need not be ideal * * * so long as [it] gave at least minimal consideration to relevant facts contained in the record'').

Section-by-Section Analysis

FRA is making minor modifications to certain provisions of 49 CFR part 244 in response to the petitions for reconsideration. This section of the preamble explains the changes made to the final rule in response to the petitions. FRA respectfully refers interested parties to the agency's Section-by-Section Analysis of the final rule and the Notice of Proposed Rulemaking for a full discussion of those aspects of the rulemaking action that remain unchanged. *See* 67 FR 11590–600; 63 FR 72228–35.

Subpart B—Safety Integration Plans

Section 244.13(j)—Personnel Staffing

Paragraph (j) of this section is modified in response to the AAR's suggestion that the regulatory text be clarified to reflect that an applicant need only provide information on personnel staffing with respect to those job categories that are impacted by a transaction. The amendment requires an applicant to identify the number of employees by job category, currently and proposed, to perform the types of functions enumerated at § 244.13(j)(1)–(8) when there is a projected change of operations that will impact workforce duties or responsibilities for employees of that job category.

Section 244.19—Disposition

FRA is revising paragraph (c)(1) of this section in response to the AAR's and CN's petitions for reconsideration. As amended, the regulation authorizes an applicant to amend its SIP, provided it explain the need for the amendment and inform FRA about the change. An amendment to a plan is presumed approved and takes effect no sooner than 30 days after it is filed with FRA, unless the agency either approves or disapproves the change within that period. Consistent with FRA's approval of a plan, the agency must determine that the amendment does not provide ''a reasonable assurance of safety'' should it reject the modification. *See* 49 CFR 244.19(a), (b).

FRA agrees with the petitioners that this revision promotes flexibility in enabling a railroad to address a change in circumstances should it decide to amend its SIP. This change, which is consistent with the agency's Railroad Workplace Safety and Qualification and Certification of Locomotive Engineers rules at 49 CFR 214.307(c) and 240.103(c), respectively, facilitates a railroad's ability to implement time-sensitive changes to a plan yet retains agency discretion to intervene should circumstances warrant.

Regulatory Impact of FRA's Final Rule

Executive Order 12866 and DOT Regulatory Policies and Procedures

The response to petitions for reconsideration of the final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under those policies and procedures, the amendments contained in the response to the petitions are not considered significant because they either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. The economic impact of the amendments and clarifications contained in this response will generally reduce the cost of compliance with the rule.

The cost reduction, however, is not easily quantified and does not significantly alter FRA's original analysis of the costs and benefits associated with the original final rule. Additionally, the agency believes that the modifications and clarifications increase the benefits associated with the final rule by facilitating amendments to a SIP and conserving agency resources in reviewing and approving a plan. Accordingly, FRA reaffirms the economic arguments and estimates advanced in its RIA for the final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of rules on ''small entities.'' FRA certifies that the response to petitions for reconsideration does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there is no substantial economic impact on small units of government, businesses, or other organizations.

Proper Consideration of Small Entities in Agency Rulemaking

The response to petitions for reconsideration of the final rule has been reviewed in accordance with Executive Order 13272 (67 FR 53461, August 16, 2002), which requires agencies to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by RFA. FRA certifies that this rulemaking action does not have a significant economic impact on these entities under the RFA.

Paperwork Reduction Act

The response to petitions for reconsideration of the final rule does not significantly change any of the ICRs contained in the original final rule.

Environmental Impact

FRA has evaluated the response to petitions for reconsideration of the final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action for environmental purposes.

Federalism Implications

The response to petitions for reconsideration of the final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Statement of Energy Effects

The response to petitions for reconsideration of the final rule has been reviewed in accordance with Executive Order 13211 (66 FR 28355, May 22, 2001), which requires agencies to prepare a Statement of Energy Effects describing the effects of certain regulatory actions on energy supply, distribution, or use when such measures are identified as ''significant energy actions.'' FRA certifies that this rulemaking action is not a significant energy action to warrant the preparation of such a statement.

List of Subjects in 49 CFR Part 244

Administrative penalties, practice and procedure, Railroad safety, Railroads, Safety Integration Plans.

In consideration of the foregoing, FRA amends part 244 of chapter II of title 49, Code of Federal Regulations, to read as follows:

PART 244—[AMENDED]

1. The authority citation for Part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. No. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

2. Section 244.13 is amended by revising paragraph (j) introductory text to read as follows:

§ 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.

* * * * *

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform the following types of functions when there is a projected change of operations that will impact workforce duties or responsibilities for employees of that job category:

* * * * *

3. Section 244.19 is amended by revising paragraph (c)(1) to read as follows:

§ 244.19 Disposition.

* * * * *

(c) * * *

(1) *By the applicant.* The applicant may amend its Safety Integration Plan, from time to time, provided it explains the need for the proposed amendment in writing to FRA. Any amendment shall take effect no earlier than 30 days after its submission to FRA, unless it is either approved or disapproved by FRA within that period. Any disapproval of an amendment shall be in accordance with the requirements prescribed in paragraph (b) of this section.

* * * * *

Issued in Washington, DC on October 30, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–28096 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110102E]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Opening of General category Atlantic bluefin tuna New York Bight set-aside fishery.

SUMMARY: NMFS opens the Atlantic bluefin tuna (BFT) General category New York Bight set-aside fishery. This action is being taken to provide for General category fishing opportunities in the New York Bight.

DATES: Effective 1 a.m. on November 5, 2002, until the date that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT landings quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2002 fishing year General category quota and effort control specifications were issued October 1, 2002 (67 FR 61537).

Opening of the New York Bight Fishery

The New York Bight set-aside area is defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island where the shoreline intersects 72° 27′ W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38° 47′ N. lat. (Delaware Bay). Under § 635.27(a)(1)(iii), NMFS may make available all or part of the 10 mt landings quota set aside for the New York Bight area when the coastwide General category fishery has been closed in any quota period. NMFS closed the coastwide General category fishery on October 25, 2002 (67 FR 66072). At that time, NMFS announced that it would open the New York Bight fishery when it is determined that large medium and giant BFT are available in the New York Bight area. Allowing a few days transition between the closure of the coastwide fishery and the opening of the New York Bight fishery reduces concerns regarding enforcement of regulations applicable to that area. Based on the presence of large medium and giant BFT in the New York Bight area, fishermen have contacted NMFS requesting an opportunity to participate in this fishery. Since the coastwide General category fishery is closed and large medium and giant BFT are now available in the New York Bight, NMFS will open the New York Bight set-aside fishery effective 1 a.m., November 5, 2002, until the date that the set-aside quota of 10 mt is determined to have been taken, which will be published in the **Federal Register**.

For vessels permitted in the General category: upon the effective date of the New York Bight opening, retaining or landing large medium or giant BFT is authorized only within the set- aside area, until the set aside quota for that area has been harvested. The daily retention limit for the set-aside fishery will be one large medium or giant BFT (measuring 73 inches (185 cm) or larger) per vessel per day. BFT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. General category permit holders may tag and release BFT in all areas while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

For vessels permitted in the Highly Migratory Species (HMS) Charter/Headboat category: when participating in the General category New York Bight fishery, i.e., fishing for large medium and giant BFT intended for sale, HMS Charter/Headboat category vessels are subject to the same rules as General category vessels. HMS Charter/Headboat

category vessels may continue to fish in all areas under the Angling category regulations while the Angling category is open. Vessels permitted in the HMS Charter/Headboat category that are still eligible for the Angling category trophy fish allowance under § 635.23(c)(1) or (2) may land one large medium or giant trophy BFT prior to May 31, 2003. Trophy BFT may not be sold and must be reported.

The announcement of the New York Bight fishery closure date will be filed with the Office of the **Federal Register**, and further communicated through the HMS Fax Network, the Atlantic Tunas Information Line, HMS web sites, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of the closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line or check the HMS web sites to verify the status of the fishery before leaving for a fishing trip. The phone numbers for the Atlantic Tunas Information Line are (978) 281–9305 and (888) USA-TUNA. The web sites are www.nmfspermits.com and www.nmfs.noaa.gov/sfa/hmspg.html.

Classification

This action is taken under § 635.27(a)(1) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 4, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–28494 Filed 11–5–02; 3:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 217
Friday, November 8, 2002

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Quality Aerospace, Inc., S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2000–11–16, which currently applies to certain Quality Aerospace, Inc. (Quality Aerospace) (formerly Ayres Corporation) S2R series and Model 600 S2D airplanes. AD 2000–11–16 requires you to repetitively inspect the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking; replace or repair any lower spar cap where fatigue cracking is found; and report any fatigue cracking found. AD 2000–11–16 resulted from an accident of an Ayres S2R series airplane where the wing separated from the airplane in flight. Since AD 2000–11–16, additional airplanes have been identified that were manufactured with a similar design to those affected by the AD and a third repair option has been developed. This proposed AD would retain the repetitive inspections and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 2000–11–16, add additional airplanes to the Applicability of the AD, and add a third repair option. The actions specified by this proposed AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 15, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2001–CE–37–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–37–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

An accident on an Ayres S2R series airplane where the wing separated from the airplane in flight caused us to issue AD 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000). This AD requires the following on certain Quality Aerospace S2R series and Model 600 S2D airplanes:

—Repetitively inspect the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking;
—Replacing or repairing any lower spar cap where fatigue cracking is found; and
—Reporting any fatigue cracking to FAA.

AD 2000–11–16 superseded AD 97–17–03, Amendment 39–10195 (62 FR 43296, August 18, 1997), which required accomplishing the following:

—Inspecting the ¼-inch and 5⁄16-inch bolt hole areas on the lower spar caps for fatigue cracking;
—Replacing any lower spar cap where fatigue cracking is found; and
—Reporting any fatigue cracking to FAA.

AD 2000–11–16 made the inspections required in AD 97–17–03 repetitive, added additional airplanes to the Applicability of the AD, changed the initial compliance time for all airplanes, and arranged the affected airplanes into six groups based on usage and configuration.

AD 97–17–03 superseded AD 97–13–11, Amendment 39–10071 (62 FR

36978, July 10, 1997), which required accomplishing the following:

—Inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;

—Replacing any lower spar cap where fatigue cracking is found; and

—Reporting any fatigue cracking to FAA.

AD 97–13–11 incorrectly referenced the Ayres Model S2R–R1340 airplanes as Model S2R–1340R. AD 97–17–03 corrected the model designation and retained the actions of AD 97–13–11.

What Has Happened Since AD 2000–11–16 To Initiate This Action?

Since AD 2000–11–16, FAA has identified additional airplanes with the same type design that should be added to the Applicability of the AD. The manufacturer has issued update service information that gives the owners/operators of the affected airplanes an additional repair option. We have also identified several minor typographical errors in AD 2000–11–16.

Is There Service Information That Applies to This Subject?

Quality Aerospace (formerly Ayres Corporation) has issued these service bulletins:

—Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996;

—Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; and

—Quality Aerospace Custom Kit No. CK–AG–30, dated December 6, 2001.

What Are the Provisions of This Service Information?

These service bulletins include procedures for:

—Inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;

—Reworking the spar cap if a small crack is found in the ¼-inch spar cap hole;

—Replacing the butterfly center splice plate, part number 20211–3, from the aft surface of the wing spar join area; and

—Installing a splice block that improves the chances of salvaging a spar cap that has small cracks in the ¼-inch and 5/16-inch bolt holes.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Quality Aerospace S2R series and Model 600 S2D airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 2000–11–16 with a new AD that would:

—Retain the repetitive inspections and replacement (if necessary) requirements of AD 2000–11–16;

—Add an additional repair option of installing a splice block to improve the chances of salvaging a spar cap that has small cracks in the ¼-inch and 5/16-inch bolt holes; and

—Add additional airplanes to the Applicability of the AD.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 1,015 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	$417	$597	1,015 × $597 = $605,955

We estimate the following costs to accomplish any necessary cold work of bolt holes that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60= $60	$100	$160

We estimate the following costs to accomplish any necessary installation of a butterfly splice plate that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such installation:

Labor cost	Parts cost	Total cost per airplane
70 workhours × $60 = $4,200	$700	$4,900

We estimate the following costs to accomplish any necessary reaming of outer holes to 5/16-inch diameter that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	None	$60

We estimate the following costs to accomplish any necessary drilling and reaming of outer holes and adding three holes to install a splice block that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
65 workhours × $60 = $3,900	$4,100	$8,000

We estimate the following costs to accomplish any necessary spar cap replacement that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost per spar cap	Parts cost per spar cap	Total cost per spar cap
200 workhours X $60 = $12,000	$2,316	$14,316

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impact of AD 2000–11–16?

The differences between this proposed AD and the cost impact of AD 2000–11–16 are:

__The addition of an optional repair to install a splice block; and

__The addition of 15 airplanes of similar design.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 draft regulatory evaluation prepared for this action has been placed 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000), and by adding a new AD to read as follows:

** ** ** **Quality Aerospace, Inc. (Ayres Corporation formerly held Type Certificate (TC) No. A4SW):** Docket No. 2001–CE–37–AD; Supersedes AD 2000–11–16, Amendment 39–11764.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Numbers	Group
(1) S–2R	5000R through 5099R, except 5010R, 5031R, 5038R, 5047R, and 5085R	1
(2) S2R–G1	G1–101 through G1–106	1
(3) S2R–R1820	R1820–001 through R1820–035	1
(4) S2R–T15	T15–001 through T15–033	1
(5) S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–144, T34–147 through T34–167, T34–171, T34–180, and T34–181.	1
(6) S2R–G10	G10–101 through G10–136, G10–138, G10–140, and G10–141	2
(7) S2R–G5	G5–101 through G5–105	2
(8) S2R–G6	G6–101 through G6–147	2
(9) S2RHG–T65	T65–002 through T65–018	2
(10) S2R–R1820	R1820–036	2
(11) S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232, and T34–234.	2

Model	Serial Numbers	Group
(12) S2R–T45	T45–001 through T45–014	2
(13) S2R–T65	T65–001 through T65–018	2
(14) 600 S2D	All serial numbers beginning with 600–1311D	3
(15) S–2R	1380R and 1416R through 2592R	3
(16) R1340	R1340–001 through R1340–035	3
(17) S2R–R3S	R3S–001 through R3S–011	3
(18) S2R–T11	T11–001 through T11–005	3
(19) S2R–G1	G1–107, G1–108, and G1–109	4
(20) S2R–G10	G10–137, G10–139, and G10–142	4
(21) S2R–T34	T34–225, T34–236, T34–237, and T34–238	4
(22) S2R–G1	G1–110 through G1–115	5
(23) S2R–G10	G10–143 through G10–165	5
(24) S2R–G6	G6–148 through G6–155	5
(25) S2RHG–T34	T34HG–102	5
(26) S2R–T15	T15–034 through T15–040	5
(27) S2R–T34	T34–239 through T34–270	5
(28) S2R–T45	T45–015	5
(29) S2R	5010R, 5031R, 5038R, 5047R, and 5085R	6

Note 1: The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

Note 2: The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

Note 3: Any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine, makes the airplane a Group 1 airplane for the purposes of this AD. Inspect the airplane at the Group 1 compliance time specified in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

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

(1) Repetitively inspect, using magnetic particle, ultrasonic, or eddy current procedures, the ¼-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Reference paragraph (e)(3) and (e)(4) of this AD (including all subparagraphs) to obtain the initial and repetitive inspection compliance times.

(i) The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole.

(ii) You must inspect both of these areas.

(iii) If using the magnetic particle method for the inspection, perform the inspection using the ''Inspection'' portion of the ''Accomplishment Instructions'' and ''Lower Splice Fitting Removal and Installation Instructions'' in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. You must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. The inspection must be performed by or supervised by a Level 2 or Level 3 inspector certified for magnetic particle inspection method using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410. CAUTION: You must firmly support the wings during the inspection to prevent movement of the spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(iv) If using ultrasonic or eddy current methods for the inspection, a procedure must be sent to the FAA Atlanta Aircraft Certification Office for approval prior to performing the inspection. Send your proposed procedure to the FAA Atlanta Aircraft Certification Office (ACO), Attn: Cindy Lorenzen, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(2) If any cracking is found during any inspection required by this AD, you must accomplish the following:

(i) Repair or replace:

(A) Use the cold work process to ream out small cracks as defined in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or

(B) ream the ¼-inch bolt holes to 5/16 inches diameter as defined in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; or

(C) install Kaplan Splice Blocks as defined in Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001; or

(D) replace the affected spar cap in accordance with the maintenance manual.

(ii) Submit a report of inspection findings to the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; facsimile: (770) 703–6097. You must include:

(A) The airplane serial number and engine model number;

(B) The total number of flight hours on the lower spar cap that is cracked;

(C) Time on the spar cap since last inspection, if applicable;

(D) The procedure (magnetic particle, ultrasonic, or eddy current) used for the last inspection;

(E) Indicate if cold working has been accomplished or modifications incorporated such as installation of big butterfly plates;

(F) Indicate the time on the spar cap when the cold working or modifications were accomplished; and

(G) Indicate which bolt hole is cracked and the length of the crack.

Note 4: Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) *What is the compliance time of this AD?* The compliance times for each of the actions of this AD are as follows:

(1) Any required repair or replacement: Prior to further flight after the inspection where the crack(s) was/were found.

(2) Reporting requirement:

(i) Submit the report within 10 days after finding any crack(s) during any inspection required by this AD.

(ii) For airplanes where cracking was found during any inspection accomplished in accordance with AD 2000–11–16, which is superseded by this AD; or by AD 97–17–03, which was superseded AD 2000–11–16; or by AD 97–13–11, which was superseded by AD 97–17–03, submit the report within 10 days after the effective date of this AD, unless already accomplished.

(3) Initial inspection: Required unless already accomplished (compliance with AD 2000–11–16, or AD 97–17–03, or AD 97–13–11) within 50 flight hours after the effective date of this AD or upon the accumulation of these hours time-in-service (TIS) on each lower spar cap, whichever occurs later:

Airplane group	Lower spar cap hours TIS
(i) 1	2,000.
(ii) 2	2,200.
(iii) 3	6,400.
(iv) 4	2,500.

Airplane group	Lower spar cap hours TIS
(v) 5	6,200.
(vi) 6	For S/N 5010R: 5,530. For S/N 5038R: 5,900. For S/N 5031R: 6,400. For S/N 5047R: 6,400. For S/N 5085R: 6,290.

(4) Repetitive inspections: The following table gives the required repetitive inspection intervals based on the work performed and the method of inspection utilized. Each time is hours TIS after the last inspection:

Work previously performed	Magnetic particle hours TIS	Ultrasonic hours TIS	Eddy current hours TIS
(i) One of the following where the airplane does not have butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II	500	550	700
(A) No cracks found previously on wing spar; or			
(B) Small cracks repaired through cold work (or done as an option if never cracked) accomplished per SB–AG–39; or			
(C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inches diameter (or done as an option if never cracked) per CK–AG–29, Part I; or			
(D) Small cracks repaired through previous Alternative Methods of Compliance; or			
(E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1/–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spars is required			
(ii) One of the following where the airplane has butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II	900	950	1,250
(A) No cracks found previously on wing spar; or			
(B) Small cracks repaired through cold work (or done as an option if no cracks found) accomplished per SB–AG–39; or			
(C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inches diameter (or done as an option if no cracks found) per CK–AG–29, Part I; or			
(D) Small cracks repaired through previous Alternative Methods of Compliance; or			
(E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1/–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spar caps is required			
(iii) Cracked wing spar found during previous inspection with wing spar replacement: For all inspection methods (magnetic particle, ultrasonic, or eddy current), time for initial and repetitive inspection intervals start over when wing spar is replaced.			

Note 5: Aircraft S/Ns T45–007DC and T45–010DC had modified splice block assemblies installed at Ayres (Ayres/Kaplan Assembly No. 88–251) and must still follow the repetitive inspection intervals listed here.

Note 6: If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the ¼-inch bolt hole to 5/16 inches diameter to remove small cracks. Ayres CK–AG–29, Part I, also provides procedures to ream the ¼-inch bolt hole to 5/16 inches diameter. If you use either of these two methods to remove cracks and the airplane is reinspected immediately with no cracks found, you may continue to follow the repetitive inspection intervals listed above.

Note 7: Group 4 and Group 5 airplanes had the butterfly plates installed at the factory and may follow the repetitive inspection interval listed in paragraph (e)(4)(ii).

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

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

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

(2) Alternative methods of compliance approved in accordance with AD 2000–11–16, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note 8: 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 (f) 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.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(h) *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 provided that:

(1) The hopper is empty;

(2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS); and

(3) Flight into known turbulence is prohibited.

(i) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–11–16, Amendment 39–11764.

Issued in Kansas City, Missouri, on October 31, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28407 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–66–AD]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposed AD would require you to check the airplane logbook to determine whether certain modifications have been incorporated on the airplane and incorporate the modifications that have not already been accomplished. This proposed AD is the result of the manufacturer performing a design study on the structural integrity of certain parts and reports of service failure of other parts installed on the affected airplanes. The actions specified by this proposed AD are intended to prevent reduced structural integrity in the primary structure of the airplane, which could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 13, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–66–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2000–CE–66–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com.* You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–66–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received reports that an unsafe condition may exist on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. Failure reports of the rudder torque tube and elevator control fasteners on in-service airplanes and design studies by the manufacturer on the structural integrity of the glider towing attachment bolt and the vertical fin rear spar prompted us to issue this proposed AD.

We have determined that failure of the rudder torque tube, the elevator control fasteners, the vertical fin rear spar, and the glider towing attachment bolt is caused by fatigue cracking and overload. As a result of the design studies, the manufacturer developed specific modifications to strengthen the affected areas of the airplane.

What Are the Consequences If the Condition Is Not Corrected?

These conditions, if not corrected, could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

British Aerospace Aerostructures Limited (now DeHavilland Support Limited) has issued BAe Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.

What Are the Provisions of This Service Information?

The service information includes procedures for inspecting the airplane to:

Determine if Modifications H 225, H 269, and H 360 are incorporated for all affected airplanes; and

Determine if Modification H 275 is incorporated for airplanes that incorporate Modification H 197 (glider towing capabilities).

The service information also specifies incorporating these modifications if not already incorporated.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

the unsafe condition referenced in this document exists or could develop on other R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes of the same type design;

the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to check the airplane logbook to determine whether certain modifications have been incorporated on the airplane and incorporate the modifications that have not already been accomplished

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 54 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish any necessary modifications that would be required based on the results of the proposed logbook check We have no way of determining the number of airplanes that may need such modification.

Modification	Labor cost	Parts cost	Total cost per airplane
H 225	40 workhours × 60 = $2,400	$1,470	$2,400 + $1,470 = $3,870.
H 269	4 workhours × 60 = $240	$203 each (2 per airplane)	$240 + $406 ($203 × 2) = $646.
H 275	43 workhours × $60 = $180	$203 each (2 per airplane)	$180 + $406 ($230 × 2) = $586.
H 360	20 workhours × $60 = $1,200	$1,150	$1,200 + $1,150 = $2,350.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''within the next 90 days after the effective date of this AD.''

Why Is the Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the rudder torque tube, the elevator control fasteners, the vertical fin rear spar, and the glider towing attachment bolt is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 50 hours time-in-service (TIS) as it would be for as airplane with 1,000 hours TIS.

For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this proposed AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 draft regulatory evaluation prepared for this action has been placed 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Robert E. Rust: Docket No. 2000-CE–66-AD

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent reduced structural integrity in the primary structure of the airplane, which could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Check the airplane logbook (i) For all affected airplanes: to determine if Modifications H 225, H 269, and H 360 are incorporated; and (ii) For only these airplanes that incorporate Modification H 197 (glider towing capabilities): to determine if Modification H 275 is incorporated.	Within the next 90 days after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.

Actions	Compliance	Procedures
(2) If, by checking the airplane logbook, you can positively determine that all the applicable modifications in paragraphs (d)(1)(i) and (d)(1)(ii) are incorporated, you must make an entry into the aircraft records that shows compliance with paragraphs (d)(1) and (d)(2) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Not applicable	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.
(3) If, by checking the airplane logbook, you determine that all the applicable modifications in paragraphs (d)(1)(i) and (d)(1)(ii) are not incorporated, or you cannot positive show that they are incorporated.. (1) Incorporate each missing modification; and (ii) You must make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with seciton 43.9 of the Federal Aviation Regulations (14 CFR 43.9)	Within the next 90 days after the effective date of this AD, unless already accomplished.	British Aerospace Aerostructures Limited has issued BAE Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.
(4) Do not incorporate Modification H 197 unless Modification H 275 has also been incorporated.	As of the effective date of this AD	British Aerospace Aerostructures Limited has issued BA3 Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.

Note 2: Although not required by this AD, FAA highly recommends you incorporate Modification H 282.

(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, Atlanta 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, Atlanta ACO.

Note 3: 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?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(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) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com.* You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 31, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28409 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 249

[Release Nos. 33–8144; 34–46767, International Series Release No. 1264, File No. S7–42–02]

RIN 3235–AI70

Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by new section 13(j) of the Securities Exchange Act of 1934, added by section 401(a) of the Sarbanes-Oxley Act of 2002, we propose to require disclosure of off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of an issuer with unconsolidated entities or other persons that have, or may have, a material effect on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. The new disclosure would be located in the ''Management's Discussion and Analysis of Financial Condition and Results of Operations'' (''MD&A'') section in a company's disclosure documents. The proposals would require a registrant to provide, in a separately captioned subsection of MD&A, a comprehensive explanation of its off-balance sheet arrangements. The proposals also would require a registrant (other than small business issuers) to provide an overview of its aggregate contractual obligations in a tabular format and contingent liabilities and commitments in either a textual or tabular format.

DATES: Comments should be received by December 9, 2002.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. In the alternative, you may submit your comments electronically to the following address: *rule-comments@sec.gov.* To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. All comment letters should refer to File No. S7–42–02. This file number, along with the name of your organization, should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the

Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site *(http://www.sec.gov).* We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be referred to Andrew Thorpe, Division of Corporation Finance (202–942–2910) or Jenifer Minke-Girard or Eric Schuppenhauer, Office of the Chief Accountant (202–942–4400), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to item 303[1] of regulation S–K,[2] item 303[3] of regulation S–B,[4] item 5 of form 20–F[5] and general instruction B of form 40–F[6] under the Securities Exchange Act of 1934.[7]

Table of Contents

I. Background
II. Discussion of Proposed Rules
A. Objectives of the Proposed Rules
B. Off-balance Sheet Arrangements
1. Background
2. Off-balance Sheet Arrangements Covered Under the Proposals
3. Proposed Disclosure Threshold
4. Proposed Disclosure about Off-balance Sheet Arrangements
C. Contractual Obligations and Contingent Liabilities and Commitments
1. Proposed Tabular Disclosure in MD&A
2. Proposed Disclosure of Contingent Liabilities or Commitments
D. Presentation of Proposed Disclosure
1. Separate Disclosure Sections
2. Language and Format
E. Other MD&A Disclosure
F. Application of the Proposals to Foreign Private Issuers
G. Proposed Safe Harbor for Forward-Looking Information
H. Other Safe Harbors for Forward-Looking Information
III. General Request for Comment
IV. Paperwork Reduction Act
V. Cost-Benefit Analysis
VI. Effects on Efficiency, Competition and Capital Formation
VII. Initial Regulatory Flexibility Analysis
VIII. Small Business Regulatory Enforcement Fairness Act
IX. Codification Update—Statutory Basis and Text of Proposed Amendments

[1] 17 CFR 229.303.
[2] 17 CFR 229.10 *et seq.*
[3] 17 CFR 228.303.
[4] 17 CFR 228.10 *et seq.*
[5] 17 CFR 249.220f.
[6] 17 CFR 249.240f.
[7] 15 U.S.C. 78a *et seq.*

I. Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 was enacted.[8] Section 401(a) of the Sarbanes-Oxley Act, entitled ''Disclosures in Periodic Reports,'' adds section 13(j) to the Securities Exchange Act of 1934, which requires the Commission to adopt final rules by January 26, 2003 (180 days after the date of enactment) to require each annual and quarterly financial report required to be filed with the Commission, to disclose ''all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.''[9] That legislative mandate is wholly consistent with the series of rulemaking and other initiatives that we have undertaken to improve the transparency and quality of corporate disclosure. Furthermore, much of the language in section 401(a) (*e.g.*, ''financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources and significant components of revenues or expenses'') mirrors the language currently found in the MD&A rules. Moreover, much of the language and many of the concepts embodied in the legislation are consistent with the language and concepts embodied in the Commission's January 2002 statement, which discussed the desirability of enhanced disclosure in MD&A of off-balance sheet arrangements.[10] Accordingly, we are proposing to implement this provision of the Sarbanes-Oxley Act, and to simultaneously advance our initiatives to improve disclosure, by amending the current MD&A rules.[11]

The Commission has long recognized that there is a need for a narrative explanation of financial statements and accompanying footnotes and has developed MD&A over the years to fulfill this need.[12] The disclosure in MD&A is of paramount importance in increasing the transparency of a company's financial performance and providing investors with the disclosure necessary to evaluate a company and to make informed investment decisions. After the financial statements themselves, MD&A is generally the most important portion of a company's disclosure. This is so because MD&A is designed to achieve three interrelated purposes:

- To provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management;
- To improve overall financial disclosure and provide the context within which financial statements should be analyzed; and
- To provide information about the quality, and potential variability, of a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.

MD&A disclosure should provide investors with an understanding of management's view of the financial performance and condition of the company, as well as an appreciation of what the financial statements show and do not show, important trends and risks that have shaped the past and trends and risks that are reasonably likely to shape the future.

The MD&A rules already require disclosure regarding off-balance sheet arrangements and other contingencies. The MD&A rules are designed to cover a wide range of corporate events, including events, variables and uncertainties not otherwise required to be disclosed under U.S. generally accepted accounting principles (''GAAP'').[13] For example, the current MD&A rules require disclosure of:

[8] Pub. L. 107–204, 116 Stat. 745 (2002).
[9] Pub. L. 107–204 sec. 401(a) [15 U.S.C. 78m(j)].
[10] *See* release no. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746]. That statement was issued in response to a petition from Arthur Andersen LLP, Deloitte and Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP, with the endorsement of the American Institute of Certified Public Accountants, for an interpretive release to facilitate enhanced MD&A disclosures. *See,* rulemaking petition No. 4–450 (Dec. 31, 2001).
[11] The Sarbanes-Oxley Act exempts from section 401 investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8). *See* Pub. L. 107–204 sec. 405 [15 U.S.C. 7263]. Therefore, registered investment companies are excluded from the scope of the proposals. The proposed rules would apply, however, to business development companies. Business development companies are defined in section 2(a)(48) of the Investment Company Act of 1940. *See* 15 U.S.C. 80a–2(a)(48). Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act, but file forms 10–K and 10–Q, and also include MD&A in their annual reports to shareholders.
[12] *See, e.g.*, Release No. 33–5443 (Dec. 12, 1973) [39 FR 829].
[13] In *In the Matter of Caterpillar Inc.,* Release No. 34–30532 (March 31, 1992), the Commission found that Caterpillar had violated section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] by failing to have disclosed the magnitude of its Brazilian subsidiary's contribution to Caterpillar's overall earnings.

Continued

• Information necessary to an understanding of the registrant's financial condition, changes in financial condition and results of operations; [14]

• Any known trends, demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in, the registrant's liquidity increasing or decreasing in any material way; [15]

• The registrant's internal and external sources of liquidity, and any material unused sources of liquid assets; [16]

• The registrant's material commitments for capital expenditures as of the end of the latest fiscal period; [17]

• Any known material trends, favorable or unfavorable, in the registrant's capital resources, including any expected material changes in the mix and relative cost of capital resources, considering changes between debt, equity and any off-balance sheet financing arrangements.[18]

• Any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, the extent to which income was so affected.[19]

• Significant components of revenues or expenses that should, in the company's judgment, be described in order to understand the registrant's results of operations; [20]

• Known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.[21]

• Matters that will have an impact on future operations and have not had an impact in the past; [22] and

• Matters that have had an impact on reported operations and are not expected to have an impact upon future operations.[23]

The MD&A rules are intentionally flexible to elicit more meaningful disclosure and to avoid boilerplate discussions.[24] Therefore, while only one item in our current MD&A rules specifically identifies off-balance sheet arrangements,[25] the other requirements clearly require disclosure of off-balance sheet arrangements if necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations.

We have focused a great deal of our attention on enhancing MD&A disclosure in a continuing effort to improve transparency and restore investor confidence. In December 2001, we issued cautionary advice emphasizing the need for MD&A disclosure regarding a company's critical accounting policies.[26] In January 2002, we issued a statement focusing on the need for improved MD&A disclosure in the following three specific areas of concern: (1) Liquidity and capital resources, including off-balance sheet arrangements; (2) certain trading activities involving non-exchange traded contracts accounted for at fair value; and (3) relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties.[27] In each of those releases, we stated our intention to consider disclosure rules that would codify our views as expressed in those releases. In May of this year, we began the codification process by proposing rules to mandate improved MD&A disclosure about a company's application of its critical accounting policies.[28] We also reiterated our intention to continue improving MD&A by proposing additional disclosure rules.[29] In keeping with those intentions, and in accordance with the mandates in the Sarbanes-Oxley Act, we now are proposing additional rules that would require companies to more effectively fulfill the purposes of MD&A.[30] As discussed below, the proposed rules would, under some circumstances, lower the threshold that triggers disclosure of off-balance sheet arrangements, require that disclosure relating to off-balance sheet arrangements must be set apart in a designated section of MD&A, and (except in the case of small business issuers) require disclosure of aggregate contractual obligations and contingent liabilities and commitments.[31]

II. Discussion of Proposed Rules

A. Objectives of the Proposed Rules

The proposals seek to improve transparency of a company's off-balance sheet arrangements and to provide an overview of aggregate contractual obligations and contingent liabilities and commitments. We believe that improvements in the quality of information in these areas is necessary for investors to better understand a company's current and future financial position and current and future sources of liquidity. Moreover, because management is in the best position to monitor and assess those aspects of its business, it also is in the best position to provide clear explanations and analysis to investors. Our objectives are:

• To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;

• To provide investors with the information and analysis necessary to gain a more comprehensive understanding of the implications of a company's obligations and contingencies from off-balance sheet arrangements that are neither readily

Disclosure of the extent of that contribution was required under the MD&A disclosure requirements, even though disclosure was not required under GAAP, because the subsidiary's earnings materially affected Caterpillar's reported income from continuing operations. *See* item 303(a)(3)(i) of regulation S–K [17 CFR 229.303(a)(3)(i)]. Furthermore, Caterpillar's MD&A should have discussed various factors which contributed to the subsidiary's earnings, such as currency translation gains, export subsidies, interest income, and Brazilian tax loss carry-forwards, because such items were significant components of its revenues that should have been identified and addressed in order for a reader of the company's financial statements to understand Caterpillar's results of operations. *Id.*

[14] *See* item 303(a) of regulation S–K [17 CFR 229.303(a)].

[15] *See* item 303(a)(1) of regulation S–K [17 CFR 229.303(a)(1)].

[16] *Id.*

[17] *See* item 303(a)(2)(i) of regulation S–K [17 CFR 229.303(a)(2)(i)].

[18] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)].

[19] *See* item 303(a)(3)(i) of regulation S–K [17 CFR 229.303(a)(3)(i)].

[20] *Id.*

[21] *See* item 303(a)(3)(iii) of regulation S–K [17 CFR 229.303(a)(3)(ii)].

[22] *See* instruction 3(A) to item 303(a) of regulation S–K [17 CFR 229.303(a)].

[23] *See* instruction 3(B) to item 303(a) of regulation S–K [17 CFR 229.303(a)].

[24] *See* Release No. 33–6711 (April 17, 1987) [52 FR 13715].

[25] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)].

[26] *See* Release No. 33–8040, FR–60 (Dec. 12, 2001) [66 FR 65013].

[27] *See* Release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746].

[28] *See* Release No. 33–8098 (May 10, 2002) [67 FR 35620].

[29] *Id.* at 35622. In a separate proposal, for example, we proposed rules to require current disclosure on form 8–K of the creation of a material direct or contingent financial obligation of a registrant and about events triggering a direct or contingent financial obligation of a registrant. *See* proposed items 2.03 and 2.04 of form 8–K [17 CFR 249.308], Release No. 33–8106 (June 17, 2002) [67 FR 42914]. While that disclosure would not be included in MD&A, it would provide investors with current disclosure of contingent obligations when they become material. The proposed periodic MD&A disclosure of off-balance sheet arrangements would provide more comprehensive information than the proposed current disclosure.

[30] While section 401(a) of the Sarbanes-Oxley Act requires us to adopt new disclosure requirements only for periodic reports, we propose to include Securities Act registration forms that require MD&A disclosure within the scope of the proposals because the policies underlying section 401(a) apply to such registration statements.

[31] *See* section II.B.

apparent nor easily understood from a reading of the financial statements alone; and

• To better inform investors of the aggregate impact of short- and long-term contractual obligations and contingent liabilities and commitments, from both on- and off-balance sheet activities, by presenting a total picture in a single location.

With a greater understanding of off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments, investors should be better able to understand how a company conducts significant aspects of its business (including financing), to assess the quality of earnings and to understand the risks that are not apparent on the face of the financial statements.

B. Off-Balance Sheet Arrangements

1. Background

Off-balance sheet arrangements often are used to provide financing, liquidity, market or credit risk support or to engage in leasing, hedging or research and development services. Some companies use off-balance sheet arrangements to obtain financing at a lower cost of capital than otherwise would be available to a company. Another common use of off-balance sheet arrangements is to allocate risks among third parties. Off-balance sheet arrangements may involve the use of complex structures, including structured finance or special purpose entities, to facilitate a company's transfer of, or access to, assets. In many cases, the transferor of assets has some continuing involvement with the transferred assets that may assume different forms, such as financial guarantees, retained interests, keepwell agreements [32] or other contingent arrangements designed to reduce risks to the special purpose entities or other third parties. The use of off-balance sheet arrangements may play a significant role in the continued availability of liquidity and capital resources for the transferor of assets. It also may be a source of potential risks to a company's future liquidity or results of operations.

One common off-balance sheet arrangement is used for selling financial assets through a process known as securitization.[33] For example, a company may have loans receivable or trade accounts receivable recorded on its books that it wishes to sell in order to generate liquidity, to transfer the risk of defaults to other parties or to protect itself against changes in interest rates. To securitize its receivables, a company sponsors the establishment of entities that are commonly known as special purpose entities. Once a special purpose entity has been established, it purchases the receivables from the company with cash proceeds received from issuing debt or equity securities, backed by the cash flows from the receivables, to interested investors. The company that sold the receivables to the special purpose entity may be required to provide financial support to the special purpose entity. For example, the company may agree to repurchase receivables from the special purpose entity if the receivables are in default, or the company may guarantee a specified level of cash flows on the receivables held by the special purpose entity. Alternatively, the sponsoring company may retain a subordinated interest in a pool of receivables, so that the senior interests have a cushion in the event that a portion of receivables are in default. Accordingly, the company that sold the receivables may continue to have certain obligations to the special purpose entity or a continuing interest in, and risk related to, the transferred assets. Depending on the nature of the obligations and the related accounting treatment under GAAP, the company's financial statements may not fully reflect the company's obligations in respect of the special purpose entity or its arrangements.

Transactions with special purpose entities commonly are structured so that the company that establishes or sponsors the special purpose entity and engages in transactions with it is not required to consolidate the special purpose entity into its financial statements under GAAP. The determination of whether or not to consolidate a special purpose entity begins with an analysis of whether the sponsor has a controlling financial interest in a special purpose entity.[34] Under GAAP, the usual condition for a controlling financial interest is the ownership of a majority voting interest.[35] The theory underlying consolidation is that ''boundaries between separate corporate entities must be ignored to report the business carried on by a group of affiliated corporations as the economic and financial whole that it actually is.''[36] Off-balance sheet arrangements, however, often are structured so that the sponsor does not have a controlling financial interest because the sponsor neither owns a majority voting interest, nor exercises control over the management of the special purpose entity. For example, a special purpose entity may be a legal entity, such as a trust, that does not issue voting stock. In addition, the activities and business decisions of the management of a special purpose entity may be subject to legally imposed limitations and therefore the control traditionally contemplated by GAAP may not exist.

Accounting standard setters in the U.S. are currently reevaluating the accounting guidance for consolidation of special purpose entities.[37] Regardless of current standards for consolidation and regardless of how those standards change as a result of the ongoing reevaluation, disclosure of off-balance sheet arrangements is vital to investor understanding.

2. Off-Balance Sheet Arrangements Covered Under the Proposals

In light of the increasing complexity of off-balance sheet arrangements and the plain language of section 401(a) of the Sarbanes-Oxley Act,[38] we believe that the proposed disclosure should address a wide variety of arrangements. Accordingly, the proposed rules define the term ''off-balance sheet arrangement'' as any transaction, agreement or other contractual arrangement to which an entity that is not consolidated with the registrant is a party, under which the registrant, whether or not a party to the arrangement, has, or in the future may have:

• Any obligation under a direct or indirect guarantee or similar arrangement;

• A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

• Derivatives, to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

• Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully

[32] A ''keepwell agreement'' includes any agreement or undertaking under which a company is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or third party.

[33] The term ''securitization'' refers to the process of transforming financial assets into securities.

[34] *See* Accounting Research Bulletin No. 51, *Consolidated Financial Statements* (Aug. 1959), paragraph 1.

[35] *See* FASB SFAS No. 94, *Consolidation of all Majority-Owned Subsidiaries* (Oct. 1987), paragraph 13 (amending paragraph 2 of Accounting Research Bulletin No. 51).

[36] *Id.* at paragraph 30.

[37] *See* FASB Exposure Draft, *Proposed Interpretation, Consolidation of Certain Special-Purpose Entities* (June 2002).

[38] Pub. L. 107–204 sec. 401 [15 U.S.C. 78m(j)].

reflected in the financial statements (excluding the footnotes thereto).[39] This definition could encompass arrangements between a company and an entity conducting off-balance sheet activities, as well as arrangements between that entity and third parties and between the company and third parties.[40]

The proposed definition of off-balance sheet arrangements slightly diverges from the exact language of section 401(a) of the Sarbanes-Oxley Act. For example, the proposed definition refers to ''any obligation, including a contingent obligation, that is not fully reflected in the financial statements,'' whereas section 401(a) refers to ''obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons.'' The proposed definition is more focused than the language of section 401(a) in order to aid companies in disclosing off-balance sheet arrangements that warrant more focused and precise disclosure.[41] An overly broad definition could elicit unnecessarily voluminous and repetitive disclosure.[42]

Another aspect of the proposals that is not explicitly stated in the Sarbanes-Oxley Act is that the arrangements are contractual. We believe that the contemplated arrangements would be contractual and that it is appropriate to include them within our policy regarding MD&A disclosure of preliminary negotiations. Therefore, the proposals include an instruction that no obligation to make disclosure of an off-balance sheet arrangement shall arise until an unconditionally binding definitive agreement, subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.[43] That proposed instruction is consistent with the Commission policy set forth in an interpretive release in 1989 on disclosure of preliminary negotiations for the acquisition or disposition of assets not in the ordinary course of business.[44] In the 1989 Interpretive Release, the Commission stated that, ''where disclosure is not otherwise required, and has not otherwise been made, the MD&A need not contain a discussion of the impact of [preliminary negotiations for the acquisition and or disposition of assets not in the ordinary course of business] where, in the registrant's view, inclusion of such information would jeopardize completion of the transaction.''[45]

The proposed definition specifically identifies four characteristics of off-balance sheet arrangements. First, the proposed definition addresses any obligation under a direct or indirect guarantee or similar arrangement.[46] GAAP currently requires disclosure in the footnotes to the financial statements of the nature and amount of the guarantee even though the possibility of loss may be remote.[47] We believe that, with regard to off-balance sheet arrangements involving guarantees, MD&A disclosure is warranted in addition to footnote disclosure when the possibility of loss is higher than remote.[48] Second, the proposed definition includes off-balance sheet arrangements that involve a retained or contingent interest in assets transferred to an unconsolidated entity.[49] Those interests may be used to provide credit enhancement to a special purpose entity and can subsequently have a material effect on a registrant's results of operations or liquidity. Third, the proposed definition includes derivatives that are not fully reflected as liabilities or assets in the financial statements.[50] That item is designed to capture, for example, derivatives that are classified as stockholder's equity under GAAP.[51]

The proposed definition also includes any obligation or liability, including a contingent obligation or liability, to the extent that it is not ''fully reflected'' on the face of the financial statements.[52] This item is designed to include certain contingent liabilities that would not be classified as guarantees under GAAP and that are not recorded at fair value as of the date of the financial statements.[53] For purposes of the proposed definition, obligations or liabilities that are not considered to be fully reflected on the face of financial statements include:

- Obligations that are not classified as a liability according to GAAP;[54]
- Contingent liabilities which, as of the date of the financial statements, are not probable or, if probable, are not reasonably estimable;[55] or
- Liabilities as to which the amount recognized in the financial statements is

[39] *See* proposed item 303(c)(3) of regulation S–B [17 CFR 228.303(c)(3)]; proposed item 303(a)(4)(iii) of regulation S–K [17 CFR 229.303(a)(4)(iii)]; proposed item 5.E.3 of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii) of form 40–F [17 CFR 249.240f].

[40] For example, a loan agreement entered into by an entity unconsolidated with the registrant or third party that benefits from a pre-existing guarantee or keepwell agreement of the registrant would be included within the definition whether or not the registrant is a party to the loan agreement.

[41] Some arrangements that could be characterized as ''off-balance sheet'' are already subject to disclosure requirements. For example, we are proposing to exclude from the definition ''contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements).'' *See* proposed item 303(c)(3)(iv) of regulation S–B [17 CFR 228.303(c)(3)(iv)]; proposed item 303(a)(4)(iii)(D) of regulation S–K [17 CFR 229.303(a)(4)(iii)(D)]; proposed item 5.E.3(d) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(D) of form 40–F [17 CFR 249.240f].

[42] Generally accepted accounting principles address situations involving off-balance sheet arrangements in many differing contexts (*See, e.g.*, FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975); FASB SFAS No. 13, *Accounting for Leases* (Nov. 1976); FASB SFAS No. 47, *Disclosure of Long-Term Obligations* (Mar. 1981); and FASB SFAS No. 129, *Disclosure of Information about Capital Structure* (Feb. 1997)). We do not intend for those generally accepted accounting principles to limit or modify the breadth of the proposed definition of ''off-balance sheet arrangement.''

[43] *See* proposed Instruction 1 to paragraph (c) of item 303 of regulation S–B [17 CFR 228.303(c)]; proposed instruction 13 to paragraph 303(a) of item 303 of regulation S–K [17 CFR 229.303(a)]; proposed instruction 1 to item 5.E. of form 20–F [17 CFR 249.220f], and proposed general instruction 7(iv) to form 40–F [17 CFR 249.240f].

[44] *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427]. Hereinafter referred to as ''1989 Interpretive Release.''

[45] *Id.* at 22436.

[46] *See* proposed item 303(c)(3)(i) of regulation S–B [17 CFR 228.303(c)(3)(i)]; proposed item 303(a)(4)(iii)(A) of regulation S–K [17 CFR 229.303(a)(4)(iii)(A)]; proposed item 5.E.3(a) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(A) of form 40–F [17 CFR 249.240f]. In May 2002, the FASB proposed a new interpretation that would affect the accounting for guarantees. *See* FASB Exposure Draft, *Proposed Interpretation, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (May 2002).

[47] *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 12.

[48] *See* section II.B.3.

[49] *See* proposed item 303(c)(3)(ii) of regulation S–B [17 CFR 228.303(c)(3)(ii)]; proposed item 303(a)(4)(iii)(B) of regulation S–K [17 CFR 229.303(a)(4)(iii)(B)]; proposed item 5.E.3(b) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(B) of form 40–F [17 CFR 249.240f].

[50] *See* proposed item 303(c)(3)(iii) of regulation S–B [17 CFR 228.303(c)(3)(iii)]; proposed item 303(a)(4)(iii)(C) of regulation S–K [17 CFR 229.303(a)(4)(iii)(C)]; proposed item 5.E.3(c) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(C) of form 40–F [17 CFR 249.240f]. The proposals are distinct from and are not intended to duplicate the disclosures required by item 305 of regulation S–K [17 CFR 229.305] or FASB SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998).

[51] *See* FASB Emerging Issues Task Force Issue No. 00–19 *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock* (Jan. 2001).

[52] *See* proposed item 303(c)(3)(iv) of regulation S–B [17 CFR 228.303(c)(3)(iv)]; proposed item 303(a)(4)(iii)(D) of regulation S–K [17 CFR 229.303(a)(4)(iii)(D)]; proposed item 5.E.3(d) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(D) of form 40–F [17 CFR 249.240f].

[53] *See, e.g.*, FASB Exposure Draft, *Proposed Interpretation, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (May 2002), paragraphs A8–A9.

[54] *See* FASB, Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements* (Dec. 1985), paragraphs 35–40.

[55] *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 8.

less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements.[56]

The last bullet point includes within the scope of the proposed definition of off-balance sheet arrangements contingent liabilities that are partially accrued according to GAAP, but excludes liabilities recorded at fair value as of the date of the financial statements. For example, GAAP requires an accrual for a loss if information available prior to issuance of the financial statements indicates that it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated.[57] In some instances where a liability is probable, a company can reasonably estimate a range of losses. A company may determine that one amount within the range is more probable than any other amount within the range. FASB interpretation no. 14 states that in that situation, a company should accrue its best estimate within the range and disclose in the notes to the financial statements the additional exposure to loss if there is at least a reasonable possibility of loss in excess of the amount accrued.[58] In that case, the contingent obligation would fall within the scope of the proposed definition because the amount accrued reflects only the most probable estimate, but does not reflect other probabilities of losses as of the date of the financial statements.

In contrast, a liability is considered to be fully reflected in the financial statements, and therefore outside the scope of the proposed definition, if it is recorded at its fair value. The fair value of a liability represents the amount at which a liability could be incurred or settled in a current transaction between willing parties other than in a forced or liquidation sale.[59] To determine fair value of a liability, management often must make an estimate of the resources that a company will have to sacrifice to settle the liability.[60] That estimate is the expected present value of the liability, and accordingly reflects the present value of all probabilities of all possible outcomes within a range. Because contingent liabilities recorded at fair value reflect the present value of all probabilities of all possible outcomes, as opposed to the most probable estimate within a range, they are considered to be fully reflected in the financial statements. For example, in some circumstances a company is required to recognize certain liabilities, such as derivatives and recourse obligations, at fair value. Under the proposed definition of off-balance sheet arrangement, those liabilities would be considered to be fully reflected in the financial statements, and outside of the scope of the proposed definition, even though the fair value of those liabilities may substantially increase in the future in response to changing events or circumstances.[61]

3. Proposed Disclosure Threshold

The structure of an off-balance sheet arrangement is not as important as the effects that the off-balance sheet arrangement may have on a company. Consistent with the language in section 401(a) of the Sarbanes-Oxley Act, the threshold for disclosure of off-balance sheet arrangements falling within the proposed definition is whether they ''may have a current or future material effect on the company's financial condition, changes in financial condition, results of operations, revenues or expenses, liquidity, capital expenditures or capital resources.''[62] The proposed disclosure would be required if management determines either that an off-balance sheet arrangement is material in the current period or that it may become material in the future. Disclosure would not be required for off-balance sheet arrangements where the likelihood of either the occurrence of an event, or the materiality of its effect, is remote.[63]

In the 1989 interpretive release, the Commission stated that a registrant has a duty to disclose prospective information in its MD&A where a trend, demand, event, commitment or uncertainty is both presently known to management and reasonably likely to have future material effects on the registrant's financial condition or results of operations.[64] Therefore, ''reasonably likely'' is the existing disclosure threshold under which information that could have a material effect on financial condition, changes in financial condition or results of operations must be included in MD&A.[65] The Commission also stated that ''[r]egistrants preparing their MD&A disclosure should determine and carefully review what trends, demands, commitments, events or uncertainties are known to management.''[66] According to the 1989 interpretive release, if management were unable to determine the reasonable likelihood of the occurrence of a future event or the materiality of its effect, then disclosure would be required.[67]

The 1989 interpretive release also stated that the probability/magnitude test for materiality approved by the Supreme Court in *Basic* v. *Levinson*[68] is inapposite to MD&A disclosure.[69] In articulating the probability/magnitude test, the Supreme Court stated that the materiality of speculative or contingent information or events ''will depend at any given time upon the balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity.''[70] In contrast, disclosure of prospective information in MD&A does not depend upon the balancing of probability and magnitude because the MD&A rules and

[56] *See* FASB Interpretation No. 14, *Reasonable Estimation of a Loss* (Sept. 1976), paragraph 3.

[57] *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 8.

[58] *See* FASB Interpretation No. 14, *Reasonable Estimation of a Loss* (Sept. 1976), paragraph 3.

[59] *See* FASB SFAS No. 107, *Disclosures about Fair Value of Financial Instruments* (Dec. 1991), paragraph 5.

[60] *See Id.* at paragraph 11.

[61] While not within the scope of the proposed definition of off-balance sheet arrangements, existing MD&A disclosure rules require disclosure of known trends, demands, commitments, events or uncertainties that are reasonably likely to have a material effect on the registrant's financial condition, changes in financial condition and results of operations. In addition, disclosure of assets and liabilities recorded at fair value currently is required with respect to a registrant's market risk. *See*, *e.g.*, item 305 of regulation S–K [17 CFR 229.305].

[62] *See* proposed item 303(c)(1) of regulation S–B [17 CFR 228.303(c)(1)]; proposed item 303(a)(4)(i) of regulation S–K [17 CFR 229. 303(a)(4)(i)]; proposed item 5.E.1 of form 20-F [17 CFR 249.220f]; and proposed general instruction 7.(i) of form 40–F [17 CFR 249.240f].

[63] *Id.* While this exclusion is not present in section 401(a) of the Sarbanes-Oxley Act, we believe that the exclusion is consistent with that legislative mandate and that it would aid companies in applying the rule to provide meaningful disclosure.

[64] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427].

[65] In the January 2002 Commission statement, we indicated our view that ''reasonably likely'' is a lower disclosure threshold than ''more likely than not.'' *See* release no. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746].

[66] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427].

[67] *Id.* at 22430. The Commission identified two assessments management must make where a trend, demand, commitment, event or uncertainty is known: (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required. (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.

[68] 485 U.S. 224 (1988).

[69] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427 at fn. 27].

[70] *Basic* at 238, (quoting *SEC* v. *Texas Gulf Sulphur Co.,* 401 F. 2d 833, 849 (2nd Cir. 1968)).

interpretive guidance specify the level of probability that would require disclosure of prospectively material information.

We read the legislative mandate in the Sarbanes-Oxley Act as suggesting a lower disclosure threshold for prospectively material information related to off-balance sheet arrangements. Instead of adopting the ''reasonably likely'' standard, it directs us to adopt a rule to require disclosure of items that ''may'' have a material current or future effect.[71] We believe that an appropriate interpretation of the disclosure threshold is best captured by the concept of ''remoteness.'' Accordingly, the proposals would require disclosure of off-balance sheet arrangements under circumstances where management concludes that the likelihood of the occurrence of a future event and its material effect is higher than remote.[72] In other words, an off-balance sheet arrangement ''may'' have a current or future material effect, and disclosure would be required, unless management determines that the occurrence of an event and the materiality of its effect is outside of the realm of reasonable possibility.[73]

To apply the proposed disclosure threshold, management must make assessments similar to those required for current MD&A disclosure of known trends, demands, commitments, events or uncertainties.[74] Under the proposed disclosure threshold, management first must identify and carefully review the registrant's direct or indirect guarantees, retained interests, equity-linked or -indexed derivatives and obligations (including contingent obligations) that are not fully reflected on the face of the financial statements. Second, management must assess the likelihood of the occurrence of any known trend, demand, commitment, event or uncertainty that could either require performance of a guarantee or other obligation, or require the registrant to recognize an impairment. If management concludes that the likelihood of occurrence is remote, then no disclosure would be required under the proposed rules.[75] If management cannot make that determination, it would have to evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty on the assumption that it will come to fruition. Disclosure then would be required unless management concludes that likelihood of the event having a material effect is remote. Consistent with other disclosure threshold determinations that management must make in drafting MD&A, the assessment of remoteness must be objectively reasonable, viewed as of the time the determination is made.[76]

4. Proposed Disclosure About Off-Balance Sheet Arrangements

The proposals explicitly require a registrant to disclose the facts and circumstances that provide investors with a clear understanding of the registrant's business activities, financial arrangements and financial statements.[77] To filter out disclosure of insignificant details, the proposals require disclosure of enumerated items only to the extent necessary to an understanding of the effect of the off balance sheet arrangements on the registrant's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources.[78]

Under the proposals, a registrant would have to disclose the nature and business purpose of the off-balance sheet arrangements.[79] This disclosure should explain to investors why and how a registrant engages in off-balance sheet arrangements. For example, a registrant may indicate that the arrangements enable the company to lease certain facilities rather than acquire them, where the latter would require the registrant to recognize a liability for the financing. Other possible disclosure under this proposed requirement may indicate that the off-balance sheet arrangement enables the registrant to readily obtain cash through sales of groups of loans to a trust; to finance inventory, transportation or research and development costs without recognizing a liability; or to lower borrowing costs of affiliates by extending guarantees to their creditors.

In addition, a registrant would have to disclose, to the extent material to an understanding of the proposed disclosure, the significant terms and conditions of the arrangements.[80] This disclosure requirement may include disclosure of the terms of credit or liquidity enhancement provided by a registrant, leases, limitations on the activities or life of a special purpose entity, contracts between the registrant and a special purpose entity for goods or services or specific rights of third parties to participate in the management of a special purpose entity. This proposed disclosure requirement applies to arrangements to which a registrant is a party and to arrangements under which the registrant may have a direct or contingent obligation even though the company is not a party to the arrangement.[81] That disclosure should inform investors of the significant terms and conditions of any arrangements that may implicate a company's pre-existing guarantees, keepwell agreements or other arrangements. Terms and conditions that are not necessary to an understanding of the disclosure required under the proposals are not required to be disclosed.

The proposals would require a registrant to disclose the nature and amount of the total assets and total obligations and liabilities (including contingent obligations and liabilities) of an entity in which off-balance sheet activities are conducted.[82] This disclosure should provide the information that investors need to

[71] Pub. L. 107–204 sec. 401(a) [15 U.S.C. 78m(j)].

[72] GAAP requires disclosure of some information about off-balance sheet arrangements in footnotes to the financial statements. *See, e.g.*, fn. 41. While parts of the proposed MD&A disclosure may overlap the disclosure presented in the footnotes to the financial statements, the proposed MD&A disclosure is designed to provide more comprehensive information and analysis than that which is provided in the footnotes. We believe this possible overlap to be warranted because it is consistent with our long-standing position that the financial statements and accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. *See* release no. 33–6711 (April 17, 1987) [52 FR 13715].

[73] ''Remote'' and ''reasonably possible'' are long-standing probability thresholds used in financial disclosure. *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975).

[74] While this proposal lowers the disclosure threshold for prospectively material information with respect to off-balance sheet arrangements, we are not proposing to lower the pre-existing ''reasonably likely'' threshold for other MD&A disclosure requirements.

[75] Even if management determines that the likelihood of the occurrence of an event is remote, disclosure may be required if the information is otherwise material under the probability/magnitude test. *See* Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[76] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427].

[77] *See* proposed item 303(c) of regulation S–B [17 CFR 228.303(c)]; proposed item 303(a)(4) of regulation S–K [17 CFR 229. 303(a)]; proposed item 5.E of form 20–F [17 CFR 249.220f]; and proposed general instruction 7 of form 40–F [17 CFR 249.240f].

[78] *Id.*

[79] *See* proposed item 303(c)(1)(i) of regulation S–B [17 CFR 228.303(c)(1)(i)]; proposed item 303(a)(4)(i)(A) of regulation S–K [17 CFR 229. 303(a)(4)(i)(A)]; proposed item 5.E.1(a) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(*A*) of form 40–F [17 CFR 249.240f].

[80] *Id.*

[81] *See supra* fn. 40.

[82] *See* proposed item 303(c)(1)(ii) of regulation S–B [17 CFR 228.303(c)(1)(ii)]; proposed item 303(a)(4)(i)(B) of regulation S–K [17 CFR 229.303(a)(4)(i)(B)]; proposed item 5.E.1(b) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(B) of form 40–F [17 CFR 249.240f].

understand the dynamics and business activities of a registrant's off-balance sheet arrangements. For example, a registrant would have to identify the total amount of assets that it transferred to the off-balance sheet entity, amounts receivable or payable and any debt obligations incurred by the entity. This information also should provide insight into an off-balance sheet entity's risk exposure, which in turn could expose the registrant to material risk.

The proposed disclosure would provide investors with insight into the overall magnitude of a company's off-balance sheet activities, the specific impact of the arrangements on a registrant and the circumstances that could cause material contingent obligations or liabilities to come to fruition. Specific disclosure would be required of:

- The amounts of revenues, expenses, and cash flows arising from the arrangements;
- The nature and total amount of any interests retained, securities issued and other indebtedness incurred; and
- The nature and amount of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are, or may become, material and the triggering events or circumstances that could cause them to arise.[83]

For example, this disclosure includes identification of the class and amount of any debt or equity securities issued by the registrant, either to the entity or to third parties, amounts of any guarantees, lines of credit, standby letters of credit, take-or-pay contracts or throughput contracts. This proposed disclosure requirement also includes provisions in financial guarantees or commitments, debt or lease agreements or other arrangements that could trigger a requirement for an early payment, additional collateral support, changes in terms, acceleration of maturity or the creation of an additional financial obligation. In addition, the proposals require disclosure of the circumstances under which the registrant's obligations and liabilities (including contingencies) could arise, such as adverse changes in the registrant's credit rating, financial ratios, earnings, cash flows, or stock price, or changes in the value of underlying, linked or indexed assets.[84]

Under the proposals, a registrant would have to provide management's analysis of the material effects of the off-balance sheet arrangements and resulting obligations and liabilities on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources.[85] Possible disclosure may include a discussion of the amounts of gains or losses that were derived from sales of assets to special purpose entities in current and past periods, including the reasons for changes from period to period. If necessary, a registrant also may be required to disclose changes in the amount of third-party at-risk equity of special purpose entities and the material consequences of those changes. To adequately inform investors of the effect an off-balance sheet arrangement on liquidity and capital resources, a registrant may have to disclose that an off-balance sheet arrangement requires the registrant to maintain a certain balance of liquid assets for an extended period of time. In that instance, the disclosure should include the amount and source of the assets required to be maintained and how that restriction on capital resources will affect ongoing operations. To inform investors of the material effects of the contingent obligations that arise from off-balance sheet arrangements, a registrant would be required to disclose the amount of assets that may be required to settle any contingent obligation, the potential sources of necessary funding and whether or not circumstances indicate that a contingency will come to fruition.

The proposed analytical disclosure should provide investors with management's insight into the impact and proximity of the potential risks that may arise from material off-balance sheet arrangements. In addition, to increase investor understanding of circumstances that would have common effects with respect to a number of off-balance sheet arrangements, the proposals require registrants to disclose managements' analyses in the aggregate.[86] For example, if particular triggering events or circumstances would either require a registrant to become directly obligated, or accelerate its obligations, under a number of off-balance sheet arrangements, and the overall obligations would be material, then the proposed rules would require an analysis of the circumstances and their aggregate effect to the extent it increases understanding.

Under the proposals, management would have to provide an analysis of the degree to which the registrant relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits.[87] This disclosure should provide investors with an understanding of the importance of off-balance sheet arrangements to the continuing operations of a registrant's business. For example, if a registrant relies on off-balance sheet arrangements for its liquidity and capital resources, a registrant may be required to disclose how often it securitizes financial assets, to what degree its securitizations are a material source of liquidity, whether it has increased or decreased securitizations from past periods and to explain such increase or decrease. If the registrant relies on off-balance sheet arrangements for market risk or credit risk support, disclosure may be required of the extent to which a group of assets has been overcollateralized and the extent to which the registrant has continuing exposure to loss. Together with the other disclosure requirements, registrants should provide information sufficient for investors to assess the extent of the risks that have been transferred and retained as a result of the arrangements.

Management also would have to discuss the effects of a termination or material reduction in the benefits of off-balance sheet arrangements.[88] If under a contractual provision, or as a result of a known event, demand, commitment, trend or uncertainty, it is reasonably likely that an off-balance sheet arrangement that materially benefits the registrant will be terminated or the benefits of the arrangement will be materially reduced, disclosure would be required of the circumstances under which such termination or reduction may occur and the material effects.[89] Under the proposals a registrant would have to disclose any contractual provisions calling for the termination or material reduction of an off-balance sheet arrangement. The disclosure would also address factors that are reasonably likely to affect the registrant's ability to continue using off-

[83] *See* proposed item 303(c)(1)(iii) of regulation S–B [17 CFR 228.303(c)(1)(iii)]; proposed item 303(a)(4)(i)(C) of regulation S–K [17 CFR 229.303(a)(4)(i)(C)]; proposed item 5.E.1(c) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(*C*) of form 40–F [17 CFR 249.240f].

[84] *Id.*

[85] *See* proposed item 303(c)(1)(iv) of regulation S–B [17 CFR 228.303(c)(1)(iv)]; proposed item 303(a)(4)(i)(D) of regulation S–K [17 CFR 229.303(a)(4)(i)(D)]; proposed item 5.E.1(d) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(D) of form 40–F [17 CFR 249.240f].

[86] *Id.*

[87] *Id.*

[88] *See* proposed item 303(c)(2) of regulation S–B [17 CFR 228.303(c)(2)]; proposed item 303(a)(4)(ii) of regulation S–K [17 CFR 229.303(a)(4)(ii)]; proposed item 5.E.2 of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(ii) of form 40–F [17 CFR 249.240f].

[89] *Id.*

balance sheet arrangements. For example, if a registrant's credit rating were to fall below a certain level, some off-balance sheet arrangements may require a registrant to purchase the assets or assume the liabilities of a special purpose entity. In addition, a change in a registrant's credit rating could either preclude or materially reduce the benefits to the registrant of engaging in off-balance sheet arrangements. In such cases, the registrant would have to disclose known circumstances that would be reasonably likely to cause its credit rating to fall to the specified level and discuss the material consequences.

Request for Comment

- Have we appropriately tailored the proposed definition of the term ''off-balance sheet arrangement'' and the proposed disclosure to filter out disclosure that is unimportant to investors? If not, how should we change the proposed definition or disclosure requirements?
- Is the proposed definition too narrow? If so, how should we change it to include other off-balance sheet arrangements that are significant to investors?
- Is the proposed definition of an ''off-balance sheet arrangement'' sufficiently clear to enable registrants to determine which derivative instruments are included in the proposed disclosure requirements and which are not?
- Is it appropriate to apply our existing policy of excluding preliminary negotiations from MD&A disclosure to off-balance sheet arrangements?
- Is the proposed ''remote'' disclosure threshold appropriate and consistent with the language in section 401(a) of the Sarbanes-Oxley Act? If not, how should we change it?
- Would it be appropriate under the language in section 401(a) of the Sarbanes-Oxley Act to apply the ''reasonably likely'' disclosure threshold applicable elsewhere in MD&A to disclosure about off-balance sheet arrangements? If so, should we adopt the ''reasonably likely'' standard for disclosure of off-balance sheet arrangements?
- Would the application of the disparate disclosure threshold proposed to apply to disclosure of off-balance arrangements, in comparison to the ''reasonably likely'' standard used elsewhere in MD&A, attribute undue prominence to information about off-balance sheet arrangements in relation to other significant information?
- Should we consider amending current MD&A rules to lower the existing ''reasonably likely'' disclosure threshold to be consistent with the threshold in the proposals?
- Would the proposed disclosure threshold for prospectively material information related to off-balance sheet arrangements yield comparable disclosures among registrants?
- Is there any basic information not required by the proposals that would be necessary to understand a registrant's off-balance sheet arrangements? If so, what additional disclosure should be required?
- Do the proposals provide enough flexibility to companies to fully and clearly describe their off-balance sheet arrangements? Would a more flexible approach, such as the current MD&A requirements for liquidity and capital resources, result in better disclosure?
- Would a registrant be able to monitor and provide disclosure about arrangements to which it is not a party, yet that may create direct or contingent liabilities or obligations for the registrant?
- Is there any management analysis not required by the proposals that would be necessary for an investor to gain an understanding of the magnitude and proximity of risk exposures and financial impact of a registrant's off-balance sheet arrangements? If so, what additional disclosure should be required?

C. Contractual Obligations and Contingent Liabilities and Commitments

Disclosure of contractual obligations and contingent liabilities and commitments currently is dispersed throughout various parts of a registrant's filings. While section 401(a) of the Sarbanes-Oxley Act does not direct us to adopt a disclosure requirement, we believe that aggregated information about contractual obligations and contingent liabilities and commitments in a single location would improve transparency of a registrant's short- and long-term liquidity and capital resource needs and demands. It also would provide appropriate context for investors to assess the relative role of off-balance sheet arrangements with respect to liquidity and capital resources. We therefore propose to require certain registrants to include tabular disclosure about contractual obligations, and either tabular or textual disclosure about contingent liabilities and commitments in the MD&A section.[90] The disclosure would include information about a registrant's known contractual obligations and contingent liabilities and commitments, encompassing both on- and off-balance sheet arrangements as of the latest balance sheet date.[91] We are not proposing that this requirement apply to small business issuers.[92]

1. Proposed Tabular Disclosure in MD&A

The proposed table requires disclosure of the amounts of contractual obligations, aggregated by type of contractual obligation, for at least the periods specified in the table below.[93] To provide flexibility for company-specific disclosure, a registrant may either use the categories of obligations specified in the proposed table or other categories suitable for its business.[94] The table should be accompanied by footnotes necessary to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual Obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt] [Capital Lease Obligations] [Operating Leases]					

[90] *See* proposed item 303(a)(5) of regulation S–K [17 CFR 229.303(a)(5)]; proposed item 5.F of form 20–F [17 CFR 249.220f]; and proposed general instruction 8 of form 40–F [17 CFR 249.240f].

[91] *Id.*

[92] ''Small business issuer'' is defined to mean any entity that (1) has revenues of less than $25,000,000; (2) is a U.S. or Canadian issuer; (3) is not an investment company; and (4) if a majority-owned subsidiary, has a parent corporation that also is a small business issuer. An entity is not a small business issuer, however, if it has a public float (the aggregate market value of the outstanding equity securities held by non-affiliates) of $25,000,000 or more. *See* 17 CFR 228.10.

[93] *See* proposed item 303(a)(5)(i) of regulation S–K [17 CFR 229.303(a)(5)(i)]; proposed item 5.F.1 of form 20–F [17 CFR 249.220f]; and proposed general instruction 8(i) of form 40–F [17 CFR 249.240f].

[94] *Id.*

Contractual Obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Unconditional Purchase Obligations] [Other Long-Term Obligations] [Total Contractual Obligations]					

2. Proposed Disclosure of Contingent Liabilities or Commitments

Under the proposals, a registrant would have to disclose, either in tabular format or in text, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments that are expected to expire in less than one year, from one to three years, from three to five years, and more than five years. The disclosure should indicate whether the amount disclosed is an expected amount or maximum amount if a range is not presented. The contingent liabilities or commitments must be aggregated by type in a manner that is suitable for the registrant's business. Examples of contingent liabilities or commitments that would be covered under the proposals are lines of credit, standby letters of credit, guarantees, and standby repurchase obligations. The disclosure should address, in footnotes to the table or in the text, provisions of contingent liabilities that create, increase or accelerate obligations, or other pertinent data.

As with other MD&A requirements, a registrant would have to disclose material changes to the amounts of contractual obligations and contingent liabilities and commitments.[95] The registrant would not be required to include the table or repeat the other proposed required textual disclosure in quarterly reports.[96] Instead, the registrant may disclose material changes by including a discussion of the relevant changes.

Request for Comment

- Should we require the proposed table to be accompanied by additional narrative disclosure regarding liquidity and capital resources above and beyond that which already exists in MD&A?
- Should we adopt definitions of ''contractual obligations'' and ''contingent liabilities or commitments'' If so, what should they be?
- To avoid potential abuses and to promote comparable disclosure among companies, should we include an instruction to the table that would limit the extent to which a registrant may adapt the table to its particular circumstances? If so, what limits should we impose?
- Should the proposed rules state that no disclosure is required with respect to the issuance of notes, drafts, acceptances, bills of exchange or other commercial instruments with a maturity of one year or less issued in the ordinary course of the registrant's business?

D. Presentation of Proposed Disclosure

1. Separate Disclosure Sections

The proposals would require a registrant to present the proposed disclosure about off-balance sheet arrangements set apart in a designated section of MD&A. In contrast, a registrant may place the tabular and textual disclosure of known contractual obligations and contingent liabilities and commitments in an MD&A location that it deems to be appropriate. While the proposed disclosure in the separate section may relate to other aspects of MD&A, such as the results of operations or liquidity and capital resources, a distinct presentation of the information would highlight it for readers of MD&A and enable investors to more easily compare disclosure of different companies. Investors will often find information relating to a particular matter more meaningful if it is disclosed in a single location, rather than presented in a fragmented manner throughout the MD&A. In addition, a distinct presentation of each section would layer the MD&A, which would enable investors with varying levels of interest and financial acumen to easily obtain desired information.

2. Language and Format

The proposed MD&A discussion should be presented in language and a format that is clear, concise and understandable. It should not be presented in such a manner that only an investor who is also an accountant or financial expert or an expert on a particular industry would be able to fully understand it. Boilerplate disclosures that do not specifically address the registrant's particular circumstances and operations also would not satisfy the proposed requirements. Under the proposals, a registrant should aggregate similar arrangements to the extent practicable, but the registrant must discuss important distinctions in terms and effects of the aggregated arrangements.[97] Disclosure that could easily be transferred from year to year, or from company to company, with no change would neither inform investors adequately nor reflect the independent thinking that must accompany the assessment by management that is intended under the proposal.

Request for Comment

- Should we require the proposed disclosure to be presented in a separate MD&A section or should it be integrated into other closely related MD&A discussions of financial condition, changes in financial condition, results of operations and liquidity and capital resources?
- To facilitate the layering of MD&A, should we amend the MD&A rules to require separate captions for the required discussions of results of operations, liquidity and capital resources?

E. Other MD&A Disclosure

While certain elements of the information required by these proposals are subsumed by existing MD&A requirements, financial statement disclosure requirements and materiality standards, we believe that more focused and specific disclosure requirements would best achieve our objectives and effectuate the will of Congress. The proposals are intended to complement and clarify the more general MD&A disclosure provisions that require a registrant to provide information about how known trends or uncertainties affect its liquidity, capital resources and results of operations, and other information necessary to an understanding of its financial condition, changes in financial condition and results of operations.[98] While that

[95] *See, e.g.*, item 303(b) of regulation S–K [17 CFR 229.303(b)].

[96] *See* proposed instruction 7 to paragraph (b) of item 303 of regulation S–K [17 CFR 229.303(b)].

[97] *See* proposed item 303(c)(1) of regulation S–B [17 CFR 228.303(c)(1)]; proposed item 303(a)(4)(i) of regulation S–K [17 CFR 229. 303(a)(4)(i)]; proposed item 5.E.1 of Form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i) of Form 40–F [17 CFR 249.240f].

[98] *See* item 303(a) of regulation S–K [17 CFR 229.303(a)].

disclosure mandate is general in nature, the responsive MD&A disclosures should be sufficiently detailed and tailored to the registrant's individual circumstances.[99]

In an effort to provide guidance to public companies, our January 2002 statement presents a number of factors that management should consider to identify the trends, demands, commitments, events and uncertainties that require disclosure with respect to liquidity and capital resources.[100] It also addresses MD&A disclosure of relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties.[101] We believe that existing disclosure requirements, including the January 2002 Commission statement, address disclosure in those areas. Therefore, to avoid unnecessary duplication of disclosure we are only proposing to codify the positions in our January 2002 statement as they relate to off-balance sheet arrangements. We believe that the factors addressed in our January 2002 statement remain useful for management to consider in meeting its MD&A disclosure obligations of liquidity and capital resources and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties.

There are some transactions that, while referred to as ''off-balance sheet arrangements,'' may not fall within the scope of the proposals. For example, some off-balance sheet arrangements do not create contingent liabilities or obligations. A registrant may routinely securitize financial assets without providing any recourse or credit or liquidity support to a special purpose entity. Existing requirements may require a registrant to discuss those activities in its MD&A discussion of liquidity and capital resources.[102] If an off-balance sheet arrangement does not fall within the scope of the proposed disclosure requirements, yet disclosure would be required under the other provisions of MD&A, a registrant may choose whether or not to provide the disclosure in the separately-captioned section required by this proposal. We would encourage that any such disclosure in the MD&A be organized so that it is most useful and understandable to investors.

Request for Comment

- Should we further amend the MD&A rules to require more specific disclosure about liquidity and capital resources? If so, what specific disclosure items should we include?
- Should we further amend the MD&A rules to require more specific disclosure about relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties? If so, what specific disclosure items should we include?
- Should we codify the factors that we identified in our January 2002 Commission statement for management's consideration in identifying the trends, demands, commitments, events and uncertainties that require disclosure with respect to liquidity and capital resources? Are there other factors that should be included in such a codification?

F. Application of the Proposals to Foreign Private Issuers

The proposed MD&A disclosure requirements would apply to foreign private issuers[103] that file annual reports on Form 20–F[104] or on Form 40–F.[105] Because section 401(a) of the Sarbanes-Oxley Act does not distinguish between foreign private issuers and U.S. companies, we interpret Congress' directive to the Commission to adopt rules requiring expanded disclosure about off-balance sheet transactions in annual reports filed with the Commission to apply equally to Form 20–F or 40–F annual reports filed by foreign private issuers as well as to Form 10–K or 10–KSB annual reports filed by domestic issuers.[106]

There are two additional reasons for applying the proposed rules to foreign private issuers' annual reports filed with the Commission. First, investors and others would enjoy the same benefits from expanded off-balance sheet disclosure in foreign private issuers' annual reports as they would from this disclosure in domestic issuers' annual reports. Second, for Form 20–F annual reports, the existing MD&A-equivalent requirements for foreign private issuers currently mirror the substantive MD&A requirements for U.S. companies. We believe this desirable policy should continue.[107]

The disclosure provided by Canadian issuers that file form 40–F is generally that required under Canadian law. We have, however, supplemented these disclosure requirements with specific required items of information.[108] We have proposed additional disclosure requirements under form 40–F as a result of the Sarbanes-Oxley Act.[109] Although an issuer prepares its MD&A discussion contained in a form 40–F registration statement or annual report in accordance with Canadian disclosure standards, we believe that requiring disclosure of off-balance sheet arrangements in accordance with SEC rules is not inconsistent with the principles of the MJDS, is consistent with the Sarbanes-Oxley Act, and, most importantly, will provide investors with useful information that is comparable to that provided by U.S. and other foreign

[99] In addition to the information specifically required, a company would be required to provide any other information necessary to keep its disclosure from being materially misleading. *See* Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[100] *See* release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746], section II.A.1.

[101] *Id.* at section II.C.

[102] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)]. This section provides that the description of known material trends in capital resources must consider off-balance sheet financing arrangements.

[103] A foreign private issuer is a non-U.S. company except for a company that has more than 50% of its outstanding voting securities owned by U.S. investors and has a majority of its officers and directors residing in or being citizens of the U.S., has a majority of its assets located in the U.S., or has its business principally administered in the U.S. *See* Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

[104] 17 CFR 249.220f.

[105] 17 CFR 249.240f. Form 40–F is the form used by qualified Canadian issuers to file their Exchange Act registration statements and annual reports with the Commission in accordance with Canadian disclosure requirements under the U.S.-Canadian Multijurisdictional Disclosure System (''MJDS'').

[106] Similarly, the Commission recently adopted rules pertaining to the certification requirements under section 302 of the Sarbanes-Oxley Act that apply to both Form 20–F and Form 40–F annual reports as well as to those filed on the domestic forms. *See* Release no. 33–8124 (August 29, 2002) [67 FR 57276].

[107] Although we revised the wording of the MD&A item in Form 20–F in 1999, the adopting release noted that we interpret that item as requiring the same disclosure as item 303 of regulation S–K. *See* Release No. 33–7745 (September 28, 1999) [64 FR 53900 at 59304]. In addition, instruction 1 to item 5 in Form 20–F provides that issuers should refer to the Commission's 1989 interpretive release on MD&A disclosure under item 303 of regulation S–K for guidance in preparing the discussion and analysis by management of the company's financial condition and results of operations required in Form 20–F. *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427].

[108] For example, under general instruction C.2 of Form 40–F, the issuer must usually include financial information that is reconciled to U.S. generally accepted accounting principles.

[109] We have recently proposed to amend Form 40–F to require disclosure concerning whether the issuer has adopted a code of ethics applicable to certain officers and whether it has a financial expert on its audit committee. *See* Release No. 33–8138 (October 22, 2002) [67 FR 66208].

companies that file reports under the Exchange Act.

Section 401(a) of the Sarbanes-Oxley Act also requires the Commission to adopt off-balance sheet disclosure rules that apply to ''each quarterly financial report required to be filed with the Commission.''[110] Since foreign private issuers are not required to file ''quarterly'' reports with the Commission, the proposed rules would not apply to Form 6–K reports submitted by foreign private issuers to provide copies of materials required to be made public in their home jurisdictions.[111] Thus, unless a foreign private issuer files a Securities Act registration statement that must include interim period financial statements and related MD&A disclosure, it would not be required to update the proposed MD&A disclosure more frequently than annually.[112]

Request for Comment

- Should we apply the proposed rules to foreign private issuers' annual reports on Form 20–F or 40–F, as proposed? Or should we exempt these foreign private issuer annual reports from the scope of the proposed rules? If so, why?
- Should we exempt Form 40–F, the MJDS annual report filed by qualified Canadian issuers, from the scope of the proposed rules? If so, why?
- If we should require foreign private issuers to provide some expanded disclosure regarding off-balance sheet transactions and other similar items in their annual reports, should we adopt rules that apply different standards for foreign private issuers compared to the standards adopted for domestic issuers but that would be consistent with the Sarbanes-Oxley Act? If so, what standards would you substitute for the proposed rules?
- Should we exempt form 6–K reports from the scope of the proposed rules, as proposed? Or should we apply the proposed rules to form 6–K reports that include quarterly financial statements?

G. Proposed Safe Harbor for Forward-Looking Information

Some of the disclosure required by the proposals would require disclosure of forward-looking information.[113] To encourage the type of information and analysis necessary for investors to understand the impact of off-balance sheet arrangements, the proposals include a safe harbor for forward-looking information.[114] The proposed safe harbor explicitly applies the statutory safe harbor protections (sections 27A of the Securities Act and 21E of the Exchange Act)[115] to forward-looking information that would be required to be disclosed by the proposals.

The statutory safe harbors contain provisions to protect forward-looking statements against private legal actions that are based on allegations of a material misstatement or omission.[116] The statutory safe harbors provide three separate bases for a registrant to claim the protection against liability for forward-looking statements made in the registrant's MD&A. First, a forward-looking statement would fall within the safe harbors if it is identified as forward-looking and accompanied by meaningful cautionary statements that identify important factors that could cause actual results to differ materially from those in the forward-looking statement. Second, the safe harbors protect from private liability any forward-looking statement that is not material. Finally, the safe harbors preclude private liability if a plaintiff fails to prove that the forward-looking statement was made by or with the approval of an executive officer of the registrant who had actual knowledge that it was false or misleading. The statutory safe harbors cover statements by reporting companies, persons acting on their behalf, outside reviewers retained by them, and their underwriters (when using information from, or derived from, the companies).

Because we believe that it would promote more meaningful disclosure, we are invoking rulemaking authority under sections 27A and 21E to ensure the application of the statutory safe harbors to the forward-looking statements that would be required under the proposed rules.[117] The proposed safe harbors are designed to remove possible ambiguity about whether the statutory safe harbors would apply to some of the statements made in response to the proposed disclosure requirements. The proposed safe harbor specifies that, except for historical facts, some of the disclosure would be deemed to be a ''forward looking statement'' as that term is defined in the statutory safe harbors.[118] Under the proposed MD&A safe harbor, all of the conditions of the statutory safe harbors must be met. Accordingly, we urge companies preparing the proposed MD&A disclosure to consider the terms, conditions and scope of the statutory safe harbors in drafting their disclosure and to tailor the required cautionary language to the specific forward-looking statements being made.

Request for Comment

- Should the proposed safe harbor be expanded to apply to all forward-looking information in MD&A, regardless of whether the information

[110] Exchange Act section 13(j) [15 U.S.C. 78m(j)].

[111] A foreign private issuer must furnish under cover of Form 6–K material information that it makes public or is required to make public under its home country laws or the rules of its home country stock exchange or that it distributes to security holders. While foreign private issuers may submit interim financial information under cover of Form 6–K, they do so pursuant to their home country requirements and not because of a Commission requirement to submit updated financial information for specified periods and according to specified standards. Therefore, we do not believe that a Form 6–K constitutes a ''periodic'' or ''quarterly'' report analogous to a Form 10–Q or 10–QSB for which expanded disclosure is required. We similarly exempted Form 6–K reports from the recently adopted section 302 certification requirements. *See* Release No. 33–8124 at n. 50.

[112] Similar to our treatment of Securities Act registration statements filed by domestic issuers, we are including within the scope of the proposals Securities Act registration statements filed by foreign private issuers on Forms F–1, F–2, F–3 and F–4 [17 CFR 239.31–239.34]. Each of these registration statements references Form 20–F's disclosure requirements. The proposed rules would not apply to Securities Act registration statements filed by Canadian issuers under the MJDS because we believe them to be outside the scope of the directive in section 401(a) of the Sarbanes-Oxley Act, which addresses only periodic reports. These MJDS registration statements are based on Canadian disclosure requirements. We believe that extending the disclosure requirements to Securities Act registration statements filed under the MJDS would be contradictory to the policies underlying the MJDS.

[113] *See, e.g.*, proposed item 303(c)(1)(iv) of regulation S–B [17 CFR 228.303(c)(1)(iv)]; proposed item 303(a)(4)(i)(D) of regulation S–K [17 CFR 229. 303(a)(4)(i)(D)]; proposed item 5.E.1(d) of Form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(D) of Form 40–F [17 CFR 249.240f].

[114] *See* proposed item 303(d) of regulation S–B [17 CFR 228.303(d)]; proposed item 303(c) of regulation S–K [17 CFR 229. 303(c)]; proposed item 5.G of Form 20–F [17 CFR 249.220f]; and proposed general instruction 9 of Form 40–F [17 CFR 249.240f].

[115] *See* 15 U.S.C. 77z–2 and 78u–5.

[116] While the statutory safe harbors by their terms do not apply to forward-looking statements included in financial statements prepared in accordance with U.S. GAAP, they do cover MD&A disclosures. The statutory safe harbors would not apply, however, if the MD&A forward-looking statement were made in connection with: an initial public offering, a tender offer, an offering by a partnership or a limited liability company, a roll-up transaction, a going private transaction, an offering by a blank check company or a penny stock issuer, or an offering by an issuer convicted of specified securities violations or subject to certain injunctive or cease and desist actions. *See* 15 U.S.C. 77z–2(b) and 78u–5(b).

[117] *See* proposed item 303(d)(1) of regulation S–B [17 CFR 228.303(d)(1)]; proposed item 303(c)(i) of regulation S–K [17 CFR 229. 303(c)(i)]; proposed item 5.G.1 of form 20–F [17 CFR 249.220f]; and proposed general instruction 9(i) of form 40–F [17 CFR 249.240f].

[118] *See* proposed item 303(d)(2) of regulation S–B [17 CFR 228.303(d)(2)]; proposed item 303(c)(ii) of regulation S–K [17 CFR 229. 303(c)(ii)]; proposed item 5.G.2 of form 20–F [17 CFR 249.220f]; and proposed general instruction 9(ii) of form 40–F [17 CFR 249.240f].

relates to off-balance sheet arrangements?

• Is there any need for the proposed safe harbor, or would the statutory safe harbors afford sufficient protection to encourage the type of information and analysis necessary for investors to understand the impact of off-balance sheet arrangements?

H. Other Safe Harbors for Forward-Looking Information

Notwithstanding the proposed safe harbor for forward looking statements, the statutory safe harbor, by its terms, may be available for some of the disclosure required by the proposals. Companies preparing disclosure under the proposals that would constitute a forward-looking statement should consider the conditions under which several existing safe harbors apply. As defined in the relevant statutory provisions, a ''forward-looking statement'' generally is:

• A statement containing a projection of revenues, income (or loss), earnings (or loss) per share, capital expenditures, dividends, capital structure, or other financial items;

• A statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

• A statement of future economic performance, including any such statement contained in MD&A;

• Any statement of assumptions underlying or relating to any statement described in the three bullet points above; or

• Any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer.[119]

In addition, two Commission rules under those Acts that pre-date the adoption of the statutory safe harbors also provide protection for forward-looking statements. The Commission safe harbor rules that apply to forward-looking statements are Securities Act rule 175 and Exchange Act rule 3b–6.[120] Under those rules, a forward-looking statement made by or on behalf of a registrant is deemed not to be a fraudulent statement if it is made in good faith and made or reaffirmed with a reasonable basis. The rule-based safe harbors apply to a registrant if it is a reporting company at the time it makes the forward-looking statement. These safe harbors also apply to a registrant that is not a reporting company, but makes the statement in a Securities Act registration statement[121] or an Exchange Act registration statement. The safe harbors cover forward-looking statements in filed documents, in annual reports to shareholders[122] and in part 1 of forms 10–Q and 10–QSB.[123]

III. General Request for Comment

The Commission is proposing these amendments to the MD&A requirements to improve the quality and relevance of explanatory disclosure about a registrant's financial condition, changes in financial condition, results of operations and reasonably likely trends, demands, commitments, events and uncertainties affecting a registrant. We welcome your comments. We solicit comment, both specific and general, upon each component of the proposals. If you would like to submit written comments on the proposals, to suggest additional changes or to submit comments on other matters that might affect the proposals, we encourage you to do so.

Request for Comment

• Is the additional information elicited by the proposals useful to investors, other users of company disclosure and readers of a company's financial statements? If not, how can it be improved to achieve that goal?

• In addition to the requirements we propose, are there particular aspects of off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments that the proposals should specifically require companies to address? If so, what are they?

• If the proposed disclosure would involve competitive or other sensitive information, are there any mechanisms that would ensure full and accurate disclosure while reducing a company's risk of competitive harm?

• Are there aspects of the proposed disclosure that should be retained while other parts of the proposed disclosure are eliminated? We solicit comment on the desirability of adopting some sections of the proposed rules, but not all sections.

Any interested person wishing to submit written comments on any aspect of the proposals, as well as on other matters that might have an impact on the proposals, is requested to do so. In addition, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of the proposals. Please submit three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You may also submit comments electronically to the following e-mail address: *rule-comments@sec.gov.*[124] To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. All comments should refer to file number S7–42–02. If you are commenting by e-mail, include this file number in the subject line, as well as the name of your organization. We will make comments available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, NW., Washington, DC 20549–0102. In addition, we will post electronically submitted comments on our Internet website (*www.sec.gov*).

IV. Paperwork Reduction Act

A. Background

The proposed amendments to regulations S–B, S–K,[125] form 20–F and form 40–F contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[126] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[127]

[119] *See* 15 U.S.C. 77z–2 and 78u–5.

[120] See 17 CFR 230.175 and 17 CFR 240.3b–6.

[121] Thus, unlike the statutory safe harbors, the rule 175 safe harbor would protect MD&A forward-looking statements made in a registration statement or prospectus for an initial public offering.

[122] *See* Exchange Act rule 14a–3 [17 CFR 240.14a–3].

[123] The rule safe harbors also cover statements that reaffirm forward-looking statements made in those documents and forward-looking statements made prior to filing or submission of those documents that are reaffirmed in those documents. In addition to the statutory and rule safe harbors directed at forward-looking statements, companies preparing the proposed MD&A disclosure also could be protected by the ''bespeaks caution'' legal doctrine that has developed through case law and is recognized by most circuit courts of appeal. *See, e.g., Lilley* v. *Charren*, 2001 U.S. App. LEXIS 19430 (9th Cir. 2001); *EP Medsystems, Inc.* v. *Echocath Inc.*, 235 F.3d 865; (3d Cir. 2000); *Parnes* v. *Gateway 2000*, 122 F.3d 539 (8th Cir. 1997). The bespeaks caution doctrine recognizes that forecasts, projections and expectations must be read in context and that accompanying cautionary language can render a misstatement or omission immaterial or render a plaintiff's reliance on it unreasonable. For a forward-looking statement to be covered by the bespeaks caution doctrine, there must be adequate cautionary language that warns investors of the potential risks related to the forward-looking statement.

[124] For more information on how to submit comments electronically, *see www.sec.gov/rules/submitcomments.htm.*

[125] Although we are proposing amendments to regulations S–B and S–K, the burden is imposed through the forms that refer to the disclosure regulations. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, we estimate the burdens imposed by regulations S–B and S–K to be one hour.

[126] 44 U.S.C. 3501 *et seq.*

[127] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

titles for the collections of information are:

(1) ''Form S–1'' (OMB Control No. 3235–0065);

(2) ''Form F–1'' (OMB Control No. 3235–0258);

(3) ''Form SB–2'' (OMB Control No. 3235–0418);

(4) ''Form S–4'' (OMB Control No. 3235–0324);

(5) ''Form F–4'' (OMB Control No. 3235–0325);

(6) ''Form 10'' (OMB Control No. 3235–0064);

(7) ''Form 10–SB'' (OMB Control No. 3235–0419);

(8) ''Form 20–F'' (OMB Control No. 3235–0288);

(9) ''Form 40–F'' (OMB Control No. 3235–0381);

(10) ''Form 10–K'' (OMB Control No. 3235–0063);

(11) ''Form 10–KSB'' (OMB Control No. 3235–0420);

(12) ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15) and Schedule 14A'' (OMB Control No. 3235–0059);

(13) ''Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)'' (OMB Control No. 3235–0057);

(14) ''Form 10–Q'' (OMB Control No. 3235–0070);

(15) ''Form 10–QSB'' (OMB Control No. 3235–0416);

(16) ''Regulation S–K'' (OMB Control No. 3235–0071); and

(17) ''Regulation S–B'' (OMB Control No. 3235–0417).

These regulations and forms were adopted pursuant to the Securities Act and the Exchange Act and set forth the disclosure requirements for annual and quarterly reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing, and sending these forms constitute reporting and cost burdens imposed by each collection of 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 control number.

Under the proposals, we would require public companies to include a discussion of material off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments in the MD&A section of their filings with the Commission. We are proposing these rules pursuant to the legislative mandate in section 401(a) of the Sarbanes-Oxley Act of 2002.[128] Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

For purposes of the Paperwork Reduction Act, we estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 366,337 hours of company personnel time and a cost of approximately $44,795,000 for the services of outside professionals.[129] That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.[130]

B. Methodology

1. Initial Calculation of Preparation Time

We derived the above estimates first by estimating the total amount of time it would take to a company prepare each item of the proposed disclosure. We estimate that in the first year, the proposed off-balance sheet disclosure would take 14.5 hours for annual reports and proxy statements, 16 hours for registration statements and 10 hours for quarterly reports. We estimate that in the first year, the proposed disclosure of contractual obligations and contingent liabilities would take 7.5 hours for annual reports and proxy statements, 8.5 hours for registration statements and 3 hours for quarterly reports. Our estimates for the preparation time for all of the proposed disclosure items in the first year are 22 hours for annual reports and proxy statements, 24.5 hours for registration statements and 15.5 hours for quarterly reports.

Because the Paperwork Reduction Act estimates represent the average burden over a three-year period, we adjusted the first-year preparation time estimates to account for the fact that companies should become more efficient at preparing the proposed disclosure after the first year. Accordingly, to calculate an estimate of the amount of time it would take to prepare the proposed disclosure in year two, we assumed that the amount of time to prepare the proposed disclosure would be reduced by 20%. In year three, we assumed the amount of time to prepare the proposed disclosure would be reduced by 10%. After we averaged the estimated preparation times for the three-year period and rounded to the nearest whole-number, the estimates for the amount of time it would take companies to prepare the disclosure are 18 hours for annual reports and proxy statements, 21 hours for registration statements and 11 hours for quarterly reports.

2. Adjustments to Estimated Preparation Times

Since not all companies engage in off-balance sheet arrangements, we made adjustments to estimated preparation time. Based on a review of a random sample of filings, we estimate that 80% of public companies engage in off-balance sheet arrangements.[131] Therefore, we estimate that the same percentage of public companies would have to disclose off-balance sheet arrangements under the proposals. To reflect the fact that not all of the forms for which we estimate a burden would include the proposed new disclosure, we reduced the incremental burden hour estimates for the affected forms accordingly.

In addition, we recognize that some issuers may have to include an MD&A section in more than one filing covering the same period. To account for this, we estimate that 40% of the forms S–1, 65% of forms F–1, 38% of forms S–4, 34% of forms F–4 and 5% of schedules 14A and 14C would be required to carry the full burden of preparing entirely new MD&A disclosure about off-balance arrangements.[132] To reflect this, we further reduced the incremental burden hours for forms by the percentage of respondents who would not be required to carry the full burden of preparing new disclosure pursuant to the proposals. After making those adjustments for our estimate of preparation time for year one, we then derived a three-year average by reducing the preparation time by 20% and 10%

[128] Pub. L. 107–204 sec. 401(a) [15 U.S.C. 78m(j)].

[129] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $1,000.

[130] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

[131] The sample consisted of approximately 175 firms listed on the NYSE and the Nasdaq that disclosed securitizations, guarantees, operating leases or other off-balance sheet arrangements.

[132] We derived these percentages from the proportion of new issuers to total issuers from our internal database. The adjustments to schedules 14A and 14C represent our best estimate based on our belief that the percentage of companies that would actually be required to carry the full burden of preparing the proposed disclosure would be minimal.

for years two and three, and averaging the sum.

C. Registration Statements

Table 1 below illustrates the total annual compliance burden of the proposed collection of information in hours and in cost for registration statements under the Securities Act and the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2002 fiscal year. To determine the average total number of hours each entity spends completing each form, we added the estimated hour increment to the current burden hour estimate for each form reported to OMB. For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

The incremental cost of outside professionals for registration statements would be approximately $4,400,000 per year and the incremental company burden would be approximately 4,888 hours per year. For purposes of our submission to OMB under the PRA, the total cost of outside professionals for registration statements would be approximately $868,882,000 per year and the company burden would be approximately 965,425 hours per year.

TABLE 1.—REGISTRATION STATEMENTS

[Columns ''25% company'' and ''$300 prof. cost'' are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	25% company (D)=(C)*0.25	75% professional (E)=(C)*0.75	$300 prof. cost (F)=(E)*$300	Added hours/form
S–1	433	1,749	757,317	189,329	567,987.75	$170,396,000	7
F–1	43	1,918	82,474	20,619	61,855.50	18,557,000	12
SB–2	650	593	385,450	96,363	289,087.50	86,726,000	11
S–4	631	3,980	2,511,380	627,845	1,883,535.00	565,061,000	7
F–4	61	1,329	81,069	20,267	60,801.75	18,241,000	6
10	71	144	10,224	2,556	7,668.00	2,300,000	18
10–SB	254	133	33,782	8,446	25,336.50	7,601,000	11
Total	.....	.....	.....	965,425	.....	868,882,000	

D. Annual Reports and Proxy/Information Statements

Table 2 below illustrates the total annual compliance burden of the collection of information in hours and in cost for annual reports and proxy and information statements under the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2002 fiscal year. For Exchange Act reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour.[133] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

The incremental cost of outside professionals for annual reports and proxy/information statements would be approximately $18,436,000 per year and the incremental company burden would be approximately 141,864 hours per year. For purposes of our submission to OMB under the PRA the total cost of outside professionals for annual reports and proxy/information statements would be approximately $2,110,552,000 per year and the company burden would be approximately 15,878,892 hours per year.

TABLE 2.—ANNUAL REPORTS AND PROXY/INFORMATION STATEMENTS

[Columns ''75% company'' and ''$300 prof. cost'' are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	75% company (D)=(C)*0.75	25% professional (E)=(C)*0.25	$300 prof. cost (F)=(E)*$300	Added hours/form
20–F	1,194	2,185	2,608,890	652,223	1,956,667.50	$587,000,000	16
40–F	134	33	4,422	1,106	3,316.50	995,000	16
10–K	8,484	1,810	15,351,798	11,513,849	3,837,949.50	1,151,385,000	16
10–KSB	3,820	1,260	4,811,290	3,608,468	1,202,822.50	360,847,000	10
SCH 14A	7,661	17	130,237	97,678	32,559.25	9,768,000	1

[133] This allocation of the burden is a departure from our past PRA submissions for Exchange Act periodic reports and proxy and information statements, for which we estimated that the company carried 25% of the burden internally and 75% of the burden of preparation was carried by outside professionals retained by the company. We believe that this new allocation more accurately reflects current practice for annual and quarterly reports and proxy and information statements. We estimate, however, that the traditional 25% company and 75% outside professional allocation remains applicable for forms 20–F and 40–F because those forms are prepared by foreign private issuers who rely more heavily on outside counsel for their preparation.

TABLE 2.—ANNUAL REPORTS AND PROXY/INFORMATION STATEMENTS—Continued

[Columns ''75% company'' and ''$300 prof. cost'' are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	75% company (D)=(C)*0.75	25% professional (E)=(C)*0.25	$300 prof. cost (F)=(E)*$300	Added hours/form
SCH 14C	464	16	7,424	5,568	1,856.00	557,000	1
Total	.....	.....	.....	15,878,892	.....	2,110,552,000	

E. Quarterly Reports

Table 3 below illustrates the total annual compliance burden of the collection of information in hours and in cost for quarterly reports under the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2002 fiscal year. For quarterly reports, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. Additionally, there would be no change to the estimated burden of the collection of information entitled ''Regulation S–B'' and ''Regulation S–K'' because the burdens are already reflected in our estimates for the forms.

The incremental cost of outside professionals for quarterly reports would be approximately $21,959,000 per year and the incremental company burden would be approximately 219,585 hours per year. For purposes of our submission to OMB under the PRA, the total cost of outside professionals for quarterly reports and Regulations S–K and S–B would be approximately $475,105,000 per year and the company burden would be 4,751,056 hours per year.

TABLE 3.—QUARTERLY REPORTS AND REGULATIONS S–K AND S–B

[Columns ''%75 company'' and ''$300 prof. cost'' are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	75% company (D)=(C)*0.75	25% professional (E)=(C)*0.25	$300 prof. cost (F)=(E)*$300	Added hours/form
10–Q	23,743	184	4,368,712	3,276,534	1,092,178.00	$327,653,000	9
10–QSB	11,299	174	1,966,026	1,474,520	491,506.50	147,452,000	7
Reg. S–K	0	1	1	1	0.00	0	0
Reg. S–B	0	1	1	1	0.00	0	0
Total	.....	.....	.....	4,751,056	.....	475,105,000	

F. Solicitation of Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments 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 send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–42–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–42–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

A. Background

In accordance with the directive of section 401(a) of the Sarbanes-Oxley Act,[134] the Commission is proposing disclosure rules regarding a company's off-balance sheet arrangements. The proposals would require disclosure to improve investors' understanding of a company's overall financial condition, changes in financial condition and results of operations. The proposals would require companies that are reporting, raising capital in the registered public markets or asking shareholders for their votes to discuss certain aspects and effects of their off-balance sheet arrangements and to provide an aggregate overview of their known contractual obligations and contingent liabilities and commitments.

[134] Pub. L. 107–204 sec. 401(a) [15 U.S.C. 78m(j)].

B. Objectives of Proposed Disclosure

The proposals seek to improve transparency of a company's off-balance sheet arrangements and to improve an investor's understanding of the liquidity and capital resource needs and demands by requiring disclosure of aggregate contractual obligations and contingent liabilities and commitments. We believe that the quality of information in these areas could be improved. Our objectives are:

- To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;
- To provide investors with the information and analysis necessary to gain a more comprehensive understanding of the implications of a company's obligations and contingencies from off-balance sheet arrangements that cannot be easily understood from the financial statements alone; and
- To better inform investors of the aggregate impact of short- and long-term contractual obligations, contingent liabilities and commitments, from both on and off-balance sheet activities, by presenting a total picture in a single location.

With a greater understanding of a company's off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments, investors would be better able to understand how a company conducts significant aspects of its business and to assess the quality of a company's earnings and the risks that are not apparent on the face of the financial statements.

C. Regulatory Approach

Although the Sarbanes-Oxley Act requires that the Commission issue rules to require disclosure of off-balance sheet arrangements, we considered alternative regulatory approaches for achieving our goal to promote greater transparency of a company's off-balance sheet arrangements. As one possible approach, we considered proposing a general MD&A requirement that companies disclose information regarding off-balance sheet arrangements that they believe to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. In the alternative, we considered proposing more rigid disclosure requirements that would mandate the particular content of disclosure, regardless of whether it would be necessary to an understanding of the registrant's financial condition, changes in financial condition and results of operations. After due consideration of both approaches, we propose an approach somewhere in between these two alternatives as the most effective. Accordingly, the proposal enumerates specific disclosure items regarding off-balance sheet arrangements, but requires disclosure only to the extent necessary to an understanding of a registrant's off-balance sheet arrangements and their effect on financial condition, changes in financial condition and results of operations.

With regard to the proposed tabular disclosure of contractual obligations, we believe that a more specific approach is necessary to elicit disclosure that is comparable among firms. For example, the proposed table and/or textual disclosure of contractual obligations and contingent liabilities and commitments requires registrant to include specific time periods for payments due under contractual obligations.[135] We have, however, attempted to provide flexibility for registrants where doing so would yield more relevant disclosure and reduce the burden for registrants. For example, our proposals allow registrants to use either specified categories of obligations or other categories suitable to its business.[136] We have also provided flexibility with regard to the proposed disclosure of contingent liabilities and commitments. For example, the proposals allow registrants to disclose contingent liabilities and commitments either in text or in tabular format.[137] In addition, under the proposals a registrant may disclose either the expected amount, range of amounts or maximum amount of contingent liabilities or commitments.[138]

Current MD&A rules require disclosure of off-balance sheet arrangements that have a material effect on a company's liquidity and capital resources.[139] In addition, MD&A must include other information that management believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations.[140] These requirements provide companies with significant flexibility in drafting the MD&A disclosure. Although some public companies provide more detailed information in their financial statements about off-balance sheet arrangements, other companies provide arcane disclosure that may not be materially misleading in a legal sense, but it nevertheless does not provide investors with the information and analysis necessary to assess the impact of off-balance sheet arrangements. To stimulate higher quality disclosures regarding off-balance sheet arrangements, we are proposing more specific disclosure requirements in the MD&A.

The proposed disclosures are designed to result in a more focused and descriptive discussion of the registrant's material off-balance sheet arrangements. The proposals attempt to mitigate the possibility that investors would be overwhelmed with voluminous disclosure by requiring disclosure ''to the extent necessary to an understanding of the registrant's off-balance sheet arrangements and their effect on financial condition, changes in financial condition and results of operations.'' [141] This approach attempts to balance the need for registrants to have flexibility when drafting financial disclosure, with investors' needs for more transparency.

D. Potential Benefits of the Proposed Rules

The primary anticipated benefit of the proposed rules is to increase transparency of the financial condition, changes in financial condition and operating results of companies and possibly to reduce the information asymmetry between management and investors. Current market events have evidenced a need to provide investors with a clearer understanding of how a company's off-balance sheet arrangements materially affect the financial statements and company performance.[142] The proposed disclosure is intended to enhance the utility of the disclosure in the MD&A section by providing more information, including management's analysis, of off-balance sheet arrangements. In addition, the proposed tabular and/or textual disclosure of contractual obligations and contingent liabilities and commitments is designed to provide investors with an understanding of the liquidity and

[135] *See, e.g.*, proposed item 303(a)(5)(i) of regulation S–K [17 CFR 229.303(a)(5)(i)].

[136] *Id.*

[137] *See, e.g.*, proposed item 303(a)(5)(ii) of regulation S–K [17 CFR 229.303(a)(5)(ii)].

[138] *Id.*

[139] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)].

[140] *See* item 303(a) of regulation S–K [17 CFR 229.303(a)].

[141] *See* proposed item 303(c)(1) of regulation S–B [17 CFR 228.303(c)(1)]; proposed item 303(a)(4)(i) of regulation S–K [17 CFR 229. 303(a)(4)(i)]; proposed item 5.E.1 of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i) of form 40–F [17 CFR 249.240f].

[142] *See, e.g.*, Paquita Y. Davis-Friday *et. al., The Value Relevance of Financial Statement Recognition vs. Disclosure: Evidence from SFAS No. 106,* 74 The Accounting Review 403 (Oct. 1999).

capital resource need and demands in short- and long-term time horizons.

By making information about off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments available and more understandable, the proposals would benefit investors both directly and indirectly through the financial analysts and the credit rating agencies whose analyses investors consider.[143] In addition, the proposed disclosures should benefit investors because the enumerated disclosure under the proposed rule would likely be more comparable across all firms and consistent over time. Greater transparency would thus enable investors to make more informed investment decisions and to allocate capital on a more efficient basis.

Request for Comment

- We solicit quantitative data to assist our assessment of the benefits of identifying off-balance sheet arrangements and analyzing their effects on the financial statements and preparing a table of contractual obligations and contingent liabilities.

E. Potential Costs of Proposed Rules

We estimate that proposed rules would impose a new disclosure requirement on approximately 9,850 public companies.[144] We estimate that the disclosure would involve multiple parties, including in-house preparers, senior management, in-house counsel, outside counsel, outside auditors, and audit committee members. For purposes of the Paperwork Reduction Act,[145] we estimated that company personnel would spend approximately 366,337 hours per year (37 hours per company) to prepare, review and file the proposed disclosure. Based on our estimated cost of in-house staff time, we estimated the PRA hour-burden would translate into an approximate cost of $45,792,000 ($5,000 per company).[146] We also estimated that companies would spend approximately $44,795,000 ($5,000 per company) on outside professionals to comply with the disclosure.[147] We also estimate that companies will incur some additional printing and dissemination costs, as the proposals may result in more detailed disclosure. We are unable to estimate the potential printing and dissemination costs because there is a wide possible range of paper and ink available and different companies will print a different number of reports depending on their shareholder base.

We believe our proposals would not substantially increase the costs to collect the information necessary to prepare the proposed disclosure. This information should largely be readily available from each company's books and records. Since management should be fully apprised of off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments in the ordinary course of managing the company, the proposed disclosure may not impose significant incremental costs for the collection and calculation of data.

Request for Comment

- What types of expenses would companies incur in order to comply with the proposed disclosure requirements?
- What would the average printing and dissemination costs be for each firm?
- We solicit quantitative data to assist our assessment of the compliance costs of identifying off-balance sheet arrangements and the table of contractual obligations and contingent liabilities and commitments in the manner proposed.

F. Foreign Private Issuers

We propose to apply to foreign private issuers the same MD&A disclosure requirements that would apply to U.S. companies. Foreign private issuers, however, are not required to file quarterly reports with the Commission. Thus, unless a foreign private issuer files a registration statement that must include interim period financial statements and related MD&A disclosure, it generally would not be required to update the proposed MD&A disclosure more frequently than annually. Therefore, the cost of compliance could be lower for foreign private issuers than for U.S. companies. It is possible, however, that foreign private issuers would incur greater expenses in connection with the required reconciliation to U.S. GAAP.

G. Small Business Issuers

We have proposed not to require that small businesses provide tabular and/or textual disclosure about the contractual obligations and contingent liabilities and commitments. This information is currently required to be disclosed in various locations in filings. While it would be useful to investors if this information were disclosed in a single location, we believe that excluding small business issuers from this requirement is consistent with the policies underlying the small business issuer disclosure system.

H. Request for Comments

To assist the Commission in its evaluation of the costs and benefits of the proposed disclosure discussed in this release, we request that commenters provide views and data relating to any costs and benefits associated with the proposed rules.

VI. Effects on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[148] requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects. The proposed rules are intended to make information about off-balance sheet arrangements and their implications for the presentation of a public company's financial condition, changes in financial condition and operating results more understandable to investors. The proposed rules also would provide an overview of a company's known contractual obligations and contingent liabilities and commitments. We have identified one possible area where the proposed rules could potentially place a burden on competition. There is some possibility that a company's competitors could be able to infer proprietary or sensitive information from disclosure about off-balance sheet arrangements. To the extent that all companies make the proposed disclosure, that impact may diminish. We request comment regarding the degree to which our proposed disclosure requirements would create competitively harmful effects upon public companies, and how to minimize those effects. We also request comment on any disproportionate cross-sectional burdens among the firms affected by our proposals that could have anti-competitive effects.

[143] See, *e.g.*, Kent L. Womack, *Do Brokerage Analysts' Recommendations have Investment Value?* 51 Journal of Finance 137 (1996). *See also,* R. Mear and M. Firth, *Risk Perceptions of Financial Analysts and the Use of Market and Accounting Data,* 18 Accounting and Business Research 335 (1988).

[144] We estimate that about 80% of the number of registrants who filed annual reports last year would be required to provide the proposed disclosure.

[145] 44 U.S.C. 3501 *et seq.*

[146] We estimate the average hourly cost of in-house personnel to be $125. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[147] To derive our estimates for the Paperwork Reduction Act, we multiplied the number of filers for each form by the incremental hours per form. The portion of the product carried by the company is reflected in hours and the portion carried by outside professionals is reflected as a cost.

[148] 15 U.S.C. 78w(a)(2).

Section 2(b) of the Securities Act [149] and section 3(f) of the Exchange Act [150] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We believe the proposed disclosure may promote market efficiency by making information about off-balance sheet arrangements, and their impact on the presentation of the company's financial position, more understandable. As a result, we believe that investors may be able to make more informed investment decisions and capital may be allocated on a more efficient basis. The possibility of these effects, their magnitude if they were to occur and the extent to which they would be offset by the costs of the proposals are difficult to quantify. We request comment on these matters and how the proposed amendments, if adopted, would affect efficiency and capital formation. Commenters are requested to provide empirical data and other factual support to the extent possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to item 303 of regulation S–K,[151] item 303 of regulation S–B,[152] item 5 of form 20–F [153] and general instruction B of form 40–F.[154] The proposals require public companies to discuss off-balance sheet arrangements and to disclose aggregate contractual obligations and contingent liabilities and commitments. The new disclosure would be included in the MD&A section of a company's annual reports, quarterly reports, registration statements and proxy and information statements.

A. Reasons for the Proposed Action

On July 30, 2002, the Sarbanes-Oxley Act of 2002 was enacted.[155] Section 401 of the Sarbanes-Oxley Act, entitled ''Disclosures in Periodic Reports,'' requires the Commission to adopt final rules by January 26, 2003 (180 days after the date of enactment) that require a company, in each annual and quarterly financial report that it files with the Commission, to disclose ''all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.''[156] To implement that legislative mandate, the Commission is proposing rules that would improve the transparency of off-balance sheet arrangements. The potential consequences of not taking this action to require disclosure regarding the off-balance sheet arrangements are: (a) Less transparency in the presentation of companies' financial statements and, correspondingly, a lesser understanding of companies' financial condition, changes in financial condition and results of operations when making investment decisions; and (b) a potential decrease in investor confidence in the full and fair disclosure system that is the hallmark of the U.S. capital markets.

B. Objectives

The proposals seek to improve transparency of a company's off-balance sheet arrangements, aggregate contractual obligations and contingent liabilities and commitments. We believe that improvements in the quality of information in these areas would promote investor understanding of a company's current and future financial position. Our objectives are:

- To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;
- To provide investors with the information and analysis necessary to gain an understanding of the financial implications of a company's obligations and contingencies that cannot be easily understood from the financial statements alone; and
- To better inform investors of the aggregate impact of a company's contractual obligations, contingent liabilities and commitments by presenting a total picture in a single location.

With a greater understanding of a company's off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments, investors would be better able to understand how a company conducts significant aspects of its business and to assess the quality of a company's earnings and the risks that are not apparent on the face of the financial statements.

C. Legal Basis

We are proposing the amendments under the authority set forth in sections 7, 10, 19, 27A and 28 of Securities Act of 1933 and sections 12, 13, 14, 21E, 23 and 36 of the Securities Exchange Act of 1934. We are also proposing the amendments pursuant to sections 3(a) and 401(a) of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to the Proposed Regulation and Rules

The proposals would affect companies that are small entities. Securities Act rule 157 [157] and Exchange Act rule 0–10(a) [158] define a company, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there were approximately 2,500 companies, other than investment companies, that may be considered small entities. The proposed disclosure requirements would apply to any small entity that fulfills its disclosure obligations by complying with our standard disclosure requirements [159] or in our optional disclosure system available only to small businesses.[160]

We believe that the off-balance sheet arrangements involving small entities would most likely be operating leases. In our Paperwork Reduction Act analysis, we estimated that the cost of in-house staff time would translate into an approximate cost of $4,000 per company.[161] This figure may be lower for a small entity if its average hourly cost for its personnel were lower than $125. We also estimated that companies would spend approximately $5,000 per company on outside professionals to comply with the disclosure.[162] This figure may be lower for a small entity if its average hourly cost of outside professionals was lower than $300. While we believe that the costs of compliance with the proposals may be

[149] 15 U.S.C. 77b(b).

[150] 15 U.S.C. 78c(f).

[151] 17 CFR 229.303.

[152] 17 CFR 228.303.

[153] 17 CFR 249.220f.

[154] 17 CFR 249.240f.

[155] Pub. L. 107–204, 116 stat. 745 (2002).

[156] Pub. L. 107–204 sec. 401 [15 U.S.C. 78m(j)].

[157] 17 CFR 230.157.

[158] 17 CFR 270.0–10(a).

[159] Regulation S–K, 17 CFR 229.10–229.1016.

[160] Regulation S–B, 17 CFR 228.10–228.701.

[161] We estimate the average hourly cost of in-house personnel to be $125. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

[162] To derive our estimates for the Paperwork Reduction Act, we multiplied the number of filers for each form by the incremental hours per form. The portion of the product carried by the company is reflected in hours and the portion carried by outside professionals is reflected as a cost.

lower for small entities, we are unable to quantify that number.

We request comment on the number of small entities that would not be required to comply with our proposals because they do not engage in off-balance sheet arrangements and whether the relative costs of company personnel and outside professionals for small entities would be lower than for larger entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

Small entities would either utilize existing personnel or hire an outside professional to provide the proposed disclosure. This would impose incremental costs on small entities in connection with drafting, reviewing, filing, printing and disseminating additional disclosure in annual reports, registration statements, proxy and information statements and quarterly reports. The data underlying the proposed disclosure should be readily available from a company's books and records. Since management should be fully apprised of material off-balance sheet arrangements through its internal controls, the proposed disclosure may not impose significant incremental costs for the collection and calculation of data.

To further ease the regulatory burden on small entities, we are excluding small business issuers from the proposed tabular and/or textual disclosure about the contractual obligations and contingent liabilities and commitments. This information is currently required to be disclosed in various locations in filings. While it may be useful to investors if this information were disclosed in a single location, we believe that excluding small business issuers from this requirement is consistent with the policies underlying the small business issuer disclosure system.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or completely duplicate the proposed rules. There is a partial overlap with financial statement requirements requiring disclosures about off-balance sheet arrangements and risks and uncertainties that could materially affect the financial statements. There also is a partial overlap with existing MD&A requirements that may require some discussion of off-balance sheet arrangements that are essential to an understanding of a company's financial condition, changes in financial condition or results of operations. However, those requirements do not include much of the information specifically targeted for inclusion in the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from coverage under the proposals.

We have drafted the proposed disclosure rules to require clear and straightforward disclosure of off-balance sheet arrangements in MD&A. Separate disclosure requirements regarding off-balance sheet arrangements for small entities would not yield the disclosure that we believe to be necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it does not seem appropriate to develop separate requirements with regard to off-balance sheet arrangements for small entities involving clarification, consolidation or simplification of the proposed disclosure. We have, however, excluded small business issuers from the proposals that require tabular and/or textual disclosure of contractual obligations and contingent liabilities and commitments.

We have used design rather than performance standards in connection with the proposals for three reasons. First, we believe the proposed disclosure would be more useful to investors if there were enumerated informational requirements. The proposed mandated disclosures may be likely to result in a more focused and comprehensive discussion of the company's off-balance sheet arrangements. Second, mandated disclosures regarding off-balance sheet arrangements may benefit investors in small entities because the enumerated disclosure under the proposed rule would likely be more comparable across all firms and consistent over time. Third, a mandated discussion of a company's off-balance sheet arrangements is uniquely suited to the MD&A disclosure in light of MD&A's emphasis on the identification of significant uncertainties and events and favorable or unfavorable trends. Therefore, adding a disclosure requirement to the existing MD&A appears to be the most effective method of eliciting the disclosure.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposals; (ii) the existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[163] a rule is ''major'' if it has resulted, or 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 or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

IX. Codification Update

The Commission proposes to amend the ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982):

By adding section 501.12, captioned ''Off-balance Sheet Arrangements'' to include the text in the adopting release

[163] Pub. L. No. 104–121, title II, 110 stat. 857 (1996).

that discusses the final rules, which, if the proposed rules are adopted, would be substantially similar to section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

Statutory Bases and Text of Proposed Amendments

We are proposing amendments to Commission's existing rules under the authority set forth in sections 7, 10, 19, 27A and 28 of the Securities Act and sections 12, 13, 14, 21E, 23 and 36 of the Exchange Act. We are also proposing the amendments pursuant to sections 3(a) and 401(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 228, 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.303 is also issued under secs. 3(a) and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

2. Section 228.303 is amended by:

a. Removing the phrase ''paragraph (a)'' and adding, in its place, the phrase ''paragraphs (a) and (c)'' in the first sentence of the introductory text;

b. Removing the phrase ''paragraph (b)'' and adding, in its place, the phrase ''paragraphs (b) and (c)'' in the second sentence of the introductory text; and

c. Adding paragraphs (c) and (d) and an instruction to paragraph (c) of item 303 before instructions to item 303.

The additions read as follows:

§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.

* * * * *

(c) *Off-balance sheet arrangements.* (1) For the periods set forth in paragraphs (a) and (b) of this item, include a separately-captioned section discussing the small business issuer's off-balance sheet arrangements that may have a current or future material effect on the small business issuer's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this paragraph (c) of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-balance sheet arrangements on the small business issuer's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(i) The nature and business purpose of the small business issuer's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this paragraph (c), the significant terms and conditions of the arrangements, including those between the small business issuer and any entity in which off-balance sheet activities are conducted and between the small business issuer or that entity and other persons;

(ii) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including contingent obligations and liabilities) of that entity;

(iii)The amounts of revenues, expenses and cash flows of the small business issuer arising from the arrangements; the nature and amount of any interests retained, securities issued and other indebtedness incurred by the small business issuer; and any other obligations or liabilities (including contingent obligations or liabilities) of the small business issuer arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(iv) Management's analysis of the material effects of any of the items identified in paragraphs (c)(1)(i), (ii) and (iii) of this item on the small business issuer's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. An analysis of the degree to which the small business issuer relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

(2) If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the small business issuer will be terminated or the benefits thereof to the small business issuer will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

(3) As used in this paragraph (c), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the small business issuer is a party, under which the small business issuer, whether or not a party to the arrangement, has, or in the future may have:

(i) Any obligation under a direct or indirect guarantee or similar arrangement;

(ii) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(iii) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(iv) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the

financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

Instruction to paragraph (c): No obligation to make disclosure under paragraph (c) of this item shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

(d) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z–2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) (''statutory safe harbors'') shall apply to forward-looking information provided pursuant to paragraph (c) of this item, provided that the disclosure is made by: An issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of this paragraph (d) only, all information required by paragraphs (c)(1)(iv) and (c)(2) of this item is deemed to be a ''forward looking statement'' as that term is defined in the statutory safe harbors, except for historical facts.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll(d), 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39 and 80b–11, unless otherwise noted.

Section 229.303 is also issued under secs. 3(a) and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

Section 229.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

4. Section 229.303 is amended by:

a. Removing the authority citation following § 229.303;

b. Removing the phrase ''paragraphs (a)(1), (2) and (3)'' and adding, in its place, the phrase ''paragraphs (a)(1), (2), (3) and (4) of this section'' in the second sentence of the introductory text of paragraph (a);

c. Removing the phrase ''or for those fiscal years beginning after December 25, 1979,'' in paragraph (a)(3)(iv);

d. Adding paragraphs (a)(4) and (a)(5) before the ''Instructions to Paragraph 303(a)'';

e. Adding instruction 13 to ''Instructions to Paragraph 303(a)'';

f. Adding instruction 7 to ''Instructions to Paragraph (b) of Item 303''; and

g. Adding paragraph (c).

The additions read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) * * *

(4) *Off-balance sheet arrangements.* (i) In a separately-captioned section, discuss the registrant's off-balance sheet arrangements that may have a current or future material effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this paragraph (a)(4) of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-balance sheet arrangements on the registrant's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(A) The nature and business purpose of the registrant's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this paragraph (a)(4), the significant terms and conditions of the arrangements, including those between the registrant and any entity in which off-balance sheet activities are conducted and between the registrant or that entity and other persons;

(B) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including contingent obligations and liabilities) of that entity;

(C) The amounts of revenues, expenses and cash flows of the registrant arising from the arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the registrant; and any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(D) Management's analysis of the material effects of any of the items identified in paragraphs (a)(4)(i)(A), (B) and (C) of this item on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. An analysis of the degree to which the registrant relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

(ii) If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the registrant will be terminated or the benefits thereof to the registrant will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

(iii) As used in this paragraph (a)(4), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant, whether or not a party to the arrangement, has, or in the future may have:

(A) Any obligation under a direct or indirect guarantee or similar arrangement;

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(C) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(D) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes

thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

(5) *Tabular disclosure of contractual obligations.* (i) In a tabular format, provide the information specified in this paragraph (a)(5) with respect to the registrant's known contractual obligations as of the latest balance sheet date. The tabular presentation should include at least the periods set forth in the columns in the table following this paragraph (a)(5)(i). The registrant shall provide amounts, aggregated by type of contractual obligation, and may use the categories of obligations specified in the table or other categories suitable to its business. A presentation of total contractual obligations for at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					
[Unconditional Purchase Obligations]					
[Other Long-Term Obligations]					
Total Contractual Obligations					

(ii) *Contingent liabilities and commitments.* Disclose, either in text or in a tabular format, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments, aggregated by type in a manner that is suitable for the registrant's business, that are expected to expire in less than one year, in one to three years, in three to five years, and more than five years. Unless a range of amounts is disclosed, specify whether the amount disclosed is the expected or maximum amount.

Instructions to Paragraph 303(a)

* * * * *

13. No obligation to make disclosure under paragraph (a)(4) of this item shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

(b) * * *

Instructions to Paragraph (b) of Item 303:

* * * * *

7. The registrant is not required to include the table required by paragraph (a)(5) of this item in a quarterly report on form 10–Q (§ 249.308a of this chapter). Instead, the registrant may disclose material changes by including a discussion of the relevant changes.

(c) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z–2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) (''statutory safe harbors'') shall apply to forward-looking information provided pursuant to paragraph (a)(4) of this item, provided that the disclosure is made by: An issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (c) of this item only, all information required by paragraphs (a)(4)(i)(D) and (a)(4)(ii) of this item is deemed to be a ''forward looking statement'' as that term is defined in the statutory safe harbors, except for historical facts.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 is amended by revising the sectional authority for 249.220f and 249.240f to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 302, and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

6. Form 20–F (referenced in § 249.220f), item 5 is amended by:

a. Adding items 5.E. through 5.G.; and

b. Adding an instruction to 5.F. to read as follows:

Note: Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 5—Operating and Financial Review and—Prospects

* * * * *

E. Off-balance sheet arrangements

1. In a separately-captioned section, discuss the company's off-balance sheet arrangements that may have a current or future material effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this item 5.E. of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-balance sheet arrangements on the company's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(a) The nature and business purpose of the company's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this item 5.E, the significant terms and conditions of the arrangements, including those between the company and any entity in which off-balance sheet activities are conducted and between the company or that entity and other persons;

(b) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including

contingent obligations and liabilities) of that entity;

(c) The amounts of revenues, expenses and cash flows of the company arising from the arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the company; and any other obligations or liabilities (including contingent obligations or liabilities) of the company arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(d) Management's analysis of the material effects of any of the items identified in paragraphs (a), (b) or (c) of this item on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent it increases understanding. An analysis of the degree to which the company relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

2. If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the company will be terminated or the benefits thereof to the company will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

3. As used in this item 5.E., the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the company is a party, under which the company, whether or not a party to the arrangement, has, or in the future may have:

(a) Any obligation under a direct or indirect guarantee or similar arrangement;

(b) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(c) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(d) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

F. Tabular disclosure of contractual obligations

1. In a tabular format, provide the information specified in this item 5.F.1. with respect to the company's known contractual obligations as of the latest balance sheet date. The tabular presentation should include at least the periods set forth in the columns in the table below. The company shall provide amounts, aggregated by type of contractual obligation, and may use the categories of obligations specified in the table below or other categories suitable to its business. A presentation of total contractual obligations for at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					
[Unconditional Purchase Obligations]					
[Other Long-Term Obligations]					
Total Contractual Obligations					

2. *Contingent liabilities and commitments.* Disclose, either in text or in a tabular format, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments, aggregated by type in a manner that is suitable for the company's business, that are expected to expire in less than one year, in one to three years, in three to five years, and more than five years. Unless a range of amounts is disclosed, specify whether the amount disclosed is the expected or maximum amount.

G. Safe harbor

1. The safe harbor provided in section 27A of the Securities Act and section 21E of the Exchange Act (''statutory safe harbors'') shall apply to forward-looking information provided pursuant to item 5.E., provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

2. For purposes of paragraph 5.G.1. of this item only, all information required by paragraphs 5.E.1(d) and 5.E.2 of this item is deemed to be a ''forward looking statement'' as that term is defined in the statutory safe harbors, except for historical facts.

* * * * *

Instruction to item 5.A:

* * * * *

Instruction to Item 5.F.: 1. The company is not required to include the table required by paragraph 5.F.1. of this item for interim periods. Instead, the company may disclose material changes in the table by including a discussion of the relevant changes.

* * * * *

7. Form 40–F (referenced in § 249.240f) is amended by adding paragraphs 7 through 9 to General Instruction B to read as follows;

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form.

* * * * *

7. *Off-balance sheet arrangements.* (i) In a separately-captioned section, discuss the registrant's off-balance sheet arrangements that may have a current or future material effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this general instruction B.7. of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-

balance sheet arrangements on the registrant's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(A) The nature and business purpose of the registrant's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this general instruction B.7., the significant terms and conditions of the arrangements, including those between the registrant and any entity in which off-balance sheet activities are conducted and between the registrant or that entity and other persons;

(B) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including contingent obligations and liabilities) of that entity;

(C) The amounts of revenues, expenses and cash flows of the registrant arising from the arrangements; the nature and amount of any interests retained, securities issued and other indebtedness incurred by the registrant; and any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(D) Management's analysis of the material effects of any of the items identified in paragraphs (A), (B) and (C) of this general instruction on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent it increases understanding. An analysis of the degree to which the registrant relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

(ii) If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the registrant will be terminated or the benefits thereof to the registrant will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

(iii)As used in this general instruction B.7., the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant, whether or not a party to the arrangement, has, or in the future may have:

(A) Any obligation under a direct or indirect guarantee or similar arrangement;

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(C) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(D) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

(iv) No obligation to make disclosure under this general instruction B.7. shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

8. *Tabular disclosure of contractual obligations.* (i) In a tabular format, provide the information specified in this general instruction B.8. with respect to the registrant's known contractual obligations as of the latest balance sheet date. The tabular presentation should include at least the periods set forth in the columns in the table below. The registrant shall provide amounts, aggregated by type of contractual obligation, and may use the categories of obligations specified in the table below or other categories suitable to its business. A presentation of total contractual obligations for at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					
[Unconditional Purchase Obligations]					
[Other Long-Term Obligations]					
Total Contractual Obligations					

(ii) *Contingent liabilities and commitments.* Disclose, either in text or in a tabular format, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments, aggregated by type in a manner that is suitable for the registrant's business, that are expected to expire in less than one year, in one to three years, in three to five years, and more than five years. Unless a range of amounts is disclosed, specify whether the amount disclosed is the expected or maximum amount.

9. *Safe Harbor.* (i) The safe harbor provided in section 27A of the Securities Act and section 21E of the Exchange Act (''statutory safe harbors'') shall apply to forward-looking information provided pursuant to general instruction B.7. of this form 40–F, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(ii) For purposes of paragraph (i) of this general instruction B.9. only, all information required by general instruction B.7.(i)(D) and B.7.(ii) of this form 40–F is deemed to be a ''forward looking statement'' as that term is defined in the statutory safe harbors, except for historical facts.

* * * * *

Dated: November 4, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28431 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7406–2]

Withdrawal of Federal Human Health and Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Federal regulations to withdraw water quality criteria applicable to Michigan.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is promulgating a direct final rule withdrawing the Federal water quality criteria applicable to Michigan because EPA views this as a noncontroversial action and anticipates no adverse comment. EPA has explained our reasons for this action in the preamble to the direct final rule. If EPA receives no adverse comments, the Agency will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: EPA will accept public comments on its proposed withdrawal of these criteria until December 9, 2002. Comments postmarked after this date may not be considered.

ADDRESSES: Please send an original and three copies of comments and enclosures (including references) to W–01–15, WQCR Comment Clerk; Water Docket, U.S. EPA, 1200 Pennsylvania Ave NW, MC–4101T, Washington, DC 20460. Alternatively, comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats avoiding the use of special characters and any form of encryption to *OW-Docket@epa.gov.* Identify electronic comments by the docket number W–01–15. Submit hand delivered comments to W–01–15, EPA's Water Docket, U.S. EPA, EPA West, 1301 Constitution Ave NW, Room B135, Washington DC 20460. No facsimiles (faxes) will be accepted. Comments will be available at the Water Docket, 202–566–2426, Monday through Friday, excluding legal holidays, during normal business hours of 8:30 am to 4:30 p.m.

The supporting record for this rulemaking may be inspected at EPA Region 5, Office of Water, 77 West Jackson Boulevard, 16th Floor, Chicago, IL 60604–3507, Monday through Friday, excluding legal holidays, during normal business hours of 9 a.m. to 5 p.m. Please contact Dave Pfeifer, as listed in the **FOR FURTHER INFORMATION CONTACT** section, before arriving.

A copy of Michigan's water quality standards may be obtained electronically from EPA's Water Quality Standards Repository, at *http://www.epa.gov/waterscience/standards/wqslibrary/mi/mi.html.*

FOR FURTHER INFORMATION CONTACT: Manjali Gupta Vlcan at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave NW., Washington, DC, 20460 (tel: 202–566–0373, fax 202–566–0409) or email at *vlcan.manjali@epa.gov*, or Dave Pfeifer in EPA's Region 5 at 312–353–9024 or e-mail at *pfeifer.david@epa.gov*.

SUPPLEMENTARY INFORMATION: This action concerns EPA's withdrawing of the Federal water quality criteria applicable to Michigan from 40 CFR 31.36 (the NTR). For further information, including the various statutes and executive orders that require findings for rulemakings, please see the information provided in the direct final rule titled ''Withdrawal of Federal Human Health and Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Michigan'' located in the ''Rules and Regulations'' section of this **Federal Register** Publication.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—land, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–28498 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27 and 90

[WT Docket No. 96–86; FCC 02–272]

The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes various technical and operational rules and policies regarding emission limitations in the narrowband portion of the 764–776 MHz and 794–806 MHz bands. This action follows recommendations proposed by the Private Radio Section (PRS) of the Telecommunication Industry Association (TIA). These Commission actions will facilitate public safety capabilities in the 700 MHz Band.

DATES: Comments are due on or before December 9, 2002, and reply comments are due on or before December 23, 2002.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Esq., *rmussend@fcc.gov,* Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Sixth Notice of Proposed Rulemaking*, FCC

02–272, adopted on September 27, 2002, and released on October 4, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this Sixth Notice of Proposed Rule Making (Sixth NPRM), the Commission requests comment on its tentative conclusion that adopting revisions to section 90.543 of the Commission's Rules as proposed herein would serve the public interest. These proposed rule changes would align the Commission's rules with industry standards documents and revise the values for Adjacent Channel Coupled Power (''ACCP'') emission limits for public safety transmitters operating in the 764–776 and 794–806 MHz frequency bands (''700 MHz band''). The proposed values reflect an industry consensus in response to the Commission's request in the Second Memorandum Opinion and Order in this proceeding

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules.

B. Paperwork Reduction Act

3. This Sixth NPRM does not contain either a proposed or modified information collection.

C. Regulatory Flexibility Act

4. Initial Regulatory Flexibility Certification. The Commission has prepared an Initial Regulatory Flexibility Certification concerning the impact on small entities of the policies and rules proposed by this Sixth NPRM. The Initial Regulatory Flexibility Certification is set forth below.

D. Comment Dates

5. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, §§ 1.415 and 1.419, interested parties may file comments are due on or before December 9, 2002, and reply comments on or before December 23, 2002. 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.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

II. Initial Regulatory Flexibility Certification

8. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. In this Sixth Notice of Proposed Rule Making (Notice), the Commission continues its evaluation of rules applicable to the use of public safety spectrum in the frequencies at 764–776 MHz and 794–806 MHz (the 700 MHz public safety band) and the spectrally proximate 700 MHz guard bands at 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz. The Commission proposes the following changes in the Sixth Notice:

- Revising values in the emission limit tables to ensure technological feasibility;
- Deleting the column entitled ''Maximum ACCP (dbm)'' from the table governing ACCP requirements for mobile transmitters because these values are inconsistent with the Commission's decision not to require mobile transmitters to utilize Automatic Power Control;
- Changing the terminology ''Adjacent Channel Coupled Power'' to ''adjacent Channel Power'' to align the Commission's rules with industry standards.

These changes, which are intended to ensure that the Commission's rules reflect the latest technical and industry standards, and to correct typographical or ministerial errors in the Commission's Rules, are exclusively of an administrative nature. The changes will not have a significant economic impact on small entities because they are technologically neutral and will affect all entities equally.

10. The Commission therefore certifies, pursuant to the RFA, that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of small

entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments.

11. The Commission will send a copy of the Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

III. Ordering Clauses

12. Pursuant to sections 4(i), 303(f), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 332, 337, 405, this notice of proposed rulemaking is hereby adopted.

13. The Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send a copy of this notice of proposed rule making, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 27

Communications common carriers, Communications equipment, Radio.

47 CFR Part 90

Communications equipment, Radio

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

Parts 27 and 90 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.53 is amended by revising paragraph (d) to read as follows:

§ 27.53 Emission limitations.

* * * * *

(d) For operations in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands, transmitters must meet the following emission limitations:

(1) The adjacent channel power (ACP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a value for the ACP as a function of the displacement from the channel center frequency and measurement bandwidth. In the following tables, ''(s)'' indicates a swept measurement may be used.

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25 kHz Mobile Transmitter ACP Requirements		
6.25	6.25	−40
12.5	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25.00	−65
62.50	25.00	−65
87.50	25.00	−65
150.00	100.00	−65
250.00	100.00	−65
350.00	100.00	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
12.5 kHz Mobile Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.50	25.00	−60
62.50	25.00	−65
87.50	25.00	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
25 kHz Mobile Transmitter ACP Requirements		
15.625	6.25	−40
21.875	6.25	−60
37.50	25	−60
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
In the paired receive band	30 (s)	−100

Offset from center frequency (kHz)	Measurement Bandwidth (kHz)	Maximum ACP relative (dBc)	Maximum ACP absolute (dBc)
150 kHz Mobile Transmitter ACP Requirements			
100	50	−40	Not specified [1]
200	50	−50	−35
300	50	−50	−35
400	50	−50	−35
600–	1000	30(s)	−60
1000 to receive band	30(s)	−70	−55
In the receive band	30(s)	−100	−75

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25 kHz Base Transmitter ACP Requirements		
6.25	6.25	−40
12.50	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25	−65
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 to 12 MHz	30 (s)	−80
12 MHz to paired receive band 30(s)	−80	
In the paired receive band	30 (s)	−100
12.5 kHz Base Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
25 kHz Base Transmitter ACP Requirements		
15.625	6.25	−40
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100.00	−65
>400 kHz to12 MHz 30(s)	−80	
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
150 kHz Base Transmitter ACP Requirements		
100	50	−40
200	50	−50
300	50	−55
400	50	−60
600–1000	30(s)	−65
1000 to receive band	30(s)	−75
In the receive band	30(s)	−100

[1] Not specified.
[2] Continues at −6dB/Oct.

(2) *ACP measurement procedure.* The following procedures are to be followed for making ACP transmitter measurements. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is on. All measurements must be made at the input to the transmitter's antenna. Measurement bandwidth used below implies an instrument that measures the power in many narrow bandwidths (*e.g.* 300 Hz) and integrates these powers across a larger band to determine power in the measurement bandwidth.

(i) *Setting reference level:* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the spectrum analyzer to give the power level in the measurement bandwidth. Record this power level in dBm as the ''reference power level''.

(ii) *Non-swept power measurement:* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth as shown in the tables above. Measure the ACP in dBm. These measurements should be made at maximum power. Calculate the coupled power by subtracting the measurements made in this step from the reference power measured in the previous step. The absolute ACP values must be less than the values given in the table for each condition above.

(iii) *Swept power measurement:* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz video bandwidth and sample mode detection. Sweep #6 MHz from the carrier frequency. Set the reference level to the RMS value of the transmitter power and note the absolute power. The response at frequencies greater than 600 kHz must be less than the values in the tables above.

(3) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACP tables in this section, the power of any emission must be reduced below the unmodulated carrier power (P) by at least 43 + 10 log (P) dB.

(4) *Authorized bandwidth.* Provided that the ACP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.543 is amended by revising paragraph (a) to read as follows:

§ 90.543 Emission limitations.

* * * * *

(a) The adjacent channel power (ACP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a value for the ACP as a function of the displacement from the channel center frequency and measurement bandwidth. In the following tables, ''(s)'' indicates a swept measurement may be used.

* * * * *

Offset from center frequency (kHz)	Measurement bandwidth	Maximum ACP (dBc)
6.25 kHz Mobile Transmitter ACP Requirements		
6.25	6.25	−40
12.5	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25.00	−65
62.50	25.00	−65
87.50	25.00	−65
150.00	100.00	−65
250.00	100.00	−65
350.00	100.00	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
12.5 kHz Mobile Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.50	25.00	−60
62.50	25.00	−65
87.50	25.00	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
25 kHz Mobile Transmitter ACP Requirements		
15.625	6.25	−40

Offset from center frequency (kHz)	Measurement bandwidth	Maximum ACP (dBc)
21.875	6.25	−60
37.50	25	−60
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP relative (dBc)	Maximum ACP absolute (dBc)
150 kHz Mobile Transmitter ACP Requirements			
100	50	−40	Not specified
200	50	−50	−35
300	50	−50	−35
400	50	−50	−35
600–1000	30(s)	−60	−45
1000 to receive band	30(s)	−70	−55
In the receive band	30(s)	−100	−75

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25 kHz Base Transmitter ACP Requirements		
6.25	6.25	−40
12.50	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25	−65
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
12.5 kHz Base Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
25 kHz Base Transmitter ACP Requirements		
15.625	6.25	−40
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100.00	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
150 kHz Base Transmitter ACP Requirements		
100	50	−40
200	50	−50
300	50	−55
400	50	−60
600–1000	30 (s)	−65
1000 to receive band	30 (s)	[1] −75
In the receive band	30 (s)	−100

Continues at 6dB/Oct.

(b) *ACP measurement procedure.* The following are the procedures for making the transmitter ACP measurements. For all measurements modulate the transmitter as it would be modulated in normal operating conditions. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during procedures for making transmitter measurements. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is active. All measurements are made at the transmitter's output port. If a transmitter has an integral antenna, a suitable power coupling device shall be used to couple the RF signal to the measurement instrument. The coupling device shall substantially maintain the proper transmitter load impedance. The ACP measurements may be made with a spectrum analyzer capable of making direct ACP measurements. ''Measurement bandwidth'', as used for non-swept measurements, implies an instrument that measures the power in many narrow bandwidths equal to the nominal resolution bandwidth and integrates these powers to determine the total power in the specified measurement bandwidth.

(1) *Setting reference level.* Set transmitter to maximum output power. Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the instrument to the assigned center frequency to measure the average power level of the transmitter. Record this power level in dBm as the ''reference power level''.

(2) *Non-swept power measurement:* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth and frequency offset from the assigned center frequency as shown in the tables in § 90.543(a) above. Any value of resolution bandwidth may be used as long as it does not exceed 2% of the specified measurement bandwidth. Measure the power level in dBm. These measurements should be made at maximum power. Calculate ACP by subtracting the reference power level measured in (b)(1) from the measurements made in this step. The absolute value of the calculated ACP must be greater than or equal to the absolute value of the ACP given in the table for each condition above.

(3) *Swept power measurement:* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz bandwidth and average, sample, or RMS detection. Set the reference level of the spectrum analyzer to the RMS value of the transmitter power. Sweep above and below the carrier frequency to the limits defined in the tables. Calculate ACP by subtracting the reference power level measured in (b)(1) from the measurements made in this step. The absolute value of the calculated ACP must be greater than or equal to the absolute value of the ACP given in the table for each condition above.

(c) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACP tables in this section, the power of any emission must be reduced below the mean output power (P) by at least 43 + 10log (P) dB measured in 100 kHz bandwidth for frequencies less than 1 GHz, and in a 1 MHz bandwidth for frequencies greater than 1GHz.

(d) *Authorized bandwidth.* Provided that the ACP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

(e) For operations in the 764 to 776 MHz and 794 to 806 MHz bands, all emissions including harmonics in the band 1559–1610 MHz shall be limited to −70 dBW/MHz dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and −80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

(f) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

[FR Doc. 02–28166 Filed 11–7–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 67, No. 217

Friday, November 8, 2002

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

Office of the Secretary

Privacy Act of 1974; Report of a New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to create a new Privacy Act system of records, FCIC–10, entitled ''Policyholder.'' The system will be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA. The primary purpose the policyholder system is to aid in the administration and management of the Federal crop insurance program.

EFFECTIVE DATE: This notice will be adopted without further publication on December 9, 2002 unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the ''routine uses'' of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Director, Actuarial Division, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–6487.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records, FCIC–10, entitled ''Policyholder'' to be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA.

The policyholder system contains records of insured producers' and their policy information. Included in this information is: Name and tax identification numbers (including social security numbers) of the insured and all persons with a substantial beneficial interest in the insured, the crops insured, coverage levels, price elections, production and yield history; acreage report information including acres, farming practices, planting dates, premium and liability data; a legal description and identification of insured's land; and, if applicable, associated loss data on the insured's land as submitted to RMA by private insurance companies.

The purpose of the policyholder system is to administer the Federal crop insurance program; identify and support compliance and agency oversight efforts to mitigate fraud, waste and abuse; evaluate and analyze program performance as an element of determining actuarial soundness; support data reconciliation with the Farm Service Agency; assemble data for the purpose of establishing sound actuarial bases for insurance on agricultural commodities; research and develop new crop and risk management programs; analyze, evaluate or modify existing programs, internal controls and program performance; perform cost benefit analysis to support program rules, changes and modifications; provide historical records of program performance for research and development related to rating and coverage; and provide insured producers' policy information to private insurance companies as required by the Standard Reinsurance Agreement between the FCIC and the private insurance companies.

The policyholder system is maintained by the Actuarial Division, Research and Development, located in the RMA Kansas City office.

A report on a new system, as required by 5 U.S.C. 552a(r) and implemented by OMB Circular A–130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Reform, U.S. House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on November 4, 2002.

Signed at Washington, DC, on November 4, 2002.

Ann M. Veneman,

Secretary of Agriculture.

USDA/FCIC–10

SYSTEM NAME:

Policyholder.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Kansas City Office, Federal Crop Insurance Corporation, Risk Management Agency, 501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676 and regional offices for the Federal Crop Insurance Corporation. Addresses of the regional offices may be obtained from the Deputy Administrator, Insurance Services, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Stop 0805, room 6709–S, Washington, DC 20250–0803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on any individual or other legal entity that has, or has had in the past, insurance with the Federal Crop Insurance Corporation (FCIC) or a private insurance company reinsured by the FCIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of standardized records containing identifying information on individuals or other legal entities such as name, address, tax identification number (social security number or employer identification number) of the insured and any person with a substantial beneficial interest in the insured. The system also contains crops insured by crop years, the amount of premium paid by the insured, the amount of indemnity paid to the insured, the cause of loss, loss ratio of each crop insured under the policy, the number of years of no loss, the total number of years a premium discount was earned, the number of years an indemnity was paid, insured acreage, acreage location, crop yield history, and other individual information related to the operation of the crop insurance program. The system consists of a

complete file containing information from all basic insurance documents: *i.e.,* the application for insurance, the annual acreage report, inspection reports, claim forms, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be used as follows:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign including the Department of Justice, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto.

(2) Disclosure to a court, magistrate or administrative tribunal or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system that constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that FCIC determines that the records sought are relevant to the proceeding.

(3) Disclosure to a congressional office in response to any inquiry from the congressional office made at the request of that individual.

(4) Disclosure to private insurance companies for any purpose relating to the sale, service, and administration of the Federal crop insurance program and the policies insured under the authority of the Federal Crop Insurance Act (Act).

(5) Disclosure to other Federal agencies and contractors, cooperators, and partners of FCIC for the purpose of conducting research, development, analyses, and evaluation into all aspects relating to new and existing crop insurance programs and other risk management tools.

(6) Disclosure to contractors or other Federal agencies to conduct research and analysis to identify patterns, trends, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, and abuse.

(7) Disclosure to private insurance companies, contractors, and other applicable Federal agencies to determine whether information has been accurately provided to FCIC and the private insurance companies and to determine compliance with program requirements.

(8) Disclosure to private insurance companies, contractors, cooperators, partners of FCIC, and other Federal agencies for any purpose relating to the sale, service, administration, analysis and evaluation of the Federal crop insurance program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically, on computer printouts, and in the file folders at the Kansas City Office.

RETRIEVABILITY:

Records are indexed by State, county and policy number. Records may be indexed and retrieved by name of individual, tax identification number (social security number or employer identification number), or policy number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices that are locked during non-duty hours. The electronic records are controlled by password protection and the computer network is protected by means of a firewall. File folders and other hard copy records are stored in locked file cabinets.

RETENTION AND DISPOSAL:

Electronic records are maintained indefinitely. Hard copy records are maintained until expiration of the records retention period established by the National Archivist.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Actuarial Division, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–6487.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Kansas City Office. The request for information should contain the individual's name and address; tax identification number (social security number or employer identification number); State(s) and county(ies) where such individual farms; and individual crop insurance policy numbers, if known. Before information about any record is released, the System Manager requires the individual to provide proof of identity or requires the requester to furnish a notarized written authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system, which pertains to such individual, by submitting a written request to the Privacy Act Officer, Risk Management Agency, Program Support Staff, Room 6620–SB, AG Stop 0821, 1400 Independence Avenue, SW., Washington, DC 20250–0821. The envelope and letters should be marked ''Privacy Act Request.'' A request for information should contain: name, address, ZIP code, tax identification number (social security number or employer identification number), name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Procedures for contesting records are the same as the procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the insurance company, or from other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–28475 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV03–944–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for specified exempt import commodities.

DATES: Comments on this notice must be received by January 7, 2003.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S., STOP 0237, Washington, DC 20250–0237; Fax: (202) 205–2829, or e-mail: *moab.docketclerk@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Specified Commodities Imported into the United States Exempt from Import Requirements.

OMB Number: 0581–0167.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect. Currently, the following commodities are subject to Section 8e import regulations: avocados, dates (other than dates for processing), hazelnuts, grapefruit, table grapes, kiwifruit, limes (suspended), olives (other than Spanish-styles olives), onions, oranges, Irish potatoes, prunes, raisins, tomatoes, and walnuts. However, imports of these commodities are exempt from such requirements if they are imported for such outlets as processing, charity, animal feed, seed, and distribution to relief agencies, when those outlets are exempt under the applicable marketing order.

Safeguard procedures in the form of importer and receiver importing requirements are used to ensure that the imported commodity is provided to authorized exempt outlets. The safeguard procedures are similar to the reports currently required by most domestic marketing orders. The import regulations require importers and receivers of imported fruit, vegetable, and specialty crops to submit a form, as provided in sections 944.350, 980.501, and 999.500.

An importer wishing to import commodities for exempt purposes must complete, prior to importation, an Importer's Exempt Commodity Form (FV–6), which is a four-part form. Copy one is presented to the U.S. Customs Service. The importer files copy two with the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Programs, AMS, within two days after the commodity enters the United States. The third copy of the form accompanies the exempt shipment to its intended destination. The receiver certifies that the commodity has been received and that it will be utilized for authorized exempt purposes. The receiver then files copy three with MOAB, within two days after receiving the commodity. The fourth copy is retained by the importer.

The Department of Agriculture (Department) utilizes this information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than that afforded to domestic goods destined for such exempt outlets. These exemptions are consistent with Section 8e import regulations under the Act.

This form requires the minimum amount of information necessary to effectively carry out the requirements of the Act, and its use is necessary to fulfill the intent of the Act, and to administer Section 8e compliance activities.

In addition, included in this extension and revision of a currently approved information collection is another form titled, ''Civil Penalty Stipulation Agreement'' (FV–7). This form provides AMS with an additional tool to obtain resolution of certain cases under the Act without the cost of going to a hearing. Stipulation agreements may be appropriate for, but limited to, instances of minor violations of a marketing order or marketing agreement or Section 8e of the AMAA. However, AMS is not under any obligation to issue stipulation agreements. The only requirement for this form is a signature, therefore, there is no burden on the person if they agree to the Agreement and return it.

The information collected is used primarily by authorized representatives of the Department, including AMS, Fruit and Vegetable Programs' regional and headquarters staff. AMS is the primary user of the information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .17 hours per response.

Respondents: Importers and receivers of exempt commodities.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 50.

Estimated Total Annual Burden on Respondents: 2,550 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0167 and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S., STOP 0237, Washington, DC 20250–0237; Fax: (202) 205–2829, or e-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–28424 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–502–N]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for Fruit and Vegetable Market News.

DATES: Comments received by January 7, 2003 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Terry C. Long, Chief; Fruit and Vegetable Market News Branch, Fruit and Vegetable Programs, AMS–USDA, 1400 Independence Avenue, SW, Stop-0238, Washington, DC 20250–0238; Telephone: (202) 720–2175, Fax: (202) 720–0547. All comments will be available for public inspection at this address during the hours of 8 a.m. to 4 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Market News.

OMB Number: 0581–0006.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: Collection and dissemination of information for fruit, vegetable and ornamental production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-*et seq.*), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The fruit and vegetable industry provides information on a voluntary basis, and is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supplies, demand, and prices of over 400 fresh fruit, vegetable, nut ornamental, and other specialty crops.

The fruit and vegetable market news reports are used by academia, but are primarily used by the fruit, vegetable and ornamental trade, which includes packers, processors, brokers, retailers, and producers. The fruit and vegetable industry requested that the Department of Agriculture issue price and supply market reports for commodities of regional, national and international significance in order to assist them in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel.

Many government agencies use the reports to make their market outlook projections. Data from these reports is included in the information forwarded to the Secretary's office and staff, as needed, to keep them appraised of the current market conditions and movement of fruit, vegetable, and ornamental commodities in the United States. Economists at most major agricultural colleges and universities use the reports to make both short and long term market projections. The data is used extensively by consulting firms and private economists to aid them in determining available supplies and current pricing.

The information is collected, compiled, and disseminated by an impartial third party, in a manner which protects the confidentiality of the reporter. Further, since the Government is a purchaser of fruits and vegetables, a system to monitor the collection and reporting of data is needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .033 hours per response.

Respondents: Fruit, vegetable, and ornamental industry, or other for-profit businesses, individuals or households, farms.

Estimated Number of Respondents: 18,347.

Estimated Number of Responses per Respondent: 200.

Estimated Total Annual Burden on Respondents: 120,964.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Terry C. Long, Chief, Fruit and Vegetable Market News Branch, Fruit and Vegetable Programs, AMS–USDA, 1400 Independence Avenue, SW, Stop-0238, Washington, DC 20250–0238.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–28425 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Fork Eel Grazing Allotments EIS—Six Rivers National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Six Rivers National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize grazing 591 cow-calf pairs on five allotments encompassing approximately 72,558 acres of National Forest System lands in the North Fork Eel River Watershed in Trinity County, California. The allotments within the analysis area include Zenia, Hoaglin, Soldier Creek, Long Ridge and Van Horn. Small portions of the latter three allotments extend into adjacent watersheds, for which separate environmental analyses would be conducted. They are located in all or portions of the following townships: T2SR6E, T2SR7E, T3SR6E, T3SR7E, T3SR8E, T4S6E, T4S7E, T4SR8E, T5SR6E, T5SR7E, Humboldt Meridian; T25NR12W, Mount Diablo Meridian.

The purposes of the proposal are to authorize grazing in the five cattle allotments under a strategy that protects heritage and natural resource values and maintains the biological diversity of rangelands. If approved, the Six Rivers National Forest would authorize grazing through term grazing permits for up to 10 years. The EIS will be designed to satisfy the requirements of the Federal Land Policy and Management Act of 1976 and implementing regulations (43 CFR 2310.1).

DATES: Comments concerning the scope of the analysis must be received on or before 30 days after publication of this notice in the Federal Register. The draft environmental impact statement is expected in March 2003 and the final environmental impact statement is expected in June 2003.

ADDRESSES: Send written comments to S. E., ''Lou'' Woltering, Forest Supervisor, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501–3834. For further information, mail correspondence to Ruben Escatell, EIS Team Leader, Mad River Ranger District, Star Route Box 300, Bridgeville, CA 95526. A public meeting scheduled for December 3, 2002 will be held at the Mad River Community Hall located at 155-C Van Duzen Road, Mad River, CA 95552. Comments may be mailed electronically to *rescatell@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Ruben Escatell or Clara Bambauer Cross, EIS Team Leaders at (707) 574–6233.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this analysis is to evaluate the grazing management on five allotments within the North Fork Eel River watershed and to determine the level and conditions of grazing to be authorized on federal lands managed by the Six Rivers National Forest, Mad River Ranger District. The allotments within the project area are Hoaglin, Long Ridge, Soldier Creek, Van Horn and Zenia. The Six Rivers National Forest Land and Resource Management Plan (LRMP) designates the North Fork Eel Watershed as a Key Watershed, part of a system of watersheds that serve as refugia for at-risk stocks of anadromous salmonids and resident fish species. Land management allocations across the analysis area include Matrix, Late-successional Reserve, Riparian Reserves, Wilderness and Wild River.

Allotment Management Plans (AMP's) developed from this analysis would meet resource protection and enhancement goals in the Six Rivers National Forest LRMP, while protecting outstandingly remarkable values associated with the segment of the river designated as Wild under the Wild and Scenic Rivers Act (1968). These goals and values include the following:

- Maintenance of water quality for aquatic ecosystems, particularly anadromous fish.
- Maintenance of rangeland biologic diversity and productivity.
- Protection of heritage resources.
- Protection of habitat for wildlife and plant species of concern.
- Maintenance of values associated with inclusive Wilderness and Wild River designations.
- Maintenance of economic stability for the local community that relies on public rangelands.
- Fulfillment of a trust responsibility to the Round Valley Indian Tribes to manage grazing activities and policies so as to not adversely impact tribal trust properties and rights downriver of the analysis area.

A number of laws, including the Multiple-Use Sustained Yield Act (1960), the Wilderness Act (1964), the California State Wilderness Act (1984), the Forest and Rangeland Renewable Resources Planning Act (1974), the Federal Land Policy and Management Act (1976), and the National Forest Management Act (1976), provide direction for grazing on public lands. The Six Rivers National Forest LRMP contains provisions to implement this direction.

Proposed Action

The Forest Service proposes to authorize grazing for 591 cow-calf pairs on National Forest Systems lands on five cattle allotments within the North Fork Eel River watershed and prepare Allotment Management Plans to incorporate the elements included within the resulting decision. Grazing practices, and construction or restoration of range improvements, would be prescribed to protect aquatic systems, water quality, anadromous fish habitat, improve livestock distribution, and enhance rangeland health and biodiversity.

Responsible Official

S.E. ''Lou'' Woltering, Forest Supervisor, Six Rivers National Forest, USDA Forest Service, 1330 Bayshore Way, Eureka, CA 95501–3834, is the Responsible Official for any decision to authorize grazing and manage rangelands in the five cattle allotments within the North Fork Eel River watershed on National Forest system lands. He will document his decisions and rationale in a Record of Decision.

Nature of Decision To Be Made

The Forest Supervisor will make the following decision: whether or not to authorize cattle grazing in allotments within the North Fork Eel River watershed, and if so, the terms and conditions required for the term grazing permits and AMP's.

Scoping Process

The public is encouraged to take part in the scoping process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. A public meeting associated with the project will be held to gain a better understanding of public issues and concerns. The meeting will be held in Mad River, California at the Mad River Community Hall on December 3, 2002 from 6 to 8 p.m.

Information from the meeting will be used in preparation of the draft and final EIS. The scoping process will include identifying: potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2wd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if

comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 31, 2002.

S.E. "Lou" Woltering,

Forest Supervisor, Six Rivers National Forest.

[FR Doc. 02–28458 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Privatization committee meeting.

TIME AND DATE: 9 a.m., Thursday, November 14, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The business advisor will report on the status of current privatization projects.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, November 14, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Friday, November 15, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Report on board election results.
3. Oath of office for new board members.
4. Election of board officers: Chairperson, Vice Chair, Secretary, and Treasurer.
5. Action on Minutes of the August 15, 2002, board meeting.
6. Secretary's Report on loans approved in FY 2002.
7. Treasurer's Report.
8. Privatization Committee Report.
9. Consideration of resolution to reestablish the Privatization Committee.
10. Governor's Remarks.
11. Establish dates and locations for Year 2003 board meeting.
12. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 1, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–28673 Filed 11–6–02; 12:31 pm]

BILLING CODE X3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

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

ACTION: Proposed Addition to Procurement List—Change of Nonprofit Agency.

SUMMARY: The Committee is republishing a proposed addition to the Procurement List for a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities because of a change in the nonprofit agency proposed to provide the service.

Comments Must Be Received On or Before: November 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The nonprofit agency identified in the original **Federal Register** notice (67 FR 58015, September 13, 2002) has been replaced by another nonprofit agency, Peckham Vocational Industries. We are extending the comment period on the proposed addition to the Procurement List to provide an opportunity for interested parties to comment on this change or to revise previously submitted comments.

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

If the Committee approves the proposed addition, the entity of the Federal Government identified in the notice will be required to procure the service 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. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service 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 service 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 service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Personal Environmental Protection & Survival Equipment Warehousing and Distribution Service. U.S. Army Natick Research Development & Engineering Center, Natick, Massachusetts.

NPA: Peckham Vocational Industries, Inc., Lansing, Michigan.

Contract Activity: U.S. Army Natick Soldier Center, Natick, Massachusetts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–28552 Filed 11–7–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

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

ACTION: Proposed Deletions from Procurement List.

SUMMARY: The Committee is proposing to delete from the Procurement List products previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 8, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (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 deletions.

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. If approved, 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 products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products 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 products proposed for deletion from the Procurement List.

The following products are proposed for deletion from the Procurement List:

Products:

Product/NSN: Card Set, Guide, File.
7530–00–861–1263.
7530–00–861–1272.
NPA: Georgia Industries for the Blind, Bainbridge, Georgia.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Disk, Flexible.
7045–01–251–7527.
7045–01–365–2070.
7045–01–365–2071.
7045–01–209–2193.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Tape, Computer.
7045–01–119–6357.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Tape, Electronic Data Processing.
7045–01–338–6542.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–28553 Filed 11–7–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

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

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: December 8, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions:

On April 26, August 9, August 30, and September 6, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 20726, 51819, 55776, 56981) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and 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 products and services to the Government.

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

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

Accordingly, the following products and services are added to the Procurement List:

Products:

Product/NSN: Easel, Wallboard, Magnetic.
7520–00-NIB–1368 (18'' x 24'').
7520–00-NIB–1369 (24'' x 36'').
7520–00-NIB–1371 (36'' x 48'').
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services:

Service Type/Location: Janitorial/Custodial, CDC/NIOSH, Spokane Research Laboratory, Spokane, Washington.
NPA: Pre-Vocational Training Center, Spokane, Washington.
Contract Activity: Center for Disease Control-NIOSH, Spokane, Washington.
Service Type/Location: Janitorial/Custodial, U.S. Attorney Building, Springfield, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: GSA Public Buildings Service, Springfield, Illinois.
Service Type/Location: Miscellaneous Support Services, Central Arkansas Veterans Healthcare System, Little Rock/North Little Rock, Arkansas.
NPA: Pathfinder Schools, Inc., Jacksonville, Arkansas.

Contract Activity: Veterans Affairs Medical Center, North Little Rock, Arkansas.
Service Type/Location: Recycling, End of Life Electronics, U.S. Mint, Washington, DC.
NPA: ServiceSource, Inc., Alexandria, Virginia.
Contract Activity: U.S. Mint, Washington, DC.
Service Type/Location: Storage and Distribution Service Springs for DSCP, Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
NPA: Arizona Industries for the Blind, Phoenix, Arizona.
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Deletions:

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

2. The action may result in authorizing small entities to furnish the products 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 products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products:

Product/NSN: Clamp, Loop.
5340–00–410–2973.
5340–01–120–1320.
5340–01–413–2977.
5340–01–418–5763.
NPA: None currently authorized.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–28554 Filed 11–7–02; 8:45 am]
BILLING CODE 6353–1–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 15, 2002, 8:30 a.m.

PLACE: Holiday Inn on the Bay Hotel, 1355 North Harbor Drive, San Diego, CA 92101.

Status:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July 19 Meeting; Acknowledgment September 13 and October 11, 2002 ''Meetings''
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Arkansas, Georgia, Illinois, New Hampshire, New York, Oklahoma, Texas and Tennessee
VI. State Advisory Committee Report: Civil Rights Issues in West Virginia (West Virginia)
VII. FY–2004 Budget Estimate to OMB
VIII. Discussion of Status of Commission Projects
IX. Presentations from Western Regional SAC members representing Arizona and California on recent activities and other civil rights developments in their states
X. Presentations and Discussion Relating to Challenges of Equal Opportunity in Higher Education

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,
Deputy General Counsel.
[FR Doc. 02–28719 Filed 11–6–02; 2:56 pm]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: BIS Program Evaluation.

Agency Form Number: N/A.

OMB Approval Number: 0694–0125.

Type of Request: Extension of a currently approved collection.

Burden: 500 hours.

Average Time Per Response: 10 minutes per response.

Number of Respondents: 3,000 respondents.

Needs and Uses: This form is used by BIS seminar instructors at seminar programs throughout the year. Seminar participants are asked to fill out the evaluation form during the program and turn it in at the end of the program. The responses to these questions provide useful and practical information that BIS can use to determine that it is providing a quality program and gives BIS information useful to making recommended improvements.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: November 4, 2002.

Madeleine Clayton,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 02–28418 Filed 11–7–02; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1251]

Approval of Processing Activity Within Foreign-Trade Zone 113, Midlothian, Texas; Siemens Westinghouse Power Corporation (Inc.) (Industrial Power Generation Equipment); Notice of Correction

The **Federal Register** notice (67 FR 64095, 10–17–2002) describing Foreign-Trade Zones Board Order 1251 approving authority for Siemens Westinghouse Power Corporation (Inc.) to process industrial power generation equipment under FTZ procedures within FTZ 113 in Midlothian, Texas, is corrected as follows:

Paragraph 2, Sentence 1, should read ''WHEREAS, Trade Zone Operations, Inc.,* * *''

Paragraph 7, Sentence 1, should read ''Signed in Washington, DC, this 7th day of October, 2002.''

Dated: October 31, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–28526 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on December 5, 2002 at 9 a.m. in room 6087B of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

1. Election of Chairman.
2. Presentation of papers or comments by the public.
3. Update on the Wassenaar Arrangement with discussion on machine tool issues.
4. Review of laser measuring equipment.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230.

For more information contact Lee Ann Carpenter at 202–482–2583.

Dated: November 5, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–28466 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Notice of Partially Closed Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, November 26, 2002, from 2 p.m. until 4 p.m. at the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC 20503. Limited seating will be available for the open sessions of the meeting. Reservations are not accepted. The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will continue deliberations concerning comments it is formulating for the President concerning the draft National Strategy to Secure Cyberspace.

Agenda

Open Session

I. Welcome—Mr. Davidson, Mr. Clarke, and Mr. Juster.
II. Review and approval of Summary of Conclusions from November 15 meeting.

Closed Session

III. Closed briefing—PCIPB Staff.
IV. Discussion of NIAC comments on draft National Strategy to Secure Cyberspace—Mr. Davidson, NIAC members, PCIPB Staff.
V. Adoption of NIAC comments—NIAC members.

Open Session

VI. NIAC Priorities—Mr. Davidson and Mr. Clarke.
VII. New Business.
VIII. Adjourn.

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Ms. Wanda Rose, Critical Infrastructure Assurance Office, Bureau of Industry and Security, U.S. Department of Commerce, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Office of the Chief Financial Officer and Assistant Secretary for Administration, U.S. Department of Commerce, formally determined on September 19, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of this Council and of any Subcommittees thereof, dealing with information, the premature disclosure of which would be likely significantly to frustrate implementation of proposed agency action shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act, 5 U.S.C. 552b(c)(9)(B). The remaining series of meetings or portions thereof will be open to the public.

For more information contact Eric T. Werner on (202) 482–7470.

Dated: November 8, 2002.

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 02–28712 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results and Rescissions in Part of Antidumping Duty Administrative Review of Barium Chloride from the People's Republic of China.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on barium chloride from the People's Republic of China (PRC). The period of review (POR) is October 1, 2000 through September 30, 2001. The petitioner requested a review of 11 exporters. One company reported that it had no shipments of subject merchandise to the United States during the POR, and we have confirmed that claim with the U.S. Customs Service (Customs). Accordingly, we are preliminary rescinding the review with respect to this firm. Because the remaining exporters have not responded to our questionnaire, we have preliminary determined to use facts otherwise available for cash-deposit and assessment purposes for all producers/exporters of the subject merchandise.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Period of Review

The POR is October 1, 2000 through September 30, 2001.

Background

On October 17, 1984, the Department published in the **Federal Register** (49 FR 40635) the antidumping duty order on barium chloride from the PRC (antidumping duty order). On October 1, 2001, the Department published in the **Federal Register** (66 FR 49923) a notice of ''Opportunity to Request Administrative Review'' of antidumping duty order covering the period October 1, 2000 through September 30, 2001. In response to the notice of opportunity to request an administrative review for this POR, the petitioner, Chemical Products Corporation (CPC) requested by letter dated October 31, 2001 that the Department conduct an administrative review of the following Chinese manufacturers/exporters of the subject merchandise: Zhangjiaba Salt Chemical Plant (Zhangjiaba), Hebei Xinji Chemical Plant, Tianjin Chemical Industry Corporation, Qingdao Red Star Chemical Group Co., Tianjin Bohai Chemical United Import/Export Company, Sichuan Emeishan Salt Chemical Industry Group Company, Ltd., Hengnan, Kunghan, Linshu, Tangshan, and China National Chemicals Import and Export Corporation (Sinochem).

On November 21, 2001, the Department published a notice of initiation of an administrative review of the producers/exporters named by the petitioner in its review request (66 FR 58432). On December 21, 2001, we received a letter from Zhangjiaba stating that ''during the * * * POR, Zhangjiaba Chemical made no shipments or sales of subject barium chloride to the United States.''

On January 14, 2002, the Department sent antidumping questionnaires to all of the parties named in the notice of initiation for whom we could find addresses.[1] We requested that the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) deliver the questionnaires to four named parties for whom we could not find addresses. Subsequently, four questionnaires sent directly to named parties by the Department were returned as undeliverable due to incorrect addresses or contact information. On January 30, 2002, the Department sent copies of the questionnaire to MOFTEC requesting that it deliver them to the four parties for whom the questionnaires were returned. On March 4, 2002, we sent letters to all of the parties named in the notice of initiation requesting that they notify the Department in writing by March 18, 2002, if they did not have any U.S. Customs entries, sales or shipments of the subject merchandise during the POR. With the exception of the December 21, 2001, letter from Zhangjiaba, we received no response from any of the parties from whom we requested information.

On February 11, 2002, the petitioner submitted a request that the Department calculate a new adverse facts available margin for the PRC-wide entity. In the submission, the petitioner included Indian factor values, factor usage rates (based on its production experience), and an average U.S. price (based on U.S. import values during the POR) with which to calculate a new PRC-wide margin. On August 23, 2002, Zhangjiaba submitted comments opposing the petitioner's request. The petitioner responded to Zhangjiaba's comments on September 6, 2002. For a complete discussion of the issue raised by the petitioner, see the ''Adverse Facts Available Rate'' section of this notice below.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On July 8, 2002, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until September 30, 2002. *See Barium Chloride from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 45088 (July 8, 2002). On August 8, 2002, the Department again extended the time limit for the preliminary results. *See Barium Chloride from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 51535 (August 8, 2002). The second extension was until October 31, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The imports covered by this review are shipments of barium chloride, a chemical compound having the formulas BaCl2 or BaCl2-2H2O, currently classifiable under item number 2827.39.45.00 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] Although the HTSUS item number is provided for convenience and for Customs purposes, the written description remains dispositive.

Preliminary Partial Rescission

We are preliminarily rescinding this review with respect to Zhangjiaba because it reported that it made no shipments of subject merchandise to the United States during the POR and our review of Customs data supports that assertion.

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single

[1] Section A of the questionnaire requests separate rates information and general information concerning a company's corporate structure, business practices, sales practices and products, including the merchandise under consideration. Section C requests a complete listing of U.S. sales of the merchandise under consideration. Section D requests information regarding the factors of production of the merchandise under consideration. Section E requests information regarding further manufacturing of the merchandise under consideration in the United States.

[2] The scope reflects the HTS item number currently in effect.

rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Because none of the companies for which an administrative review has been requested for this POR has demonstrated that it is entitled to a separate rate, all are deemed to be included in the PRC-wide entity and will be assigned a single margin as discussed below.

Facts Available

Section 776(a)(1) of the Act mandates that the Department shall, subject to section 782(d) of the Act, use facts available in reaching its determination if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use facts available when an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified. In the instant review, none of the named respondents, other than Zhangjiaba, answered the Department's questionnaire. Thus, pursuant to section 776(a) of the Act, the margin for the PRC-wide entity must be based on facts available.[3]

In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of the party. This section of the Act goes on to note that such an adverse inference may include reliance on information derived from the petition, a final determination in an antidumping investigation or review, or any other information placed on the record. Because all but one of the named respondents failed to reply to our questionnaire and our inquiry regarding shipments, we preliminarily determine that these entities did not act to the best of their abilities to comply with our requests. Therefore, pursuant to section 776(b) of the Act, we are basing the margin for the PRC-wide entity on adverse facts available.

[3] Since we received no responses to our questionnaire, section 782(d) of the Act, which directs the Department to provide parties with an opportunity to remedy deficient responses, is not applicable.

Adverse Facts Available Rate

Although the Department's general practice is to use as an adverse facts available rate, the highest rate from any segment of the proceeding, including the current segment (*see Sigma Corp.* v. *U.S.,* 117 F.3rd 1401, 1411 (Fed. Cir. July 7, 1997) (stating that Commerce has a ''long-standing practice of assigning to respondents who fail to cooperate with Commerce's investigation the highest margin calculated for any party in the less-than-fair-value investigation or in any administrative review''), the petitioner urges the Department to base the adverse facts available rate on information it placed on the record of this review, rather than using the highest rate from any segment of the proceeding. (*i.e.,* 60.84 percent, the rate calculated in the 1985–1986 administrative review that is currently applicable to all imports of subject merchandise). Specifically, the petitioner contends that the 60.84 percent rate is not an appropriate adverse facts available rate because it is based on outdated information which does not reflect current market conditions and it has neither stopped injurious dumping nor induced named respondents to participate in administrative reviews subsequent to the 1985–1986 review. According to the petitioner, since the 1985–1986 POR, there have been various changes in the process used by Chinese companies to produce barium chloride and in the prices of inputs used in that production process. Therefore, the petitioner claims that it is likely that a recalculated adverse facts available rate, based on the information it has placed on the record, would reflect current marketplace behavior better than the 1985–1986 margin. The petitioner also claims that a recalculated margin would enable the Department to meet its obligation to ''determin(e) current margins as accurately as possible.'' *See Rhone Poulenc, Inc.* v. *U.S.,* 899 F.2d 1185, 1191 (Fed. Cir. 1990). In addition, the petitioner points to the more than 150 percent increase in the volume of U.S. imports of barium chloride from the PRC between the years 1996 and 2000, and the extremely low U.S. import prices for barium chloride, as evidence that the existing adverse facts available rate has provided neither a sufficient incentive for PRC producers to begin trading barium chloride fairly in the United States, nor a sufficient restraint on imports to ameliorate the effects of unfair trade on the U.S. industry. *See* Memorandum to the File from Drew Jackson regarding factual information used in our analysis, dated concurrently with this notice (Factual Information Memorandum).

In urging the Department to calculate an adverse facts available rate based on the information it submitted, the petitioner points out that section 776(b) of the Act permits the Department to calculate an adverse facts available rate based upon information from the petition, other administrative reviews, or any other information placed on the record. The petitioner contends that the information it placed on the record of this review (*i.e.,* Customs import data, factor values from publicly available sources, and factor usage information based on its own expertise as a manufacturer of barium chloride) satisfies the statutory requirements for use by the Department as facts available under sections 773(c) (outlining NME methodology) and 776(b) (use of adverse inferences) of the Act.

Further, the petitioner notes that the Department has used new record information in administrative reviews to calculate antidumping rates higher than that alleged in the petition or found in earlier proceedings where the new information was probative and verified. Citing *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review,* 66 FR 56272 (Nov. 7, 2001) (*SSPC from Belgium*), the petitioner points out that the Department has used financial ratio information from the publicly available financial reports of a non-cooperating respondent to calculate a margin that was higher than any margin alleged in the petition or calculated during a previous review. Additionally, the petitioner notes that in *Petroleum Wax Candles from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review,* 66 FR 14545 (Mar. 13, 2001) (*Petroleum Wax Candles*), although the Department rejected the proposed calculation submitted by the petitioner in that case as being inconsistent with the methods of calculating normal value, it nevertheless acknowledged that, where an adverse inference is warranted, the use of ''any other information placed on the record'' is an appropriate source of information for calculating an adverse facts available margin.

Zhangjiaba contends that the Department should dismiss the petitioner's argument because its assertions are unsubstantiated and its request unsupported by the cases to which it cited. In particular, Zhangjiaba notes that the petitioner provided nothing to support its claim that there have been changes in the production process and input prices for barium chloride since the 1985–1986 POR, nor

did it provide anything to support the alleged increase in the volume of barium chloride imported into the United States. In addition, Zhangjiaba maintains that the petitioner has not shown that the factors of production it provided for the recalculation have any relevance to the PRC producer's factors of production, nor has it shown that the prices of U.S. imports of barium chloride from the PRC have decreased or not kept pace with the costs of production in the PRC. Moreover, Zhangjiaba argues that the petitioner's reliance on *SSPC from Belgium* is misplaced because, unlike the petitioner in *SSPC from Belgium,* the petitioner here has placed non-publicly available and uncorroborated information on the record, and therefore, the Department may not rely upon this information to calculate an adverse facts available rate. Additionally, Zhangjiaba notes that the courts have required some connection between the data used to calculate a dumping margin and the respondents' actual dumping margins, and that the data used must be neither aberrationally high nor based on uncorroborated information. Citing *F. Lli De Cecco di Filipino Fara S. Martino S.p.A* v. *United States,* 216 F.3d 1027, 1033 (Fed. Cir. 2000) (*De Cecco*), Zhangjiaba notes that a federal circuit court has found that ''Congress could not have intended for (the Department's) discretion to include the ability to select unreasonably high rates with no relationship to respondent's actual dumping margin.'' *See F. Lli De Cecco di Filipino Fara S. Martino S.p.A* v. *United States.* Zhangjiaba also points out that in *Petroleum Wax Candles* the Department rejected the petitioner's proposed calculations.

Further, with respect to its own situation, Zhangjiaba contends that it should not receive an adverse facts available rate because, given that it had no shipments during the POR, it did not fail to supply anything requested of it by the Department. Zhangjiaba goes on to note that an adverse facts available rate can only be applied to a respondent that withholds information, fails to provide requested information, significantly impedes an investigation, or provides information that cannot be used.[4] Finally, Zhangjiaba notes that in the final results of the sunset review (64 FR 5633 (February 4, 1999)), the most recent determination in this proceeding, the Department found that revocation of the order on barium chloride from the PRC would likely lead to dumping at 14.50 percent.[5] In the absence of any evidence on the record that the magnitude of dumping has increased, Zhangjiaba argues that there is no basis for recalculating the PRC-wide rate; however, if the PRC-wide rate is changed, it should be changed to 14.50 percent, the rate identified in the most recent determination.

In response to Zhangjiaba's comments, the petitioner reasserts its position that it is appropriate for the Department to calculate an adverse facts available margin using information placed on the record of this review because the adverse facts available rate previously used in this proceeding is more than 15 years old and does not take into account changes in sales and input prices or changes in the methodology used by the Department of NME cases. The petitioner notes that in *Sodium Thiosulphate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 57 FR 58792 (Dec. 11, 1992) (*Sodium Thiosulphate from the PRC*, the Department recalculated the facts available rate (at that time referred to as the best information available (BIA) rate) using information placed on the record by the petitioner because the previous BIA rate was ''no longer sufficiently adverse to induce respondents to submit timely accurate, and complete responses,'' (the Department continued to follow this approach in the final results of that review). The petitioner also contends that updating the adverse facts available rate is consistent with the language and policy of the Act. The petitioner argues that in the absence of subpoena power, the Department's only incentive to induce respondents to participate in antidumping proceedings is the potential that a producer will receive an adverse facts available dumping margin. The petitioner also notes that the adverse facts available margin serves the important policy goal of ensuring that respondents who choose not to participate in the process do not obtain more favorable rates than cooperating parties.

Additionally, the petitioner argues that an adverse facts available rate that is not sufficient to compel cooperation by respondents is subject to change. Citing *Steel Wire Rope from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation on Part of Antidumping Duty Order*, 63 FR 17986 (April 13, 1998) (*Steel Wire Rope*), the petitioner notes that the Department determined that an adverse facts available rate calculated during a previous administrative review did not offer an adequate sanction to induce the respondents to cooperate in the proceeding, and therefore it revised the adverse facts available rate from 1.51 percent to 13.79 percent.

Moreover, the petitioner dismisses Zhangjiaba's claim that the Department has no basis for using facts otherwise available or deriving an adverse inference with respect to Zhangjiaba. The petitioner points out that in *Final Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China*, 66 FR 39487 (July 31, 2001), the Department determined that a producer of subject merchandise that made no shipments during the POR was not entitled to a separate rate. Therefore, the petitioner argues that Zhangjiaba, which reported that it made no shipments of barium chloride to the United States during the POR, is not entitled to a separate rate and should receive the PRC-wide rate.

Additionally, the petitioner claims that Zhangjiaba's assertions about an increase in imports of barium chloride into the United States are without merit. The petitioner contends that its statement that U.S. imports of barium chloride from the PRC rose by more than 150 percent between 1996 and 2000 is a statement of fact appropriately filed within the deadline for submitting factual information (interested parties may submit factual information on the record within 140 days after the last day of the anniversary month for the review; *see* 19 CFR 351.301(b)(2)). The petitioner argues that, according to the Department's regulations, it is not required to provide any additional support for its statement. Moreover, the petitioner claims that any party that takes issue with this statement should provide their own factual information as rebuttal.

Furthermore, the petitioner dismisses Zhangjiaba's claim that its information cannot be used to relocate the PRC-wide margin because the information is not public, is uncorroborated, and is unrelated to the PRC barium chloride industry. The petitioner notes that while it did supply proprietary consumption quantities for factors, the Act does not require that all information submitted for the Department's consideration in calculating margins be public information (*e.g.,* petition rates are invariably based on sensitive information). *See* section 776(b)(4) of this Act. Moreover, the petitioner claims

[4] Zhangjiaba citing section 776(a) of the Act. (19 U.S.C. 1677e(a)).

[5] Consistent with the guidance provided in the *Sunset Policy Bulletin*, the Department found that revocation of the order on barium chloride from the PRC would likely lead to dumping at the rate from the investigation. The investigation margin is 14.50 percent.

that the information it submitted to the Department has probative value because it consists of U.S. government imports statistics, which need not be corroborated, factor values from sources consistently used by the Department, and consumption quantities which can be relied upon based on the petitioner's extensive experience as a producer of barium chloride. Further, the petitioner maintains that in claiming that the petitioner's data is not related to the Chinese barium chloride industry's factors of production, Zhangjiaba has failed to recognize that the Department must seek other sources of information in light of the consistent failure of named respondents to submit information requested by the Department.

Finally, the petitioner argues that the margin from the sunset review is irrelevant because it is the margin from the investigation which reflects the behavior of exporters without the discipline of the order, rather than current market conditions, and thus it does not serve as an appropriate measure of dumping during the instant POR.

Section 776(b) of the Act permits the Department to base adverse facts available upon ''any other information placed on the record.'' The issue before the Department here, is whether the facts in this case provide a sufficient basis for calculating the adverse facts available rate using information placed on the record of this review, rather than using as adverse facts available the highest margin from any segment of the proceeding. In making this determination, it is instructive to consider the guidance regarding adverse inferences provided by the Statement of Administrative Act (SAA) and the courts. In employing adverse inferences, the SAA instructs the Department to consider ''the extent to which a party may benefit from its own lack of cooperation,'' noting that adverse inferences are made ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See* H.R. Doc. 103–316, Vol. 1 at 80 (1994). However, with respect to selecting an adverse facts available rate, the Court of International Trade (CIT) noted that Congress ''intended for an adverse facts available rate to be a reasonably accurate estimate of the respondents's actual rate, albeit with some built-in increase intended as a deterrence to non-compliance.'' *See DeCecco*, 216 F.3d at 1032. Furthermore in *Ferro Union, Inc.* v. *United States*, 44 F Supp.2d 1310, 1335 (CIT 1999) (*Ferro Union*), the CIT noted that ''Commerce cannot select a rate which focuses only on inducing the exporter to cooperate and ignores the interest in selecting a margin which relates to the past practices of the industry.'' The Court went on to note that ''Commerce must assure itself that the margin it applies is relevant and not outdated, or lacking a rational relationship to {the respondent}.'' *See Ferro Union,* 44 F. Supp.2d at 1335.

In light of the above, we have examined sales prices and import trends concerning PRC barium chloride to determine whether the highest margin calculated in any segment of this proceeding is sufficiently adverse to induce cooperation from the named respondents (*i.e.*, we considered the extent to which the named respondents may benefit from their lack of cooperation). Over the 16 years following the 1985–1986 POR, prices for the majority of U.S. imports of barium chloride from the PRC have remained virtually unchanged. The average unit value (AUV) of barium chloride imported from the PRC into the United States during the instant POR is 238.97 U.S. dollars per metric tone while the AUV of barium chloride imports during the 1985–1986 POR is 232.46 U.S. dollars per metric tone. *See* Factual Information Memorandum. With respect to the normal value of PRC barium chloride, pursuant to the Department's NME methodology, we have examined the constructed value rather than actual sales prices. Given that none of the named respondents provided any information on which to base constructed value, we calculated constructed value using the factors of production data provided by the petitioner. We valued the factors of production using surrogate values from India. For details regarding our selection of India as the surrogate country, see the ''Calculation of the Adverse Facts Available Rate'' section of this notice below. Comparing constructed value to the AUV of imports of subjected merchandise during the instant POR yields a margin significantly greater than the 60.84 percent margin calculated in the 1985–1986 administrative review (the highest margin calculated in any segment of this proceeding). The foregoing analysis suggests that the 60.84 percent margin from the 1985–1986 administrative review may not bear a rational relationship to the practices of the PRC-wide entity during the instant POR because input values have increased significantly and, therefore, the margin no longer reflects current market behavior. More importantly, it indicates the margin is not adverse, as respondents would benefit from use of this margin.

The production costs calculated from the data submitted by the petitioner are based on surrogate values derived from transactions that are contemporaneous with the instant POR, and, based on our corroboration standard, we believe it is reasonable to preliminarily find that a rational relationship does exist between the margin calculated using these data and the practices of the PRC-wide entity during the instant POR. *See* the ''Corroboration'' section of this notice below.

With respect to the question of whether the 60.84 percent margin calculated in the 1985–1986 administrative review is sufficiently adverse to induce cooperation from the named respondents, we note that since completing the 1985–1986 administrative review, the Department has conducted one administrative review of the antidumping duty order on barium chloride from the PRC (the 1997–1998 administrative review).[6] The firms named as respondents in the instant administrative review were also named as respondents in the 1997–1998 administrative review. None of these firms responded to the questionnaire issued in the 1997–1998 administrative review. In addition, the Department conducted a sunset review of the antidumping duty order on barium chloride from the PRC in which it received no response from any respondent interested party. However, U.S. Customs records indicate that at least one named respondent exported subject merchandise to the United States during he instant POR. *See* Factual Information Memorandum. Moreover, import statistics from the International Trade Commission confirm the petitioner's assertion that the volume of imports of barium chloride from the PRC has increased approximately 158 percent between the years 1996 and 2000. In fact, the quantity of barium chloride imported into the United States from the PRC has increased by 170.5 percent between the years 1996–2001. *See* Factual Information Memorandum. Despite the fact that the volume of U.S. imports of barium chloride from the PRC is increasing—and there are indications that at least some of the named respondents are participating in the U.S.

[6] The Department rescinded its administrative reviews of the order on barium chloride from the PRC covering the period October 1, 1986 through September 30, 1987 (the petitioner withdrew its request for review) and October 1, 1990 through September 30, 1991 (the sole respondent made no shipments of barium chloride to the United States).

market at the 60.84 percent antidumping duty rate—none of the respondents have participated in the Department's two most recent administrative reviews of barium chloride from the PRC. This fact, when considered in light of our concerns as to whether the 60.84 percent margin reflects the current practices of the PRC-wide entity, leads us to conclude that the 60.84 margin is not sufficiently adverse to induce cooperation from the named respondents. Because the margin calculated from the information placed on the record by the petitioner bears a rational relationship to the practices of the PRC-wide entity during the instant POR and is higher than the 60.84 percent rate, we find it reasonable to use the margin as adverse facts available. Furthermore, with respect to the 14.50 percent margin advocated by Zhangjiaba, we agree with the petitioner that this is not an appropriate measure of dumping in this review because, as noted above, information placed on the record of this review indicates that production costs, and hence constructed value, have change significantly and, therefore, the margin no longer reflects current market behavior. Moreover, even without the information provided by the petitioner, the 14.50 percent rate would not reflect an adverse inference in light of the 60.84 percent rate that is currently applicable to all imports of subject merchandise. Based on the foregoing, including virtually constant AUVs, likely increases in factor values, and significant increases in import volumes, we have preliminary decided to calculate the PRC-wide rate using information placed on the record of this review by the petitioner.

As noted above, this approach was taken by the Department in previous cases in which it considered the adverse facts available rate to be inappropriate. *See, e.g., Sodium Thiosulphate from the PRC.*

Further, with respect to Zhangjiaba's claim that it should not receive an adverse facts available rate because it did not fail to supply anything requested of it by the Department, we note that Zhangjiaba shipped no subject merchandise to the United States during this POR, and thus, it is not possible to conduct an antidumping analysis of the company. Therefore, we are preliminary rescinding this review with respect to Zhangijaba. Because Zhangjiaba has never been assigned a separate rate, there is no basis to assign Zhangjiaba a rate distinct from the PRC-wide rate. *See Final determination of Sales at Less Than Fair Value: Foundry Coke Products From the People's Republic of China,* 66 FR 39487 (July 31, 2001) and accompanying Decision Memorandum at Comment 8.

Calculation of the Adverse Facts Available Rate

We have calculated an adverse facts available rate for the PRC-wide entity using the factor usage rates, average U.S. price, and certain surrogate values placed on the record of this review by the petitioner. Where possible, we have updated or revised the surrogate values placed on the record by the petitioner to include Indian import statistics covering the entire POR. Additionally, where the petitioner has used price lists to value a factor, we have valued the factor using Indian import statistics covering the entire POR.

The Department has identified India as an appropriate surrogate for the PRC in each segment of this proceeding in which it calculated an antidumping duty margin. *See, e.g., Final Determination of Sales at Less Than Fair Value; Barium Chloride From the People's Republic of China,* 49 FR 33916 (August 27, 1984) (where the Department stated that ''India would be the most appropriate surrogate selection.''). Moreover, in this review, the Department's Office of Policy has identified as a country at a level of economic development comparable to the PRC. See Memorandum from Jeffrey May to Holly Kuga dated February 28, 2002. Finally, we note that the petitioner placed evidence on the record of this review demonstrating that India is a producer of barium chloride. *See* the petitioner's February 11, 2002 submission at Exhibit 1. Therefore, we find the petitioner's use of India as its source of surrogate values to be appropriate. For details regarding our calculation, see the memorandum from Drew Jackson to The File, ''Calculation of the Adverse Facts Available Rate in the 2000–2001 Administrative Review of Barium Chloride From the People's Republic of China'' dated concurrently with this notice.

Corroboration of Information

Section 776(c) of the Act provides that the Department shall, in using facts otherwise available, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, where corroboration is not practicable, the Department may use uncorroborated information. *See Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review,* 64 FR 17995, 17996, (April 3, 1999) (noting ''where corroboration is not practicable, the Department may use uncorroborated information''). Publicly available data from independent sources that relate to the relevant time period are generally considered to be both relevant and reliable because they are contemporaneous with the period under consideration and not generated for purposes of the trade action. Therefore, we consider the AUVs and factor values placed on the record of this review to be corroborated. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China,* 67 FR 60214, 60214 (September 25, 2002) (wherein the Department found export prices, based on U.S. government statistics, and Indian surrogate values, based on publicly available information, to be sufficiently corroborated).

Due to the lack of information from the named respondents, it is not practicable to corroborate the factor usage rates placed on the record by the petitioner. It is worth noting that the implementing regulation for section 776 of the Act states, ''(t)he fact that the corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' *See* 19 CFR 351.308(d) Therefore, given that we have been able to corroborate average unit values and factor values placed on the record by the petitioner, we consider the calculation using the petitioner's facts to be sufficiently corroborated. *See, e.g., Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation,* 67 FR 621121–01 (October 3, 2002).

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage dumping margin exists for the period October 1, 2000 through September 30, 2001:

Exporter/manufacturer	Margin (percent)
PRC-wide rate	153.88

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. *See* § 351.224(b) of the Department's regulations. Interested parties may submit case briefs within 21 days of the date of publication of this notice. Rebuttal briefs, whose content is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* §§ 351.309 and 351.310 of the Department's regulations. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity comment on arguments raised in case of rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 10 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c).

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any comments, not later than 120 days after the date of publication of these preliminary results.

Duty Assessment Rates

Upon completion of the final results in this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We intend to issue assessment instructions to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of barium chloride from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters will be the rate established in the final results of this review; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to their PRC suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under § 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.221.

Dated: October 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–28525 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–804 and A–471–806]

Notice of Antidumping Duty Orders: Sulfanilic Acid From Hungary and Portugal

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

ACTION: Notice of Antidumping Duty Orders: Sulfanilic Acid from Hungary and Portugal.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or John Brinkmann for Hungary, telephone: (202) 482–3534 or (202) 482–4126, respectively; and S. Anthony Grasso for Portugal, telephone: (202) 482–3853. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR part 351 (April 2001).

Scope of Orders

Imports covered by these orders are all grades of sulfanilic acid (''sulfanilic acid'' or ''subject merchandise''), which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, currently classifiable under the subheading 2921.42.22 of the *Harmonized Tariff Schedule* (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under the HTS subheading 2921.42.90, is a powder, granular, or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble

materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Orders

In accordance with section 735(d) of the Act, on September 25, 2002, the Department published in the **Federal Register** the *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Hungary,* 67 FR 60221, and the *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal,* 67 FR 60219.

On November 1, 2002, in accordance with section 735(d) of the Act, the U.S. International Trade Commission notified the Department that a U.S. industry is ''materially injured,'' within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of imports of sulfanilic acid from Hungary and Portugal.

Therefore, in accordance with section 736(a)(3) of the Act, on or after the date of publication of this notice in the **Federal Register**, the U.S. Customs Service officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins as noted below. The ''All Others'' rates apply to all exporters of sulfanilic acid from Hungary and Portugal not specifically listed below. The cash deposit rates are as follows:

Producer/exporter	Margin (percent)
Hungary:	
Nitrokemia 2000 Rt.	20.98
All Others	20.98
Portugal:	
Quimigal—Quimica de Portugal S.A.	74.14
All Others	74.14

Moreover, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department following the completion of a review requested under 19 CFR 351.213(b) or 19 CFR 351.214(b) (or if a review is not requested, in accordance with 19 CFR 351.212(c)), antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise of all entries of sulfanilic acid from Hungary and Portugal.

Pursuant to section 736(a)(1) of the Act, if appropriate, based on the above-noted further advice from the Department, for all producers and exporters of sulfanilic acid from Hungary and Portugal, antidumping duties will be assessed on all unliquidated entries of sulfanilic acid entered, or withdrawn from warehouse, for consumption on or after May 6, 2002, the date of publication of the Department's preliminary determinations with respect to sulfanilic acid from Hungary and Portugal in the **Federal Register** (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Hungary,* 67 FR 30358, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sulfanilic Acid from Portugal,* 67 FR 30362).

This notice constitutes the antidumping duty orders with respect to sulfanilic acid from Hungary and Portugal, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

These antidumping duty orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: November 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–28523 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–437–805]

Notice of Countervailing Duty Order: Sulfanilic Acid From Hungary

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

ACTION: Notice of Countervailing Duty Order: Sulfanilic Acid from Hungary.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller or Daniel J. Alexy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116 or (202) 482–1540, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR part 351 (April 2001).

Scope of Order

Imports covered by this order are all grades of sulfanilic acid (''sulfanilic acid'' or ''subject merchandise''), which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, currently classifiable under the subheading 2921.42.22 of the *Harmonized Tariff Schedule* (''HTS''), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under the HTS subheading 2921.42.90, is a powder, granular, or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Countervailing Duty Order

On September 25, 2002, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary,* 67 FR 60223 (September 25, 2002).

On November 1, 2002, in accordance with section 705(d) of the Act, the U.S. International Trade Commission notified the Department that a U.S. industry is ''materially injured,'' within the meaning of section 705(b)(1)(A)(i) of

the Act, by reason of imports of sulfanilic acid from Hungary.

Therefore, in accordance with section 706(a)(3) of the Act, on or after the date of publication of this notice in the **Federal Register**, Customs Service officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the countervailing duty rates as noted below. The ''All Others'' rate applies to all exporters of sulfanilic acid from Hungary not specifically listed below:

Producer/exporter	Ad valorem subsidy rate (percent)
Nitrokemia 2000 Rt.	2.87
All Others	2.87

Moreover, in accordance with section 706(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department following the completion of a review requested under 19 CFR 351.213(b) or 19 CFR 351.214(b) (or if a review is not requested, in accordance with 19 CFR 351.212(c)), countervailing duties equal to the amount of the net countervailable subsidy determined to exist for entries of sulfanilic acid from Hungary.

Pursuant to section 706(a)(1) of the Act, if appropriate, based on the above-noted advice from the Department, for all producers and exporters of sulfanilic acid from Hungary, countervailing duties will be assessed on all unliquidated entries of sulfanilic acid from Hungary entered, or withdrawn from warehouse, for consumption on or after March 4, 2002, the date of publication of the Department's preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Sulfanilic Acid from Hungary,* 67 FR 9696 (March 4, 2002)), and before July 2, 2002, the date the Department instructed Customs to discontinue the suspension of liquidation in accordance with section 703(d) of the Act (*see also,* The Statement of Administrative Action, H. Doc. No. 103–316, Vol. 1 at 874 (1994), reprinted in 1994 U.S.C.C.A.N. 3773, 4163), and on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this countervailing duty order in the **Federal Register**.

This notice constitutes the countervailing duty order with respect to sulfanilic acid from Hungary, pursuant to section 705(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is published in accordance with sections 706(a) and 777(i) of the Act and 19 CFR 351.211.

Dated: November 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–28524 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the following seat on its Sanctuary Advisory Council: Citizen-At-Large. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. The MBNMS is recruiting a primary and alternate representative for this Citizen-At-Large seat, which was vacated by the previously appointed representatives before their term had expired. Applicants who are chosen for this seat should expect to serve until February 2005.

DATES: Applications are due by December 11, 2002.

ADDRESSES: Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps at (831) 647–4201, or *Nicole.Capps@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: the Research Activity Panel (RAP) chaired by the Research Representative, the Sanctuary Education Panel (SEP) chaired by the Education Representative, the Conservation Working Group (CWG) chaired by the Conservation Representative, and the Business and Tourism Activity Panel (BTAP) chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring , resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of

California's marine programs and policies.

Authority: 16 U.S.C Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 31, 2002.

Alan Neuschatz,

Associate Assistant Administrator for Management.

[FR Doc. 02–28463 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Olympic Coast National Marine Sanctuary (OCNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Member and alternate for the Conservation seat, Member and alternate for the Research seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by November 29, 2002.

ADDRESSES: Application kits may be obtained from Andrew Palmer, OCNMS, 138 West First St., Port Angeles, WA 98362 Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Palmer at (360) 457–6622 x. 30 or *andrew.palmer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council provides NOAA with advice on the management of the Sanctuary. Members provide advice to the Olympic Coast Sanctuary Superintendent on Sanctuary issues. The Council, through its members, also serves as liaison to the community regarding Sanctuary issues and acts as a conduit, relaying the community's interests, concerns, and management needs to the Sanctuary.

The Sanctuary Advisory Council members represent public interest groups, local industry, commercial and recreational user groups, academia, conservation groups, government agencies, and the general public.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 31, 2002.

Alan Neuschatz,

Associate Assistant Administrator for Management.

[FR Doc. 02–28462 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000817236–2242–04, I.D. No. 082702F]

General Grant Administration Terms and Conditions of theCoastal Ocean Program for FY2003

AGENCY: National Centers for Coastal Ocean Sciences/Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (NCCOS/CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice for financial assistance for project research grants and cooperative agreements.

SUMMARY: It is the intent of NOAA/NOS/NCCOS/CSCOR/COP to provide direct financial assistance in the form of discretionary research grants and cooperative agreements under its program for the management of coastal ecosystems.

This document does not solicit proposals but rather describes the general grant administration terms and conditions of the NCCOS/CSCOR/COP program for fiscal year 2003. It is NCCOS/CSCOR/COP's intent to issue supplemental Announcements of Opportunities (AOs) to request proposals on specific projects throughout the year according to the appropriations issued by Congress. AOs will be issued through the **Federal Register**. Information regarding these announcements will be made available on the NCCOS/CSCOR/COP Home Page and NCCOS/CSCOR/COP's e-mail list. These announcements will provide specific program descriptions.

DATES: Effective November 8, 2002.

ADDRESSES: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMCι4, Room 8218, Silver Spring, MD 20910–3282

FOR FURTHER INFORMATION CONTACT: Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, (301)713–3338/x155.

SUPPLEMENTARY INFORMATION:

Electronic Access

NOAA Standard Form and COP-specific application forms are accessible with instructions on the following COP Internet Site: *http://www.cop.noaa.gov*, under the COP Grants Information section, Part D, Application Forms for Initial Proposal Submission.

Forms may be viewed and in most cases filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures. If you are unable to access this information, you may call COP at 301–713–3338 to leave a mailing request.

General information about the COP's projects and publications is also available on the NCCOS/CSCOR/COP Internet Site.

Background

(1) *Program Authority(s)*: 16 U.S.C. 1456c; 33 U.S.C. 883d; 33 U.S.C. 1442; 15 U.S.C. 1540; and/or Pub.L. 105–383.

(2) *Catalog of Federal Domestic Assistance (CFDA)*: 11.478 Coastal Ocean Program.

(3) *Program Description*: NOAA's NCCOS/CSCOR/COP provides predictive capability for managing coastal ecosystems through sponsorship of research. NCCOS/CSCOR/COP seeks to deliver the highest quality science in a timely manner for important coastal decisions. It supports research on critical issues that exist in the Nation's estuaries, coastal waters, and Great Lakes and translates its findings into accessible information for coastal managers, planners, lawmakers, and the public. The COP also supports educational activities at the graduate and undergraduate level to facilitate the development of qualified professionals in the fields of coastal science, management, and policy.

Coastal Ecosystem Oceanography

NCCOS/CSCOR/COP supports the conservation and management of marine ecosystems through sponsorship of improved ecological and oceanographic predictions for resource management. Studies focus on (1) understanding

critical processes that control the abundance, distribution, and replenishment of fishery resources; (2) determining critical habitat processes that influence fishery ecosystems; and (3) quantifying ecosystem species interactions to develop models that can be used in management decisions. Current efforts support studies dealing with cod and haddock on Georges Bank, and salmon in the Pacific Northwest.

Cumulative Coastal Impacts

NCCOS/CSCOR/COP sponsors a series of regional watershed projects on the causes and impacts of multiple stresses on coastal ecosystems. Studies focus on (l) developing indicators of stress; (2) predicting impacts of multiple stresses (3) valuing natural resources in ecological and economical terms; and (4) predicting the outcomes of management strategies. Current efforts are located in Chesapeake Bay, Florida Bay and the Keys, the coastal areas of South Carolina, the Pacific Northwest, and coral reefs in Florida and Hawaii.

Harmful Algal Blooms (HABs) and Hypoxia

NCCOS/CSCOR/COP also sponsors studies on the ecology and oceanography of harmful algal blooms (HABs), focusing on identifying and modeling linkages between the physiology, ecology, behavior and toxicity of HABs and local/regional circulation patterns and water quality. These results will not only generate greater general knowledge of problematic species in the U.S. coastal waters, but also provide a foundation for development of regional HAB forecasting capabilities, eventually providing a means to assess the effectiveness of prevention, control, and mitigation strategies developed in the programs. Current regional efforts are located in the Gulf of Maine, the Pacific Northwest, Hawaii, eastern Long Island, the coastal regions of the mid-Atlantic States, the Great Lakes, and the western coast of Florida.

Eutrophication and resulting hypoxia have become common problems affecting living marine resources and recreational uses of coastal waters. The NCCOS/CSCOR/COP supports research examining the influences of nutrient loading, physical forcing, climate change, and extent of hypoxic conditions (i.e., the ''dead zone'') on the ecosystem and fisheries of the northern Gulf of Mexico.

Benefits of the NCCOS/CSCOR/COP

Continued population pressures on the Nation's coastal areas and ongoing changes in the environment will continue to stress our coastal waters, bays, and estuaries and the Great Lakes. NCCOS/CSCOR/COP has focused on developing information for longer range U.S. management and policy at large and complex scales. NCCOS/CSCOR/COP research will help the U.S. respond to the major challenges of the next century and to balance the needs of economic growth with those of conserving the environment and its coastal resources.

(4) *Funding Availability*: On average, annual funding for each Announcement of Opportunity is approximately $l,000,000. Each NCCOS/CSCOR/COP project generally consists of several coordinated investigations with separate awards, ranging from $5,000 to $500,000. Actual funding levels will depend upon the final budget appropriations for the fiscal year. Individual AOs will be released with specific applicable dollar amounts.

The funding history of NCCOS/CSCOR/COP's Direct Financial Assistance is as follows: FY99 $8.5M; FY00 $15M, FY01 15.5M; FY02 $20M; and FY03 is estimated at $22.2M. Publication of this notice does not obligate Commerce/NOAA to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

If an application for a financial assistance award is selected for funding, NCCOS/CSCOR/COP has no obligation to provide any additional prospective funding in connection with that award in subsequent years.

(5) *Matching Requirements*: None.

(6) *Type of Funding Instrument*: They are project grants and cooperative agreements.

(a) Research Project Grants: A research project grant is one in which substantial programmatic involvement by NOAA is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from NOAA.

(b) Cooperative Agreements: A cooperative agreement implies that NOAA will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with NOAA. A cooperative agreement is appropriate when substantial NOAA involvement is anticipated. This means that the recipient can expect substantial agency collaboration, participation, or intervention in project performance. Substantial involvement exists when: responsibility for the management, control, direction, or performance of the project is shared by the assisting agency and the recipient; or the assisting agency has the right to intervene (including interruption or modification) in the conduct or performance of project activities.

(c) Determination of which instrument to use: Applicants must specify the type of award for which they are applying, either a grant or a cooperative agreement. The funding agency will review the applications in accordance with the evaluation criteria. Before issuing awards, NOAA will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial NOAA involvement in the project.

(d) In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA Federal applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant or cooperative agreement.

Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer, provided legal authority exists for the Federal applicant to receive funds from another agency. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from the applicants, the Economy Act (31 U.S.C. section 1535) is not an appropriate basis. Support may be solely through COP or partnered with other Federal offices and agencies.

Proposals deemed acceptable from NOAA Federal researchers will be funded through an intraagency transfer.

(7) *Eligibility Criteria:* Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

(i) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(ii) Non-NOAA Federal applicants will be required to submit certifications

or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(iii) NCCOS/CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(iv) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

(8) *Award Period*: Typically, NCCOS/CSCOR/COP's projects average 1 to 5 years in length. Projects covering more than 1 year will usually be funded on an annual basis.

(9) *Indirect Costs*: Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of (a) the line item amount for the Federal share of indirect costs contained in the approved budget of the award or (b) the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

(10) *Application Forms*: When applying for financial assistance under a published AO, applicants will be able to obtain both the standard NOAA application forms and COP-specific application forms at the COP home page. Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures in blue ink. If you are unable to access this information, you may also call (301)713–3338 to leave a mail request. At time of submission, the applicant will follow the proposal requirements presented in the funding announcement.

At time of original application for financial assistance, all applicants are required to submit the NOAA Standard Form 424 (Rev July 1997), ''Application for Federal Assistance'' and a COP Summary Proposal Budget Form for each fiscal year increment in lieu of the NOAA Standard Form 424A (Rev July 1997),''Budget Information for Non-Construction Programs.'' Applicants shall also include a budget narrative/justification that supports all proposed budget categories. The SF–424A shall be requested only from those recipients subsequently recommended for award. Multi-institution proposals must include a Summary Proposal Budget Form from each institution.

Disposition of Unsuccessful Application: Applications not adhering to these stated guidelines will be returned to the applicant without further review.

In addition, other forms required as part of a complete application package from only those recipients subsequently recommended for award include the NOAA Standard Form 424–B, ''Assurances for Non-Construction Programs''; the CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''; the CD–512, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' (this certification is to remain with the recipient and is not forwarded to the Grants Officer); the CD–346, ''Applicant for Funding Assistance''(for non-profit organizations) and the SF-LLL, ''Disclosure of Lobbying Activities'' (if applicable).

(11) *Project Funding Priorities*: Priority considerations will be given to proposals that promote balanced coverage of the science objective stated in the later AOs, avoid duplication of completed or ongoing work, and increase geographic diversity. Additional and/or other priorities may be detailed in NCCOS/CSCOR/COP AOs.

(12) *Evaluation Criteria*: Unless otherwise stated in an individual funding announcement, the following criteria and evaluation weightings will be used for evaluating both solicited and unsolicited proposals:

(a) Scientific Merit (20 percent): Intrinsic scientific value of the proposed work and the likelihood that it will lead to fundamental advancements, new discoveries or will have substantial impact on progress in that field;

(b) Research Performance Competence (20 percent): The capability of the investigator and collaborators to complete the proposed work as evidenced by past research accomplishments, previous cooperative work, timely communication, and the sharing of findings, data, and other research products;

(c) Relevance (20 percent): Likelihood that the research will make substantial contributions or develop products leading to improved management of coastal resources;

(d) Technical Approach (20 percent): The proposed work has focused science objectives and a complete and efficient strategy for making measurements and observations in support of the objectives. The approach is sound and logically planned throughout the cycle of the proposed work;

(e) Linkages (10 percent): Connections to existing or planned studies, or demonstrated cooperative arrangements to provide or use data or other research results to achieve the objectives.

(f) Costs (10 percent): Adequacy of the proposed resources to accomplish the proposed work, and the appropriateness of the requested funding with respect to the total available funds.

(l3) *Selection Procedures*: All proposals will be evaluated and scored individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or by independent peer panel review. Both Federal and non-Federal experts in the field may be used in this process. The peer mail reviewers will be several individuals with expertise in the subjects addressed by particular proposals. Each mail reviewer will see only certain individual proposals within his or her area of expertise, and score them individually on a scale of one to five, where scores represent respectively: Excellent (1), Very Good (2), Good (3), Fair (4), Poor (5).

The peer panel will comprise of 4 to 12 individuals, with each individual having expertise in a separate area, so that the panel, as a whole, covers a range of scientific expertise. The panel will have access to all mail reviews of proposals, and will use the mail reviews in discussion and evaluation of the entire slate of proposals. All proposals will be evaluated and scored individually. The peer panel shall rate the proposals using the evaluation criteria and scores provided above and used by the mail reviewers. The individual peer panelist scores shall be averaged for each application and presented to the program officers. No consensus advice will be given by the independent peer mail review or the review panel.

The program officers will neither vote or score proposals as part of the independent peer panel nor participate in discussion of the merits of the proposal. Those proposals receiving an average panel score of ''Fair'' or ''Poor'' will not be given further consideration, and proposers will be notified of non-selection.

For the proposals rated by the panel as either ''Excellent,'' ''Very Good,'' or ''Good'', the program officers will (a) select the proposals to be recommended for funding by average panel ratings,

and/or by applying the project funding priorities listed in section 11 and specific objectives published in the AO; (b) determine the total duration of funding for each proposal; and (c) determine the amount of funds available for each proposal subject to the availability of fiscal year funds. Awards may not necessarily be made in rank order. In addition, proposals rated by the panel as either ''Excellent,'' ''Very Good,'' or ''Good'' that are not funded in the current fiscal period, may be considered for funding in another fiscal period without having to repeat the competitive, review process.

Recommendations for funding are then forwarded to the selecting official, the Director of NCCOS/CSCOR/COP, for the final funding decision. The Director shall make his final funding decisions based upon the program officials' recommendations, project funding priorities and availability of funds.

Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the proposer. Declined applications will be held in the NCCOS/CSCOR/COP for the required 3 years in accordance with the current retention requirements, and then destroyed.

(14) *Other Requirements*:

(a) The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

(b) Intergovernmental Review: (a) Applications under this program are not subject to Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs.'' (b) It has been determined that this notice is not significant for purposes of E.O. 12866. Pursuant to 5 U.S.C. 553 (a)(2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(c) Data Archiving: Any data collected in projects supported by NCCOS/CSCOR/COP should be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to be determined by the institution, the NODC, and the Program Officer. It is the responsibility of the institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by NCCOS/CSCOR/COP are encouraged to be made available to the general research community at no or modest handling charge (to be determined by the institution, Program Officer, and DOC).

(d) Please note that NOAA is developing a policy on internal overhead charges, NOAA scientists considering submission of proposals should contact the appropriate NCCOS/CSCOR/COP Program Manager for the latest information.

(e) Paperwork Reduction Act: This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648–0384; a Summary Proposal Budget Form (30 Minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the Annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Leslie.Mcdonald@noaa.gov. Copies of these forms and formats can be found on the COP home page under the Grants Information section.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: October 31, 2002.

Alan Neuschatz,

Associated Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–28511 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102C]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska Working Group will meet in Anchorage, AK.

DATES: The meeting will be held on November 25–26, 2002.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Top of the World Room, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff: 907–271–2809

SUPPLEMENTARY INFORMATION: On Monday, November 25, the committee will meet starting at 10 a.m. and on Tuesday, November 26, the meeting will begin at 8 a.m. to review: data on rockfish bycatch rates; International Pacific Halibut Commission discussion paper on managing halibut bycatch in a rationalized Pacific cod hook and line fishery; proposals for catcher/processor elements and options and finalize elements and options for analysis.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: November 5, 2002.

Theophilus R. Brainerd,

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

[FR Doc. 02–28546 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Standard for Bunk Bed Cornerposts

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP–03–1/ HP–03–1) requesting that the Commission establish a standard for bunk bed cornerposts. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by January 7, 2003.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to *cpsc-os@cpsc.gov.* Comments should be captioned ''Petition CP–03–1/ HP–03–1, Petition on Bunk Bed Cornerposts.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland, and on the Commission's website at *http://www.cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Danny Foundation requesting that the Commission establish a standard to address the hazard of strangulation posed by bunk bed cornerposts. The Commission is docketing this request as a petition under the Consumer Product Safety Act, 15 U.S.C. 2057, and the Federal Hazardous Substances Act, 15 U.S.C. 1261(q)(1)(A). The petitioner asserts that, due to the height of bunk beds, cornerposts on bunk beds pose a substantial risk to children when their clothing, bedding or other items become caught on the cornerposts. In such circumstances, children can hang from the caught item and die. The petitioner states that such incidents have resulted in fourteen deaths to American children since 1993.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland, or from the Commission's website at *http://www.cpsc.gov.*

Dated: November 4, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–28420 Filed 11–7–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

The Joint Staff; National Defense University (NDU), Board of Visitors (BOV) Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors.

DATES: The meeting will be held on November 14th and 15th 2002, from 18:00 to 21:00 on the 14th and continuing on the 15th from 08:30 to 17:00.

ADDRESSES: The meeting will be held in Room 115, Marshall Hall, Building 62, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: NDU Assistant Vice President for Administration and Deputy Chief of Staff, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–6200. To reserve space, interested persons should contact Mr. Michael Mann, @ (202) 685–3903 and/ or e-mail: *mannm@ndu.edu.*

SUPPLEMENTARY INFORMATION: The agenda will include past, present, and future Joint Professional Military Education and National Security/Home Land Security Policy issues that drive mission requirements for the National Defense University and its many Components. The meeting is open to the public with limited space available for observers to be allocated on a first come, first served basis.

POC: Michael Mann, BOV Executive Secretary, @ *mannm@ndu.edu* and/or (202) 685–3903.

Dated: October 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28413 Filed 11–7–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

United States Military Cancer Institute

Sunshine Act Meeting Notice

AGENCY: United States Military Cancer Institute.

TIME AND DATE: 0830 to 1500, November 14, 2002.

PLACE: Eisenhower Suite, WRAMC 6900 Georgia Ave., NW., Washington, DC 20307.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: USMCI goals and objectives.

8:30 a.m. Meeting—Committee of Scientific Advisors

(1) Welcome

(2) Introduction

(3) Overview of various Oncology Programs

(4) Committee and Director Executive Session

CONTACT PERSON FOR MORE INFORMATION: Mr. William Mahr, Associate Director for Administration—USMCI, (202) 782–0552.

Dated: November 4, 2002.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28720 Filed 11–6–02; 3:32 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Marine Corps announces a proposed extension of an approved information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimated of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2003

ADDRESSES: Send written comments and recommendations on the proposed information collection to Marine Corps Recruiting Command, (Code MROR), 3280 Russell Road, Quantico, VA 22134–5103.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Gunnery Sergeant Ricardo Hudson at (703) 784–9449.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Personal Information Questionnaire; OMB Control No. 0703–0012.

Needs and Uses: The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Affected Public: Individuals or households.

Annual Burden Hours: 8,350.

Number of Respondents: 16,700.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 30, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28490 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Chief of Naval Education and Training

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Chief of Naval Education and Training announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 6, 2003.

ADDRESSES: Send written comments and recommendations on the proposed information collection to CDR K. Looney (N79A21), 250 Dallas Street, Pensacola, FL 32508–5220.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact CDR K. Looney at (850) 452–9387.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application Forms Booklet, Naval Reserve Officers Training Corps (NROTC) Scholarship Program; OMB Control No. 0703–0026.

Needs and Uses: This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or households.

Annual Burden Hours: 56,000.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Average Burden per Response: 4 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: October 30, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28491 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Navy Recruiting Command

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Commander, Navy Recruiting Command announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimated of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2002.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mrs. Judy Birmingham at (901) 874–9210.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application for Commission or Warrant Rank, USN or USNR; OMB Control No. 0703–0029.

Needs and Uses: All persons interested in entering the U.S. Navy or

Naval Reserve in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or Naval Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 23,400.

Number of Respondents: 11,700.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 30, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28492 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; United States Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The United States Naval Academy announces a proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2003.

ADDRESSES: Send written comments and recommendations on the proposed information collection to the Admissions Office, United States Naval Academy, 117 Decatur Road, Annapolis, MD 21402–5017.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Nick Pantelides, telephone (410) 293–1803.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application Procedures for United States Naval Academy; OMB Control Number 0703–0036.

Needs and Uses: This collection of information is necessary to determine the eligibility and evaluate overall competitive standing of candidates for appointment to the United States Naval Academy. An analysis of the information collected is made by the Admissions Board during the process in order to gauge the qualifications of individual candidates.

Affected Public: Individuals or households, Federal agencies or employees.

Annual Burden Hours: 30,000.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Average Burden per Response: 3 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 30, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28493 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission (''Commission'') will hold an informal conference followed by a public hearing on Monday, November 25, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 10:00 a.m. Topics of discussion include: a status report on the PCB TMDL for the Delaware Estuary; a progress report on development of the Commission's new comprehensive plan; a presentation on the I–MAP Delaware Basin Internet mapping project; and a discussion regarding a resolution to amend the Commission's Comprehensive Plan and Water Code relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions.

The dockets scheduled for public hearing are as follows:

1. *Borough of Collingswood D–89–3 CP RENEWAL.* A renewal of a surface water and ground water withdrawal project to supply up to 155 million gallons (mg)/30 days of water to the applicant's distribution system from all wells and Newton Creek. The project is located in Collingswood Borough, Camden County, New Jersey. No increase in the requested allocation is sought.

2. *Township of Harrison D–2002–36 CP.* An upgrade and expansion project of a 0.4 million gallons per day (mgd) secondary level sewage treatment plant (STP) to provide advanced secondary treatment of 0.8 mgd. The STP will continue to serve residential and commercial development in Harrison Township, Gloucester County, New Jersey. The plant is located in Harrison Township off Creek Road about one mile west of State Route 45. A new outfall will be constructed to discharge to the non-tidal portion of Raccoon Creek, a tributary of the Delaware River.

3. *Musconetcong Sewerage Authority D–2002–40 CP.* A project to expand a 3.81 mgd tertiary STP by adding a 0.5 mgd tertiary treatment plant that will operate in parallel mode. The project is located in Mount Olive Township, Morris County, New Jersey, just north of the Route 206 intersection with Interstate 80. The project will continue to serve Stanhope Borough in Sussex County and Netcong Borough in Morris County, plus portions of Mount Olive Township, Mount Arlington Borough, and Roxbury Township, also within Morris County. The expansion is primarily needed to serve residents of various communities around Lake Hopatcong, where some failing on-lot septic systems need to be phased out of service. A portion of the existing service area is located outside of the Delaware River Basin, in the Raritan River Basin, as documented in Docket No. D–92–80 CP, approved by the Commission on August 4, 1993. STP effluent will continue to be discharged to the Musconetcong River, a tributary of the Delaware River.

4. *Little Washington Wastewater Company d/b/a Suburban Wastewater Company D–2002–42.* A project to rerate the White Haven STP from 0.34 mgd to 0.45 mgd, while continuing to provide advanced secondary level of treatment via an activated sludge process. The project will continue to serve White

Haven Borough and a portion of Dennison Township, both in Luzerne County, Pennsylvania. The project is located in the Borough of White Haven, approximately 300 feet south of Route 940 on the bank of the Lehigh River, to which it will continue to discharge.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the August 28, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; a resolution concerning the drought emergency declared by the Commission on December 18, 2001; and a resolution to amend the Comprehensive Plan and Water Code relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions. A hearing on the Lake Wallenpaupack resolution was held on October 16, and the written comment period on that item was held open through November 15.

Draft dockets scheduled for public hearing on November 25, 2002 are posted on the Commission's web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: November 4, 2002.

Pamela M. Bush, Esq.,

Commission Secretary.

[FR Doc. 02–28460 Filed 11–7–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 December 9, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 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: November 4, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal PLUS Program Master Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 33,333.

Burden Hours: 16,667.

Abstract: This promissory note is the means by which a Federal PLUS Program loan borrower promises to repay his or her loan.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2096. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the internet address *OCIO_RIMG@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 Lew Oleinick at *Lew.Oleinick@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. 02–28478 Filed 11–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 December 9, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 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: November 4, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal Direct PLUS Loan Application and Master Promissory Note (PLUS MPN), and Endorser Addendum.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 225,000.

Burden Hours: 112,500.

Abstract: The PLUS MPN is the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan. If an application for a Federal Direct PLUS Loan is determined to have an adverse credit history and obtains an endorser, the Endorser Addendum is the means by which an endorser agrees to repay the loan if the borrower does not repay it.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2112. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@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 Lew Oleinick at *lew.oleinick@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. 02–28479 Filed 11–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.017A]

Office of Postsecondary Education; International Research and Studies Program

ACTION: Notice of reopening and correction of the International Research and Studies Program fiscal year (FY) 2003 competition.

Notice to Applicants: On September 26, 2002 the Secretary published in the **Federal Register** (67 FR 60645 through 60646) a notice inviting applications for new awards for FY 2003 for the International Research and Studies Program. This notice corrects the notice published on September 26, 2002 by replacing the absolute priority and the two invitational priorities with a single invitational priority, and reopening this competition.

In order to broaden the programmatic impact on the field of language, area and international studies, the Secretary replaces the entire section on priorities in the notice of September 26, 2002 with the following:

Invitational Priority

This competition focuses on projects designed to meet the priority in the regulations for this program (34 CFR 660.34(a)(2)).

Specific languages or regions for study or materials development: We are particularly interested in projects that include studies and the development of instructional materials on the Middle East, Central Asia, and South Asia and the languages spoken in these regions.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications. The competition is reopened to provide applicants time to prepare applications in accordance with this notice of correction.

New Deadline for Transmittal of Applications: January 17, 2003.

For Applications and Further Information Contact: The application for this program is available at: *http://www.ed.gov/offices/OPE/HEP/iegps/irs.html.*

Jose L. Martinez, U.S. Department of Education International Education and Graduate Programs Service, 1990 K Street NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7635, or via Internet: *jose.martinez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1125.

Dated: November 4, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–28419 Filed 11–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, December 5, 2002, 9 a.m.–5 p.m.; Friday, December 6, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Radisson Hotel-Portland, 1441 N.E Second Avenue, Portland, OR, Phone: (503) 244–2401, Fax: (503) 233–0498.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, December 5, 2002

- Groundwater Protection Program
  —Overview of the Hanford Groundwater Strategy
  —Key Activities from the Master Schedule
  —Systems Assessment Capability
- Long-Term Stewardship: Hanford Plan
  —Workshop Update
  —Draft Advice on the Plan (tentative)
- 116N–1 Trench
  —Discussion on Proposed Significant Difference from Record of Decision
  —Draft Advice (tentative)
- Public Involvement Process on the B/C Pilot (i.e., final remediation of a reactor area)
  —Draft Advice (tentative)
- Public Comment Period

Friday, December 6, 2002

- Board discussion and adoption of draft advice
- Committee Updates
- Discussion of Hanford Advisory Board 2003 Meeting Dates and Locations
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on November 5, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–28468 Filed 11–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

McNary-John Day Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to construct the McNary-John Day Transmission Line Project in Benton and Klickitat Counties, Washington, and Sherman and Umatilla Counties, Oregon. This decision is based on input from public processes and information in the McNary-John Day Transmission Line Project Final Environmental Impact Statement (DOE/EIS–0332, August 2002). The proposed action consists of building 79 miles of 500-kilovolt transmission line between BPA's McNary and John Day Substations, including several short-line routing alternatives. Construction of this transmission line is needed to allow new power, which is expected to be generated in southeast Washington and northeast Oregon, to be transmitted over BPA's transmission system. Some initial project activities will occur in 2003, with complete construction occurring when financing is secured from the parties who will utilize the line capacity.

ADDRESSES: Copies of the McNary-John Day Transmission Line Project ROD and the McNary-John Day Transmission Line EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Stacy L. Mason, KEC–4, Bonneville Power Administration, PO Box 3621, Portland, Oregon, 97208–3621, telephone number 503–230–5455; fax number 503–230–5699; e-mail *slmason@bpa.gov.*

Issued in Portland, Oregon, on October 30, 2002.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02–28467 Filed 11–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–434–000]

ANR Pipeline Company; Notice of Site Visit

November 1, 2002.

On November 21, 2002, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of ANR Pipeline Company's (ANR) WestLeg Project in McHenry County, Illinois and Walworth and Rock Counties, Wisconsin. We will examine the proposed project route by automobile and on foot. Representatives of ANR will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Those interested in attending should meet at 8 .a.m at the following location: Holiday Inn Express (lobby), 2790 Milwaukee Rd., Beloit, WI 53511.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28438 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–612–003]

ANR Pipeline Company; Notice of Compliance Filing

November 1, 2002.

Take notice that on October 28, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of March 31, 2002:

First Revised Sheet No. 106
First Revised Sheet No. 141A

ANR states that the tariff sheets are being filed in compliance with the Commission's September 26, 2002 order accepting ANR's proposed Associated Liquefiables tariff revisions. This filing also incorporates the required language that permits Shippers to trade PTR imbalances when known and provides the procedures used for making PTR nominations and determining PTR imbalances.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28444 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–057]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 1, 2002.

Take notice that on October 29, 2002, ANR Pipeline Company (ANR) tendered for filing and approval Amendments to two Service Agreements between ANR and Wisconsin Public Service Corporation, which revise the MDQ under such Agreements. ANR requests that the Commission accept and approve the agreements to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28450 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–241–000 and RP00–241–006

Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy-Gas, L.P., and El Paso Merchant Energy Company; Notice of Scheduling Oral Argument

November 1, 2002.

1. On October 9, 2001, the Chief Administrative Law Judge (Chief ALJ) issued an Initial Decision in Phase I of this proceeding (Docket No. RP00–241–000).[1] On September 23, 2002, the Chief ALJ issued a separate Initial Decision in Phase II of this proceeding (Docket No. RP00–241–006).[2] The parties have asked the Commission to provide for oral argument before the Commission.

2. Because oral argument will assist the Commission in its decision making in this case, we are scheduling oral argument to be held on December 2, 2002, at 10 a.m. in the Commission Meeting Room at 888 First Street, NE., Washington, DC 20426.

3. The Public Utilities Commission of the State of California and the parties aligned with it will be allotted a total of one and one-half hours to present their arguments, a portion of which may be reserved for rebuttal purposes. El Paso Natural Gas Company and El Paso Merchant Energy, L.P. also will be allotted one and one-half hours to present their arguments. No later than November 15, 2002, these parties must notify the Commission of the number of representatives they wish to present and the manner in which they desire to allocate their allotted time. The parties must be prepared to address all aspects of this case.

4. A transcript of the oral argument will be available immediately from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. A transcript also will be available for the public on the Commission's FERRIS system two weeks after the oral argument. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the oral argument. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast or needing information on making arrangements

[1] *Public Utilities Commission of the State of California* v. *El Paso Natural Gas Co.*, 97 FERC] 63,004 (2001).

[2] *Public Utilities Commission of the State of California* v. *El Paso Natural Gas Co.*, 100 FERC] 63,041 (2002).

should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC.''

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28443 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–216–002]

CenterPoint Energy Gas Transmission Company; Notice of Crediting Report

November 1, 2002.

Take notice that on October 29, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing a revision to its Annual Crediting Report for 2001 as directed by the Commission's order dated October 10, 2002.

CEGT states that copies of the filing has been mailed to each party listed on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28445 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–45–000]

ANR Pipeline Company; Notice of Tariff Filing

November 1, 2002.

Take notice that on October 29, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 148, with an effective date of December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28448 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–7–000]

Colorado Interstate Gas Company; Notice of Application

November 1, 2002.

Take notice that on October 23, 2002, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced docket, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing the construction, ownership, and operation of facilities in Colorado to enhance the summer season capacity on that portion of its pipeline system known as the Valley Line (Summer-time Enhancement Project), and to incrementally increase capacity to meet the needs of certain Valley Line customers subscribing to additional capacity during a recent open season (Valley Line 2003 Expansion Project). This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Specifically, CIG proposes to construct and operate the following facilities:

(1) A 1,775 horsepower (ISO) ''jumper'' compressor unit that will compress gas from CIG's Line Nos. 5A and 5B into its newly constructed Line No. 5C. This facility will be located at CIG's existing Cheyenne Compressor Station in Weld County, Colorado, (2) a 7,800 horsepower (ISO) turbine compressor unit to be installed on CIG's Line No. 5C, also to be located at the Cheyenne Compressor Station, and

(3) A 1,650 horsepower (ISO) facility that will blend air into the gas stream in CIG's recently constructed Line No. 212A. This blending facility is necessary to stabilize the heat content of gas delivered to CIG's customers on the Valley Line. This facility is to be constructed immediately adjacent to

CIG's Drennan Road Meter Station in Colorado Springs, Colorado.

CIG states that the proposed facilities will provide Valley Line customers with 50,000 Dth per day of flexibility during the summer season and an additional 42,150 Dth per day of incremental capacity. CIG estimates that the cost of the proposed Summer-time Enhancement Project facilities will be $9,753,100 and that cost of the Valley Line 2003 Expansion Project will be $13,237,800 for a total cost of $22,990,900. CIG states that it will not initially seek any rate recovery for the costs associated with the Summer-time Enhancement Project. CIG states that it seeks rolled-in rate treatment for the costs associated with the Valley Line 2003 Expansion Project facilities.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534 or Judy Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–4829 or by fax at (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 21, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28439 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–44–000]

Enbridge Pipelines (UTOS) L.L.C.; Notice of Filing of Offer of Settlement

November 1, 2002.

Take notice that on October 28, 2002, Enbridge Pipelines (UTOS) L.L.C. (UTOS), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385–602 (2002), filed an Offer of Settlement (Settlement) in the captioned proceedings.

UTOS states that the Settlement resolves UTOS's general Section 4(e) rate filing obligation presently set for January 2, 2003, pursuant to the Commission's October 8, 1998 Notice of Extension of Time in Docket Nos. RP94–161–000, *et al.* UTOS further states that shippers representing approximately 91% of its present system throughput either did not oppose or took no position relative to the Settlement.

According to UTOS, under the Settlement, it will not be required to make such general rate filing, thus permitting its currently effective rates to remain in effect until subsequently changed. As a result, UTOS says, the Settlement promotes administrative efficiencies by providing rate certainty for all concerned, while at the same time avoiding the time and expense that would otherwise be attendant to a general Section 4(e) rate filing.

Pursuant to Rule 602(f)(2) Initial Comments on the Settlement are due by November 18, 2002, and Reply Comments are due by November 27, 2002.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The

Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28447 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–013]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

November 1, 2002.

Take notice that on October 30, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Nexen Marketing U.S.A. Inc. (Nexen) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Nexen commencing November 1, 2002.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28449 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–533–000]

Kinder Morgan Interstate Gas Transmission, LLC; Notice of Request for Waiver

November 1, 2002.

Take notice that on September 4, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing a request for a one-time waiver of certain notice and timing requirements of Section 29.a of its FERC Gas Tariff, Fourth Revised Volume No. I–B, relating to the assessment of an Operational Flow Order (OFO) penalty to Kansas Gas Service, a Division of OneOk, Inc.

KMIGT states that copies of the filing have been served upon transportation and storage shippers and affected state regulatory bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28446 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–12–000]

Kinder Morgan Michigan, LLC, Complainant, v. Michigan Electric Transmission Company, LLC, Respondent; Notice of Complaint

October 18, 2002.

Take notice that on October 15, 2002, Kinder Morgan Michigan, L.L.C. (KMM) filed with the Federal Energy Regulatory Commission (Commission) a complaint under section 206 of the Federal Power Act, 16 U.S.C. 824e (1994), and section 206 of the Commission's Rules of Practice and Procedure, 18 CFR 206, against Michigan Electric Transmission Company, LLC (METC) requesting that the Commission find that the terms and conditions of KMM's Generator Interconnection and Operating Agreement with METC violate Commission policy and precedent, and are unjust and unreasonable.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before October 25, 2002 . This filing is available for review at the Commission in the Public Reference Room or may be viewed on

the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28575 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–54–001]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

October 18, 2002.

Take notice that on October 17, 2002, Midwest Independent Transmission System Operator submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment seeks a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28576 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–7–000]

Old Dominion Electric Cooperative; Notice of Application

October 18, 2002.

Take notice that on October 17, 2002, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to refund a lease and leaseback transaction previously approved by the Commission, including the issuance of up to $15,000,000 in bonds.

Old Dominion also requests a waiver of the Commission's competitive bidding and negotiated placement requirements under 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28577 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–32–002]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 1, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 (''Tariff''), the tariff sheets listed in Appendix A of the filing proposed to be effective on November 1, 2002.

Texas Eastern states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order Issuing Certificate issued June 28, 2002, in Docket No. CP02–32–000 (''June 28 Order''). Texas Eastern states that the tariff sheets listed in Appendix A establish the maximum recourse rate and the related negotiated rate for service on Texas Eastern's TIME Project facilities, as required by the June 28 Order, and incorporate references to the new incremental TIME service into Rate Schedule FT–1 and the General Terms and Conditions of the Tariff, including the reference in Section 3 of Rate Schedule FT–1 specifically required by the Commission in Ordering Paragraph (B)(4) of the June 28 Order.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28572 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–1–000, *et al.*]

Calpine Energy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 18, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine Energy Services, L.P.

[Docket No. EC03–1–000]

Take notice that on October 11, 2002, Calpine Energy Services, L.P. tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under section 204 of the Federal Power Act for approval of the acquisition of the securities of Calpine Northbrook Energy Marketing, LLC, an affiliated public utility.

Comment Date: November 1, 2002.

2. Southern California Edison Company

[Docket Nos. ER97–2355–007, ER98–1261–003, and ER98–1685–002]

Take notice that on October 15, 2002, Southern California Edison Company (SCE) tendered for filing a request for authority to refund to retail customers on December 1, 2002, transmission revenues associated with the reduction in SCE's Base Transmission Revenue Requirement that was ordered by the Federal Energy Regulatory Commission (Commission) in this docket, excluding any refund associated with the overhead allocation issue still pending at the Commission.

Comment Date: November 5, 2002.

3. Duquesne Light Company

[Docket No. ER03–47–000]

Take notice that on October 16, 2002, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 16, 2002 with Select Energy, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Select Energy, Inc. as a customer under the Tariff.

DLC requests an effective date of October 16, 2002 for the Service Agreement.

Comment Date: November 6, 2002.

4. Tampa Electric Company

[Docket No. ER03–48–000]

Take notice that on October 16, 2002, Tampa Electric Company (Tampa Electric) tendered for filing proposed changes to the rates for Transmission and Ancillary services under its Open Access Transmission Tariff. Tampa Electric states that the changes include increases in the rates for transmission services, and both increases and decreases in rates for ancillary services. Tampa Electric requests that the rate changes be made effective on December 16, 2002.

Copies of the filing have been served on all customers under Tampa Electric's open access tariff and the Florida Public Service Commission.

Comment Date: November 6, 2002.

5. Riverside Energy Center, LLC

[Docket No. ER03–49–000]

Take notice that on October 16, 2002, Riverside Energy Center, LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 600 megawatt gas-fired, combined cycle electric generating facility in the Town of Beloit, Rock County, Wisconsin.

Comment Date: November 6, 2002.

6. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER03–51–000]

Take notice that on October 16, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Service Sales Agreement between Companies and Northern States Power Company under the Companies' Rate Schedule MBSS. This executed agreement replaces the Unexecuted Agreement filed with the Commission on June 18, 2002, Docket No. ER02–2086–000.

Comment Date: November 6, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.

Deputy Secretary.

[FR Doc. 02–28573 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–19–000, et al.]

Consolidated Edison Company, et al.; Electric Rate and Corporate Filings

October 31, 2002.

The following filings have been made with the Commission. The filings are

listed in ascending order within each docket classification.

1. Southern California Edison Company v. Enron Generating Facilities: Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A, and Zond Wind System Partners, Ltd. Series 85–B

[Docket Nos. EL03–19–000, QF90–43–005, QF91–59–006, QF95–186–005, QF85–687–002, and QF85–686–002]

Take notice that on October 28, 2002, Southern California Edison Company tendered for filing a petition for declaratory order requesting revocation of qualifying facility status for certain Enron-affiliated generating facilities and a complaint and motions for investigation and hearing, and for just and reasonable rates and refunds.

Comment Date: November 18, 2002.

2. Virginia Electric and Power Company

[Docket No. ER01–247–007]

Take notice that on October 29, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, hereby tenders for filing a revision to Dominion Virginia Power's generator interconnection procedures (Interconnection Procedures) in compliance with the Commission's Order issued in this docket on August 2, 2002. Dominion Virginia Power respectfully requests that the revision to its Interconnection Procedures become effective October 30, 2002, the day after filing.

Comment Date: November 19, 2002.

3. Nevada Power Company

[Docket No. ER03–89–000]

Take notice that on October 29, 2002, Nevada Power Company, tendered for filing pursuant to Section 205 of the Federal Power Act, an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between Nevada Power Company and the City of Needles, California. The Service Agreement is being filed in compliance with Section 29.5 of Sierra Pacific Resources Operating Companies' Open Access Transmission Tariff.

Nevada Power Company has requested that the Commission accept the Service Agreement and permit service in accordance therewith effective October 1, 2002.

Comment Date: November 19, 2002.

4. Nevada Power Company

[Docket No. ER03–90–000]

Take notice that on October 29, 2002, Nevada Power Company (Nevada Power) tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of the Agreement for the Sale of Electric Power and for Transmission Service Between Nevada Power Company and the City of Needles, California. Nevada Power has requested an effective date for the cancellation of October 1, 2002.

This Notice of Cancellation is filed pursuant to the termination notice given by the City of Needles to Nevada Power Company, appropriate to the Agreement for the Sale of Electric Power and for Transmission Service. Copies of the filing were served upon the City of Needles, the California Public Utilities Commission, and the Public Utilities Commission of Nevada.

Comment Date: November 19, 2002.

5. Otter Tail Power Company

[Docket No. ER03–91–000]

Take notice that on October 29, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an executed service agreement with the Midwest Independent Transmission System Operator (Midwest ISO), for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of October 30, 2002 for this executed service agreement.

A copy of the filing was served on representatives of the Midwest ISO and other affected parties.

Comment date: November 19, 2002.

6. Idaho Power Company

[Docket No. ER03–92–000]

Take notice that on October 29, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Pinnacle West Capital Corporation under its open access transmission tariff in the above-captioned proceeding.

Comment Date: November 19, 2002.

7. El Paso Electric Company

[Docket No. ER03–93–000]

Take notice that on October 29, 2002, El Paso Electric Company filed an unexecuted transmission service agreement with Public Service Company of New Mexico in this proceeding.

Comment Date: November 19, 2002.

8. NorthWestern Corporation

[Docket No. ES03–8–000]

Take notice that on October 25, 2002, NorthWestern Corporation (NorthWestern) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to assume no more than $355,402,000 of First Mortgage Bonds; $67,010,325 of Junior Subordinated Debentures; $40,000,000 of Medium-Term Notes; and $62,700,000 of Transition Bonds of NorthWestern Energy, L.L.C., formerly known as Montana Power Company. NorthWestern also requested a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: November 12, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28441 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–7–000, et al.]

Georgia Power Company, et al.; Electric Rate and Corporate Filings

November 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Georgia Power Company

[Docket No. EC03–7–000]

Take notice that on October 29, 2002, Georgia Power Company filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act requesting all necessary authorizations for the transfer of certain transmission facilities from the Municipal Electric Authority of Georgia to Georgia Power Company in exchange for certain real property.

Comment Date: November 29, 2002.

2. EPCOR Energy (U.S.), G.P., EPCOR Merchant and Capital (US) Inc. EPCOR Power Development, Inc. EPDC, Inc., and Frederickson Power L.P.

[Docket No. EC03–8–000]

Take notice that on October 29, 2002, EPCOR Energy (U.S.), G.P., EPCOR Merchant and Capital (US) Inc., EPCOR Power Development, Inc., EPDC, Inc., and Frederickson Power L.P. (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of an intracorporate reorganization of the Applicants under a to-be-established U.S. parent, EPCOR Energy (U.S.), G.P.

Comment Date: November 29, 2002.

3. Twin Oaks Power, LP

[Docket No. EG03–10–000]

Take notice that on October 28, 2002, Twin Oaks Power, LP (Twin Oaks) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Twin Oaks will acquire, own, and operate a two unit, 300 MW lignite-fired electric generating plant known as the TNP One Generating Station, located in Robertson County, Texas. Twin Oaks' principal business offices are located at 101 Ash Street, San Diego, California.

Comment Date: November 22, 2002.

4. Nordic Energy of Ashtabula, L.L.C.

[Docket No. EG03–11–000]

Take notice that on October 30, 2002, Nordic Energy of Ashtabula, L.L.C. (NEA), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

NEA states that it will be engaged either directly or indirectly and exclusively in the business of owning and operating electric generation facilities. Specifically, NEA is developing an electric generating unit in the vicinity of Ashtabula, Ohio.

Comment Date: November 22, 2002.

5. City of Riverside, California

[Docket No. EL03–20–000]

Take notice that on October 29, 2002, the City of Riverside, California (Riverside) submitted a Petition for a Declaratory Order (1) determining that Riverside's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Riverside's becoming a Participating Transmission Owner; (2) approving Riverside's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Riverside's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Riverside.

Comment Date: November 21, 2002.

6. City of Banning, California

[Docket No. EL03–21–000]

Take notice that on October 29, 2002, the City of Banning, California (Banning) submitted a Petition for a Declaratory Order (1) determining that Banning's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Banning's becoming a Participating Transmission Owner; (2) approving Banning's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Banning's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Banning.

Comment Date: November 21, 2002.

7. California Independent System Operator Corporation Investigation of Wholesale Rates Of Public Utility Sellers of Energy and Ancillary Services In the Western Electricity Coordinating Council

[Docket Nos. ER02–1656–008 and EL01–68–024]

Take notice that on October 29, 2002, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's October 11, 2002 ''Order On Rehearing And Compliance Filing,'' 100 FERC ¶ 61,061 (2002), and the Commission's October 24, 2002 ''Notice of Extension of Time'' extending the date for submitting the instant compliance filing, issued in the above-referenced dockets.

The ISO has served this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and all parties in Docket Nos. EL00–95 and ER02–1656. In addition, the ISO has posted a copy of the filing on its Home Page.

Comment Date: December 2, 2002.

8. Sun River Electric Cooperative, Inc.

[Docket No. ES03–9–000]

Take notice that on October 28, 2002, Sun River Electric Cooperative, Inc. (Sun River) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowings under a loan agreement with the National Rural Utilities Cooperative Finance Corporation in an amount not to exceed $13,700,812 at any one time over a two-year period.

Sun River also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: November 22, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28440 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–3–000, et al.]

Sithe/Independence Power Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

October 17, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sithe/Independence Power Partners, L.P.

[Docket No. EG03–3–000]

Take notice that on October 15, 2002, Sithe/Independence Power Partners, L.P. (Sithe Independence) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations. Sithe Independence requested that the Commission determine that Sithe Independence is an EWG on and as of the future date that the Qualifying Facility status of its 1,060 MW electric generating facility in Oswego County, New York is terminated.

Comment Date: November 7, 2002.

2. Wolfskill Energy Center, LLC

[Docket No. EG03–4–000]

Take notice that on October 15, 2002, Wolfskill Energy Center, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for Commission determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Wolfskill, a Delaware limited liability company, proposes to own and operate a nominally rate 45 MW natural gas-fired, simple cycle electric generating facility to be located in Solano County, California. Wolfskill intends to sell the output at wholesale to an affiliated marketer.

Comment Date: November 7, 2002.

3. Appalachian Power Company

[Docket No. ER01–3122–003]

Take notice that on October 11, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing in compliance with the Letter Order issued in this Docket on May 6, 2002, an executed amended Interconnection and Operation Agreement between Appalachian Power Company and Duke Energy Wythe, LLC . The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 26, 2001. A copy of the filing was served upon the Virginia State Corporation Commission.

Comment Date: November 1, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–488–003]

Take notice that on October 11, 2002, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing certain revisions to its Operating Protocols for Existing Generators, FERC Electric Tariff, Original Rate Schedule No. 4, pursuant to the Commission's Order, Midwest Independent Transmission System Operator, Inc., 100 FERC 61,262. The Midwest ISO has requested an effective date of April 16, 2002.

The Midwest ISO has served a copy of its filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region and has electronically posted this filing on the Midwest ISO's website www.midwestiso.org under the heading ''Filing to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested partied upon request.

Comment Date: November 1, 2002.

5. Southern Company Services, Inc.

[Docket No. ER03–38–000]

Take notice that on October 15, 2002, Southern Company Services, Inc. (SCS) filed with the Federal Energy Regulatory Commission (Commission) a Tariff for the Sale, Assignment or Transfer of Transmission Rights (Tariff). The Tariff would allow SCS to reassign transmission rights to other eligible transmission customers. An effective date of October 16, 2002 has been requested.

Comment Date: November 1, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–39–000]

Take notice that on October 15, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to Attachment T of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, which reflect that the provisions in Attachment T concerning Michigan Retail Access only apply to American Transmission Company, LLC load (*i.e.*,Edison Sault Electric Company and Upper Peninsula Power Co.) located in the Upper Peninsula of Michigan and not generically to the Lower Peninsula of Michigan. The Midwest ISO has requested an effective date of November 25, 2002.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: November 5, 2002.

7. Accent Energy Midwest LLC

[Docket No. ER03–40–000]

Take notice that on October 15, 2002, Accent Energy Midwest LLC (Accent

Energy) tendered for filing a Notice of Succession in the above-referenced docket involving Accent Energy FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1–2.

Comment Date: November 5, 2002.

8. Puget Sound Energy, Inc.

[Docket No. ER03–41–000]

Take notice that on October 15, 2002, Puget Sound Energy, Inc. (PSE), tendered for filing Revision 3 to Exhibit C of the General Transmission Agreement, effective as of July 8, 2002 (Revision 3), amending the General Transmission Agreement entered into as of December 1, 1994, by the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (BPA) and PSE. A copy of the filing was served upon BPA.

PSE states that the IR Agreement relates to integrated transmission service by BPA with respect to certain of PSE's resources and to certain other contractual arrangements between BPA and PSE affecting such transmission service.

Comment Date: November 5, 2002.

9. Sithe/Independence Power Partners, L.P.

[Docket No. ER03–42–000]

Take notice that on October 15, 2002, Sithe/Independence Power Partners, L.P. (Sithe Independence) petitioned the Commission to (1) accept for filing Sithe Independence's FERC Electric Tariff No. 1 (Tariff No. 1) and grant Sithe Independence the blanket authority to make market-based sales of energy, capacity and ancillary services under its Tariff No. 1; (2) accept for filing the Amended and Restated Energy Purchase Agreement By and Between Sithe Independence and Consolidated Edison Company of New York, Inc. dated September 1, 2000 and amended on June 3, 2002, designated as Sithe Independence's Original Service Agreement No. 1; (3) accept for filing the Energy Purchase Agreement Between Sithe Independence and Niagara Mohawk Power Corporation dated July 24, 1992, and amended on November 16, 1992 and June 28, 2001 and supplemented by a letter on March 29, 2000, designated as Sithe Independence's Original Service Agreement No. 2; (4) grant Sithe Independence a waiver of the code of conduct requirement and the restriction on sales to two of its public utility affiliates with franchised service territories, PECO Energy Company and Commonwealth Edison Company; (5) grant Sithe Independence such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates; (6) grant Sithe Independence a waiver of the 60-day and 120-day notice requirements in Section 35.3 of the Commission's regulations, 18 CFR 35.3, to the extent necessary to permit this filing to become effective conditioned on and as of the future date that the Qualifying Facility status of its 1,060 MW electric generating facility in Oswego County, New York, is terminated; and (7) grant Sithe Independence a waiver of the Commission's filing requirements if and to the extent that the Commission determines that Sithe Independence's Original Service Agreement Nos. 1 and/or 2 are not in full compliance with the requirements of Order No. 614.

Comment Date: November 5, 2002.

10. Arizona Public Service Company

[Docket No. ER03–43–000]

Take notice that on October 15, 2002, Arizona Public Service Company tendered for filing a Notice of Cancellation for APS–FPC Rate Schedule No. 21 effective date August 13, 1963.

Notice of the proposed cancellation has been served to Electrical District No. 5 and The Arizona Corporation Commission.

Comment Date: November 5, 2002.

11. BOC Energy Services, Inc.

[Docket No. ER03–44–000]

Take notice that on October 15, 2002, BOC Energy Services, Inc. (BOC) petitioned Federal Energy Regulatory Commission (Commission) for acceptance of BOC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity and certain ancillary services at market-based rates; and the waiver of certain Commission regulations.

BOC intends to engage in wholesale electric power and energy purchases and sales as a marketer. BOC is not in the business of generating or transmitting electric power. BOC is a Delaware corporation engaged primarily in the business of serving the load of affiliate air separation facilities.

Comment Date: November 5, 2002.

12. Virginia Electric and Power Company

[Docket No. ER03–45–000]

Take notice that Virginia Electric and Power Company (the Company) on October 15, 2002, respectfully tendered for filing A Notice of Cancellation of the Service Agreements with Sempra Energy Trading Corp., effective December 16, 2002, designated as Seventh Revised Service Agreement No. 253 under FERC Electric Tariff, Second Revised Volume No. 5, Firm Point to Point Transmission Service Agreement and Seventh Revised Service Agreement No. 49 under FERC Electric Tariff, Second Revised Volume No. 5, Non-Firm Point-to-Point Transmission Service Agreement.

Copies of the filing were served upon Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: November 5, 2002.

13. Minnesota Power Superior Water, Light & Power Company and Rainy River Energy Corporation

[Docket No. ER03–46–000]

Take notice that on October 15, 2002, Minnesota Power and its affiliates Superior Water, Light & Power Company and Rainy River Energy Corporation filed an application requesting that the Commission waive the code of conduct requirement for Rainy River Energy Corporation (RREC) in order to permit its affiliate Split Rock Energy LLC to assist in the sale of RREC's resources to unaffiliated third-parties.

Comment Date: November 5, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28574 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000 and PF01–1–000]

Greenbrier Pipeline Company, LLC; Notice of Meetings for the Greenbrier Pipeline Project Draft Environmental Impact Statement

November 1, 2002.

The Federal Energy Regulatory Commission (FERC) will conduct comment meetings on environmental issues for the proposed Greenbrier Pipeline Project filed in the above-referenced dockets.

The meetings will start at 6:30 p.m. and end at 10 p.m. at the locations listed below:

Monday, November 18, 2002 Person County Office Building, Roxboro, North Carolina304 South Morgan Street, Roxboro, North Carolina 27573, (336) 597–1720.

Monday, November 18, 2002 Floyd County High School, Floyd, Virginia, 721 Baker Street, Floyd, Virginia 24091, (540) 745–9450.

Tuesday, November 19, 2002 Laurel Park High School, Martinsville, Virginia, 280 Laurel Park Avenue, Martinsville, Virginia 24112, (276) 632–7216.

Tuesday, November 19, 2002 Fayetteville High School, Fayetteville, West Virginia 515 W. Maple Avenue, Fayetteville, West Virginia 25840 (304) 574–0560.

Additional information may be obtained from the Commission's Office of External Affairs at 1 866 208–FERC (3372).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28437 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready For Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 1, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 7000–015.

c. *Date filed:* January 30, 2002.

d. *Applicant:* Orion Power New York GP II, Inc.

e. *Name of Project:* Newton Falls Project.

f. *Location:* On the Oswegatchie River, in St. Lawrence County, New York. This project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Jerry Sabattis, Reliant Energy, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2787 or Sam Hirschey Reliant Energy, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2790.

i. *Commission Contact:* Any questions concerning this notice should be addressed to Janet Hutzel, e-mail address *janet.hutzel@ferc.gov*, or telephone (202) 502–8675.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is now ready for environmental analysis. At this time we do not anticipate the need for preparing a draft EA. We intend to prepare one environmental document. The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any new license issued by the Commission. Recipients will have 45 days to provide the Commission with any comments on that document. All comments on the EA, filed with the Commission, will be considered in an Order taking final action on the license application. However, should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

l. The Newton Falls Project consists of two developments and has a total installed capacity of 2,220 kilowatts. The upper development includes a 600-foot-long dam, a 650-acre reservoir, a 1,200-foot-long bypassed reach, and a powerhouse with three turbine-generator units having a combined installed capacity of 1,540 kW. The lower development includes a 350-foot-long dam, a 9-acre reservoir, a 300-foot-long bypassed reach, and a powerhouse with one turbine-generator unit having an installed capacity of 680 kW. The upper development powerhouse discharges directly to the lower development impoundment and the project is operated in a storage-and-release peaking mode. The project produces an average of approximately 9,500 megawatt-hours of energy per year.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the

issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28442 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Nos. OAR–2002–0041 and OAR–2002–0036; AD–FRL–7406–4]

RIN 2060–AK34

National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List for Standards Under Section 112(c)(6) and 112(k) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the area source category list and inventory.

SUMMARY: This notice removes five area source categories of hazardous air pollutants (HAP) (*i.e.*, asphalt hot-mix production, fabricated metal products, paint and allied products, paper coated and laminated, packaging and transportation equipment manufacturing) from the list developed under section 112(c)(6) of the Clean Air Act (CAA). It also removes an additional area source category, Open Burning of Scrap Tires, from the anthropogenic stationary source categories included in the inventory analysis for section 112(c)(6) and 112(k). Consequently, that source category will no longer be a candidate for regulation under either section 112(c)(6) or 112(k). The revisions in this notice have not been reflected in any previous notices and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be without need for public comment based on the nature of the actions.

EFFECTIVE DATE: November 8, 2002.

ADDRESSES: The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara B. Driscoll, Policy, Planning and Standards Group, Emission Standards Division (MD–C439–04), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–0942, telephone number (919) 541–1051, electronic mail (e-mail): *driscoll.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket

The EPA has established an official public docket for this action under the Docket ID Nos. OAR–2002–0041 and OAR–2002–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access

You may access this Federal Register document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document. Once in the system, select ''search,'' then key in the appropriate docket identification.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules, *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. Revisions to the Section 112(c)(6) Source Category List

A. What Is the History of the Source Category List for the Seven HAP Specified Under Section 112(c)(6)?

Section 112(c)(6) of the CAA instructs us to list categories and subcategories of sources to assure that sources accounting for not less than 90 percent of the aggregated emissions of each of seven specific HAP (alkylated lead compounds, polycyclic organic matter (POM), hexachlorobenzene (HCB), mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans (TCDF) and 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)) are subject to standards under section 112(d)(2) or (d)(4). The EPA published a list of categories for section 112(d)(2) rulemaking pursuant to section 112(c)(6) on April 10, 1998 (63 FR 17838). In the April 1998 **Federal Register** notice, we provided a summary table of 1990 emissions inventory data for known sources of the seven specific HAP titled ''Summary of 1990 Emission Inventory Data for Section 112(c)(6) Pollutants (tons/yr).'' Emissions inventories consist of estimates of annual emissions to the air from all the sources for which data are available such as power plants, chemical plants, automobiles, and wildfires. Using these inventory data, we identified the sources of the total emissions of these seven HAP. However, we did not further evaluate certain types of sources that are not considered appropriate for section 112 regulation. The sources excluded

from further evaluation are wildfires and prescribed burning, mobile sources (cars, airplanes, etc.), residential combustion sources (fireplaces, woodstoves, oil and coal heaters), pesticide application, cigarette smoke, utility boilers, gasoline distribution stage II (evaporative emissions from gas stations), and consumer products usage.

The April 1998 **Federal Register** notice also contains a table of source categories subject to regulation which is titled ''1990 Anthropogenic Stationary Source Category Percentage Contributions and Associated Regulations.'' This table provides the individual percentage contributions for each source category toward the total 1990 anthropogenic stationary source emissions of each of the seven HAP. The table also lists any associated regulation for each source category. A review of the available data indicated that a substantial majority of source categories emitting the seven HAP had already been listed for regulation under section 112(d)(2) of the CAA or were subject to substantively equivalent regulation under other CAA authorities. Consequently, in April 1998, we listed only two additional source categories in response to the requirements in section 112(c)(6) to ensure that sources accounting for not less than 90 percent of the emissions of the seven HAP had been targeted for regulation. These were Open Burning of Scrap Tires and Gasoline Distribution (Aviation Fuel), which includes evaporative losses associated with the distribution and storage of aviation gasoline containing lead.

In addition to these two new source categories, EPA's list of categories subject to regulation in the April 1998 notice included both the major and area source components of many source categories for which we had not yet promulgated a section 112(d) regulation. We stated that:

> When the regulations for each of those categories are developed, EPA will analyze the data specific to those sources and determine, under section 112(d), in what manner requirements will be established. Some area categories may be negligible contributors to the 90 percent goal, and as such pose unwarranted burdens for subjecting to standards. These trivial source categories will be removed from the listing as they are evaluated since they will not contribute significantly to the 90 percent goal. (63 FR 17841)

B. Why Is EPA Revising the Section 112(c)(6) List?

This notice announces the removal of five area source categories, all of which are emission sources of POM, from the air toxics source category list identified in the April 1998 **Federal Register** notice (63 FR 17838). We are also removing an additional area source category, Open Burning of Scrap Tires, an emission source of POM, from the anthropogenic stationary source categories considered in the section 112(c)(6) inventory analysis. Consequently, Open Burning of Scrap Tires will no longer be a candidate for regulation under section 112(c)(6). With these changes, EPA is still able to meet the requirement to list categories and subcategories of sources to assure that sources accounting for not less than 90 percent of the aggregated emissions of each of seven HAP specified in section 112(c)(6) are subject to standards.

Specifically, we have determined that the following five area source categories of POM are not needed to achieve the statutory requirement to subject to standards those sources accounting for 90 percent of the aggregated emissions of POM: Asphalt Hot-Mix Production; Fabricated Metal Products; Paint and Allied Products; Paper Coated and Laminated, Packaging; and Transportation Equipment Manufacturing. This is because we now include the area source contribution of Gasoline Distribution (Stage 1) toward the 90 percent requirement for POM. We included this category as a candidate for listing in the April 1998 notice, but at that time it was not counted toward the 90 percent requirement since we had not yet determined whether we would develop regulations for the area source component of Gasoline Distribution (Stage 1). Subsequently, we added this category to the list of area source categories for regulation under a July 1999 **Federal Register** notice for the Integrated Urban Air Toxics Strategy (64 FR 38706) and, therefore, now list it as a source category subject to regulation under section 112(c)(6).

We are removing a seventh area source category of POM, Open Burning of Scrap Tires, from the list of anthropogenic stationary source categories subject to section 112(c)(6) inventory analysis; consequently it is no longer a candidate for regulation under section 112(c)(6). For reasons similar to our rationale for exclusion of a number of other source categories (*e.g.*, wildfires), we do not consider Open Burning of Scrap Tires to be a source category appropriate for regulation under section 112 of the CAA. Open burning of scrap tires is generally a result of arson, accident, or lightning. There is no business or industry that uses open burning of scrap tires. Moreover, this activity is already banned in all 50 States either through State statute or under health and public safety codes.

For the section 112(c)(6) inventory analysis, we used three surrogates for POM which are described in the April 1998 **Federal Register** notice (63 FR 17845). These are: (1) Extractable organic matter (EOM), (2) the sum of the seven polynuclear aromatic hydrocarbon (PAH) compounds that are probable human carcinogens (7–PAH), and (3) the sum of the sixteen polynuclear aromatic hydrocarbon compounds measured in EPA test method 610 (16–PAH). The area source category revisions in this notice impact the section 112(c)(6) analysis for two of these POM surrogates: 7–PAH and 16–PAH.

Because the area source category of Open Burning of Scrap Tires was estimated to represent 294 tons per year of 16–PAH in 1990, we removed this tonnage from the total 1990 emissions of 16–PAH subject to section 112(c)(6) analysis. Similarly, because Open Burning of Scrap Tires was estimated to contribute 52.5 tons per year of 7–PAH in 1990, we removed this tonnage from the total 1990 emissions of 7–PAH subject to section 112(c)(6) analysis.

Table 1 of this notice provides an updated summary based on the changes described in this notice of the source categories that emit 16–PAH and the percentage of 1990 emissions attributable to each category. Table 2 of this notice provides the same information for source categories that emit 7–PAH. In both Tables 1 and 2, we list the area and major source emissions contributions for each source category separately to show the relative contributions. For 16–PAH, Table 1 reflects an update of major versus area source contributions to emissions for two source categories: Primary Aluminum Production and Blast Furnaces and Steel Mills. For 7–PAH, Table 2 reflects an update of the major versus area source emissions contributions for Primary Aluminum Production. Table 3 of this notice contains the revised emissions contributions as a result of the updates to the major and area source contributions for each of these source categories. The update reflects that both Primary Aluminum Production and Blast Furnaces and Steel Mills are source categories consisting of 100 percent major sources.

Consistent with the discussion in the October 18, 2000 **Federal Register** notice on the National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing (65 FR 62414), Table 2 in today's notice reflects the removal of the source category and

POM emissions (7 tons in the form of 16–PAH) from Tire Manufacturing. This is because the POM emissions from this source category are due to combustion associated with the use of steam boilers in the rubber tire manufacturing process. We believe that these emissions are already accounted for under the POM (16–PAH) emission estimates for boilers.

In Tables 1 and 2 of this notice, we sum the percentage contributions for each pollutant to show the total emissions of 16–PAH and 7–PAH subject to standards. For 16–PAH, the total is 92.2 percent (of 8,404.69 tons per year) and for 7–PAH, it is 99.1 percent (of 314.4 tons per year).

II. Revisions to the Section 112(k) Area Source Category Inventory

A. What Is the History of the Emissions Inventory Development for POM Under Section 112(k)?

As discussed in the July 19, 1999 **Federal Register** notice on the National Air Toxics Program: The Integrated Urban Strategy (64 FR 38706), section 112(k)(3)(B) of the CAA requires us to identify not less than 30 HAP that are estimated to pose the greatest threat to public health in the largest number of urban areas as a result of emissions from area sources. The EPA's list of area source HAP includes POM. For the evaluation of POM as a potential public health threat in urban areas, and for the subsequent source category analysis, we used 7–PAH as a surrogate for the much larger, more complex and diverse mixture of POM.

Under section 112(k), we are required to identify sufficient area source categories to assure that sources accounting for 90 percent or more of the aggregate emissions of each of the 30 identified HAP are subject to standards under section 112(d). In determining the aggregate area source emissions of 7–PAH, EPA considered area source categories that were subject to existing standards, or which were expected to be subject to standards based on their inclusion in the existing regulatory agenda for area source categories. Since Open Burning of Scrap Tires was identified in the April 1998 **Federal Register** notice for section 112(c)(6) as an area source category we intended to regulate, we included it as a category for regulation under section 112(k) and counted its emissions of 7–PAH toward the total subject to the 90 percent requirement.

B. Why Is EPA Removing Open Burning of Scrap Tires From the Section 112(k) Inventory of Area Sources?

As previously discussed in today's notice, we do not consider Open Burning of Scrap Tires to be a source category appropriate for regulation under section 112 of the CAA. Therefore, it is no longer a candidate for regulation under section 112(k).

Because the area source category of Open Burning of Scrap Tires was estimated to contribute 45.5 tons per year of 7–PAH in urban areas in 1990, we removed this tonnage from the total 1990 emissions of 7–PAH subject to the section 112(k) area source category analysis. The effect of this change in the area source categories being listed under section 112(k) will be addressed in a future **Federal Register** notice.

III. Administrative Requirements

Today's notice is not a rule; it is essentially an information-sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be ''significant'' is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may either

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has determined that this action is not significant under the terms of Executive Order 12866.

Dated: November 4, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 16–PAH

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Aerospace Industry (Surface Coating)		1.64e+03	19.51	19.5
Petroleum Refining: All Processes		1.07e+03	12.77	32.3
Primary Aluminum Production		6.62e+03	7.88	40.2
Pulp and Paper Kraft Recovery Furnaces		6.49e+02	7.72	47.9
Coke Ovens: Charging, Topside & Door Leaks		5.39e+02	6.41	54.3
Coke Ovens: Pushing, Quenching & Battery Stack		5.17e+02	6.15	60.4
Blast Furnace and Steel Mills		4.99e+02	5.94	66.4
Industrial Organic Chemicals Manufacturing		2.23e+02	2.65	69.0
Pulp and Paper— Lime Kilns		1.83e+02	2.18	71.2
Industrial Coal Combustion		1.10e+02	1.31	72.5
Plastic Foam Products Manufacturing		1.08e+02	1.29	73.8
Fabricated Metals Products		1.07e+02	1.28	75.1
Chemical Manufacturing: Cyclic Crude and Intermediate Production		1.01e+02	1.20	76.3
Coke Ovens: By-Product Recovery Plants		7.78e+01	0.93	77.2

TABLE 1.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 16–PAH—Continued

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Industrial Wood/Wood Residue Combustion		5.50e+01	0.65	77.9
Paper Coated and Laminated, Packaging		5.43e+01	0.65	78.5
Napthalene Production		4.52e+01	0.54	79.5
Portland Cement Manufacture: Non-Hazardous Waste Kilns		3.83e+01	0.46	79.9
Transportation Equipment Manufacturing (SICs combined)		3.87e+01	0.46	80.4
Asphalt Roofing Production		3.72e+01	0.44	80.8
Secondary Lead Smelting		3.64e+01	0.43	81.2
Industrial Oil Combustion		3.56e+01	0.42	81.7
Gasoline Distribution (Stage 1)		3.55e+01	0.42	82.1
Commercial Coal Combustion		3.45e+01	0.41	78.9
Commercial Printing, Gravure		2.87e+01	0.34	82.8
Industrial Stationary IC Engines: Natural Gas		2.86e+01	0.34	82.8
Paints and Allied Products		2.37e+01	0.28	83.1
Phthalic Anhydride Production		1.83e+01	0.22	83.3
(Surface Coating) Ship Building and Repair		1.36e+01	0.16	83.4
Wood Household Furniture Manufacturing		1.11e+01	0.13	83.6
Commercial Oil Combustion		1.07e+01	0.13	83.7
Portland Cement Manufacturing: Hazardous Waste Kilns		1.26e+01	0.15	83.8
Commercial Wood/Wood Residue Combustion		7.16e+00	0.09	83.9
Industrial Stationary IC Engines: Diesel		3.51e+00	0.04	84.0
Chloroalkali Production		1.36e+00	0.02	84.0
AREA SOURCES				
Gasoline Distribution (Stage 1)	3.20e+02		3.80	87.8
Commercial Coal Combustion	1.38e+02		1.64	89.4
Industrial Coal Combustion	4.71e+01		0.56	90.9
Commercial Oil Combustion	4.26e+01		0.51	89.9
Secondary Lead Smelting	3.36e+01		0.40	90.3
Commercial Wood/Wood Residue Combustion	2.86e+01		0.34	91.2
Napthalene Production	1.94e+01		0.23	91.5
Industrial Stationary IC Engines: Natural Gas	1.90e+01		0.23	91.7
Industrial Oil Combustion	1.53e+01		0.18	91.9
Industrial Wood/Wood Residue Combustion	1.38e+01		0.16	92.0
Phthalic Anhydride Production	7.86e+00		0.09	92.1
Chloroalkali Production	3.16e+00		0.04	92.2
Chemical Manufacturing: Cyclic Crude and Intermediate Production	3.20e+00		0.04	92.2
Plastic Foam Products Manufacturing	1.56e+00		0.02	92.2
Industrial Stationary IC Engines: Diesel	1.51e+00		0.02	92.2
Total:	694	7060		

TABLE 2.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 7–PAH

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Primary Aluminum Production		1.41e+02	44.85	44.8
Coke Ovens: Charging, Topside & Door Leaks		7.18e+01	22.84	67.7
Coke Ovens: Pushing, Quenching & Battery Stacks		3.01e+01	9.57	77.3
Petroleum Refining: All Processes		1.60e+01	5.09	82.3
Commercial Coal Combustion		7.20e+00	2.29	84.6
Pulp and Paper: Kraft Recovery Furnaces		3.74e+00	1.19	85.8
Industrial Coal Combustion		2.16e+00	0.69	88.8
Portland Cement Manufacturing: Non-Hazardous Waste Kilns		2.08e+00	0.66	86.5
Portland Cement Manufacturing: Hazardous Waste Kilns		2.08e+00	0.66	87.1
Asphalt Roofing Production		1.43e+00	0.46	87.6
Industrial Wood/Wood Residue		9.68e-01	0.31	87.9
Industrial Stationary IC Engines: Natural Gas		6.18e−01	0.20	88.1
Pulp and Paper: Lime Kilns		2.50e−01	0.08	88.9
Commercial Wood/Wood Residue		2.02e−01	0.06	88.9
Industrial Stationary IC Engines: Diesel		6.25e−02	0.02	89.0
Industrial Oil Combustion		2.10e−02	0.01	89.0
AREA SOURCES				
Commercial Coal Combustion	2.88e+01		9.16	98.1
Industrial Coal Combustion	9.27e−01		0.29	98.7
Commercial Wood/Wood Residue Combustion	8.08e−01		0.26	98.4
Portland Cement Manufacturing: Non-Hazardous Waste Kilns	5.20e−01		0.17	98.8
Industrial Stationary IC Engines: Natural Gas	4.12e−01		0.13	99.0
Industrial Wood/Wood Residue Combustion	2.42e−01		0.08	99.1
Industrial Stationary IC Engines: Diesel	2.68e−02		0.01	99.1

TABLE 2.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 7–PAH—Continued

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Commercial Oil Combustion	2.40e−02		0.01	99.1
Total:	31.8	280		

TABLE 3.—REVISED MAJOR/AREA SOURCE DISTRIBUTIONS OF 1990 EMISSIONS

Source category	Major source contributions, percent	Area source contribution, percent
Blast Furnace and Steel Mills	100	0
Primary Aluminum Production	100	0

[FR Doc. 02–28502 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements filed October 23, 2002, through November 01, 2002, pursuant to 40 CFR 1506.9.

EIS No. 020445, DRAFT EIS, COE, Lake Sidney Lanier Project, To Continue the Ongoing Operation and Maintenance Activities Necessary of Flood Control, Hydropower Generation, Water Supply, Recreation, Natural Resources Management, and Shoreline Management, Section 10 and 404 permits, Dawson, Forsyth, Lumpkin, Hill and Gwinnett Counties, GA, Comment Period Ends: December 23, 2002, Contact: Charles H. McGregor (817) 886–1708.

EIS No. 020446, DRAFT EIS, JUS, AZ, Programmatic EIS—U.S. Border Patrol Activities within Borders Areas of the Tucson and Yuma Sectors, To Gain, Maintain, and Extend Control of the Border to Prevent Unlawful Entry of Persons into the U.S., Cochise, Santa Cruz, Pina and Yuza Counties, AZ, Comment Period Ends: December 23, 2002, Contact: Charles H. McGregor (817) 886–1708.

EIS No. 020447, FINAL EIS, COE, NJ, South River, Raritan River Basin Hurricane and Storm Damage Reduction and Ecosystem Restoration, Implementation, Middlesex County, NJ, Wait Period Ends: December 9, 2002, Contact: Josephine R. Axt (212) 264–5119.

EIS No. 020448, FINAL EIS, FRC, ID, C.J. Strike Hydroelectric Project (FERC NO. 2055), New License Issuance, Snake and Bruneau Rivers, Owyhee and Elmore Counties, ID, Wait Period Ends: December 9, 2002, Contact: John Blair (202) 502–6092.

EIS No. 020449, DRAFT EIS, AFS, MT, Windmill Timber Sale and Road Decomissioning Project, To Implement Timber Harvesting, Road Construction and Road Decommissioning in the Mill Creek Drainage of the Absaroka Mountain Range, Gallatin National Forest, MT, Comment Period Ends: December 23, 2002, Contact: Mike Dettori (406) 222–1892.

EIS No. 020450, FINAL SUPPLEMENT, FHW, WV, VA, Appalachians Corridor H, To Construct a 16-mile Highway Between Kerene to Parsons, Battlefield Avoidance, Randolph and Tucker Counties, WV, Wait Period Ends: December 27, 2002, Contact: Thomas J. Smith (304) 347–5928.

EIS No. 020451, FINAL SUPPLEMENT, NOA, ME, VT, CT, NH, MA, RI, Federal Lobster Management in the Exclusive Economic Service, Implementation, American Lobster Fishery Management Plan, NY, NH and MA, Wait Period Ends: December 09, 2002, Contact: Harold Mears (202) 482–5181.

EIS No. 020452, FINAL SUPPLEMENT, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Vegetation Management in the Coastal Plain/ Piedmont, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS and TX, Wait Comment Ends: December 9, 2002, Contact: Robert Wilhelm (404) 347–7076.

This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 020453, FINAL SUPPLEMENT, AFS, AL, GA, KY, NC, SC, TN, VA, WV, Vegetation Management in the Appalachian Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (WAS), AL, GA, KY, NC, SC, TN, VA and WV, Wait Period Ends: December 9, 2002, Contact: Robert Wilhelm (404) 347–7076. This document is available on the Internet at: *http://www.apo.lc.usbr.gov.*

EIS No. 020454, FINAL SUPPLEMENT, AFS, OK, AR, Vegetation Management in the Ozark/Quachita Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (WAS), Qzark, Quachita and St. Francis National Forests, AR and McCurtain and LeFLore Counties, OR , Wait Period Ends: December 09, 2002, Contact: Robert Wilhelm (404) 347–7076. This document is available on the Internet at: *http://www.southregion.fs.fed.us/planning/vmeis/index.htm.*

EIS No. 020455, FINAL EIS, IBR, CA, Imperial Irrigation District Water Conservation and Transfer Project and Draft Habitat Conservation Plan (HCP), To Implement a Grant and Section 10 Permit to Authorize the Incidental Take, Colorado River, Imperial County, CA , Wait Period Ends: December 09, 2002, Contact: John A. Johnson (202) 513–0673. This document is available on the Internet at: *http://www.lc.usbr.gov/lcrivops/html.*

EIS No. 020456, FINAL EIS, IBR, AZ, NV, CA, Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP), and Related Federal Actions, Implementation, Quantification Settlement Agreement (QSA), Lower Colorado River, in the

States of AZ, CA and NV, Wait Period Ends: December 9, 2002, Contact: John A. Johnson (202) 513–0673. This document is available on the Internet at: *http://www.lc.usbr.gov/lcrivops/html.*

Amended Notices

EIS No. 020370, DRAFT EIS, IBR, NM, UT, CO, Navajo Reservoir Operations, Proposed Operational Changes to Navajo Dam and Reservoir, Endangered Species Act (ESA), Related Flow Recommendations, Navajo Unit-San Juan River, NM, C0 and UT, Due: December 4, 2002, Contact: Ken Beck (970) 385–6558. Revision of FR Notice Published on 9/6/2002: CEQ Comment Period Ending 11/4/2002 has been Extended to 12/4/2002.

EIS No. 020376, DRAFT EIS, IBR, CA, Fish Passage Improvement Project at the Red Bluff Diversion Dam (RBDD), Improvements of Anadromous Fish Passage both Upstream and Downstream, Tehama-Colusa Canal Authority (TCCA), Tehama, Glenn, Colusa and Yolo Counties, CA, Comment Period Ends: November 30, 2002, Contact: Max Stodolski (530) 529–3895. Revision of FR Notice Published on 9/6/2002: CEQ Comment Period Ending on 10/21/2002 has been Extended to 11/30/2002.

Dated: November 5, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–28505 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–8]

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 12, 2002 (67 FR 11992).

Draft EISs

ERP No. D–AFS–L65395–AK Rating EC2, Otter Lake Timber Sale(s) Project, Implementation, Plan to Harvest and Sell Timber, Hoonah Ranger District, Tongass National Forest, AK.

Summary: EPA expressed environmental concerns about adverse impacts to water and air quality, cultural resources and to threatened and endangered species.

ERP No. D–AFS–L67041–OR Rating EO2, Granite Area Mining Projects, Proposals to Approve Plans of Operation on 16 Mining Claims within the Granite Creek Watershed, Implementation North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR.

Summary: EPA expressed environmental objections with the preferred alternative because preliminary determinations indicate that 10 of 16 mine plans would likely adversely affect listed mid-Columbian steel head, potential impacts to listed bull trout and Forest Service sensitive fish species, and a lack of alternatives to mitigate already impacted aquatic resources. EPA recommends that the final EIS include sufficient measures to protect and restore impaired water bodies and habitats of listed species.

ERP No. D–FAA–C51022–NJ Rating LO, Atlantic City International Airport, Air Service Improvements, Economic Development and Enhanced Efficiency and Safety, Airport Layout Plan Approval, Atlantic County, NJ.

Summary: EPA has a lack of objections with the project due to our early coordination with the FAA on the proposed action.

ERP No. D–FHW–F40408–00 Rating EC2, Trunk Highway 60 Reconstruction Project, Improvements from 1.8 miles south of the Minnesota-Iowa Border (120th Street) to I–90 north of the City of Worthington, Funding, U.S. Army COE Section 404 and NPDES Permits Issuance, Nobles County, MN and Osceola County, IA.

Summary: EPA expressed environmental concerns regarding water quality and natural resource impacts in addition to historic and cultural resource impacts. EPA requested further analyses in the FEIS and stronger purpose and need discussion in relation to the project.

ERP No. D–MMS–L02028–AK Rating EO2, Beaufort Sea Planning Area Multiples Sale 186, 195 and 202 Oil and Gas Lease Sales, Alaska Outer Continental Shelf, Offshore Marine Environment, Beaufort Sea Coastal Plain, and the North Slope Borough of Alaska.

Summary: EPA expressed environmental objections to the proposed action since it did not include the deferral lease blocks that were associated with the four deferral alternatives that would protect subsistence whale areas. EPA also expressed concern about the sufficiency of analyses addressing impacts of potential oil spills and noise disturbances to whale hunting, environmental justice, and threatened eiders. EPA recommended that the EIS's proposed alternative include deferral blocks that protects subsistence whaling and address EPA's concerns with additional information and analyses.

ERP No. D–SFW–L02029–AK Rating EC2, Swanson River Satellites Natural Gas Exploration and Development Project, Evaluation of a Right-of-Way Permit Application and U.S. Army COE Section 404 and NPDES Permits Issuance, Kenai National Wildlife Refuge, Kenai Peninsula, AK.

Summary: EPA identified environmental concerns related to the need to (1) minimize impacts from exploration activities, (2) maximize the reclamation and reuse of gravel, (3) minimize impacts to wetlands and their functions and (4) provided technical support of impact characterizations. EPA also recommended that government-to-government consultation with affected Tribal governments be conducted before issuance of the final EIS.

ERP No. DS–COE–L32010–00 Rating EC2, Columbia River Channel Improvement Project, Additional Information to Update the Disposal Plan and to Update the Project Economics, Columbia and Lower Willamette River Federal Navigation Channel, OR.

Summary: EPA expressed environmental concerns and recommended that the Corps prepare a cumulative effects analysis, explain how this project will affect the goals and objectives of the Comprehensive Conservation and Management Plan for the lower Columbia River estuary, and improve the discussion on project monitoring.

Final EISs

ERP No. F–AFS–L65387–AK Helicopter Landing Tours on the Juneau Icefield 2002 to 2006, Combination Fixed-Wing and Helicopter Landing Tour Operations to Antler Glacier Lake, Special Use Permits Issuance, Tongass National Forest, City and Borough of Juneau, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BIA–K03026–CA Teayawa Energy Center, Construction and Operation of a 600 megawatt (MW)(nominal output), Natural-Gas-Fired, Combined-Cycle Energy Center, On Indian Trust Land, Torres Martinez

Desert Cahuilla Indians Tribe, Coachella Valley, Riverside County, CA.

Summary: EPA reviewed the FEIS and found that the document adequately addresses the issues raised in our comment letter on the DEIS.

ERP No. F–FHW–C40155–NY

NY–17, Horseheads Project, Reconstruction from RM 17–6205–1069 to RM 14–6201–3040, Funding, Town and Village of Horseheads, Chemung County, NY.

Summary: EPA's comments on the DEIS were adequately addressed.

ERP No. F–FHW–G40168–LA

Bayou Barataria Bridge/LA–302 Replacement, LA–45/Jean Lafitte Boulevard to LA–3257/Privateer Boulevard, Funding and U.S. Army COE Section 404 and US Coast Guard Bridge Permits Issuance, Communities of Jean Lafitte and Barataria, Jefferson Parish, LA.

Summary: EPA expressed no further comments on the Final EIS and has no objection to the selection of the preferred alternative. EPA's comments were adequately addressed in the Final EIS.

ERP No. F–FRC–L05223–WA Martin Creek Hydroelectric Project (FERC Project No.10942), Construction, Operation and Maintenance of a 10.2-Megawatt (MW) Hydroelectric Run-of-River Facility, License Approval, Cascade Mountains, Martin and Kelley Creeks, Mt. Baker-Snoqualmie National Forest, King County, WA.

Summary: EPA continues to have environmental objections to the proposed project because it would undermine the environmental and biological protection provisions of the Northwest Forest Plan and would degrade water quality in Martin Creek, designated an ''extraordinary'' water body by the State of Washington. EPA recommended selection of the No Action alternative based on the negative environmental effects, negative net power benefits, and extremely small amount of power that would be generated by the project.

ERP No. F–NPS–C67000–NJ Maurice National Scenic and Recreational River (NS&RR) Comprehensive Management Plan, Implementation, Atlantic and Cumberland Counties, NJ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–G61040–TX Fort Davis National Historic Site, General Management Plan, Implementation, Fort Davis, TX.

Summary: EPA has no objection to the selection of the preferred alternative since the final EIS adequately responded to comments offered on the Draft EIS.

ERP No. FS–FRC–L05208–WA Irene Creek Hydroelectric Project, (FERC No.10100-002) and Anderson Creek Hydroelectric Project (FERC No. 10416–003), Construction and Operation, Issuance of Amended License Applications, Skagit and Whatcom Counties, WA.

Summary: EPA continues to have environmental objections to the proposed projects (and alternatives to it) because they would undermine Northwest Forest Plan protections, degrade pristine water quality found in Irene and Anderson Creek, and likely affect listed bull trout. Analyses in the EIS show that it would cost more to operate projects than the value of power produced and that an extremely small amount of power would be generated. For these reasons, EPA recommends that FERC select the No Action Alternative.

Dated: November 5, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–28506 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7406–3]

Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust

AGENCY: Environmental Protection Agency.

ACTION: Extension of period for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing an extension of the public comment period for its July 25, 2002 (67 FR 48648) Notice of Data Availability (NODA) on cement kiln dust to December 9, 2002.

DATES: The comment period for the Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust is extended and will close on December 9, 2002.

ADDRESSES: You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. RCRA–1999–0011. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to [*RCRA-docket@epamail.epa.gov*], Attention Docket ID No. RCRA–1999–0011. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Confidential information submitted by hand delivery or courier should be taken to the RCRA CBI Document Control Officer, U.S. EPA Crystal Station, 2800 Crystal Drive (7th floor), Arlington, VA 22202.

2. *By Mail Send your comments to:* RCRA Docket Information Center (5305T), U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Ave., NW., Room B–102, Washington, DC, 20460, Attention Docket ID No. RCRA–1999–0011.

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Docket Information Center (5305T), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room B–102, Washington, DC, 20460. Attention Docket ID No. RCRA–1999–0011. Such deliveries are only accepted during the

Center's normal hours of operation as identified below.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at 1301 Constitution Ave., NW., Room B–102, Washington, DC 20460. The RIC is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0270. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The public comments and supporting materials are also available electronically. See the **ADDRESSES:** Electronically section above for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or (703) 412–9810. For more detailed information on specific aspects of today's action, contact Anthony Carrell, U.S. Environmental Protection Agency (5306W), 1200 Pennsylvania Ave, NW., Washington, DC 20460, at (703) 308–0458, or e-mail: *carrell.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

Customer Service

In developing the Final Rule, we are trying to address the concerns of all our stakeholders. Your comments will help us improve this regulatory action. We invite you to provide different views on the new data received. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the report.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

Copies of the NODA, titled Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust, are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: *http://www.epa.gov/epaoswer/other/ckd/index.htm.* Printed copies of the proposal and related documents, can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

Background

The Agency issued a proposed rule titled Standards for the Management of Cement Kiln Dust on August 20, 1999 (64 FR 45631). In the proposed rule, EPA established a 90-day public comment period, which was extended to February 17, 2000. The Agency received a total of 52 comments. On May 11, 2001 the American Portland Cement Alliance (APCA) submitted a rulemaking petition to EPA pursuant to 7004(a) of the RCRA. EPA met with APCA on July 6, 2001 to discuss the petition. APCA provided groundwater monitoring data for 18 CKD disposal facilities from a collection of information on 35 plants that together acccounted for approximately 95 percent of the CKD landfilled in the United States in 2000. In a Notice of Data Availability, published July 25, 2002 (67 FR 48648), the Agency established a 60-day period to inspect and make public comment on the data. Subsequently, the Agency received a request from a stakeholder to extend the comment period another 30 days. EPA supports the request for an extension, and the comment period will be extended from September 23, 2002 to December 9, 2002.

Dated: October 31, 2002.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 02–28503 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. on Tuesday, November 12, 2002, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Part 366—Minimum Standards of Integrity and Fitness for an FDIC Contractor.

Discussion Agenda:

Memorandum re: BIF Assessment Rates for the First Semiannual Assessment Period of 2003.

Memorandum re: SAIF Assessment Rates for the First Semiannual Assessment Period of 2003.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 5, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–28608 Filed 11–5–02; 4:51 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 7, 2002, meeting open to the public. This meeting was cancelled.

DATE AND TIME: Thursday, November 14, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–13: Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee by counsel, Robert F. Bauer; National Republican Senatorial Committee by counsel, Alexander N. Vogel; National Republican Congressional Committee by General Counsel, Donald F. McGahn II.

Final Audit Report—Campbell for Senate.

Final Audit Report—Committee to Elect Lindsey Graham.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–28642 Filed 11–06–02; 11:08 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, November 13, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED:

- Approval of the 2003 Administrative and Non-Administrative Budget for the Financing Corporation.
- Amendment to the Federal Home Loan Bank of Cincinnati Capital Plan.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,

General Counsel.

[FR Doc. 02–28692 Filed 11–6–02; 2:34 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 November 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Donald Dean Nolan, Hawarden, Iowa; to acquire additional voting shares of First State Associates, Inc., Hawarden, Iowa, and thereby indirectly acquire additional voting shares of The Hawarden Banking Company, Hawarden, Iowa, and First State Bank, Hawarden, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Stephen R. Green Revocable Trust, Stephen R. Green, Trustee, Farmington, Missouri; to acquire additional voting shares of New Era Bancorporation, Inc., Fredericktown, Missouri, and thereby indirectly acquire additional voting shares of New Era Bank, Fredericktown, Missouri.

Board of Governors of the Federal Reserve System, November 4, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28415 Filed 11–7–02; 8:45 am]

BILLING CODE 6210–01–S

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 Web site 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 December 2, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. CenterState Banks of Florida, Inc., Winter Haven, Florida; to acquire 100 percent of the voting shares of CenterState Bank of Florida, Winter Haven, Florida.

Board of Governors of the Federal Reserve System, November 4, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28414 Filed 11–7–02; 8:45 am]

BILLING CODE 6210–01–S

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Proposed Somewhat Revised OGE Form 201 Ethics Act Access Form

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) a somewhat revised OGE Form 201 used by persons for requesting access to executive branch public financial reports and other covered records for three-year approval under the Paperwork Reduction Act. This proposed somewhat revised version of the form will replace the existing one.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by December 9, 2002.

ADDRESSES: Comments should be sent to Mr. Stuart Shapiro, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; Telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD: 202–208–8025; FAX: 202–208–8037. A copy of the proposed somewhat revised OGE Form 201 and the rest of the OGE submission package to OMB may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics has submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), a proposed somewhat revised OGE Form 201 ''Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records'' (OMB control # 3209–0002).

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under section 109(18)(D) of the Ethics in Government Act (the Ethics Act), 5 U.S.C. app. § 109(18)(D), is planning to modify and update the existing access form. That form, the OGE Form 201, collects information from, and provides certain information to, persons who seek access to SF 278 reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information about the identity of the requester, as well as any other person on whose behalf a record is sought, and a notification of prohibited uses of SF 278 reports. See section 105(b) and (c) of the Ethics Act, 5 U.S.C. app. § 105(b) and (c), and 5 CFR 2634.603(c) and (f) of OGE's executive branchwide regulations thereunder. Executive branch departments and agencies are encouraged to utilize the OGE Form 201, but they can, if they so choose, continue to use or develop their own forms as long as they contain all the required information.

The revisions proposed to part I of the OGE Form 201 would create: more space for requesters to enter their name, address, and organization; received date and filled date blocks for agency use to facilitate internal administrative processing; and a type of applicant block to make internal processing easier. The Office of Government Ethics is also proposing a couple of minor stylistic changes to the form title (to pluralize the references to SF 278 reports and other covered records) and to reflect the new 2002 edition date, in addition to updating the OGE paperwork contact official to reflect recent OGE organizational changes.

Also, OGE proposes to add reference in part III of the form, on ''other covered records,'' to two additional types of records that requesters may obtain by submitting the OGE Form 201. These types of ''covered records'' are: cover letters for OGE-approved gifts reporting waiver requests and cover letters for OGE-approved public reporting waiver requests for certain less than 130-day special Government employees. See sections 102(a)(2)(C) and 101(i) of the Ethics Act, 5 U.S.C. app. §§ 102(a)(2)(C) and 101(i) and 5 CFR 2634.304(f)(2) and 2634.205(b)(4) of OGE's executive branchwide regulations thereunder.

In addition, OGE proposes to modify the Privacy Act Statement in part II of the form. The Office of Government Ethics is in the process of updating the OGE/GOVT–1 system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records, and in which completed OGE Form 201s can be maintained). As a result, the Privacy Act Statement, which includes paraphrases of the routine uses, on the proposed modified OGE Form 201 will be revised. A summary of the anticipated changes relevant to that OGE Form 201 statement has been prepared for inclusion with the mark-up copy of the form as proposed for revision, which is available from OGE upon request. Once the new language in OGE's forthcoming Privacy Act notice is finalized (anticipated completion date is early in 2003), OGE will request permission from OMB to modify the OGE Form 201 (with notice to OMB at that time) without further paperwork clearance even though the final new wording will take effect after reclearance of the renewed form.

In part II of the form, OGE notes that it will adjust the referenced civil monetary penalty for prohibited uses of an SF 278 to which access has been gained when it is again adjusted in the next year or two. The penalty, under section 104(a) of the Ethics Act, 5 U.S.C. app. § 104(a), will likely be raised from the current $11,000 figure once OGE and the Department of Justice issue their next respective inflation adjustment rulemakings, anticipated in the summer or fall of 2003, in accordance with the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act. See 28 U.S.C. 2461 note. The civil monetary penalty was last adjusted in 1999 (see OGE's final rule at 64 FR 47095–47097 (August 30, 1999) and the Justice Department's final rule as codified at 5 CFR 85.3(a)(4) in particular, at 64 FR 47099–47104 on the same date). The future OGE rulemaking will again revise 5 CFR 2634.703 of the executive branch financial disclosure regulation to reflect the adjusted penalty. The Office of Government Ethics will request permission from OMB to revise the OGE Form 201 penalty amount reference once that adjustment takes effect (with notice to OMB at that time) without further paperwork clearance, even though the adjustment occurs after reclearance of the revised form. Moreover, any periodic future adjustments to that civil monetary penalty, pursuant to further rulemakings by OGE and the Justice Department under the inflation adjustment laws, will also be reflected in future editions of the form.

Since publication of the first round paperwork notice, and upon further evaluation of the business process associated with the OGE Form 201, OGE is withdrawing two of its previously proposed modifications to the form, and is proposing additional minor revisions to the form. The Office of Government Ethics proposes these further revisions to facilitate internal administrative processing and to expedite the transfer of copies of the records to the requester. These further proposed changes are described in detail below. The mark-up copy of the OGE Form 201 as proposed for revision, which is available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), shows all the changes that would be made.

The Office of Government Ethics proposes adding OGE's address, phone number, and fax number to the form header, moving the form number and edition date to the end of the form title, and moving the OMB control number to the lower right-hand corner of the first page of the form.

Also, in part I of the form, OGE proposes withdrawing OGE's initial proposal of including an office FAX number block and request date block. Moreover, OGE proposes adding a date field in the applicant's signature block and creating a block for applicants to indicate whether they would like to pick up the requested records or have OGE mail the records to them. Furthermore, OGE proposes removing the word ''Optional'' in the office telephone number block.

In addition, in part II of the form (Notice of Action), OGE proposes removing the ''Other. Explanation:'' block and adding a signature and date block for persons picking up the requested records.

Finally, under part II.C (Public Burden Information) of the form, OGE proposes replacing the phrase ''upper right-hand corner'' with ''lower right-hand corner'' to reflect the proposed location of the OMB control number.

In light of OGE's experience over the past three years (1999–2001), with a total of 667 non-Federal access requests received, the estimate of the average number of access forms expected to be filed annually at OGE by members of the public (primarily by news media, public interest groups and private citizens) is proposed to be adjusted from the current estimate of 172 to 222 (not

counting access requests by other Federal agencies or Federal employees). The estimated average amount of time to complete the form, including review of the instructions, remains at ten minutes. Thus, the overall estimated annual public burden for the OGE Form 201 for forms filed at OGE will increase from 29 hours in the current OMB paperwork inventory listing (172 forms × 10 minutes per form—number rounded off) to 37 hours (222 forms × 10 minutes per form—number rounded off). For the entire executive branch, OGE estimates that the overall usage of the form each year will average some 1,600.

The Office of Government Ethics expects that the revised form should be ready, after OMB clearance, for dissemination to executive branch departments and agencies in the winter of 2002. The OGE Form 201 as revised will continue to be made available free-of-charge as a downloadable Portable Document Format (PDF) file to the public as well as departments and agencies on OGE's Internet Web site (Uniform Resource Locator address: *http://www.usoge.gov*). The Office of Government Ethics will continue to permit departments and agencies to use the copy of the OGE Form 201 available on OGE's Web site or to develop and utilize their own, electronic versions of the OGE form, provided that they precisely duplicate the original to the extent possible. Agencies can also develop their own access forms, provided all the information required by the Ethics Act and OGE regulations is placed on such forms, along with the appropriate Privacy Act and paperwork notices with any attendant clearances being obtained by the agencies therefor.

For now, OGE itself accepts filing of a completed OGE Form 201 by mail, FAX, or in person, but does not permit E-mail or Internet online transmission. Similarly, requested copies of reports or other covered records are supplied by OGE as hard (paper) copies.

On June 19, 2002, OGE published its first round notice of the forthcoming request for paperwork clearance for the proposed somewhat revised OGE Form 201. *See* 67 FR 41728–41729). The Office of Government Ethics did not receive any comments in response to that notice, though one agency requested a copy of the proposed revised form.

In this second notice, public comment is again invited on the proposed somewhat revised OGE Form 201 as set forth in this notice, including specifically views on: the need for and practical utility of this proposed modified collection of information; the accuracy of OGE's burden estimate; the enhancement of quality, utility and clarity of the information collected; and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: November 1, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–28488 Filed 11–7–02; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9:30 a.m.–4 p.m., January 29, 2003.

Place: WestCoast Tri-Cities Hotel, 1101 North Columbia Center Blvd., Kennewick, WA. Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, and agency updates.

Matters to Be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include presentations and discussions on each tribal members respective environmental health activities, and agency updates.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Alan Crawford, Executive Secretary, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32 Atlanta, Georgia 30333, telephone 1–888–42-ATSDR (28737), fax 404/498–1744.

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: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28457 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.–8 p.m., December 3, 2002.

Place: YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–9922.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be Discussed: The agenda includes a discussion of the public health assessment, updates from the Public Health Assessment, Health Needs Assessment, Agenda, and Outreach and Communications, and the Guidelines and Procedures Workgroups. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT:

La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

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: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28452 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5:30 p.m., January 30, 2003. 5:30 p.m.–7:30 p.m., January 30, 2003. 8:30 a.m.–4 p.m., January 31, 2003.

Place: West Coast Tri-Cities, 1101 North Columbia Center Blvd., Kennewick, WA 99336. Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on introduction to public health assessment, continued discussion of the Hanford Community Health Project, agency updates, and an evening session with an endocrinologist.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: French Bell, Executive Secretary HHES, or Marilyn Palmer, Committee

Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

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: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28453 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–11]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Case-Control Study of Environmental Exposures and Genetic Susceptibility in Individuals with Multiple Sclerosis in Three Geographic Areas—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to serve the public by using the best science, taking responsive public health actions, and providing trusted health information to prevent harmful exposures and disease related to toxic substances. This legislation was, in part, in response to the lack of scientific information about potential adverse health effects resulting from exposure of a general population to hazardous substances.

Citizens across the nation living near hazardous waste sites have expressed concern about a perceived increase of multiple sclerosis (MS) in their communities and many believe this occurrence is directly linked to exposure to hazardous substances. Evidence indicates that multiple sclerosis is a complex disease with a multifactorial etiology determined by both environmental factors and genetic susceptibility. Although the specific biological mechanism of MS is unknown, one possibility is that an environmental exposure triggers an inappropriate type of immune response where the T-lymphocytes become sensitized to myelin which slows or blocks signals transmitted to the central nervous system. Unfortunately, basic epidemiologic data does not exist regarding the number of people affected with this disease, but estimates range from 250,000 to 400,000 people in the Unites States. MS differentially affects women, people in the 30 to 60 year-old age group, and Caucasians.

Recently, ATSDR collaborated with researchers from the Texas Department of Health, the Ohio Department of Health, and the Jackson County Missouri Health Department to conduct a prevalence study in order to respond to community concerns of multiple sclerosis and possible associations with hazardous waste sites. This research was conducted to establish methodologies for estimating MS prevalence and to determine the prevalence rates for this disease in three geographic areas near source(s) of hazardous waste: Lorain County, Ohio; the cities of Independence and Sugar Creek, Missouri; and a 19-county area surrounding Lubbock, Texas. Medical records of individuals from neurologists' offices were used to ascertain cases and a consulting neurologist for each geographic area reviewed the clinical and laboratory data available in the patient's medical record to verify diagnosis. No patients were contacted in this study.

ATSDR is currently proposing a case-control study that will examine specific environmental exposures that affect the immune system as well as specific genes that are associated with an immune response. Cases will include individuals who have been diagnosed with MS and were identified through the prevalence study conducted in Ohio, Missouri and Texas. Controls will be selected from patients who attended the same neurologists' office from which the cases arose and who meet eligibility requirements. Study participants will be asked to complete a questionnaire to ascertain exposure to heavy metals and other toxic chemicals either through occupational exposures, hobbies or lifestyle activities, or due to residential proximity to industry or hazardous waste sites. Participants will also be asked to provide a blood sample to test for exposure to possible infectious agents and to evaluate specific candidate genes as potential risk factors of disease.

To reduce the amount of time required by the respondents, Computer Assisted Telephone Interviews (CATI) will be conducted. Following completion of all respondent interviews, the data will be tabulated and analyzed, comparing high versus low exposed participants. The information collected in this proposed study will provide information on the potential role of environmental exposures and genetic factors in the development of multiple sclerosis.

There is no cost to respondents other than their time to participate in the study.

Respondents	Number of respondents	Number of responses/respondents	Average burden/response (in hours)	Total burden (in hours)
Cases	500	1	1	500
Controls	1,000	1	1	1,000
Total				1,500

Dated: October 30, 2002.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–28454 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–13]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: A Research Program to Develop Optimal NIOSH Alerts in Farming (OMB No. 0920–0501)—REVISION—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote ''safety and health at work for all people through research and prevention.'' Alerts are some of the primary publications by which NIOSH communicates health and safety recommendations to at-risk workers. Each Alert is mailed to workers affected by a particular health or safety hazard and contains information about the nature of the hazard, as well as recommendations for avoiding or controlling it. Despite the important role of Alerts in conveying health and safety information to workers, these publications have not been routinely pretested and evaluated for effectiveness. Therefore, it is important to continue research that examines the degree to which the NIOSH Alerts produce risk awareness, as well as comprehension, acceptance and use of the recommended health and safety measures.

The OMB-approved project, ''A Research Program to Develop Optimal NIOSH Alerts in Farming'' (0920–0501), applied theoretical advances in communication research to the development of NIOSH Alerts to ensure maximal effectiveness in conveying health and safety information to workers. This project applied psychology and communication theories to experimentally manipulate features of the NIOSH Alerts and examine the effects of these manipulations on the effectiveness of the Alert. To design these theory-based Alerts, the concepts of goal attainment imagery and risk imagery were applied. Goal attainment imagery asks the readers to imagine themselves carrying out the safety recommendations provided in the Alert, while risk imagery asks the readers to imagine themselves in a high risk situation where the safety recommendations are not followed.

Field research from the project, which applied these two types of imagery, has shown that farmers who received an Alert containing goal attainment imagery found the Alert easier to visualize, stronger, more convincing and more attention getting than a standard Alert. Farmers who received an Alert with goal attainment imagery reported heightened perceptions of risk awareness and more positive attitudes toward engaging in safety recommendations. In addition, they reported that they would be more likely to pass the information on to other farmers. No differences were found between farmers who received Alerts containing risk imagery and farmers who received a standard Alert. Therefore, goal attainment imagery seemed to have the strongest effect when included in the Alerts.

The original OMB-approved protocol proposed that a national mail-out survey would be conducted in order to test the generalizability of the data collected in the field. Farmers would receive an experimental (high imagery) or a standard version of an Alert along with a survey to complete and return to NIOSH. However, based on results from similar projects, we have learned that mail surveys generate low response rates. We propose changing the data collection format from a mail survey to a telephone survey. Farmers would receive an experimental version of the Alert and then be contacted approximately two weeks later to complete a telephone survey.

This change to the data collection format would serve three purposes. It is expected that the response rate for the telephone survey would be considerably higher than the response rate for the mail survey. Also, surveying a national sample of farmers would allow us to generalize the results to the broader population of farmers. Finally, the distribution of the experimental Alerts is similar to the way in which NIOSH Alerts are distributed to at risk workers and would present an opportunity to test the effectiveness of this distribution method. There is no cost to respondents.

Respondent	Number of respondents	Number of responses respondent	Average burden response (in hours)	Total burden (in hours)
Farmers	400	1	20/60	133
Total				133

Dated: November 4, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–28455 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–12]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Disease Surveillance Program—II. Disease Summaries (0920–0004)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention. Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service (PHS) since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC Surveillance Program is based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years, the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded.

CDC and the Council of State and Territorial Epidemiologists (CSTE) collect data on disease and preventable conditions in accordance with jointly approved plans. Changes in the surveillance program and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are reviewed and revised based on variations in the public's health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC at variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the Morbidity and Mortality Weekly Report (MMWR), providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: influenza, respiratory and enterovirus, arboviral encephalitis, rabies, Salmonella, Campylobacter, Shigella, foodborne outbreaks, waterborne outbreaks, and enteric virus. These data are essential on the local, state, and Federal levels for measuring trends in diseases, evaluating the effectiveness of current prevention strategies, and determining the need for modifying current prevention measures.

This request is for extension of the data collection for three years. Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each.

The total estimated annualized burden is 6,048 hours. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden in Hours
State and local health officials in 50 states/territories	864	28	15/60	6,048
Total				6,048

Dated: November 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–28456 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee for Injury Prevention and Control, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Advisory Committee for Injury Prevention and Control of the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period, through October 28, 2004.

For further information, contact Louise Galaska, Executive Secretary, Advisory Committee for Injury Prevention and Control, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341, telephone 770/488–4694 or fax 770/488–1670.

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: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28451 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Meetings/Opportunity for Public Comment: Interagency Committee on Smoking and Health (ICSH) Cessation Subcommittee

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.

Agency: Department of Health and Human Services, Centers for Disease Control and Prevention's Office on Smoking and Health.

Date and Time: November 14, 2002, 8:30 a.m.–1 p.m.

Place: The Westin Westminster, 10600 Westminster Boulevard, Westminster, Colorado, 80020, Telephone 303/410–5000.

Date and Time: December 3, 2002, 8:30 a.m.–1:00 p.m.

Place: Hyatt Regency O'Hare at O'Hare International Airport, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018, Telephone (847) 696–1234.

Purpose: The ICSH Cessation Subcommittee is convening two public meetings and soliciting comments to obtain input from key audiences who must work in a coordinated manner to successfully promote tobacco use cessation. Input should be focused on (1) opportunities to promote tobacco use cessation, (2) the strategies to overcome barriers and challenges faced by each group to ensure these objectives are implemented, and (3) the types of support DHHS could provide. Individuals and organizations are encouraged to comment in one or both of the following ways: (1) In writing, by submission through the mail, or e-mail; (2) in person, at two public meetings that will be convened in Denver, CO, and Chicago, IL. Comments will also be accepted during the public meetings.

Status: Open to the public, limited only by the space and time available. If you would like to attend the public meetings, you are encouraged to register by providing your name, title, organization name, address, and telephone number to Ms. Jessica Porras, (address below). If you would like to speak at the meetings, please notify Ms. Porras when you register. Written comments may be submitted until December 20, 2002.

To submit electronic comments, send via e-mail to *jporras@cdc.gov*. To submit comments by mail, send to: ICSH Cessation Subcommittee Public Comments (Attn: Ms. Jessica Porras), Office on Smoking and Health, 200 Independence Avenue, SW., Room 317B, Washington, DC 20201.

Matter to be Discussed: The ICSH Cessation Subcommittee is charged with making recommendations on how best to promote tobacco use cessation. The Subcommittee will develop a report, to be submitted by the Chair of the ICSH to the Secretary of HHS, which contains action steps for both a Secretary's initiative and public-private partnerships to achieve this outcome. Background documents on the ICSH and the ICSH Cessation Subcommittee are available at *http://www.cdc.gov/tobacco/ICSH/index.htm*. Submitted comments will be posted on the Internet at *http://www.cdc.gov/tobacco/ICSH/index.htm*.

For Further Information Contact: Ms. Jessica Porras, Office on Smoking and Health, 200 Independence Avenue, SW., Suite 317B, Washington, DC 20201, Telephone 202/205–8500 or facsimile 202/205–8313 or e-mail: *jporras@cdc.gov*.

The November 14, 2002 meeting notice is being published less than 15 days prior to the meeting due to difficulty of coordinating the attendance of members because of conflicting schedules.

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: November 4, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 02–28436 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–29/30, CMS–317, CMS–319, CMS–2746, and CMS–R–293]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as 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.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Request for Certification as Rural Health Clinic and Rural Health Clinic Survey Report Form and Supporting Regulations in 42 CFR 491.1–491.11.

Form No.: CMS–0029/0030 (OMB# 0938–0074).

Use: The Form CMS–29 is utilized as an application to be completed by suppliers of RHC services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Online Survey and Certification and Reporting System (OSCAR) by the CMS Regional Offices (RO). The Form CMS–30 is an instrument used by the State survey agency to record data collected in order to determine RHC compliance with individual conditions of participation and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction (keypunching) and retrieval into OSCAR at the CMS ROs. The form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.

Frequency: Annually.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 661.

Total Annual Responses: 661; Total Annual Hours: 1,157.

2. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: State Medicaid Eligibility Quality Control (MEQC) Sampling Plan and Supporting Regulations in 42 CFR 431.800–431.865.

Form No.: CMS–317 (OMB# 0938–0146).

Use: The State MEQC sampling plan is necessary for CMS to monitor the States' operation of the MEQC system for States performing the traditional sampling process. The sampling plan includes all data involved in the States' sample selection process—population sizes and sample frame lists, sample sizes, sample selection procedures, and claim collection procedures.

Frequency: Semi-annually.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 55.

Total Annual Responses: 110.

Total Annual Hours: 2,640.

3. *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: State Medicaid Eligibility Quality Control (MEQC) Sample Section Lists and Supporting Regulations in 42 CFR 431.800—431.865.

Form No.: CMS–0319 (OMB# 0938–0147).

Use: The sample selection lists contain identifying information on Medicaid beneficiaries and is the basis for the cases that States review to determine the accuracy of the Medicaid eligibility determinations. The Regional Office uses this list to monitor State review activity.

Frequency: Monthly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 55.

Total Annual Responses: 660.

Total Annual Hours: 5,280.

4. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: End Stage Renal Disease Death Notification 42 CFR 405.2133.

Form No.: CMS–2746 (OMB# 0938–0448).

Use: This form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. The form's primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients.

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government.

Number of Respondents: 4,000.

Total Annual Responses: 56,258.

Total Annual Hours: 9,564.

5. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Medicare Telephone Customer Satisfaction Survey.

Form No.: CMS–R–293 (OMB# 0938–0780).

Use: In response to the National Partnership for Reinventing Government and Government Performances and Results Act (GPRA), CMS is implementing a number of initiatives to measure and then improve the customer service that is provided by Medicare Call Centers, that service over 21 million calls annually.

Frequency: On occasion, simi-annually, other (single 800# survey).

Affected Public: Individuals or Households; Number of Respondents: 50,000.

Total Annual Responses: 50,000.

Total Annual Hours: 3,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS 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 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 31, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–28423 Filed 11–7–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Maryland State Plan Amendment 02–05

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 19, 2002, Suite 216, The Public Ledger Building, 150 S. Independence Mall West, Philadelphia, Pennsylvania 19106, at 10 a.m., to reconsider our decision to disapprove Maryland State Plan Amendment 02–05.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, Office of Hearings, Centers for Medicare & Medicaid Services, Suite L, 2520 Lord Baltimore Drive, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Maryland State Plan Amendment (SPA) 02–05. This SPA was disapproved on August 26, 2002.

In this amendment, Maryland proposes to cover targeted case management services for abused and neglected children under foster care. At issue is whether the Centers for Medicare & Medicaid Services properly

concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that the proposed services were within the statutory definition of case management services found in section 1915(g)(2) of the Social Security Act (the Act); (2) the proposed services are available without charge to the user and thus payment under the amendment is not reasonable and necessary and would duplicate payment under other program authorities; and (3) the amendment would restrict beneficiary freedom of choice by limiting providers to employees of public welfare agencies.

Medicaid coverage of targeted case management is authorized by section 1915(g) of the Act, which defines case management as services that assist beneficiaries in gaining access to needed services and does not include the direct provision of those services. Because the services proposed as Medicaid targeted case management are segments of child welfare services related to the foster care program, CMS is of the belief that they are integral components of the direct services and administrative functions of child welfare services.

During conversations between CMS and the State of Maryland, the State cited section 8435 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647. In this section Congress clarified that the Secretary may not deny approval of either a SPA or a claim on the basis that the state is required to provide such services under state law, or is, or was otherwise paying for the services using non-Federal funds. However, section 8435 also expressly stated that this was not to be construed to require the Secretary to make payment for case management services that are provided without charge to the users of such services. Approval of SPA 02–05 would be contrary to this express statutory provision, since this SPA seeks payment from Medicaid program for services that are available without charge to the users.

In addition, while states are free to set qualifications for providers, a state must comply with Medicaid law and regulations concerning freedom of choice at section 1902(a)(23) of the Act and the implementing regulation at 42 CFR 431.51. These provisions require that a state plan permit beneficiaries to obtain services from any qualified provider that undertakes to provide the services. Section 1915(g)(1) of the Act states ''The provision of case management services under this subsection shall not restrict the choice of the individual to receive assistance in violation of section 1902(a)(23).''

Section 1116 of the Act and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Maryland SPA (02–05).

The notice to Maryland announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Georges C. Benjamin, M.D.
Secretary, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201.

Dear Dr. Benjamin: I am responding to your request for reconsideration of the decision to disapprove Maryland State Plan Amendment (SPA) 02–05. This SPA was disapproved on August 26, 2002.

In this amendment, Maryland proposes to cover targeted case management services for abused and neglected children under foster care. At issue is whether the Centers for Medicare & Medicaid Services (CMS) properly concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that the proposed services were within the statutory definition of case management services found in section 1915(g)(2) of the Social Security Act (the Act); (2) the proposed services are available without charge to the user and thus payment under the amendment is not reasonable and necessary and would duplicate payment under other program authorities; and (3) the amendment would restrict beneficiary freedom of choice by limiting providers to employees of public welfare agencies.

Medicaid coverage of targeted case management is authorized by section 1915(g) of the Act, which defines case management as services that assist beneficiaries in gaining access to needed services and does not include the direct provision of those services. Because the services proposed as Medicaid targeted case management are segments of child welfare services related to the foster care program, CMS is of the belief that they are integral components of the direct services and administrative functions of child welfare services.

During conversations between CMS and the State of Maryland, the State cited section 8435 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647. In this section Congress clarified that the Secretary may not deny approval of either an SPA or a claim on the basis that the state is required to provide such services under state law, or is, or was otherwise paying for the services using non-Federal funds. However, section 8435 also expressly stated that this was not to be construed to require the Secretary to make payment for case management services that are provided without charge to the users of such services. Approval of SPA 02–05 would be contrary to this express statutory provision, since this SPA seeks payment from the Medicaid program for services that are available without charge to the users.

In addition, while states are free to set qualifications for providers, a state must comply with Medicaid law and regulations concerning freedom of choice at section 1902(a)(23) of the Act and the implementing regulations at 42 CFR 431.51. These provisions require that a state plan permit beneficiaries to obtain services from any qualified provider that undertakes to provide the services. Section 1915(g)(1) of the Act states ''The provision of case management services under this subsection shall not restrict the choice of the individual to receive assistance in violation of section 1902(a)(23).'' Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Maryland SPA 02–05.

I am scheduling a hearing on your request for reconsideration to be held on December 19, 2002, Suite 216, The Public Ledger Building, 150 S. Independence Mall West, Philadelphia, Pennsylvania 19106, at 10 a.m. to reconsider our decision to disapprove Maryland SPA 02–05.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.

Sec. 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–28469 Filed 11–7–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2912]

Final Guidance for Industry on the Development of Supplemental Applications for Approved New Animal Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#82) entitled ''Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs.'' This guidance explains how and when drug sponsors may use data collected for original new animal drug applications (NADAs) to support the technical sections of a supplemental NADA. The guidance also explains when the Center may, under existing statutes or regulations, require the submission of new data. Finally, the guidance delineates the instances in which a sponsor will generally need to file a new NADA rather than a supplemental application.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the final guidance document.

FOR FURTHER INFORMATION CONTACT: Marilyn N. Martinez, Office of New Animal Drug Evaluation (HFV–130), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7577, e-mail: *mmartine@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115) was signed into law. Section 403 of FDAMA requires FDA to provide information regarding approval of supplemental applications for approved products.

Section 403(b)(2) of FDAMA requires that FDA issue guidance on specific data requirements for supplemental NADAs in order to prevent duplication of previously submitted data. In the **Federal Register** of February 8, 2000 (65 FR 6214), FDA announced the availability of a draft guidance for industry entitled ''Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs.'' The draft guidance illustrated the various types of supplemental applications and their dependence on new data. This draft guidance explained how and when drug sponsors could use data accepted in support of an original application to support supplemental applications. The draft guidance also explained when a sponsor should submit a new NADA rather than a supplemental NADA. The agency received no comments on the draft guidance. The content of the final guidance is the same as the draft.

''Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs'' demonstrates the agency's dedication to assisting the sponsor in creating a project development strategy and to fostering a discussion between the sponsor and the agency. With this in mind, the guidance is organized in a user-friendly format with two distinctive sections. The first section separates supplemental applications into two categories: Category I includes applications that do not ordinarily require additional data and category II includes applications that may require additional data. The guidance then lists the 14 types of supplemental applications in each category as well as the instances in which a sponsor generally will need to file a new NADA rather than a supplemental NADA.

The second section is dedicated to clarification of category II supplemental applications and the data to meet the technical section requirements. The data CVM would recommend be submitted for each category II supplement are provided in tables. The tables indicate if: (1) New data will generally be needed, (2) existing data included in a previously approved application will generally suffice, or (3) the nature of the supplemental application will dictate whether or not new data are generally needed. A comment section follows each table providing explanations and suggestions to the sponsor. The guidance also cross-references several FDA documents relating to the processing of supplemental applications, providing further assistance to the sponsor.

This final level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the development of supplemental applications for approved new animal drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this final guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The final guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cvm*.

Dated: October 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28472 Filed 11–7–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 30-day Proposed Information Collection: Indian Health Service Loan Repayment Program.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the (HHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was published in the Federal Register (67 FR 53956) and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

Proposed Collection:

Title: 09–17–0014, ''Indian Health Service Loan Repayment Program.''

Type of Information Collection Request: Extension of a currently approved collection.

Form Number: None.

Forms: The IHS Loan Repayment Program Information Booklet contains the instructions and the application formats.

Need and Use of Information Collection: The IHS Loan Repayment Program (LRP) identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and will to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract under which the IHS agrees to repay part or all of the indebtedness for professional training education. In exchange, the health professionals agree to serve for a specified period of time in IHS health care facilities. Eligible health professionals that wish to apply must submit an application to participate in the program. The application requests personal, demographic and educational training information, including information on the educational loans of the individual for which repayment is being requested (*i.e.,* date, amount, account number, purpose of each loan, interest rate, the current balance, etc.). The data collected is needed and used to evaluate applicant eligibility; rank and prioritize applicants by specialty; assign applicants to IHS health care facilities; determine payment amounts and schedules for paying the lending institutions; and to provide data and statistics for program management review and analysis.

Affected Public: Individual and households.

Type of Respondents: Individuals.

Burden Hours: The table below provides the estimated burden hours for this information collection.

Burden is the time it takes for respondents to complete the data collection instruments:

Estimated Burden Hours

Data collection instrument	Estimated no. of respondents	Responses per respondent	Average burden hour per response*	Total annual burden hrs
Section I	425	1	0.25 (15 mins)	106.0
Section II	425	1	0.50 (30 mins)	213.0
Section III	425	4	0.25 (15 mins)	425.0
Contract	425	1	0.33 (20 mins)	140.0
Affidavit	425	1	0.17 (10 mins)	72.0
Lender Certificate	1700	1	0.25 (15 mins)	425.0
Total	2125			1381

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601. Telephone non-toll free (301) 443–5938; Fax: (301) 443–2316, or e-mail: *lhodahkw@hqe.ihs.gov*.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before December 9, 2002.

Dated: October 24, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 02–28471 Filed 11–7–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Chemical Optimization of Molecular-Targeted Anticancer, Antiviral and Antimicrobial Drug Leads

An opportunity is available for a Cooperative Research and Development Agreement (CRADA) for the purpose of collaborating with the National Cancer Institute (NCI), Developmental

Therapeutics Program (DTP), Screening Technologies Branch (STB), on further research and development to optimize chemical structures of lead compounds exhibiting molecular-targeted anticancer, antiviral and/or antimicrobial activities.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice of opportunities for cooperative research and development.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710, as amended; and Executive Order 12591 of April 10, 1987), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) for collaborative optimization of small-molecule screening leads for potency and pharmaceutical properties consistent with clinical development. The leads have been identified by STB using high-throughput screening and preliminary structure/activity study of >140,000 samples from the NCI Repository addressing a number of molecular targets of potential therapeutic significance. More specifically, a medicinal chemistry partner is sought for collaborative R&D to identify and resolve potential structural problems/features related to toxicity, formulation, chemical stability, metabolism, etc. Based on this analysis, lead compounds may be directly subjected to secondary and *in vivo* testing or a series of derivatives/analogs may be designed to obviate problems. In a second stage, *in vivo* active compounds will be subjected to additional analysis and analogs will be synthesized to further optimize structure/activity properties. Any CRADA for the biomedical use of this technology will be considered. The CRADA would have an expected duration of one to five years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to elect a non-exclusive or exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Bjarne Gabrielsen, Ph.D., Technology Transfer Branch, National Cancer Institute-Frederick, Fairview Center, Room 500, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquiries should be directed to: Robert Shoemaker, Ph.D., Chief, Screening Technologies Branch, Developmental Therapeutics Program, Bldg. 440, P.O. Box B, National Cancer Institute, Frederick, MD 21702 (phone 301–846–6845; FAX 301–846–6844; e-mail: *shoemaker@dtpax2.ncifcrf.gov*.)

DATES: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential CRADA proposals, preferably two pages or less, must be submitted to the NCI. Review of proposals will begin within 90 days from date of this publication and will continue until a suitable collaborator(s) is identified. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

SUPPLEMENTARY INFORMATION:

Technology Available

DTP scientists within the STB have extensive experience with both cell-free and cell-based molecular targeted screens and a track record of moving screening discoveries into clinical testing. Targeting the HIF–1–α (Hypoxia Inducible Factor-1) and CEBP–α (CCAAT/Enhancer Binding Protein α) signaling pathways relevant to cancer are among the current top priorities. Substantial effort has also been directed recently towards identification of novel inhibitors of HIV–1 assembly. Additional opportunities are anticipated.

Technology Sought

Accordingly, DHHS now seeks collaborative arrangements for chemical optimization of drug screening leads. The successful Collaborator should possess experience in the following areas at a minimum: Evaluation of structural features of lead molecules, design of derivative molecules with advantageous properties, solid and solution phase synthesis of individual compounds and focused libraries, molecular modeling of ADME drug properties, etc. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as development of the technology toward commercialization. The role of the National Cancer Institute-Screening Technologies Branch in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with pertinent available reagents (such as authentic standards for lead molecules) for investigation/evaluation.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical expertise as outlined in the CRADA Research Plan.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern patent rights to CRADA inventions.

Dated: November 1, 2002.

Kathleen Sybert,

Chief, Technology Transfer Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 02–28540 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S.

Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

New Gene Expressed in Prostate Cancer and Methods of Use

TK Bera, C Wolfgang, I Pastan (NCI), B Lee, J Vincent;

DHHS Reference No. E–005–2002 filed Nov. 14, 2001;

Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov.*

A new polypeptide is described in this invention that is specifically detected in the cells of the prostate. This polypeptide has been termed Novel Gene Expressed In Prostate (NGEP). There are potential claims to the NGEP gene, polynucleotides encoding NGEP, antibodies to NGEP, methods for using an NGEP polypeptide, polynucleotide, or antibody, and pharmaceutical compositions containing any of the above NGEP-related molecules. This invention might be useful in prostate cancer diagnostics, such as an assay to detect prostate cancer, or as a therapeutic directed towards prostate cancer.

Use of Interferon-Inducible 2',5'-Oligoadenylate-Dependent RNase in the Diagnosis, Prognosis, and Treatment of Prostate Cancer

J. Carpten (NHGRI), J. Trent (NHGRI), J. Smith, P. Walsh, W. Isaacs, D. Stephan, and N. Nupponen (NHGRI);

PCT Application PCT/US02/19516 (DHHS Ref. E–196–01/1), claiming priority to a U.S. Provisional Patent Application filed on June 20, 2001;

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

This invention pertains to the use of interferon-inducible 2',5'-oligoadenlyate-dependent RNase L in the diagnosis, prognosis and treatment of cancer, particularly prostate cancer. The inventors have identified a potential prostate cancer susceptibility locus, which has been designated HPC1 due to its putative link to hereditary prostate cancer. HPC1 may lead to an early, sensitive and accurate method for detecting cancer or a predisposition to cancer, especially prostate cancer, in a mammal. In addition, such claimed methods can be used to monitor onset and progression of cancer, as well as a patient's response to a particular treatment.

Signal Transduction Inhibitor Compounds in Clinical Trials as Cancer Therapeutics

Elise C. Kohn, Lance A. Liotta, Christian C. Felder (NCI);

U.S. Patent 5,359,078 issued October 25, 1994;

U.S. Patent 5,482,954 issued January 9, 1996;

U.S. Patent 5,498,620 issued March 12, 1996;

U.S. Patent 5,705,514 issued January 6, 1998;

U.S. Patent 5,880,129 issued March 9, 1999;

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

The above issued patents relate to azole, diazole, and triazole compounds that appear to inhibit signal transduction and inhibit invasion and metastasis of malignant solid tumors. A number of these compounds are in phase I, II and III clinical trials for specific indications, and might be useful in other indications as well.

These issued patents claim a number of compositions of matter, pharmaceutical compositions of said compounds, and methods of using said compounds.

Dated: November 4, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–28536 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Tissue Microosmometer

Ferenc Horkay, Peter J. Basser, Adam Berman (NICHD)

DHHS Reference No. E–280–2002/0 filed Aug. 07, 2002

Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

This new tissue microosmometer allows for the quantification of minor changes in the swelling properties of different tissues (*e.g.* cartilage) using very small amounts of tissue, and can be used as a potential diagnostic technique to detect early stages of cell or tissue injury such as cartilage degeneration or disorder. Varying the vapor pressure in the environment of the device induces controlled changes in the osmotic pressure of a tissue layer attached to the surface of a flat quartz crystal. Variation in the swelling degree is measured with high sensitivity and reliability by monitoring the change in resonance frequency of the quartz crystal. The device requires less than one microgram of sample, and the small tissue sample allows for an extremely fast response time. The device is well suited to the study of expensive or limited availability biological or macromolecular samples.

Method for Convection Enhanced Delivery of Therapeutic Agents

Edward H. Oldfield (NINDS)

DHHS Reference No. E–202–2002/0 filed Sep. 24, 2002

Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a method for monitoring the spatial distribution of therapeutic substances by MRI or CT that have been administered to tissue using convection-enhanced delivery, a technique that is the subject of NIH-owned U.S. Patent No. 5,720,720. In one embodiment, the tracer is a molecule,

detectable by MRI or CT, which functions as a surrogate for the motion of the therapeutic agent through the solid tissue. In other particular embodiments, the tracer is the therapeutic agent conjugated to an imaging moiety. The method of this invention uses non-toxic macromolecular MRI contrast agents comprised of chelated Gd(III). In particular, the surrogate tracer used in this invention is a serum albumin conjugated with either a gadolinium chelate of 2-(p-isothiocyanotobenzyl)-6-methyldiethylenetriamine pentaacetic acid or with iopanoic acid. These macromolecular imaging agents have clearance properties that mimic the pharmacokinetic properties of co-administrated drugs, so as to be useful in quantifying the range and dosage level of therapeutic drugs using MR imaging.

Refinement of Isointensity Surfaces

Peter Yim (CC)
DHHS Reference No. E–078–2002/0 filed Feb 22, 2002
Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a method for reconstructing arterial geometry from magnetic resonance angiography (MRA) using isosurfaces deformed to conform to the boundaries of objects in the image with minimal a priori assumptions of object shape. The method determines the degree of stenosis in digital phantoms with an accuracy of at least 10%. This method, unlike previous techniques, does not require the imposition of a pre-defined surface mesh onto the image or user interaction for definition of the vessel axes. Here, the deformable model surface mesh is generated by the isosurface algorithm. Accordingly, the new method requires minimal user interaction and provides highly accurate results when applied to the evaluation of vascular stenoses. The methodology may also be applicable for reconstruction of the geometry of vascular aneurysms from MRA. Other potential applications include precision surface reconstruction of vascular surfaces from computed tomographic angiography (CTA) and precision reconstruction of the surface of the colon from computed tomography (CT).

Automated Centerline Detection Algorithm for Colon-Like 3D Surfaces

Gheorghe Iordanescu (CC), Ronald Summers (CC), Juan Cebral
DHHS Reference No. E–311–2001 filed Dec. 27, 2001
Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a method for obtaining the centerline of a colon-like surface, which is an important tool for virtual colonoscopy. The invention uses only three steps: (1) Computing a shrunken version of the colon surface (2) modeling the shrunken colon by an ordered group of 3D points and (3) selecting equally distanced planes to define equal length segments along the centerline. The centerline is a vital parameter for any virtual colonoscopy technique as it defines a navigation path along which the imaging proceeds and it provides a natural coordinate system for describing polyp detections. A virtual colonoscopy method is described and claimed in NIH-owned U.S. Patent No. 6,246,784. However, detecting the centerline of the colon is a challenging problem for which a number of approaches have been developed. Most of these approaches are not fully automatic, are slow and require the original CT images. The method of this invention is fully automatic, relatively quick and uses only the 3D surface rather than the original CT images.

Discovery of Novel Inhibitors of HIV–1 Integrase That Can Be Used for the Treatment of Retroviral Infection Including AIDS

Terrence R. Burke, Jr., Xuechen Zhang, Godwin C. G. Pais, Christophe Marchand, Evguenia Svarovskaia, Vinay K. Pathak, and Yves Pommier (NCI)
DHHS Reference No. E–317–2001/0 filed Dec. 07, 2001
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention provides azido group-containing diketo acids that can inhibit HIV–1 integrase in vitro efficiently while being highly selective for the strand transfer step of the integration reaction. Human Immunodeficiency Virus (HIV) and other retroviruses require three viral enzymes for replication: Reverse transcriptase, protease and integrase. The prognosis of AIDS has been improved recently by the discovery and application of reverse transcriptase and protease inhibitors. However, a significant fraction of patients fail to respond to such treatments and viral resistance remains a major problem. Furthermore, anti-AIDS combinations are often not well tolerated. Thus, HIV integrase is a rational target for AIDS therapy because genetic studies demonstrated that the enzyme is essential for viral replication while being without a cellular equivalent. Therefore, specific integrase inhibitors should be effective and devoid of toxicity. Since this invention involves the discovery of novel HIV–1 integrase inhibitors that are derived from diketo acids with a different anti-HIV mechanism from that of reverse transcriptase and protease inhibitors, these azide group-containing compounds may represent potential new therapeutics for treatment of retroviral infections, including AIDS.

Dated: November 4, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–28537 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Regulation of INS (3456) P4 Signalling by a Reversible Kinase/Phosphatase and Methods and Compositions Related Thereto

Dr. Stephen Shears (NIEHS)
DHHS Reference No. E–105–2002/0 filed Mar 18, 2002
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov*.

Signaling entities are frequently controlled by quite delicate shifts in the dynamic balance of regulatory signals with competing impacts. Ion channels provide particularly impressive

examples of the degree of signal amplification that can result; switching the conductance state of a single channel can influence the transmembrane movement of millions of ions per second. Both stimulatory (Ca^{2t} and CaMKII) and inhibitory ($Ins(3,4,5,6)P_4$ signals converge on the family of so-called ''Ca^{2t}-activated'' Cl^- channels. Thus receptor-dependent changes in $Ins(3,4,5,6)P_4$ levels is a topic of general biological significance, in that it impacts upon regulation of salt and fluid secretion from epithelial cells, cell volume homeostasis, and electrical excitability in neurons and smooth muscle. Unfortunately, understanding of the cellular control on $Ins(3,4,5,6)P_4$-signaling has been rudimentary, because the pathway of $Ins(3,4,5,6)P_4$ synthesis has not previously been characterized.

The NIH announces new treatment methods for asthma, bronchitis and cystic fibrosis. The treatments consist of either increasing or decreasing the activity of inositol 1,3,4,5,6 pentakisphosphate 1-phosphatase in a patient, thereby controlling $Ins(3,4,5,6)P_4$-signaling which in turn affects the choride channels and mucus secretion produced. This modulation of inositol 1,3,4,5,6 pentakisphosphate 1-phosphatase is accomplished with the help of an inositol phosphate kinase, which can also act as an inositol pentakisphosphate 1-phosphatase.

Mutated Constitutively Active Nuclear Orphan Receptor

Masahiko Negishi, Akiko Ueda, Lars C. Pedersen, Satoru Kakizaki, Tatsuya Sueyoshi (NIEHS)
DHHS Reference No. E–034–2002/0 filed Feb. 19, 2002
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov*.

The constitutively active nuclear orphan receptor (CAR) activates transcription of genes encoding various drug-metabolizing enzymes such as cytochromes P450 in response to drug exposures. Induction of these enzymes confers on organisms a higher metabolic capability to defend themselves against xenochemical toxicity and/or carcinogenicity. Direct drug responses, however, have not been demonstrated with CAR in a cell-mediated transfectin assay, due to its *in vitro* constitutive activity.

The NIH announces the creation of an altered CAR molecule, with decreased constitutive activity *in vitro* using site-directed mutagenesis to the receptor. This alteration allows the CAR molecule to be directly activated by drugs and can be used for *in vitro* drug screening that will make the screenings more efficient and cost effective.

Bone-Forming Composition, Methods for Making and Methods of Use

Mahesh H. Mankani, Sergei Kuznetsov, Pamela G. Robey (NIDCR)
DHHS Reference No. E–263–2001/0 filed Jan. 25, 2002
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov*.

Transplantation of bone marrow stromal cells (BMSCs) offers a method for repairing and/or closing large bone defects. Although most bone defects occur as a result of trauma, bone loss can also arise from congenital disorders, neoplasms, and/or infections. To make BMSC transplantation most useful as a method for engineering new bone, it would be helpful to optimize the growth rate, extent, and strength of newly formed bone. Current methods of transplantation produce bone that is nonuniform in size, shape and form, making it difficult to compare bone samples directly.

The NIH announces a new method of forming bone tissue based on using a combination of bone marrow stromal cells and hydroxyapatite/tricalcium phosphate particles. The newly created bone has desired dimensions, which are similar, consistent, and/or identical to the shapes of the preformed compositions. When the composition is made with human BMSCs derived from pathological tissue, and transplanted into immunodeficient mice, the new bone reproduces features of the original disease, allowing for the testing of agents that inhibit, stimulate, or modify bone formation.

Methods of Making, Using and Pharmaceutical Formulations Comprising 7-Alpha,11-Beta-Dimethyl-17-Beta-Hydroxyestra-4,14-Dien-3-One and 17 Esters Thereof and 7-Alpha,11-Beta-Dimethyl-17-Beta-Hydroxyestra-4-en-3-One 17-Undecanoate

Drs. Richard Blye and H.K. Kim (NICHD)
DHHS Reference No. E–069–2000/3 filed Mar. 29, 2002 (PCT–CIP Patent Application)
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov*.

The NIH announces a new technology that relates to compounds that possess potent androgenic activity. These compounds offer a potential therapeutic benefit in the treatment of hypogonadism, regardless of cause, as an adjuvant in hormone replacement therapy for both men and women and for androgen stimulation of anabolism in a broad spectrum of disease entities involving debilitation.

These compounds exhibit both oral and parenteral androgenic activity. Oral activity appears greater than that of methyltestosterone. Parenteral activity as an aqueous suspension is substantially longer than that produced by testosterone enanthate or testosterone cypionate. Since these compounds lack a 17-alkyl moiety, they are expected to show less hepatotoxicity upon oral administration. Claims in this patent application are drawn to the new androgenic compounds themselves, their method of preparation, pharmaceutical formulations containing the new androgens and their utility and use in a wide spectrum of therapeutic applications.

Dated: November 4, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–28538 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee (IACC) to be held on November 22, 2002, on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106–310), Title I, section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (DHHS). In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the National Institutes of Health (NIH). The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The IACC meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee.

Date: November 22, 2002.

Time: 8:30 a.m.–5:15 p.m.

Agenda: Discussion of autism activities across Federal agencies.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31,

Conference Room 10 (6th floor), Bethesda, Maryland 20892.

Contact Person: Ann Wagner, Ph.D., Division of Services and Intervention Research, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7142, MSC 9633, Bethesda, Maryland 20892. Email: < *awagner@mail.nih.gov* > Phone: 301–443–4283.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting is also available on-line on the NIMH Home Page at < *http://www.nimh.nih.gov/iacc/index.cfm* >.

Dated: October 31, 2002.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 02–28539 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Minority Institution/Cancer Centers Partnerships: CA03–009, CA03–008, CA03–010.

Date: December 3–4, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Affairs, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 8060, Rockville, MD 20892, (301) 594–1403.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28533 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: December 4–5, 2002.

Open: December 4, 2002, 8:45 a.m. to 3:15 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: December 4, 2002, 11:05 a.m. to 11:55 a.m.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: National Cancer Institute, 9000 Rockvill Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Closed: December 4, 2002, 3:15 p.m. to Recess.

Agenda: Review intramural program site visit outcomes; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: December 5, 2002, 8:30 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without

a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28534 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, T32's.

Date: November 12–14, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jeffrey M. Chernak, Ph.D., The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Human Genetics.

Date: November 18–19, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Iberville Suites—New Orleans, 910 Iberville Street, New Orleans, LA 70112.

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Intervention Panel.

Date: November 21, 2002.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20814.

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28527 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Gordon Conference Review.

Date: December 2, 2002.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tracy A Shahan, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28528 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: November 20, 2002.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Boulevard, Suite 3158, Bethesda, MD 20892–9547 (Telephone Conference Call).

Contact Person: Khursheed Asghar, Ph.D., Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Minority Institutions' Drug Abuse Research Development Program (MIDARP).

Date: December 5, 2002.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Marina L. Volkov, Ph.D., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: December 16, 2002.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Khursheed Asghar, Ph.D., Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28529 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Skin Diseases Special Emphasis, Panel. R03's Small Grants for New Investigators.

Date: December 16, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contract Person: Richard J. Bartlett, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28530 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Bone Marrow.

Date: December 2, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd., Suite 707 MSC 4879, (Telephone Conference Call).

Contact Person: Tracy A. Shahan, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28531 Filed 11–07–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–27 Review of R21 Grants.

Date: December 12, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, Ph.D., Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–14 Review of R44 Grants.

Date: December 19, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special

Emphasis Panel, 03–28 Review of R01 Grants.

Date: December 20, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28532 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Family-Based Interventions to Influence Diet and Physical Activity.

Date: November 14, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBCB (1) 40 Chemistry/Biophysics Program Project Panel.

Date: November 18, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Arnold Revzin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk for Violence.

Date: November 18, 2002.

Time: 2 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, (301) 435–3554, *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Autoimmune Disease Antagonists.

Date: November 19, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MEDB (02) Identification of Histone Gene Regulation Sequences.

Date: November 21, 2002.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alec S. Liacouras, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology Computer Modeling.

Date: November 22, 2002.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF R01 Conflict Reviews.

Date: December 2, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D. Rodewald, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA (02) M: Molecular Pharmacology of Shingosine-1-Phosphate.

Date: December 2, 2002.

Time: 1:15 p.m. to 2:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN–5 (05).

Date: December 2, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Stuesse, Ph.D., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, *stuesses@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Respiratory.

Date: December 2, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–5 (06) M Member Conflict Health Services Research.
Date: December 2, 2002.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (10) Neuroscience–SBIR/STTR.
Date: December 3, 2002.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW. Washington, DC 20037.
Contact Person: Bernard F. Driscoll, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reviewer Conflict Applications.
Date: December 3, 2002.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abraham P. Bautista, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Investigator Interactive Research Projects.
Date: December 5, 2002.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abraham P. Bautista, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506. *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drosphila.
Date: December 5, 2002.
Time: 2:30 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Regulation of eNOS.
Date: December 5, 2002.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28535 Filed 11–07–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–45]

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.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 1, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–28291 Filed 11–7–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming between the Shoalwater Indian Tribe and the State of Washington, which was executed on September 4, 2002.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–28426 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–090–03–9971–EK]

Conservation Helium Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice requesting comment to proposed conservation helium sale.

SUMMARY: The purpose of this action is to request comments on the proposed method of sale to begin implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the conservation helium reserve sell off.

The Act requires the Department of the Interior to offer for sale, beginning no later than 2005, a portion of the conservation helium stored underground at the Cliffside Field north of Amarillo, TX. The Department of the Interior in consultation with the private helium industry has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region.

DATES: Submit comments on or before December 9, 2002.

ADDRESSES: Comments: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management; Amarillo Field Office; 810 S. Fillmore, Suite 500; Amarillo, TX 79101; Attention: Crude Helium Sale or e-mail them to *AmFOFMO@blm.gov* with Crude Helium Sale in the subject line.

FOR FURTHER INFORMATION CONTACT: Timothy R. Spisak, (806) 356–1002 Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1.01 What Is the Purpose of the Sale?

The purpose of this sale is to begin implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the conservation helium reserve sell off. The Act requires the Department of the Interior to offer for sale, beginning no later than 2005, a portion of the conservation helium stored underground at the Cliffside Field north of Amarillo, TX. The Department of the Interior in consultation with the private helium industry has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. This is the first of 12 annual sales that the Department will conduct to dispose of the conservation helium stored underground at the Cliffside Field. The annual sales are being conducted in a manner intended to prevent market disruptions occurring from a shortage of crude helium. This first sale will be used to test the disposal process with subsequent sales adjusted as needed.

1.02 What Terms Do I Need To Know to Understand This Sale?

Allocated sale—That portion of the annual sale volume of conservation helium that will be set aside for purchase by the crude helium refiners.

Annual conservation helium sale—The sale of a certain volume of conservation helium to private entities conducted annually beginning no later than 2005.

Bidder—Any entity or person who submits a request for purchase of a volume of the annual conservation helium sale and has met the qualifications contained in part 1.05 in this notice.

BLM—The Bureau of Land Management.

Conservation helium—The crude helium purchased by the U.S. Government under the authority of the Helium Act of 1960 and stored underground in the Cliffside Field.

Crude helium—A partially refined gas containing about 70 percent helium and 30 percent nitrogen. However, the helium concentration may typically vary from 50 to 95 percent.

Crude helium refiners—Those entities with a capability of refining crude helium and having a connection point on the crude helium pipeline and a valid helium storage contract as of the date of a conservation helium sale.

Excess volumes—Allocated sale volumes not requested by the crude helium refiners.

Helium storage contract—A contract between the BLM and a private entity allowing the private entity to store crude helium in underground storage at the Cliffside Field.

HPA—The Helium Privatization Act of 1996.

In-kind crude helium—Conservation helium purchased by private refiners in exchange for like amounts of pure helium sold to Federal Agencies and their contractors in accordance with the HPA.

MMcf—One million cubic feet of gas measured at standard conditions of 14.65 pounds per square inch (psi) and 60° F.

Mcf—One thousand cubic feet of gas measured at standard conditions of 14.65 psi and 60° F.

Non-allocated sale—That portion of the annual sale volume of conservation helium that will be offered to all qualified Bidders.

1.03 What Volume of Conservation Helium Will Be Offered in the Year 2003 Annual Conservation Helium Sale?

The volume of helium available for this sale is 2,100 MMcf. In accordance with the HPA, this volume was determined by dividing the total volume of stored conservation helium less the statutory required reservation of 600 MMcf for Government purposes less estimated in-kind crude helium transfers for 12 years divided by 12.

1.04 At What Price Will the Conservation Helium Be Sold?

The conservation helium will be sold at the same price as in-kind crude helium. For fiscal year 2003 that price is $52.50 per Mcf.

1.05 Am I Qualified To Purchase Conservation Helium at This Sale?

Any person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating partially or wholly within the United States who meets one or more of the following requirements is qualified to submit a purchase request:

- Operates a helium purification plant within the U.S., or
- Operates a crude helium extraction plant within the U.S., or
- Is a wholesaler of pure helium or purchases helium for resale within the U.S., or
- Is a consumer of pure helium within the U.S.

All entities requesting participation in the non-allocated sale must submit proof of being qualified to purchase conservation helium and must either have a helium storage contract with the BLM or have a third party agreement in place with a valid storage contract holder.

1.06 When Will the Conservation Helium Be Offered for Sale?

The BLM, Amarillo Field Office, will accept requests for purchase of conservation helium from final publication of this notice until January 15, 2003. On January 16, 2003, requests to purchase conservation helium will be opened and evaluated. Thereafter, volumes of this conservation helium sale will be apportioned and allocated according to the sale rules described in this notice.

1.07 What Must I Do To Submit a Request for Purchase?

You must submit the following information to the BLM, Amarillo Field Office:

- Billing address information and name(s) of principle officers of the company.
- Proof of being an entity qualified to purchase conservation helium at this sale as defined in part 1.05 above. Documents such as invoices for sale or purchase of helium, helium storage

contracts, or other relevant documents may be submitted as proof of qualification.

- The amount (in Mcf) of conservation helium requested.
- Certified check or money order in the amount of $1,000 made payable to the Bureau of Land Management. This money will be used to cover administrative expenses to conduct this sale and is nonrefundable.

1.08 Where Do I Send My Request for Purchase?

All requests for purchase of helium as part of this sale must be sent by certified mail to: Bureau of Land Management, Amarillo Field Office, 810 S. Fillmore, Suite 500, Amarillo, TX 79101, Attention: Crude Helium Sale.

1.09 When Do I Need to Submit Payment for Any Conservation Helium Sold to Me?

Successful purchasers will submit payments according to the following schedule: 25% by February 28, 2003; 25% by April 30, 2003; 25% by June 30, 2003; 25% by September 30, 2003.

Conservation helium will not be transferred to the purchaser's storage account until payment is received for that portion. Successful purchasers may, at their option, accelerate the purchase schedule.

1.10 To Whom Do I Make Payments for Awarded Conservation Helium Volumes?

Make checks payable to the Bureau of Land Management at the address listed in part 1.08 of this notice.

1.11 Are There Any Penalties for Not Paying for the Conservation Helium in a Timely Manner?

If a payment is not received by the due date, the purchaser will forfeit the remainder of its allotment unless the purchaser can show that payment was late through no fault of its own. However, penalty interest will be accessed in accordance with the Debt Collection Act of 1982, 31 U.S.C. 951–953.

1.12 How Will I Know if I Have Been Successful in My Purchase Request?

Successful purchasers will be notified in writing by BLM no later than January 31, 2003, with the awarded volumes and payment schedule.

Allocated Sale

2.01 What Is the Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the crude helium refiners.

2.02 Who Will Be Allowed To Purchase Conservation Helium in The Allocated Sale?

Only those who meet the definition of crude helium refiners as defined in part 1.01 of this notice.

2.03 What Volume of Conservation Helium is Available in the Allocated Sale?

The amount available will be 90 percent of the total volume of the annual conservation helium sale—1,890 MMcf.

2.04 How Will the Conservation Helium Be Apportioned Among the Refiners?

The apportionment to each crude helium refiner will be based on its percentage share of the total refining capacity as of October 1, 2000, connected to the BLM crude helium pipeline.

2.05 What Will Happen if a Refiner or Refiners Request an Amount Other Than Their Share of What is Offered for Sale?

- If one or more refiners request less than their allocated share, any other refiner(s) that requested more than their share will be allowed to purchase the excess volume based on proportionate shares of remaining refining capacities.
- Requests by the crude helium refiners that are in excess of the amount available above will be carried over to the non-allocated sale and considered a separate bid under the non-allocated sale rules.

2.06 What Will Happen if the Total Amount Requested By the Crude Helium Refiners is Less Than the 1,890 MMcf Offered in the Allocated Sale?

Any excess volume not sold to the crude helium refiners will be added to the non-allocated Sale volume.

2.07 Do You Have a Hypothetical Example of How an Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 90 percent available for allocated sale (1,890 MMcf).

Bidder—allocated sale	Installed refining capacity (percent)	Refiner bid volume*	Allocated volume*	Excess volume requested*	Proration percent	Excess allocated*	Total allocated*	Carry over to non-allocated sale*
Refiner A	10	225	189	36	20	36	225	0
Refiner B	50	750	750	0	0	0	750	0
Refiner C	40	985	756	229	80	156+3	915	70
Total	100	1,960	1,695	265	100	195	1,890	70

*All volumes in MMcf.

After the initial allocation, refiner B has received all requested. However, 265 MMcf is deemed excess of the total in the first iteration of the Allocated Sale and reallocated to the two remaining refiners based on the refining capacity between them. With the reallocation, refiner A gets all requested, but refiner C is still short by 73 MMcf. Additionally, 3 MMcf remains unallocated and without any other refiners is awarded to refiner C, who now has a remaining request of 70 MMcf that is posted into the non-allocated sale.

Non-Allocated Sale

3.01 What Is the Non-Allocated Sale?

That portion of the annual sale Volume of conservation helium that will be offered to all qualified bidders.

3.02 What Is the Minimum Volume I Can Request? The Minimum Request Is 5 MMcf.

3.03 What Volume of Conservation Helium Is Available for the Non-Allocated Sale?

The total volume of conservation helium available for this portion of the sale is 210 MMcf plus any additional helium that is not sold as part of the allocated sale.

3.04 How Is the Ratio of Allocated to Non-Allocated Sale Volumes Determined?

According to the terms of the HPA, the BLM must conduct the annual conservation helium sales in a manner not to cause undue helium market disruptions; and therefore, the majority of the conservation helium is being offered as part of the allocated sale. Currently, the crude helium refiners have refining capacity roughly double what can be supplied through the annual conservation helium sales. Although there are other crude helium supplies available to the crude helium refiners, these supplies are declining each year. The BLM must be sensitive to the crude helium refiners requirements while maintaining a balance with other helium industry requirements. The exact ratio of allocated to non-allocated sale volumes may change for subsequent annual conservation helium sales.

3.05 How Will the Non-Allocated Conservation Helium Be Apportioned Among the Bidders?

The conservation helium will be apportioned equally in 1 Mcf increments among the bidders with no prospective bidder receiving more than its request.

3.06 What Will Happen if the Bidders Request More Than What Is Made Available for Sale in Part 3.03 of This Notice?

- If one or more bidders request less than their apportioned amount, any other bidder(s) that requested more than its apportioned amount will be allowed to purchase equally apportioned amounts of the remaining volume available for this sale.
- If all bidders request more than their apportioned amount each bidder will receive its apportioned amount as determined in part 3.05 of this notice.

3.07 What Will Happen if a Bidder Requests Less Than Its Apportioned Amount?

Any bidder requesting less than the calculated apportioned volume, will receive the amount of its request and amounts remaining will be reapportioned in accordance with part 3.03 of this notice.

3.08 What Will Happen if the Total Requests From All Bidders Are Less Than That Offered for Sale in the Non-Allocated Sale?

If the total non-allocated volume requested is less than the non-allocated volume offered for this portion of the sale, the excess amount will not be sold and will be held in storage for future sales.

3.09 Do You Have a Hypothetical Example of How a Non-Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 10 percent available for non-allocated sale (210 MMcf).

Bidder—Non-allocated sale	Bid volume*	Apportioned volume*	Excess volume requested*	Proration percent	Excess apportioned*	Total apportioned*	Amount requested not received*
Refiner C	70	52.5	17.5	50	15	67.5	2.5
Company D	100	52.5	47.5	50	15	67.5	32.5
Company E	50	50	0	0	0	50	0
Company F	25	25	0	0	0	25	0
Total	245	180	65	100	30	210	35

*All volumes in MMcf.

In this example, three companies submit a request and there is a carryover amount from one of the crude helium refiners in the allocated sale that is considered as a separate request. Each bidder would be apportioned 52.5 MMcf, (*i.e.*, 210 MMcf of non-allocated conservation helium ÷ 4 bidders = 52.5 MMcf per bidder).

After the initial allocation, companies E & F have received all they requested. However, 30 MMcf is deemed excess in the first iteration of the non-allocated sale and reallocated to the two remaining bidders. With the reallocation, refiner C and company D each receives an additional 15 MMcf. No more helium is available, refiner C and company D do not receive all that they requested, and the sale is complete.

Dated: October 9, 2002.

Richard A. Whitley,

Acting State Director, New Mexico.

[FR Doc. 02–28702 Filed 11–7–02; 1:50 pm]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–03–1420–BJ]

Montana: Filing of Plat of Amended Protraction Diagram

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Amended Protraction Diagram.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of the amended protraction diagram of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, PO 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: The amended protraction diagram was prepared at the request of the U.S. Forest Service, and was necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center. The lands for the prepared amended protraction diagram are:

Principal Meridian, Montana

Tps. 11, 12, and 13 S., Rs. 12, 13, and 15 W.

The plat, representing the Amended Protraction Diagram 55 Index of unsurveyed Townships 11, 12, and 13 South, Ranges 12, 13, and 15 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 11 S., R. 15 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 11 South, Range 15 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 12 S., R.15 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 12 South, Range 15 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 12 S., R. 13 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 12 South, Range 13 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 12 S., R. 12 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 12 South, Range 12 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 13 S., R. 12 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 13 South, Range 12 West, Principal Meridian, Montana, was accepted October 24, 2002.

We will place a copy of the plat of the amended protraction diagram we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this amended protraction diagram, as shown on this plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat of the amended protraction diagram until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: October 31, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–28470 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Amendment—Harpers Ferry National Historical Park

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of boundary amendment—Harpers Ferry National Historical Park.

SUMMARY: Notice is hereby given that the National Park Service (NPS) is amending the boundary of Harpers Ferry National Historical Park to include three additional tracts of land containing 160 acres.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Act of June 30, 1944, c. 328, 58 Stat. 645 (codified as amended and supplemented, 16 U.S.C. 450bb–450bb–6), which established Harpers Ferry National Historical Park, provides the Secretary of the Interior with authority to make minor revisions in the boundary of the Park. Such boundary revisions may be made, when necessary, after advising the appropriate Congressional committees, and following publication of a revised boundary map, drawing, or other boundary description in the **Federal Register**.

In order to properly interpret and preserve the historic and scenic character of Harpers Ferry National Historical Park, it is necessary to revise the existing boundary to include three additional tracts of land comprising approximately 160 acres. The inclusion of these tracts within the boundary will increase the acreage of the Park to approximately 2,505 acres, the existing acreage ceiling for the Park as set forth by Pub. L. 101–109, approved October 6, 1989. The properties will be acquired by purchase.

Notice is hereby given that the exterior boundary of Harpers Ferry National Historical Park is revised to include the following tracts of land described as follows:

Tract Number P102–01

Beginning at a point in the centerline of West Virginia Route 27 (Bakerton Road) said point also being a corner common to Wallich thence with said centerline the following nine (9) courses:

1. South 20°06′32″ West 96.87 feet, thence
2. South 23°28′14″ West 151.46 feet, thence
3. South 23°14′14″ West 462.57 feet, thence
4. South 23°30′40″ West 198.75 feet, thence
5. South 23°59′38″ West 594.37 feet, thence
6. South 23°40′44″ West 395.36 feet, thence
7. South 23°17′36″ West 163.64 feet, thence
8. South 23°04′41″ West 198.57 feet, thence
9. South 23°43′59″ West 330.97 feet, thence
10. South 23°30′42″ West 137.18 feet, thence departing said centerline and running through the following three (3) courses:
11. North 66°31′59″ West 903.11 feet passing through a set #5 rebar and cap from the beginning thereof, to a set #5 rebar and cap thence
12. North 23°21′50″ East 811.82 feet to a fence post thence
13. North 23°26′52″ East 1,842.14 feet to a set #5 rebar and cap at the base of a fence and corner to aforesaid Wallich thence with said Wallich the following three (3) courses
14. South 21°07′45″ East 14.20 feet to a set #5 rebar and cap thence
15. South 72°11′45″ East 829.96 feet to a set #5 rebar and cap thence
16. South 69°41′45″ East 69.78 feet passing through a set #5 rebar and cap distant 15.00 feet from the end thereof to the point of beginning containing 56.00 acres, including that portion of WV Route 27 right-of-way and a proposed 40-foot wide access easement leading from WV Route 27 to the remainder of the property.

Being a part of the same property conveyed to the Civil War Preservation Trust from Anita D. Brown, Executrix of the Estate of Dixie D. Kilham, by a deed dated June 4, 2002, and recorded among the Land Records of Jefferson County, West Virginia in Deed Book 961, Page 219.

Tract Number P102–02

All those three certain tracts or parcels of real estate containing 3.93 acres, more or less, in the aggregate, designated as ''WILT T.M. 6A/10, 11, 12 W.B. EE/346'' on a plat of survey thereof dated June 9, 1995, prepared by Peter H. Lorenzen, L.P.S., entitled ''PLAT OF RESURVEY for Norman Lester Wilt, Jr.,'' to which said plat reference is hereby made for a more complete and accurate description by metes and bounds of the parcels; TOGETHER WITH a perpetual non-exclusive easement for purposes of ingress and egress to and from the property over and across that certain area designated as ''20' ROW (NOT IN USE)'' and ''40' ROW (NOT IN USE).''

Being the same property conveyed to Scot M. Faulkner by Norman L. Wilt, Sr. and Susan M. Wilt, husband and wife, by Deed dated June 9, 1995, and recorded among the Land Records of Jefferson County, West Virginia, in Deed Book 807, Page 394.

Tract Number P103–01

All of the land together with improvements situated thereon as shown on a Final Plat entitled ''MURPHY'S LANDING'' dated May 2001, and prepared by R. Michael Shepp, P.S. of Appalachian Surveys of West Virginia, L.L.C.

Being all of the land acquired by Karen Dixon Fuller from Margaret Murphy by dated Deed December 30,

1997, and recorded among the Land Records of Jefferson County, West Virginia, in Deed Book 885, Page 444, AND all of the land acquired by Josephine K. Curtis and Karen Dixon Fuller from Recreational Adventures Campgrounds, Limited Liability Company by a Deed of Exchange dated February 1, 1999, and recorded among the Land Records of Jefferson County, West Virginia in Deed Book 923, Page 450.

Subject to all restrictive covenants, conditions easements, rights-of-way and limitations of record.

The above described parcels of land contain in the aggregate 160 acres of land and are depicted on Harpers Ferry National Historical Park Land Status Map numbered 385/80085, Segments 102 and 103, dated July, 2002.

All maps and drawings referenced are on file and available for inspection in the offices of the Land Resources Program Center, National Capital Region, National Park Service, Department of Interior, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: September 25, 2002.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 02–28520 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Expiring Contracts; Extension For up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID Number	Concessioner name	Park
DENA005–98	Rainier Mountaineering, Inc	Denali National Park.
DENA006–98	Mountain Trip, Inc	Denali National Park.
DENA008–98	Alaska Mountaineering School	Denali National Park.
DENA009–98	Alpine Ascents International	Denali National Park.
DENA010–98	American Alpine Institute	Denali National Park.
DENA011–98	NOLS	Denali National Park.
DENA013–98	DNP Wilderness Centers	Denali National Park.
DENA015–98	Kantishna Roadhouse	Denali National Park.
DENA016–98	Denali National Park Backcountry Lodge	Denali National Park.
DENA022–97	Alpine Air	Denali National Park.
DENA023–97	Doug Geeting Aviation	Denali National Park.
DENA024–97	Hudson Air Service	Denali National Park.
DENA025–97	K2-Rustair	Denali National Park.
DENA027–98	McKinley Air Service	Denali National Park.
DENA028–97	Fly Denali National Park	Denali National Park.
DENA029–97	Talkeetna Air Taxi	Denali National park.
DENA030–97	Kantishna Air Taxi	Denali National park.
DENA018–98	EarthSong Lodge Dog Sled Adv	Denali National Park.
DENA021–98	Denali National Park West Lodge	Denali National Park.
DENA001–81	ARAMARK	Denali National Park.
ARO001–98	Alaska Natural History Assn	AK Parks.
GLBA008–98	Alaska Discovery, Inc	Glacier Bay National Park and Preserve.
GLBA009–98	Alaska Discovery, Inc	Glacier Bay National Park and Preserve.
GLBA010–98	Gray, Gary C., Reg. Guide	Glacier Bay National Park and Preserve.
GLBA011–98	Chilkat Guides	Glacier Bay National Park and Preserve.
GLBA012–98	Colorado River/Trail Exp., Inc	Glacier Bay National Park and Preserve.
GLBA013–98	James Henry River Journeys	Glacier Bay National Park and Preserve.
GLBA014–98	Mountain Travel/Sobek	Glacier Bay National Park and Preserve.
GLBA017–98	Wilderness River Outfitters	Glacier Bay National Park and Preserve.
GLBA015–98	Chicagaof Charters	Glacier Bay National Park and Preserve.
GLBA016–98	Grand Pacific Charters	Glacier Bay National Park and Preserve.
GLBA018–98	Glacier Guides	Glacier Bay National Park and Preserve.
GLBA019–98	Marine Adventure Sailing Tours	Glacier Bay National Park and Preserve.
GLBA025–98	Princeton Hall Ltd	Glacier Bay National Park and Preserve.
GLBA026–98	Lisianski Charters	Glacier Bay National Park and Preserve.
GLBA027–98	Gustavus Marine Charters	Glacier Bay National Park and Preserve.
GLBA028–98	Elfin Cove Sportfishing Lodge	Glacier Bay National Park and Preserve.
GLBA021–98	Seawind Charters	Glacier Bay National Park and Preserve.
GLBA030–98	Dolphin Charters	Glacier Bay National Park and Preserve.
GLBA031–98	Glacier Bay National Park and Preserve Country Inn	Glacier Bay National Park and Preserve.
GLBA032–98	Sea Wolf Wilderness Adventures	Glacier Bay National Park and Preserve.
GLBA020–98	Northern Lights Haven	Glacier Bay National Park and Preserve.
GLBA029–98	Johnny's East River Lodge	Glacier Bay National Park and Preserve.
GLBA033–98	Gray, Gary C., Reg. Guide	Glacier Bay National Park and Preserve.
GLBA035–98	Glacier Bay National Park and Preserve Sea Kayaks	Glacier Bay National Park and Preserve.
GLBA037–98	New World Ship Management	Glacier Bay National Park and Preserve.
GLBA038–98	Lindblad Expeditions, Inc	Glacier Bay National Park and Preserve.

Conc ID No.	Concessioner name	Park
GLBA039–99	Alaska Sightseeing/Cruise West	Glacier Bay National Park and Preserve.
GLBA041–98	Glacier Bay National Park and Preserve Park Concessions	Glacier Bay National Park and Preserve.
GLBA044–98	Glacier Bay National Park and Preserve Adventures	Glacier Bay National Park and Preserve.
GLBA901–98	Gray, Gary C., Reg. Guide	Glacier Bay National Park and Preserve.
GLBA902–98	Latham, John H., Reg. Guide	Glacier Bay National Park and Preserve.
NOAT901–98	Philip E. and Carol M. Driver	Noatak National Preserve.
NOAT906–98	David Leonard	Noatak National Preserve.
NOAT904–98	Jake & Patricia Jacobson	Noatak National Preserve.
KATM005–98	Branch River Air Service	Katmai National Park.
KATM006–98	Bristol Bay Sportfishing	Katmai National Park.
KATM002–98	No See Um Lodge	Katmai National Park.
KATM007–98	Mike Cusack's King Salmon Lodge	Katmai National Park.
KATM004–98	Shaska Ventures	Katmai National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: October 24, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–28514 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Expiring Contracts; Extension for up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to one year from the date of permit expirations.

SUPPLEMENTARY INFORMATION: The permits listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession permits, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to one year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity. The temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
ANIA904–98	King Guiding Service	Aniakchak National Monument.
ANIA903–98	Katmai Guide Service	Aniakchak National Monument.
ANIA906–98	Cinder River Lodge	Aniakchak National Monument.
LACL901–96	Northward Bound	Lake Clark National Park.
LACL902–95	Alaska Wilderness Trips	Lake Clark National Park.
GAAR001–95	Richard A. Guthrie	Gates of the Arctic National Preserve.
GAAR002–96	Rob Holt	Gates of the Arctic National Preserve.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: October 24, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–28515 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Comprehensive Transportation Management Plan; Marin County, CA; Notice of Intent To Prepare an Environmental Impact Statement

Summary: In accord with § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the National Park Service—and in coordination with Marin County (California) and the California Department of Transportation—is initiating a conservation planning and environmental impact analysis process regarding transportation access and facility improvements to the roadway network between U.S. Highway 101 (at the U.S. Highway 101-State Highway 1 interchange) and Stinson Beach (Pacific Ocean). This roadway network is one of the principal travel corridors connecting the urban centers of Marin, San Francisco and the East Bay with National Park sites in southwest Marin County and the State Park site of Mount Tamalpais (the national park sites include the Muir Woods National Monument, Muir Beach, Stinson Beach, and Tennessee Valley). The Comprehensive Transportation Management Plan Environmental Impact Statement (EIS) will assess alternatives for improving access to and between various park sites to reduce automobile impacts. A key objective

will be to identify options to reduce traffic congestion and lower negative effects of existing transportation infrastructure on priority ecological systems. Notice is hereby given that a public scoping process has been initiated with the purpose of eliciting public comment regarding the full spectrum of issues and concerns, including a suitable range of alternatives, the nature and extent of potential environmental impacts and appropriate mitigation strategies, and perceived ecological benefits that should be addressed in drafting the forthcoming EIS.

Background: The project area comprises a network of roads, bridges, trails and parking areas providing access to Muir Woods, Muir Beach, Tennessee Valley and Stinson Beach. Some of the key connecting roads include California Highway 1, Panoramic Highway, and Muir Woods, Frank Valley, and Tennessee Valley Roads. Peak-hour congestion and failing levels of service on some of these roads have become concerns for local jurisdictions and communities as well as the National Park Service (NPS). Also of particular concern is the fact that certain features of the existing transportation system encroaches upon and impact natural systems within the park lands. These include effects on wetlands, floodplains, and riparian corridors. Significant ecological systems within the project area include the fresh water streams and riparian areas of the Redwood Creek watershed, Coyote Creek, and Easkoot Creek.

The Golden Gate National Recreation Area (GGNRA) is partnering with Marin County to prepare a combined Environmental Impact Statement—Environmental Impact Report. The GGNRA and Marin County are co-lead agencies for the environmental review under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), respectively.

The project alternatives will identify actions that improve modes of transportation for accessing the national and state park sites in the project study area. Alternative transportation modes could include public transit, or shuttles. Reservation systems and paid parking also will be considered. Another key component of the project will be to identify improvements that either reduce or eliminate existing impacts of transportation infrastructure (such as roads, parking lots and drainage structures) on ecological systems. Key goals and objectives for the project are:

- Identify and design transportation, access, and facility improvements that protect park resources;
- Improve alternative access and circulation for visitors and residents within the project area;
- Reduce traffic congestion in the project area, and on roadways to and between national and state park sites;
- Improve the quality of the visitor experience, including trip travel, while ensuring that access remains safe, dependable and affordable;
- Improve the health of the ecological resources and systems adversely affected by transportation infrastructure within the project area;
- Improve/enhance design elements for efficient and effective transit access to park sites in the project area;
- Implement effective transportation links with clean technologies to access park sites;
- Provide for an effective transit intercept facility for visitors to Marin national and state park lands (Note: An intercept facility is a parking area or structure providing visitor support services, where visitors may leave their automobiles and travel to park sites via an alternate system such as buses or shuttle systems—rather than driving on congested roadways).

Public Process to Date: Preliminary public and agency planning meetings for the Comprehensive Transportation Management Plan were begun in 1999. The GGNRA, with the assistance of the regional Metropolitan Transportation Commission, convened an interagency group of transportation and resource agencies in the San Francisco Bay Area to develop plans for reducing traffic congestion on the regional roadway system serving park lands. The Park Lands Transportation Taskforce (Taskforce) membership includes GGNRA, Marin County, Federal Highway Administration, California Department of Transportation, City of Sausalito, California State Parks, and the Golden Gate Bridge and Highway Transportation District among other regional agencies.

Under the supervision of the Taskforce, a public research project was conducted in the project area during 2001–2002, and a public survey of persons visiting park sites polled approximately 4,000 individuals at five park sites during peak, shoulder, and off-peak seasons. Information collected included visitor origin and destination, area of residence by park site visited, degree of perceived traffic congestion, and the purpose or recreation activity related to park visits.

The GGNRA and Marin County plan to make informal presentations at community meetings adjacent to the study areas such as Stinson Beach and Muir Beach through September 2002, in addition to a presentation to the GGNRA Advisory Commission meeting in July 2002. Five public scoping workshops are then planned for Fall 2002. These include workshops at the GGNRA Advisory Commission, Stinson Beach, Muir Beach, Tamalpais Valley, and in the city of Berkeley (in the East Bay).

GGNRA and Marin County will develop conceptual approaches to identifying action alternatives for the public scoping workshops. Following the scoping phase, a full range of preliminary action alternatives will be developed and evaluated. The GGNRA and Marin County will then host workshops to review these proposed action alternatives with the public. GGNRA and Marin County anticipate that approximately three action alternatives will be formulated, in addition to the No Action Alternative.

Comments and Public Scoping: As noted, scoping meetings will be held during Fall 2002. The locations, dates and time of scoping meetings will be announced through a direct mailing, a weblink with both GGNRA and Marin County websites, and via local and regional media. All interested individuals, organizations and agencies are encouraged to attend these meetings to comment orally and/or provide written comments or suggestions. Interested persons may also refer to GGNRA web site *www.nps.gov/goga/admin/planning/index.htm* for more information on this project.

A scoping background document will also be available at the above Web site, and also can be obtained by writing or telephoning as noted below. Comments, suggestions, or relevant information (or requests to be added to the project mailing list) should be sent to: Golden Gate National Recreation Area, CTMP EIS, Attn: Stephen Laughlin, Building 201, Fort Mason, San Francisco, CA 94123 [telephone (415) 561–4941]

All written comments for the scoping phase of the ElS must be postmarked no later than 60 days following the publication of this notice in the **Federal Register**. 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. As always: 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.

Decision Process: Availability of the draft EIS for review and written comment will be announced in the **Federal Register** notice, as well as local and regional news media, GGNRA website, and via direct mailing to the project mailing list. At this time, the draft EIS is anticipated to be available for public review in the first quarter of the year 2004. To ensure further opportunity to comment on the draft EIS after it is distributed, additional public meetings will be held (dates and locations to be determined). Notice of the availability of the final EIS likewise will be published in the **Federal Register**. As a delegated EIS, the official responsible for the final NEPA decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementing the selected Plan would be the Superintendent, Golden Gate National Recreation Area.

Dated: August 21, 2002.

Arthur E. Eck,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–28519 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts; Cape Cod National Seashore Advisory Commission Two Hundred Thirty Ninth Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 22, 2002.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (September 27, 2002)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   Salt Pond Visitor Center
   Pheasant Program
   Penniman House
   Highlands Center
   Restoration Projects
   a. Hatches Harbor
   b. East Harbor
   c. Mary Chase Salt Marsh
   Doane Road
   Provincetown Municipal Airport
   Marconi Celebration
   News from Washington
6. Old Business
   Invasive Species
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 23, 2002.

Michael B. Murray,

Acting Superintendent.

[FR Doc. 02–28516 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State Museum of Anthropology, University of Oregon, Eugene, Oregon and U.S. Department of the Interior, National Park Service, Whitman Mission National Historic Site, Walla Walla, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains in the possession of Oregon State Museum of Anthropology, University of Oregon, Eugene, Oregon and in the control of U.S. Department of the Interior, National Park Service, Whitman Mission National Historic Site, Walla Walla, WA. These human remains were removed from a burial site at Whitman Mission National Historic Site.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the National Park unit that has control of these Native American human remains. The Manager, National NAGPRA Program is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service and Oregon State Museum of Anthropology professional staff and an expert on aboriginal burial practices in the Plateau culture area of North America in consultation with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon.

In October 1960, human remains representing a minimum of one individual were removed from a burial at Whitman Mission National Historic Site in Walla Walla, Washington during legally authorized excavations by NPS archeologist Paul Schumacher. The human skeletal remains had been in a flexed position and were thought to be the remains of a Native American. They were removed from the burial site at Whitman Mission and delivered to University of Oregon where they were inspected and described by David L. Cole in November 1960. The skeletal remains were confirmed to be those of a Native American woman who had been between 50 and 60 years of age at the time of death. No known individuals were identified. No funerary objects are present. To honor the request of the Confederated Tribes of the Umatilla Reservation, Oregon these human remains continue to be in the possession of the Oregon State Museum of Anthropology, University of Oregon.

All available documentation on the human remains from the NPS, including an archival photograph of the skeletal remains in situ, and from the University of Oregon was submitted to Professor Roderick Sprague, an expert on aboriginal burial practices in the Plateau culture area of North America with over 40 years of professional experience, for his review and assessment. On the basis of both the flexed position of the burial and the absence of grave goods, Dr. Sprague concluded that this set of human remains dates to the protohistoric period of from A.D. 1700–1800.

Whitman Mission National Historic Site commemorates the history of a

mission established by Marcus and Narcissa Whitman in the 1830s on land that was primarily occupied by Cayuse Indians at the time. The site of the mission settlement is widely recognized as having been part of a larger aboriginal Cayuse territory and is within the judicially established area that is officially recognized as the Cayuse homeland. Immediately to the west of the Cayuse territory was the aboriginal homeland of the Walla Walla tribe. To the west of the Cayuse and southwest of the Walla Walla was the recognized aboriginal homeland of the Umatilla tribe. The Cayuse, the Walla Walla and the Umatilla are all constituent tribes of the present-day Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Lastly, officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Superintendent Francis T. Darby, Whitman Mission National Historic Site, 328 Whitman Mission Road, Walla Walla, Washington 99362-9699, telephone (509) 522-6360, before December 9, 2002. Repatriation of these human remains to the Confederated Tribes of the Umatilla Reservation, Oregon may begin after that date if no additional claimants come forward.

Whitman Mission National Historic Site is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: October 7, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–28522 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–S

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 October 19, 2002.

Pursuant to section 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 by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW, 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by November 25, 2002.

Beth L. Savage,

Acting Keeper of the National Register of Historic Places.

ALASKA

Juneau Borough—Census Area

Sentinel Island Light Station (Light Stations of the United States MPS), Sentinel Island, Juneau, 02001407

CALIFORNIA

Shasta County

Phillips Brothers Mill, Approx. 30 mi. NE of Redding, Oak Run, 02001406

COLORADO

Fremont County

Rouch Gulch Bridge (Highway Bridges in Colorado MPS), US 50 at milepost 230.12, Swissvale, 02001410

Larimer County

Bee Farm, 4320 E. Cty Rd. 58, Fort Collins, 02001409

Rio Grande County

Creede Branch, Denver and Rio Grande Railroad (Railroads in Colorado, 1858–1948 MPS), Along the D&RGW right-of-way bet. South Fork and Creede, South Fork, 02001408

GEORGIA

Gordon County

Taylor, William, House, 3032 Battlefield Parkway, Resaca, 02001414

ILLINOIS

Macon County

West End Historic District, Roughly bounded by S. Fairview Ave., Park Place, Fairview Park, Westdale Ave., W. Main St., Glencoe Ave., Sunset Ave., Decatur, 02001444

Tazewell County

Dement—Zinser House, 105 Zinser Place, Washington, 02001411

MAINE

Knox County

Manana Island Fog Signal Station (Light Stations of the United States MPS), Monhegan Island, Monhegan Island, 02001412

Lincoln County

Cuckolds Light Station (Light Stations of the United States MPS), The Cuckolds, Southport, 02001413

MARYLAND

Anne Arundel County

Baltimore Light Station (Light Stations of the United States MPS), Gibson Island, Gibson Island, 02001417

Sandy Point Shoal Light Station (Light Stations of the United States MPS), Approx. 0.5 mi. off of Sandy Pt., Skidmore, 02001424

Baltimore County

Craighill Channel Lower Range Front Light Station (Light Stations of the United States MPS), 3.5 mi. SE of Fort Howard, Baltimore, 02001420

Cut-Off Channel Range Front Light Station (Light Stations of the United States MPS), SW of Fort Howard, Fort Howard, 02001415

Cut-off Channel Range Rear Light Station (Light Stations of the United States MPS), Sparrows Point, Edgemore, 02001423

Graighill Channel Lower Range Rear Light Station (Light Stations of the United States MPS), Edgemere Area, Edgemere, 02001418

Cecil County

Turkey Point Light Station, (Light Stations of the United States MPS), South Elk Neck State Park, North East, 02001421

Dorchester County

Hooper Island Light Station, (Light Stations of the United States MPS), Approx. 5 mi. S of Cove Pt, Hooperville, 02001426

Queen Anne's County

Bloody Point Bar Light Station, (Light Stations of the United States MPS), Near Claiborne, Claiborne, 02001416

Somerset County

Solomons Lump Light Station, (Light Stations of the United States MPS), 1.5 mi. N of Abrahams Pt., Crisfield, 02001422

St. Mary's County

Point No Point Light Station,

(Light Stations of the United States MPS),
Approx. 2 mi. ESE of Point No Point,
Dameron, 02001425

Massachusetts

Middlesex County

Minute Man National Historical Park,
Minute Man National Historical Park,
Lexington, 02001445

Missouri

Greene County

Palace Hotel,
(Springfield, Missouri MPS (Additional Documentation)),
501 College St.,
Springfield, 02001419

St. Louis Independent City

Luyties Homeopathic Pharmacy Company Building,
4200 Laclede Ave., St. Louis (Independent City), 02001442
Missouri Pacific Building,
210 N. 13th St., St. Louis (Independent City), 02001441

Pennsylvania

Dauphin County

Millersburg Passenger Rail Station,
127 W. Center St.,
Millersburg, 02001430

Monroe County

Delaware, Lackawanna and Western Railroad Water Gap Station,
Waring Dr.,
Delaware Water Gap, 02001431

Montgomery County

Lower Merion Academy—Cynwyd Elementary School—Bala Cynwyd Junior High
School Complex,
506 Bryn Mawr Ave.,
Bala Cynwyd, 02001429

Philadelphia County

Lorraine Apartments,
699 N. Broad St.,
Philadelphia, 02001427

South Dakota

Lake County

Lake Badus Rural Agricultural Historic District,
Roughly bounded by U.S. 81, Cty Rd. 16, Cty Rd 37, and Cty Rd. 20,
Nunda, 02001428

Virginia

Bristol Independent City

Virginia Hill Historic District,
Sections of Moore, Lee, Russell, Clinton, Spencer, W. Mary and Buchanan Sts.,
Bristol (Independent City), 02001447

Hampton Independent City

Thimble Shoal Light Station,
(Light Stations of the United States MPS),
Approx. 1.5 mi. E of Fort Monroe Military Reservation,
Hampton City (Independent City), 02001436

Mathews County

Wolf Trap Light Station,
(Light Stations of the United States MPS), SE of New Point Comfort,
Poquoson East, 02001434

New Kent County

Spring Hill,
11221 Carriage Rd.,
Providence Forge, 02001448

Newport News Independent City

Newport News Middle Ground Light Station,
(Light Stations of the United States MPS),
Approx. 2 mi. SSE of Newport News,
Newport News (Independent City), 02001438

Northumberland County

Smith Point Light Station,
(Light Stations of the United States MPS),
Bamboo Island,
Smith Point, 02001437

Norton Independent City

Grandin Road Commercial Historic District,
Grandin Rd. SW, and Memorial Ave.,
Roanoke (Independent City), 02001450

Pittsylvania County

Locust,
7408 Ward's Rd.,
Hurt, 02001449

Richmond Independent City

Forest Hill Park, Bet. Riverside Dr., Forest Hill Ave., and 42nd St., and 34th St.,
Richmond (Independent City), 02001446

Virginia Beach Independent City

Cape Henry (Second Tower) Light Station,
(Light Stations of the United States MPS), Atlantic Ave.,
Fort Story, 02001439

Westmoreland County

Mount Pleasant,
317 Coles Point Rd.,
Hague, 02001440

Wisconsin

Dane County

Shorewood Historic District,
Roughly bounded by Lake Mendota Dr., Tallyho Ln., and Shorewood Blvd.,
Village of Shorewood Hills, 02001432
United States Post Office and Federal Courthouse,
215 Martin Luther King Junior Blvd.,
Madison, 02001443

[FR Doc. 02–28517 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

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 October 26, 2002. Pursuant to section 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 by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by November 25, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALASKA

Southeast Fairbanks Borough—Census Area

Haines, John, Homestead, Mi. 296 Richardson Hwy., Delta, 02001461

Valdez-Cordova Borough—Census Area

Copper River and Northwestern Railway Bunkhouse and Messhouse, Third St., Chitina, 02001460

COLORADO

La Plata County

Smiley Junior High School, 1309 E 3rd Ave., Durango, 02001462

KENTUCKY

Bourbon County

Cane Ridge Rural Historic District, Canal Ridge Rd., Paris, 02001463

Calloway County

Murray Commercial Historic District, Roughly bounded by Walnut St., L.P. Miller St., Poplar St. and 6th St., Murray, 02001464

Campbell County

Third Street Motor Car Company Building, 216 E. Third St., Newport, 02001465

Green County

Downtown Greensburg Historic District, (Green County MRA) Public Square and bounded by N. and S. Main St., and E. and W. Court Sts., Greensburg, 02001466

Hardin County

Woodard, George, House, (Hardin County MRA) 232 W. Poplar St., Elizabethtown, 02001467

Jefferson County

Duncan, Stuart E. and Annie L., Estate, (Louisville and Jefferson County MPS) 404 Mockingbird Valley Rd., Louisville, 02001468

Stewart, W.K., Bookstore, 550 S. Fourth St., Louisville, 02001469

McCracken County

Masonic Temple, 501–505 S. 7th St., Paducah, 02001470

Massachusetts

Bristol County

Mount Pleasant Cemetery, Crocker, Cohannet, and Barnum Sts., Taunton, 02001474

Hampden County

Friedrich Block, 449–461 Main St., Holyoke, 02001473

Robert, Clovis, Block, 338–348 Main St., Holyoke, 02001472

Worcester County

Dean, Frank L. and Mabel H., House, 10 Cedar St., Worcester, 02001471

Nebraska

Cass County

Nehawka Public Library, Jct. of Elm and Master Sts., Nehawka, 02001481

Chase County

Texas Trail Stone Corral, Address Restricted, Imperial, 02001478

Douglas County

Shafer, M.F., and Co. Building, 1624 Webster, Omaha, 02001477

Keith County

Gainsforth, Dr. Burdette and Myrna, House, 1300 East A St., Ogallala, 02001476

Lancaster County

Hitchcok, W.F., House, 2733 Sheridan Blvd., Lincoln, 02001482

Thayer, John M., House, 1901 Prospect St., Lincoln, 02001479

Nuckolls County

Nelson Cemetery Walk, Northeast edge of Nelson, Nelson, 02001480

Saunders County

Barnes Oil Company, Jct. of Silver St. and U.S. 6, Ashland, 02001475

New Jersey

Somerset County

Staats House, 17 Von Steuben Ln., South Bound Brook Borough, 02001483

Oregon

Columbia County

Oregon-American Lumber Company Mill Office, 511 East Bridge St., Vernonia, 02001485

Lane County

Log Cabin Inn Ensemble, 156483 McKenzie Highway, McKenzie Bridge, 02001486

Multnomah County

Clarke-Mossman House, 1625 NW 29th Ave., Portland, 02001484

Virginia

Goochland County

Springdale, 2048 Cardwell Rd., Crozier, 02001490

Washington

King County

Shuey, Henry Owen, House, 5218 16 Ave. NE, 02001487

Spokane County

Latah School, 515 North Main, Latah, 02001489

Ralston, John and Mary, House, 2421 W. Mission Ave., Spokane, 02001488

[FR Doc. 02–28518 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Whitman Mission National Historic Site, Walla Walla, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of Whitman Mission National Historic Site, Walla Walla, WA. These human remains and cultural items were removed from a burial site at Whitman Mission National Historic Site.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the National Park unit that has control of these Native American human remains and associated funerary objects. The Manager, National NAGPRA Program is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service and Oregon State Museum of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon.

In July 1961, human remains representing a minimum of one individual were removed from a burial at Whitman Mission National Historic Site in Walla Walla, Washington during legally authorized excavations by NPS archeologist Paul Schumacher. The human skeletal remains were removed from Whitman Mission and were delivered to the University of Oregon. In January 1962 David L. Cole completed a detailed description of the skeletal remains and identified them as representing a male Native American individual who had been approximately 45-55 years old at the time of death. The burial was characterized as a Christian burial in a coffin that dated to the early historic period (1830s) when the Whitmans operated a mission among the Cayuse. In preparation for repatriation the NPS took possession of this set of human remains in August 1996. No known individuals were identified. The 20 associated funerary objects are 6 fragments of wood from a coffin, 1 bag of wood particles, 8 corroded nails with some attached wood pieces, 1 copper brad, 2 bone buttons, 1 shell button and 1 dentalia shell bead.

Whitman Mission National Historic Site commemorates the history of a mission established by Marcus and Narcissa Whitman in the 1830s on land that was primarily occupied by Cayuse Indians at the time. The site of the mission settlement is widely recognized as having been part of a larger aboriginal Cayuse territory and is within the judicially established area that is officially recognized as the Cayuse homeland. Immediately to the west of the Cayuse territory was the aboriginal homeland of the Walla Walla tribe. To the west of the Cayuse and southwest of the Walla Walla was the recognized aboriginal homeland of the Umatilla tribe. The Cayuse, the Walla Walla and the Umatilla are all constituent tribes of the present-day Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of Whitman Mission National Historic Site also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(A), the 20 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of

the death rite or ceremony. Lastly, officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Superintendent Francis T. Darby, Whitman Mission National Historic Site, 328 Whitman Mission Road, Walla Walla, Washington 99362-9699, telephone (509) 522-6360, before December 9, 2002. Repatriation of these human remains and associated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may begin after that date if no additional claimants come forward.

Whitman Mission National Historic Site is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: October 7, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–28521 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–FES–02–34]

Reach 11 Recreation Master Plan, Central Arizona Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a final environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), in conjunction with the City of Phoenix (City), has prepared a final EIS for a Recreation Master Plan for the Reach 11 Recreation Area (Reach 11), located in the northeast portion of the city of Phoenix, Maricopa County, Arizona. The final EIS considers the proposed approval and implementation of a recreation master plan for a 1,500-acre area adjacent to the Central Arizona Project (CAP) canal, between Cave Creek and Scottsdale roads. The land is owned by Reclamation and is managed for recreational purposes by the City's Parks and Recreation Department (PRD) under a 1986 Recreation Land Use Agreement (RLUA). The final EIS describes the anticipated environmental effects associated with a new recreation master plan for Reach 11. A proposed action and two action alternative master plans have been considered in the EIS. A No Action Alternative is also described, which provides a baseline for comparing the impacts of the three action alternatives.

DATES: No decision will be made on the proposed action until 30 days after the release of the final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD).

ADDRESSES: Copies of the final EIS are available for public inspection and review at the locations listed in the Supplementary Information section below.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Eto, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone 602–216–3857.

SUPPLEMENTARY INFORMATION: The final EIS considers the effects of approving a new Recreation Master Plan for Reach 11. Reach 11 is managed for recreational purposes by the PRD, consistent with the 1986 RLUA pursuant to Title 28, Federal Water Project Recreation Act of 1965 (Pub. L. 89–72, as amended). The current master plan was approved in 1987. The City and Reclamation determined a comprehensive planning effort for a new master plan should be carried out, due to the major population growth that has occurred and future growth anticipated for the area. This effort included conducting a recreation needs assessment to inventory existing facilities in the vicinity of Reach 11, and evaluating needs based upon established park standards, existing capacity, and public interest in or opposition to various recreation uses. The purpose and need for a new Recreation Master Plan is to optimize recreational use of Reach 11 based upon the needs of the City and community, while ensuring compatibility with the primary flood control function of Reach 11. A master plan would accommodate and respect the full range of current and future recreation demands of this growing area of Phoenix, Arizona. The final EIS considers three alternative master plan scenarios. All three provide a level of development established for a City district park. Under the Proposed Action, high-demand recreation needs would be balanced with passive recreation uses and maintenance of quality habitat areas. Two other alternative action alternatives are considered: One that would provide less active recreation-oriented development and emphasizes passive recreation-oriented activities (Alternative 1), and one that would maximize development of active-recreation oriented recreation facilities (Alternative 2). The No Action Alternative assumes the existing 1987 master plan, (which does not meet current PRD district park standards), would continue to be implemented. The alternative ultimately selected and implemented is expected to be developed in phases by PRD, as funding becomes available.

The draft EIS was issued November 9, 2001. Responses to comments received from interested organizations and individuals on the draft EIS are addressed in the final EIS.

Locations for public inspection and review of the final EIS:

- Department of the Interior, Natural Resources Library, 1849 C Street, NW, Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225.
- Arizona Department of Library Archives and Public Records, 1700 West Washington St., Phoenix AZ 85007.
- North Central Regional County Library, 17811 N. 32nd St., Phoenix AZ 85032.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix AZ 85004.
- Government Document Service, Arizona State University, Tempe, AZ 85281.
- Arizona State University—West Library, 4701 W. Thunderbird Rd., Glendale AZ 85306.

After release of the final EIS and the end of the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

Dated: Ocotber 11, 2002.

Lorri Gray,

Acting Regional Director, Lower Colorado Region.

[FR Doc. 02–28509 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES–02–36]

Imperial Irrigation District Water Conservation and Transfer Project, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a final environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) has issued an October 2002 Final EIR/EIS on the Imperial Irrigation District (IID) Water Conservation and Transfer Project, which would conserve and transfer the right to use up to 300,000 acre-feet per year of Colorado River water, which IID would otherwise divert for use within IID's water service area in Imperial County, California. The conserved water would be transferred to San Diego County Water Authority (SDCWA), Coachella Valley Water District (CVWD) and/or The Metropolitan Water District of Southern California (MWD).

DATES: No decision will be made on the proposed action until at least 30 days after the United States Environmental Protection Agency's (EPA) Notice of Availability for the Final EIR/EIS has been published in the **Federal Register**. At this time, it is anticipated the Secretary of the Interior (Secretary) will complete a Record of Decision (ROD) for Reclamation's action prior to December 31, 2002.

ADDRESSES: A copy of the October 2002 Final EIR/EIS is available for public inspection and review at the locations listed in the Supplementary Information section. An Internet version of the document is available on Reclamation's Lower Colorado River Operations Web site at *http://www.lc.usbr.gov/lcrivops.html.* In addition, hard copy or computer diskette versions of the document are also available upon request from Ms. Janet Steele, Boulder Canyon Operations Office, Bureau of Reclamation, BCOO–4601, PO Box 61470, Boulder City, Nevada 89006, telephone 702–293–8551, faxogram 702–293–8042.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Final EIR/EIS should be directed to Mr. Bruce D. Ellis at Reclamation's Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone 602–216–3854.

SUPPLEMENTARY INFORMATION: The water transfers, which are to remain in effect for up to 75 years, would facilitate efforts to reduce California's diversion of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment. Approval of the Secretary of the Interior (Secretary) will be required to change the point of delivery for the water transferred to SDCWA and MWD water.

IID is seeking a permit from the U.S. Fish and Wildlife Service (FWS) pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) that would authorize the incidental take of covered species associated with IID's water conservation and transfer project as well as its ongoing operation and maintenance activities within the IID water service area, the right-of-way of the All American Canal, and the Salton Sea. As a condition of applying for a Section 10 permit, IID is developing a Habitat Conservation Plan (HCP) in consultation with FWS, a draft of which is appended to this Final EIR/EIS.

Both Reclamation's approval of the change in point of delivery of Colorado River water and FWS' potential future issuance of a Section 10 permit are Federal actions that require compliance with the National Environmental Policy Act (NEPA) of 1969, as amended. Reclamation and the FWS issued the Draft EIR/EIS as a means to streamline the NEPA process and concurrently analyze the effects of both Reclamation's action and the FWS permit action. The FWS was a cooperating agency in the development of the Draft EIR/EIS and associated draft HCP, and evaluation of the impacts associated with the proposed issuance of a permit pursuant to Section 10 of the Federal ESA. However, at this time the FWS is not making a decision relative to the Section 10 permit.

This October 2002 Final EIR/EIS has been prepared pursuant to NEPA and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, and is being issued by Reclamation as the lead agency for its action. The FWS is a cooperating agency. Both agencies intend to use the EIR/EIS document to issue separate RODs. Some of the analyses in this October 2002 Final EIR/EIS document are relevant and may be used at a later date to support the decision for the Section 10 permit. It is anticipated the FWS would issue a supplemental or amended EIS for that decision at that later date.

The terms of IID's water conservation and transfer transactions are set forth in the ''Agreement for Transfer of Conserved Water'' (IID/SDCWA Transfer Agreement), executed by IID and SDCWA in 1998 (as amended), and a proposed Quantification Settlement Agreement (QSA) to be executed by IID, CVWD, and MWD. The QSA establishes a framework of conservation measures and water transfers within southern California for up to 75 years, and would facilitate California's efforts to reduce its diversions of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment, thus benefitting the entire Colorado River Basin. It would authorize the transfer of up to 200,000 acre-feet to SDCWA pursuant to the IID/SDCWA Transfer Agreement, and provide for the transfer of up to 100,000 acre-feet of water conserved by IID to CVWD and/or MWD.

The Secretary of the Interior (Secretary), pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support California's efforts. One of these actions is execution of an Implementation Agreement (IA) that would commit the Secretary to make Colorado River water deliveries to facilitate implementation of the QSA. The Secretary's execution of the IA is the subject of Reclamation's IA, Inadvertent Overrun and Payback Policy, and Related Federal Actions Final EIS (FES–02–35), which is being filed with EPA concurrently with this October 2002 Final EIR/EIS. Impacts to the Colorado River, that would result from the change in point of delivery of IID's conservation and transfer of up to 300,000 acre-feet of Colorado River water, are incorporated into an analysis of all changes in the point of delivery proposed in the IA and included in the QSA.

IID filed a Notice of Completion with California's State Clearinghouse on January 17, 2002, indicating the Draft EIR/EIS was available for review, pursuant to the California Environmental Quality Act (CEQA). On January 18, 2002, Reclamation filed the Draft EIR/EIS with EPA. IID and Reclamation made the Draft EIR/EIS available for a 90-day public review and comment period, from January 25, 2002 to April 26, 2002. Public hearings were held on April 2, 3, and 4, 2002, in La Quinta, El Centro, and San Diego, California, respectively. A total of 30 speakers provided oral comments at the public hearings. In addition, 300 written comment letters were received.

In June 2002, a Final EIR/EIS was prepared for consideration by the IID Board of Directors (Board) as the lead agency under CEQA. The June 2002 Final EIR/EIS incorporated the Draft

EIR/EIS, together with modifications and additions thereto set forth in an Errata, copies of all written and oral comments received on the Draft EIR/EIS, and responses to those comments. On June 28, 2002, the IID Board certified the June 2002 Final EIR/EIS pursuant to the requirements of Section 15090 of the CEQA Guidelines. In order to comply with Council on Environmental Quality regulations implementing NEPA related to the use of errata (40 CFR part 1503.4(c)), Reclamation has prepared this fully integrated, stand alone October 2002 Final EIR/EIS.

The Final EIR/EIS identifies and summarizes the impacts to the Colorado River associated with IID's proposed change in point of delivery of up to 300,000 acre-feet of Colorado River water, under either the IID/SDCWA Transfer Agreement or QSA. It also describes the anticipated impacts associated with the water conservation measures to be undertaken. IID's proposed methods of conserving the water to be transferred, and use of that water, are also described in the Final EIR/EIS.

The Final EIR/EIS includes an analysis of impacts that may be relevant when evaluating the impacts of IID's water transfer and conservation project and operation and maintenance activities associated with its permit request. However, the FWS currently does not anticipate issuing a Section 10 permit concurrent with Reclamation's decision regarding the change in point of delivery of Colorado River water; thus, discussion regarding the HCP and Section 10 permit is not included here.

Copies of the October 2002 Final EIR/EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763
- Brawley Public Library, 400 Main Street, Brawley, CA 92227
- Carlsbad City Library, 1775 Dove Lane, Carlsbad, CA 92009
- El Centro Public Library, 539 State Street, El Centro, CA 92243
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344
- Riverside Central Library, Government Documents Section, 3581 Mission Inn Avenue, Riverside, CA 92501
- San Bernardino County Library, 104 West 4th Street, San Bernardino, CA 92401
- San Diego County Public Library, 201 E. Douglas Street, El Cajon, CA 92020
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364

No decision will be made regarding the proposed Federal action until at least 30 days after EPA's Notice of Availability for this October 2002 Final EIR/EIS, and the Final IA EIS. It is anticipated the Secretary will complete a ROD for Reclamation's proposed action prior to December 31, 2002. The ROD will state the action that will be implemented and will discuss all factors leading to the decision. Any changes that have been to the proposed water conservation and transfer project will be evaluated prior to decision-making to determine what, if any, additional environmental compliance documentation is needed. These determinations will be addressed in the ROD.

Dated: October 29, 2002.

Willie Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–28507 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES–02–35]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Lower Colorado River, Arizona, California and Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a final environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) has issued the Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions Final EIS (Final IA EIS). Execution of the Implementation Agreement (IA) would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies (participating agencies) to implement the proposed Quantification Settlement Agreement (QSA).

DATES: No decision will be made on the proposed action until at least 30 days after the United States Environmental Protection Agency's (EPA) Notice of Availability for the Final IA EIS has been published in the **Federal Register**. At this time, it is anticipated the Secretary of the Interior (Secretary) will complete a Record of Decision (ROD) prior to December 31, 2002.

ADDRESSES: A copy of the Final IA EIS is available for public inspection and review at the locations listed in the **SUPPLEMENTARY INFORMATION** section. An internet version of the document is available on Reclamation's Lower Colorado River Operations Web site at *http://www.lc.usbr.gov/lcrivops.html*. In addition, hard copy or computer diskette versions of the document are also available upon request from Ms. Janet Steele, Boulder Canyon Operations Office, Bureau of Reclamation, BCOO–4601, PO Box 61470, Boulder City, Nevada 89006, telephone 702–293–8551, faxogram 702–293–8042.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Final IA EIS should be directed to Mr. Bruce D. Ellis, Phoenix Area Office, Bureau of Reclamation, PXAO–1500, PO Box 81169, Phoenix Arizona 85069–1169, telephone 602–216–3854, faxogram 602–216–4006.

SUPPLEMENTARY INFORMATION: The Secretary, pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support the implementation of the QSA. The QSA is an agreement in principle among the participating agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. It provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.

The purpose of the Federal action is to facilitate implementation of the QSA. The need for the Federal action is to assist California's efforts to reduce its

use of Colorado River water to its 4.4 million acre-feet apportionment in a normal year. This reduction in California's use of Colorado River water would benefit the entire Colorado River Basin. The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species.

The Final IA EIS describes the potential environmental impacts of the three components that make up the proposed Federal action. Because the purpose of the proposed action is to provide Federal approval of an agreement negotiated among the participating agencies, no other action alternatives to the IA are considered in the Final IA EIS. Similarly, the biological conservation measures proposed to be implemented under the proposed action relate specifically to the water transfers specified in the IA and QSA. These measures were developed and agreed to by Reclamation and the U.S. Fish and Wildlife Service (FWS) in response to Reclamation's August 2000 Biological Assessment, and were incorporated into a FWS January 2001 Biological Opinion; no alternatives to the biological conservation measures are considered in the Final IA EIS. With regard to the IOP, in response to scoping comments received, Reclamation developed an alternative that would eliminate the forgiveness of payment aspect of the proposed policy. This alternative has been evaluated and is described in the Final IA EIS.

The Final IA EIS describes the direct impacts of changing the point of delivery of up to 388,000 acre-feet per year (KAFY) of Colorado River water, from Imperial Dam to Parker Dam, such as changes in Colorado River flow and reservoir storage. The Final IA EIS also describes and incorporates by reference analyses of off-river impacts that would result from actions taken by the QSA participating agencies as a result of implementing the QSA. This is because the changes in water deliveries agreed to by the Secretary in the IA will enable the QSA to be fully implemented. The non-Federal actions carried out by the participating agencies pursuant to the QSA need to comply with the California Environmental Quality Act, California Endangered Species Act, and other State and local requirements. Toward that end, an Environmental Impact Report/Environmental Impact Statement was prepared for the IID Water Conservation and Transfer Project (IID EIR/EIS).

The IID EIR/EIS describes the potential impacts from IID's proposed project that would conserve and transfer the right to use up to 300 KAFY of Colorado River water, which IID would otherwise divert for use within IID's water service area in Imperial County, California. The conserved water would be transferred to San Diego County Water Authority, Coachella Valley Water District and/or The Metropolitan Water District of Southern California. These transfers are associated with the QSA and would remain in effect for up to 75 years. The change in delivery point of up to 300 KAFY associated with the IID Water Conservation and Transfer Project is included as part of the 388 KAFY change in point of delivery evaluated in the Final IA EIS. In concert with the water conservation actions associated with the IID Water Conservation and Transfer Project, IID has developed a Habitat Conservation Plan (HCP), which would mitigate impacts to covered species from those water conservation actions (as well as ongoing IID operation and maintenance activities). The HCP would provide the basis for FWS to issue ''take'' authorization (under section 10 of the ESA) to IID for its potential impacts to listed species. FWS has indicated it does not anticipate taking an action on the HCP at this time. Because issuance of the section 10 permit by FWS is uncertain, Reclamation has initiated a consultation with FWS under section 7 of the ESA on the voluntary implementation of certain biological conservation measures, which could provide an alternative mechanism for obtaining ''take'' authorization for the California water agencies. The section 7 approach and its impacts are described in this Final IA EIS. A more detailed description of IID's water conservation actions and the HCP are included in the IID Final EIR/EIR (FES–02–36), which is being filed with EPA concurrently with this Final IA EIS.

A copy of the Final IA EIS is available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Canslor Way, Blythe, CA 92225.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111.

No decision will be made on the proposed action until at least 30 days after EPA's Notices of Availability for the Final IA EIS and the October 2002 Final IID EIR/EIS have been published in the **Federal Register**. At this time, it is anticipated the Secretary will complete a ROD prior to December 31, 2002. The ROD will state the action that will be implemented and will discuss all factors leading to the decision. Any changes that have been made to the proposed species conservation plan will be evaluated prior to decision-making to determine what, if any, additional environmental compliance documentation is needed. These determinations will be addressed in the ROD.

Dated: October 29, 2002.

Willie Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–28508 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR 870.18, Abandoned mine reclamation fund—fee collection and coal production reporting; and 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by December 9, 2002 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically *to jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 870.18, Abandoned mine reclamation fund—fee collection and coal production reporting; 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants. OSM is requesting a 3-year term of approval for each information collection activity.

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 number for part 870.18 is 1029–0090 and 30 CFR part 735 and 886 that require grant submittals are currently approved under OMB control number 1029–0059.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on July 22, 2002 (67 FR 47828). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49 and OSM–51.

Frequency of Collection: Semi-annually, annually and once.

Description of Respondents: State and Tribal regulatory and reclamation authorities.

Total Annual Responses: 132.

Total Annual Burden Hours: 655 hours.

Title: 30 CFR Part 870.18—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–0090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be used by OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine operators.

Total Annual Responses: 933.

Total Annual Burden Hours: 700.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0059 for parts 735 and 886 and the three grant forms, and 1029–0090 for Part 870.18 in your correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to *jtreleas@smre.gov.*

Dated: October 15, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–28477 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Handbook on Electronic Filing Procedures

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Consistent with the Government Paperwork Elimination Act, the United States International Trade Commission (Commission) has implemented procedures to permit persons to electronically file certain documents with the Commission. The Commission also is publishing a notice of final rulemaking to permit electronic filing. In conjunction with that notice, the Commission is issuing a final version of a Handbook on Electronic Filing Procedures that sets forth the requirements governing electronic filing of documents (Handbook). The Handbook was finalized after consideration of public comments to the initial draft of the Handbook on Electronic Filing Procedures (EFP), which was published in the **Federal Register** on April 26, 2002 (67 FR 20822, April 26, 2002) (Draft Handbook).

DATES: The effective date of the Handbook as printed in this notice will be announced in a notice to be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the

General Counsel, United States International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website *(http://www.usitc.gov).*

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2002, the Commission published a notice in the **Federal Register** to solicit public comments on the draft Handbook (April 2002 Notice). 67 FR 20822, April 26, 2002. In its notice, the Commission proposed certain electronic filing procedures in the draft Handbook and requested public comment on those procedures.

The Commission received a total of six sets of comments from the ITC Trial Lawyers Association (ITCTLA) and five law firms. The Commission carefully evaluated all comments received. The Commission's response to those comments is set forth below. The comments are organized by Handbook section. Please refer to the draft Handbook published in the April 2002 notice when reading the comments discussed below.

The Commission considered those public comments in developing the Handbook, which will be maintained and distributed by the Secretary. The Handbook is being promulgated in conjunction with § 201.8(f) of the Commission's rules of practice and procedure (rules), as amended. Section 201.8(f) allows persons the option of filing certain documents electronically without violating the relevant rules requiring paper filings at the Commission. Please review the entire Handbook before you begin electronic filing. The Handbook follows the analysis of public comments and the Commission's response thereto.

Analysis of Public Comments to Draft Handbook and Commission's Response

1. *Handbook, section II(A) ''Definitions and Instructions:''* The ITCTLA commented that the Commission should add a definition of ''cover sheet'' to the definitions and instructions section of the Handbook. The law firm of Adduci, Mastriani & Schaumberg L.L.P. commented that the Commission should add a definition for ''Notice of Electronic Filing'' to the definitions and instructions section of the Handbook. The Commission has added these two definitions to section II(A) of the Handbook.

2. *Handbook, section II(B) ''Registration as an EFP User and Assignment of Passwords'':* The law firm of Miller & Chevalier commented that the Commission should consider three alternatives in issuing user IDs and passwords: (1) Whether to limit user IDs and passwords to only a few per law firm; (2) whether to issue user IDs and passwords to secretaries and legal assistants; and (3) whether to issue different user IDs and passwords for each new case to prevent disclosure of business proprietary information (BPI) or confidential business information (CBI). The Commission has determined to issue one user ID and password to each registered user for use in Commission proceedings instead of a different user ID and password in each new proceeding because party representatives are not permitted at this time to file documents containing BPI or CBI or to view such documents in the Commission's Electronic Document Information System (EDIS–II). If and when that policy changes, the Commission will revisit the issue of whether a user must register more than once. The Commission also has decided not to restrict the issuance of user IDs and passwords to a certain group of registered users in order to encourage persons to register for electronic filing.

The ITCTLA and Adduci, Mastriani & Schaumberg L.L.P., suggested that the Commission clarify that an EFP user need only register once for electronic filing. The Commission has revised this section to state that electronic filers need to register only once for a user ID and password. Registered users of the electronic filing system need only submit a registration form to the Secretary once; however, registered users are responsible for notifying the Secretary in the event of any changes to their registration information.

3. *Handbook, section II(B)(5)(a):* The ITCTLA commented that the Commission should incorporate instructions to nonparties in the Handbook instead of separately on the website. The Commission will post instructions for electronic filing to nonparties on the website because nonparties typically do not file the same type of documents as parties do. It will be easier for nonparties to access filing instructions directly on the website instead of having to review the Handbook for instructions.

4. *Handbook, section II(C) ''Types of Documents'':* The ITCTLA commented that the Commission should permit electronic filing of documents listed in categories (2) through (7) of section II(C) of the Handbook, followed by paper filings of those documents the following day. Alternatively, the ITCTLA and the law firm of Stewart and Stewart commented that the Commission should not require the concurrent filing of paper copies of certain electronically filed documents as specified in the Handbook. The Commission has determined to adopt the ITCTLA's comment to permit electronic filing of documents listed in categories (2) through (7) of section II(C) of the Handbook, followed by a corresponding paper filing of the same document no later than one business day after the electronic filing.

Adduci, Mastriani & Schaumberg commented that the Commission should first permit only public electronic filings under 5 megabytes, and then progress to public and confidential e-filings over 5 megabytes once system flaws have been discovered and fixed. The ITCTLA and Miller & Chevalier commented that the Commission should allow electronic filing of documents containing BPI or CBI. The Commission has determined not to permit the electronic filing of documents containing BPI or CBI at this time. Once EDIS–II has operated for a time, the Commission may reevaluate its prohibition on electronic filing of documents containing BPI or CBI. As for Adduci's comment regarding the size of electronic filings, the Commission has determined that any electronic filing may exceed five megabytes, so long as none of the attachments in the filing is over five megabytes.

The ITCTLA commented that the Commission should consider granting counsel electronic access to BPI or CBI materials on EDIS–II in each investigation upon the filing of a notice of appearance and APO application. The ITCTLA proposed that, in the alternative, the Commission should phase-in access to confidential material in EDIS–II by permitting only parties' counsel (on the APO list) and ALJs in selected investigations to access BPI or CBI in the first phase; permitting a limited number of counsel (on the APO list) in any investigation to access BPI or CBI in the second phase; and all counsel (on the APO list) in any investigation to access BPI or CBI in the third phase. The Commission has determined not to provide counsel electronic access to BPI or CBI immediately because the agency wants to operate EDIS–II for a time before considering permitting such access.

The ITCTLA proposed rewording of section II(C) of the draft Handbook to avoid possible confusion over which type of documents may be filed electronically. Stewart & Stewart commented that the Commission should

provide an ''express instruction'' regarding the type of documents that may be filed electronically, as the Court of International Trade does in its electronic filing procedures (instead of listing several categories of documents that can be filed electronically). Wilmer, Cutler & Pickering commented that the Commission should not prohibit electronic filing of public versions of documents containing BPI or CBI. Although the Draft Handbook does permit the electronic filing of public versions of documents containing BPI or CBI, the Commission has determined to clarify the language of section II(C) in the Handbook by largely adopting the proposed language of the ITCTLA. The Commission considers that such language will provide sufficient instructions to filers.

The ITCTLA commented that the Commission should explicitly address how the ''24 hour'' rule is to be applied in electronic filing of documents in title VII investigations. Currently, paper filers can choose to submit either the corrected confidential document in its entirety or the corrected portion of the confidential document under the ''one day'' rule. However, because inserting replacement pages into a PDF document would pose technical difficulties, the Commission has determined that, for electronic filings, the entire document containing ''one day'' changes must be refiled electronically. The Commission has amended the language in the Handbook to incorporate the requirement that complete copies of documents with ''one day'' changes must be filed, instead of just pages containing ''one day'' changes, as is currently done with paper copies of documents.

5. *Handbook, section II(D) ''Where Documents Are To Be Filed Electronically'':* The ITCTLA commented that the Commission should incorporate instructions for electronic filing and hardware/software requirements in the Handbook, instead of on the website. The Commission has determined to add a set of Adobe Acrobat standards, and instructions on attachment creation and redaction methodology to the Handbook, but sees no need to duplicate other instructions posted on the website.

Stewart & Stewart commented that the Commission should provide a warning to electronic filers that text-based PDF files may permit others to retrieve ''masked'' confidential material. The Commission has added such a warning in the Handbook.

6. *Handbook, section II(E) ''Notice of Electronic Receipt'':* Stewart & Stewart commented that the Commission should consider including the start time of the registered user's electronic transmission of the document on the notice of electronic receipt, in the event that the document is not received in its entirety by EDIS–II until after 5:15 p.m. The Commission has determined not to include the start time of the electronic transmission on the notice of electronic receipt due to technical limitations of EDIS–II.

7. *Handbook, section II(F): ''Deadline for Electronic Filing of Documents:''* The ITCTLA commented that the Commission should treat an electronic filing as timely if transmission of the electronic document to EDIS–II begins on or before 5:15 p.m. on the filing deadline date (not when the transmission to EDIS–II is completed). The ITCTLA also commented that the Commission should consider extending the electronic filing deadline beyond 5:15 p.m. to encourage filers to choose electronic filing over paper filing.

The Commission intends to adhere to 5:15 p.m. as the deadline for receipt of electronic documents in its entirety by EDIS–II so that electronic filers do not have an undue advantage over paper filers. The Commission notes that, even though the 5:15 p.m. deadline is applicable to both electronic and paper filings, paper filers must still factor in time for printing, assembly and manual delivery of paper documents. Electronic documents not received in their entirety by 5:15 p.m. will be treated as filed on the next Commission business day.

Adduci, Mastriani & Schaumberg commented that the Commission should amend section II(F) of the Handbook to state that filers should contact the Secretary's office in the event of a technical failure during an electronic filing transmission. The Secretary should assign an authorization number for the filer to include in a declaration filed with the original document the following business day. The Commission has decided not to adopt the comment of Adduci, Mastriani & Schaumberg that filers who experience a technical failure during actual electronic filing of a document may contact the Secretary for an authorization number to file a document the following business day. Authorization numbers will only be issued by the Secretary if the EDIS–II website experiences a technical failure for a period of time greater than 1 hour after 12 p.m. on a Commission business day. In all other cases, filers may submit a request for late filing if they experience technical difficulties in electronic filing.

8. *Handbook, section II(G) ''Technical Failures'':* Stewart & Stewart, Miller & Chevalier, and the ITCTLA commented that the Commission should correct the draft Handbook to state that the EDIS–II website will be deemed subject to a technical failure if the site is ''unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12 noon * * *'' or ''* * * any period of time after 12 noon * * *'' The Commission has corrected the Draft Handbook to state ''* * * any period of time greater than one hour after 12 noon * * *''

9. *Handbook, section II(H) ''Requests for Late Filing'':* Adduci, Mastriani & Schaumberg commented that if a filer begins an electronic filing transmission prior to 5:15 p.m. but receives the notice of electronic filing after 5:15 p.m., a request for late filing should be granted by the Secretary. As previously noted above, the filing deadline for electronic documents is 5:15 p.m. If the electronic document is not received in its entirety by EDIS–II by no later than 5:15 p.m., the filer may submit a request for late filing to the Secretary, requesting that the Commission accept the late filing. The Commission has determined that requests for late filing will be granted or denied based on the circumstances of each late filing.

Miller & Chevalier commented that the Commission should specify the type of documentation that should be attached to a request for late filing to show that a document was electronically filed prior to 5:15 p.m. The Commission has determined not to require that documentation be attached to a request for late filing. Instead, the registered user should include, in the request for late filing, an unsworn declaration attesting to the start time of the electronic transmission to EDIS–II.

10. *Handbook, section II(I): ''Format of Documents'':* Stewart & Stewart commented that the Commission should consider requiring electronic filers to include specific information regarding security and permission settings in the document properties section of the PDF file being transmitted to the Commission to assist it in handling of the document. The Commission has included in the Handbook certain security and permission settings that all Registered Users must implement for their electronic filings.

The ITCTLA commented that the Commission should post on the EDIS–II website a template that contains the standardized settings for Adobe Acrobat PDF documents that are electronically filed. The Commission has determined to list in the Handbook portable document format (.pdf) standards for electronically filed documents.

The ITCTLA commented that the Commission should implement word count limits for electronically filed documents to avoid inadvertent violations of page limits due to pagination problems with Adobe Acrobat PDF format. The Commission has decided to retain in the initial phase the same page limits requirements as are applicable to paper filings because of the system's technical limitations.

Miller & Chevalier commented that the Commission should not discourage filing of image-based PDF files because they can also be made searchable via certain steps that the Commission could require filers to perform. At this time, the Commission will retain the language in the Draft Handbook regarding image-based PDF files due to the large size of such files and technical limitations of EDIS–II with respect to conversion of image-based PDF files.

11. *Handbook, section II(J): ''Size of Electronic Transmission'':* Miller & Chevalier commented that the Commission should clarify whether each attachment of an electronic submission or the entire electronic submission is limited to no more than five (5) megabytes. Miller & Chevalier suggested the following revision: ''An electronic transmission as a whole can exceed 5 megabytes so long as no one attachment exceeds 5 megabytes.'' The Commission has determined to adopt Miller & Chevalier's proposed language regarding the size of attachments to an electronic transmission.

Miller & Chevalier commented that the Commission should provide detailed instructions on how to label each separate attachment for an electronic filing. The Commission has incorporated in the Handbook detailed instructions on how to label each separate attachment for an electronic filing.

12. *Handbook, section II(K)(4)(c): ''Signatures'':* The ITCTLA commented that, once electronic filing of documents containing confidential material is permitted, the Commission should note the potential conflict between section II(K)(4)(c) (requiring the retention of documents containing two or more original signatures for one year after the conclusion of an investigation and resulting appeals) and Commission rules that require the return or destruction of materials released under APO after completion of certain proceedings. The Commission has determined to amend the language in this section to state that electronic filers must retain documents containing two or more original signatures until the earlier of (i) Commission deadline for destruction of APO materials, if applicable; or (ii) one year after the conclusion of the investigation and resulting appeals.

Adduci, Mastriani & Schaumberg commented that the Commission should require that a party who electronically files a document containing multiple signatures must maintain a hard copy of the document containing the facsimile signatures (instead of the original signatures) for one year after completion of the investigation. The Commission has determined to retain the requirement of maintaining a hard copy of a document containing multiple signatures for easier verification of signatures.

13. *Handbook, section II(L): ''Limitations on Service of Electronic Documents'':* Miller & Chevalier and the ITCTLA commented that, in Commission proceedings, the Commission should not require the Secretary's or ALJ's prior approval for electronic service since parties already reach private agreements among themselves regarding service arrangements. Instead, the Commission could either permit the Secretary or ALJ to impose deadlines for electronic service or delete the prior consent requirement altogether. The Commission has determined to retain the requirement of prior consent to electronic service by the Secretary or ALJ so that a record of proceedings subject to electronic service may be maintained by the Secretary or ALJ.

Miller & Chevalier and the ITCTLA commented that the Commission should serve its own documents such as orders and opinions on parties either via email or other electronic means. The Commission has determined not to serve electronically its own documents on parties in the initial phase because of technical and security concerns.

Stewart & Stewart commented that the Commission should clarify in the Handbook how an electronic filer should effect service of paper versions of electronic text-based PDF documents containing hyperlinks to exhibits, decisions published by courts on official websites, decisions available in commercial legal databases, or other material available on the internet. Options for paper service of hyperlinked materials include submitting supporting materials on optical disks, revising page or file size limitations. Stewart & Stewart also raised the issue of whether service of paper copies that do not contain the enhancements of the electronic version is sufficient under the rules. The Commission has added a section in the Handbook to prohibit hyperlinks to other documents unless the actual hyperlinked material is included in its entirety in any corresponding paper copy to be filed with the Commission and served on other parties. In addition, the Commission has added a section in the Handbook that states that hyperlinked materials in electronic form will not be considered part of the official record of the Commission proceeding (*See, e.g.* 19 CFR 207.50(b)).

14. *Handbook, section II(N) ''Official Administrative Record in Electronic Filings'':* Stewart & Stewart commented that the Commission should specify in the Handbook how it intends to treat electronically filed documents for purposes of compiling the official record (*See, e.g.* 19 CFR 207.50(b)), given that documents filed electronically may differ from corresponding paper versions. The ITCTLA commented that the Commission should deem the first-filed copy as the governing or ''official copy'' in the event of disputes over filing dates/times or discrepancies between electronically filed and paper copies, unless other arrangements are made by the filing party. The Commission has determined, for consistency, to designate the electronic version of a document as being the ''official copy'' for purposes of compiling the official administrative record and in the event of any dispute or discrepancy between electronic and paper versions of a document.

15. *Other electronic filing comments:* The ITCTLA commented that the Commission should send an email notification to each counsel of record in an investigation concurrently with uploads to EDIS–II identifying all documents filed. The Commission has determined, in the initial pilot phase, not to send email notifications to each counsel of record in an investigation in order to allow counsel time to register as users of the electronic filing system. Moreover, the current form of EDIS–II does not include a function to send email notifications to each counsel of record. The Commission has included a feature on the EDIS–II home page that permits users to quickly identify all documents filed with the Commission on a daily basis.

Miller & Chevalier commented that the Commission should post a frequently asked questions (FAQs) section on its website to address both general filing guidelines and technical questions. The Commission has determined to post a FAQs section on its website.

The ITCTLA commented that the Commission should only maintain a single website for both electronic filing and EDIS–II access, instead of

establishing another website (*http://edis.usitc.gov*) for electronic filing. The Commission has determined to retain the second website (*http://edis.usitc.gov*) for electronic filing in order to maintain the security of EDIS–II. A link to the EDIS–II website will be posted on the Commission's Web site at *http://www.usitc.gov.*

The ITCTLA commented that the Commission should develop and post on the EDIS–II website tools for redaction of BPI or CBI from filed documents so that counsel do not inadvertently breach APO obligations. The Commission has determined not to develop nor post on its website standard tools for redaction of BPI or CBI, given the variety of differing software/hardware systems used by parties, counsel, and other persons appearing before the Commission.

Miller & Chevalier commented that the Commission should implement a trial period whereby law firms can perform test filings to determine whether there are any technical problems with either the ITC system or with the law firms' own computer systems. The Commission is considering whether to conduct a trial period.

Handbook on Electronic Filing Procedures

The Handbook is printed in its entirety below. The Commission anticipates that EDIS–II will be operational and available for public use in December 2002. However, before persons will be permitted to register for electronic filing and to submit filings electronically to EDIS–II, the Commission will publish a notice in the **Federal Register** advising the public of the date that electronic filing will begin.

In issuing this Handbook, the Commission does not intend to maintain all of the procedures set forth in the Handbook indefinitely. Rather, the Commission anticipates that, as persons register for and utilize the electronic filing system, Handbook procedures *may need to be amended.* In particular, the Commission may consider expanding the list of documents that can be filed electronically.

International Trade Commission

Commission Handbook on Electronic Filing Procedures

I. Introduction

A. This Handbook provides instructions for persons who wish to file documents electronically with the United States International Trade Commission (Commission) pursuant to § 201.8(f) of the Commission's rules of practice and procedure (19 CFR 201.8(f)).

B. In any conflict between the Commission's rules of practice and procedure (rules) and this Handbook, the rules shall govern. This Handbook is designed to be read in conjunction with the rules. This Handbook does not alter or waive any provisions in the rules governing the filing of documents with entities and/or persons other than the Commission, including but not limited to the United States Secretary, NAFTA Secretariat.

C. If you choose to file in paper form, you must comply with the relevant provisions of the rules governing such filing. The Commission does not permit filing by means other than paper filing in accordance with the relevant rules or electronic filing in accordance with § 201.8(f) and this Handbook. Thus, for example, filing by facsimile and by electronic mail (*i.e.*, sending a document to a Commission electronic mail address) are not permitted.

II. Electronic Filing Procedures (EFP)

A. *Definitions and Instructions:*

(1) ''EFP'' means the Commission's Electronic Filing Procedures.

(2) ''Secretary'' means the Secretary to the Commission (500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000). The EFP is administered by the Secretary and any questions about EFP should be directed to the Secretary.

(3) ''Business hours'' or ''Business days'' refers to the hours and days that the Commission is open (*i.e.*, from 8:45 a.m. to 5:15 p.m., Washington, DC local time, from Monday through Friday, excepting Saturdays, Sundays and Federal legal holidays).

(4) The ''Web site'' refers to the Commission's world wide Web site at *http://edis.usitc.gov.*

(5) ''EDIS–II'' refers to the Commission's Electronic Document Information System, which will receive electronic transmission of documents through the Commission's Web site.

(6) ''Cover sheet'' refers to the EDIS–II cover sheet that all filers must complete pursuant to § 201.8(g) of the Commission's rules and regulations.

The cover sheet may be completed either on-line at the Web site for electronic filings or in paper form for paper filings.

(7) ''Document'' refers to the cover sheet and attachments that comprise an electronic filing with the Commission.

(8) ''Electronic receipt'' means that an electronic transmission of a document to EDIS–II via the Commission's Web site has been successfully completed in its entirety.

(9) ''Electronic filing'' means the electronic transmission of a document and the Secretary's acceptance of the document for filing. As discussed below, the electronic transmission and receipt of a document does not necessarily mean that the document has been filed.

(10) ''Registered user'' means a person that registers to file documents electronically with the Commission.

(11) ''E-mail address of record'' means the electronic mail address of a registered user which he or she has provided to the Secretary.

(12) ''Notice of electronic receipt'' will be provided in two forms: (a) An on-screen notice of receipt once the electronic transmission of the document is complete; and (b) an e-mail sent to the registered user's e-mail address of record. The notice of electronic receipt only conveys that the document is physically present at the Commission and does not mean that the document has been accepted by the Secretary for filing in EDIS–II.

(13) ''Notice of electronic filing'' will be e-mailed to the registered user's e-mail address of record upon acceptance of the electronic document for filing in EDIS–II by the Secretary.

B. *Registration as an EFP user and assignment of passwords:*

(1) Except as provided in paragraph B(5) below, to file electronically, you must first register to become a ''registered user'' of the Web site. To register, you should fill-out the ''EFP user registration form'' (hereinafter called ''registration form'') both on-line at the Web site and in paper form by printing-out a paper copy directly from the Web site. You should mail or deliver the completed and signed paper copy of the registration form to the Secretary. The registration form will require identification of your name, firm affiliation (if any), address, telephone number and e-mail address of record, and your original signature (on the paper copy). You must have and maintain a working e-mail address to be a registered user. you should also designate a user ID and password on the on-line version of the registration form; however, you may not use your user ID and password for electronic filing until the Secretary has reviewed the paper copy of your registration form and has sent you a notice of activation of user ID and password by mail. Electronic filers need only submit the registration form to the Secretary once to become a registered user of the Web site. Once the Secretary has sent the registered user a notice of activation of user ID and password, the registered user will be permitted to file certain documents

electronically in Commission proceedings in which he or she has filed an entry of appearance or otherwise represents a party.

(2) A registered user may authorize another person to file a document with the Commission using the user ID and password of the registered user; however, the registered user assumes responsibility for any authorized use of his or her user ID and password. The registered user and all persons who participate in the preparation of or are signatories to a document shall retain responsibility with respect to any duties and obligations pertaining to the document under the rules. A registered user must comply with applicable limitations on disclosure of BPI and CBI when providing his or her user ID and password to another person. As provided in paragraph II(K)(2), a document filed using a registered user's user ID and password will be deemed signed by that registered user.

(3) Upon learning of the potential compromise of the confidentiality of his/her password, the registered user shall immediately change the password. The registered user must also notify the Secretary of the perceived breach and the period of compromise. If the registered user has provided his/her password to an employee of the registered user's firm, such as a paralegal, legal assistant, or secretary who subsequently leaves the firm, the registered user must change the password when that employee's access should be terminated. Unless there is a perceived breach of confidentiality, in such instances, no notification of the Secretary is needed.

(4) Every registered user shall be responsible for keeping his or her registration information current.

(5) You may not electronically file documents with the Commission unless you have registered with the Commission pursuant to the procedures set forth in subparagraph (1) above, with the following exception:

(a) If you do not represent a party to an investigation pending before the Commission (*i.e.*, you are not an attorney, consultant, officer, owner, shareholder, employee, agent, director, or other representative of a party to an investigation), and you would like to submit a document to the Commission regarding the pending investigation, please follow the relevant instructions on the Web site for non-registered users.

C. *Types of documents:*

(1) The following documents cannot be filed electronically and must be filed in paper form in accordance with the rules: A document (i) that contains confidential business information (''CBI'') or business proprietary information (''BPI'') as defined in 19 CFR 201.6, (ii) that exceeds the size limit set forth in paragraph II(I) of this Handbook, or (iii) that contains exhibits of original documents, such as certified copies.

(2) All other documents may be filed electronically. However, for the following six categories of documents, you must also file the document in paper form pursuant to the rules no later than one business day after the electronic filing.

(a) Briefs for which no BPI or CBI version is filed, including those subject to 19 CFR 201.13, 207.15, 207.23, 207.25, 207.65, 207.67, and 210.40, except that briefs filed in proceedings subject to section 332 of the Tariff Act of 1930 for which no CBI version is filed may be filed electronically without corresponding paper copies;

(b) Comments on questionnaires for which no BPI or CBI version is filed, subject to 19 CFR 207.20 and 207.63;

(c) Final comments for which no BPI version is filed, subject to 19 CFR 207.68 and 207.30;

(d) Petitions for review for which no CBI version is filed subject to 19 CFR 210.43 and 210.46;

(e) Petitions, including those subject to 19 CFR 202.2, 206.2, 206.14, 206.33, 206.43, 206.54, 207.10, 210.47; and

(f) Complaints, including those subject to 19 CFR 210.12.

For these six categories of documents, you must include a printout of a copy of the cover sheet that accompanied the electronic filing and submit it with the paper version.

If a standard form has been prescribed to be used when filing any document, you must use that standard form when filing such document electronically. You must complete the electronic cover sheet on EDIS–II at the time that you make your electronic filing. EDIS–II will consider the cover sheet and one or more attachments to be the complete filing. For example, a cover letter addressed to the Secretary is one attachment. Multiple attachments may be filed as part of the same electronic transmission as long as each attachment does not exceed the size limitation set forth in paragraph II(I) of this Handbook. You may submit any number of attachments per document. However, each individual pleading or submission must be accompanied by a unique cover sheet. For example, each motion filed in connection with an investigation conducted pursuant to section 337 must have a unique cover sheet even if several motions are filed sequentially. In addition, a motion and a memorandum in support thereof must be filed separately (*i.e.*, the memorandum cannot be attached to the motion). Likewise, a notice of appearance and APO application for access to BPI or CBI each must have a separate cover sheet even if filed jointly.

If you are electronically filing 24-hour changes to a document pursuant to §§ 206.8 or 207.3 of the Commission's rules of practice and procedure (19 CFR 206.8 and 207.3), you must file the entire corrected document again, not just portions of the document containing the 24-hour changes. If you are filing both an electronic version and a paper version of a document, you must state in your cover letter to the Secretary that you are making filings of the same document in both electronic and paper form. The cover letter to the Secretary must be included in both the electronic version and the paper version of the document.

Any hyperlinked materials contained in an electronic filing must be reproduced in their entirety as an attachment to the document. Please note that any hyperlinked material contained in the electronic version of a document must be printed in its entirety in the corresponding paper copy, in conformance with all applicable page limits under the Rules.

D. *Where documents are to be filed electronically:*

If you want to file a document electronically, you should visit the Web site and follow the instructions for submitting a document electronically to EDIS–II, including completion of the cover sheet for each filing. The instructions will include the applicable hardware and software requirements for electronic filing.

E. *Notice of electronic receipt:*

Upon completion of the electronic transmission of your document and upload at the Commission, EDIS–II will provide you with an on-screen notice of electronic receipt. In addition, EDIS–II will generate and send an e-mail notice of electronic receipt to the official e-mail address associated with the user ID. Receipt of a notice of electronic receipt does not constitute acknowledgment by the Commission that the document has been properly filed pursuant to the rules or this Handbook. Moreover, such notification does not constitute service of the document on the parties to an investigation.

If you do not receive a notice of electronic receipt following transmission of a document for filing or get an error message, the document will not be deemed transmitted to EDIS–II and consequently, will not be received by the Secretary for filing. You must

attempt to (i) re-transmit the document electronically until such a notice is received, (ii) file in paper form, or (iii) contact the Secretary in accordance with the provisions of paragraph II(G) permitting delayed filings.

If the document is electronically received by EDIS–II on a Saturday, Sunday, or Federal legal holiday, or after business hours on a business day, the effective filing date and time of the document will be the next business day, assuming the document is accepted. If the document is electronically received by EDIS–II during business hours, then the effective filing date and time of the document is the date and time that the document has been electronically received by EDIS–II.

Subsequent to the notice of electronic receipt, the Secretary will send you a second notice (notice of electronic filing) notifying you that the document has been accepted by the Secretary for filing in EDIS–II.

F. *Deadline for electronic filing of documents:*

When the Commission has imposed a deadline on the filing of a document, the Secretary will consider the document timely filed electronically only if it is received successfully in its entirety by EDIS–II by 5:15 p.m., Washington, DC local time, on the day that the document is due to be filed. However, prior to that time, you may electronically transmit a document to EDIS–II at any time of the day (*i.e.*, twenty-four hours/day) and on any day of the week (including weekends and holidays). You should preserve the notice of electronic receipt, which states the time and date that EDIS–II received the document, for your records. From time to time, EDIS–II may be unavailable for electronic filing due to periodic maintenance. The Commission will try to schedule EDIS–II maintenance to those times when EDIS–II is least likely to be used. Scheduled downtime of EDIS–II will be posted on the Web site.

G. *Technical failures:*

(1) The Secretary shall deem the website to be subject to a technical failure on a given day if the website is unable to accept electronic filings continuously or intermittently over the course of any period of time greater than one hour after 12 noon, Washington, DC local time, on that day. If you are unable to file a document electronically by the deadline imposed by the Commission because the website is experiencing a technical failure, you should contact the Office of the Secretary immediately to report the technical failure of the website and to seek authorization from the Secretary to file your document after the Commission's deadline governing the filing of your document. If the Secretary grants you such an authorization, the Secretary shall give you an authorization number that you should include on the cover sheet and/or cover letter accompanying your document when you do file your document. When you do file your document subject to the authorization, you should also file an unsworn declaration as described in paragraph II(K)(4)(d) stating (i) the fact that the website's technical failure prevented your making a timely filing, (ii) the dates and times of the attempted filing, (iii) your contacts with the Office of the Secretary to report the website's technical failure, (iv) the Secretary's granting of authorization to file after deadline to you, and (v) the authorization number.

If you are making a late filing for reasons unrelated to the operating status of the website, you should follow the normal procedures in the rules for late filings.

(2) If you discover that the version of the document available for viewing on EDIS-II does not conform to the document that you transmitted, you should send or transmit to the Commission a replacement document with an explanatory cover letter. After receipt, the Secretary will review the documents and provide you with notification of acceptance or rejection.

H. *Requests for late filing:*

If you electronically transmit your document prior to 5:15 p.m., but the document is not received in its entirety by EDIS-II by 5:15 p.m., you may file a ''Request for Late Filing'' with the Secretary requesting that the your late filing be accepted because you began electronically transmitting the document to EDIS-II prior to 5:15 p.m. In the request for late filing, you should include an unsworn declaration as described in paragraph II(K)(4)(d) by the registered user attesting to the start time of the electronic transmission.

Please be aware that many filers wait until near the end of the business day to file documents. Please be mindful of the heavy volume of filings at the end of the day and try to transmit your document as early in the day as possible.

I. *Size of electronic transmission:*

An electronic transmission as a whole can exceed 5 megabytes so long as no one attachment exceeds 5 megabytes. A filing with an attachment that exceeds the foregoing size limitation may only be filed in paper form pursuant to the rules. All page limits set forth in the rules shall remain in effect for purposes of this Handbook.

J. *Format of documents:*

(1) Documents filed electronically pursuant to this Handbook must be submitted in Adobe Acrobat portable document format (PDF). Please be aware that some special characters used in certain word-processing applications may not convert easily to PDF. The conversion process to PDF may affect pagination as well as the conversion of special characters. Filers are responsible for the accuracy of the documents submitted.

The Commission encourages the submission, when practicable, of documents converted to PDF from word-processed text over that of documents converted to PDF from images because the former normally are significantly smaller in terms of megabytes than the latter, and because the former are more easily searchable within EDIS-II. EDIS-II will create a searchable text version of an image-based document through an optical character recognition process, but that text version is likely to contain some conversion errors.

The Commission will post on the website information that will assist users with document conversion to PDF.

(2) Each page of an electronically filed document must be in letter-sized format (*i.e.*, 8 ½ inches by 11 inches when printed by the Secretary).

(3) Documents filed electronically cannot exceed the smaller of the page limits set forth in the rules or the size limit set forth herein.

(4) Text-based PDF files may permit others to retrieve ''masked'' or ''whited-out'' BPI or CBI. Please remove all ''masked'' or ''whited-out'' BPI or CBI before filing any electronic document with the Commission.

(5) *PDF submission requirements:* When preparing PDF documents for filing, you must comply with the following requirements. PDF documents that do not comply with these requirements will be rejected by EDIS-II. (**Note:** When installing Adobe Acrobat 5.0, the default setting must meet all requirements.)

(a) PDF version must be Version 1.3 or greater. (**Note:** Use of Acrobat is not required, but if it is used, it must be Acrobat 4 or greater. This is because only Acrobat 4 or later produces PDF version 1.3.)

(b) Documents must not have Type 3 fonts. Use of Type 1 fonts is recommended.

(c) Only Roman and Cyrillic alphabet may be used in PDF format. Other foreign language documents must be scanned. Special characters should be checked on conversion to ensure that

they were not changed during the distilling process.

(d) Do not attach any embedded files to your PDF document for electronic filing. This includes all comments (note tool, pencil tool, highlights tool, digital signature tool, embedded files, embedded sounds or other multimedia); forms actions; JavaScript actions; external cross references, and image alternates.

(e) Document security setting must have a PDF file security setting of ''none.''

(6) *PDF submission recommendations:* When preparing PDF documents for submission, the following are recommendations that will enhance the usability of the document.

(a) PDF creation should be via distiller.

(b) Font embedding should be default distiller setting.

(c) Resolution standard for scanning to PDF should be at least 200 dpi and not more than 300 dpi and NMT 300. 300 dpi is recommended. This will allow readable images without causing undue size.

(d) *Linearization:* You should select optimize for web view as distiller setting.

(e) *Scanning vs. conversion from native format:* Whenever possible, you should create PDF from native format.

(f) *Selecting printer/distiller:* You should select distiller as printer before creating document.

(g) *Document properties/associated index:* You should not use this field in your PDF document for electronic filing.

(h) *Recommended template for PDF files:* A sample ''usitc.joboptions'' file is located on the website as a template for your PDF documents. Persons interested in using this template should go directly to the website.

(7) *Document attachment requirements:*

(a) You must not include attachments or embedded objects within the PDF file. Examples of embedded objects include all comments (note tool, pencil tool, highlights tool, digital signature tool, embedded files, embedded sounds or other multimedia); forms actions; JavaScript actions; external cross references, web links, and image alternates.

(8) *Document attachment guide lines:*

(a) Attachments should be created in the proper sequence; if both electronic and paper versions of a document are filed, the two versions should be in the same sequence.

(b) Attachments should conform with the following naming convention:

(i) All attachments relating to a single filing must have the same root name, which would be the ''document name'' given by the filer;

(ii) Each attachment should be called a segment and must be numbered sequentially in the order that they appear within the document, followed by the total number of segments (*e.g.*, ''Posthearing Brief Segment 1 of 13'').

(c) Use logical break points in creating attachments. Avoid breaking attachments in the middle of a section (*e.g.*, main textual document, exhibit, appendix) of the filing. An entire section should be contained in a single attachment, if possible.

(d) A single document of less than 5 megabytes should not be broken into multiple attachments.

(e) The main textual document (*e.g.*, brief, petition, motion) should be contained in a separate attachment from material appended to the filing (*e.g.*, exhibits), unless the entire document is less than 5 megabytes. Cover letters need not be filed separately from the main textual document.

(f) Material appended to the main textual document (*e.g.*, exhibits, appendices) may be combined into a single attachment, as long as the entire attachment does not exceed 5 megabytes in size.

(9) When redacting BPI or CBI from a document, you should use redaction methodology that does not change the pagination of the public version, when compared with the BPI or CBI version.

K. Signatures:

(1) A document filed with the Commission electronically shall be deemed to be signed by a person (the ''signatory'') when the document identifies the person as a signatory and the filing complies with subparagraph (2), (3) or (4). When the document is filed with the Commission in accordance with any of these methods, the filing shall bind the signatory as if the document were physically signed and filed, and shall function as the signatory's signature, whether for the purpose of complying with the Commission's rules, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(2) In the case of a signatory who is a registered user as described in paragraph II (B)(1), such document shall be deemed signed, regardless of the existence of a physical signature on the document, provided that such document is filed using the user ID and password of the signatory. The page on which the physical signature would appear if filed in non-electronic form must be filed electronically, but need not be filed in an optically scanned format displaying the signature of the signatory. In such cases, the electronically filed document shall indicate a typed ''electronic signature'', *e.g.*, ''s/ Jane Doe''.

(3) In the case of a signatory who is not a registered user, or who is a registered user but whose user ID and password will not be utilized in the electronic filing of the document, such document shall be deemed signed and filed when the document is physically signed by the signatory, the document is filed electronically, and the signature page is filed in optically scanned form pursuant to and consistent with the EFP.

(4) *In the case of a document to be signed by two or more persons, the following procedure shall be used:*

(a) The filing person shall initially confirm that the content of the document is acceptable to all persons required to sign the document. The filing person then shall attest that original signatures have been obtained from each of the other signatories on a paper copy of the document. If the filing person complies with the foregoing requirements, the Commission shall presume that the filing person has the authority to file the document on behalf of all other persons required to sign such document.

(b) The filing person shall then file the document electronically, indicating the original signatures that have been obtained, *e.g.*, ''s/ Jane Doe,'' ''s/John Doe,'' etc.

(c) The filing person must retain the hard copy of the document containing the original signatures until the earlier of: (i) The Commission deadline for destruction of APO materials, if applicable; or (ii) one year after the conclusion of the investigation and resulting appeals.

(d) For a document that requires a signature in the presence of a notary public (*e.g.*, affidavits), the document instead should contain an unsworn declaration clause to be signed by the signatory under penalty of perjury. The language for unsworn declarations under penalty of perjury is provided in 28 U.S.C. 1746.

L. Limitation on Service of Electronic Documents:

Documents filed electronically in all pending matters before the Commission, except for proceedings under section 337 of the Tariff Act of 1930, are not to be served electronically on other parties without the prior agreement of the Secretary. In the case of proceedings before an administrative law judge under section 337 of the Tariff Act of 1930, the presiding administrative law judge shall determine whether electronic service of documents by parties will be permitted in that

proceeding. Parties may only effect electronic service on recipients who have provided written consent thereto to the Secretary or the presiding administrative law judge. Persons who have filed documents electronically with the Commission must comply with the rules in effecting service of the electronically filed document on parties in accordance with 19 CFR 201.16. All electronically filed documents must be accompanied by a certificate of service.

M. Copyright and Other Proprietary Rights:

(1) The website shall bear a prominent notice as follows: ''The contents of each filing in EDIS–II may be subject to copyright and other proprietary rights (with the exception of the notices, orders, and opinions of the ITC). It is the user's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing material found in EDIS–II. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Users must make their own assessments of rights in light of their intended use.''

(2) By filing any material with the Commission electronically, a person shall be deemed to consent to all uses of such materials by all parties to the action solely in connection with and for the purposes of the action, including the electronic filing in the action (by a party who did not originally file or produce such materials) of portions, excerpts, quotations, or selected exhibits from such filed materials as part of motion papers, pleadings or other filings with the Commission.

(3) Any dispute that arises among persons regarding the use of materials subject to copyright and other proprietary rights must be resolved among the persons themselves, without the Commission's involvement.

N. *Official record of commission proceedings:*

The electronic version of any document filed by a party in a Commission proceeding will be considered the ''official version'' for purposes of compiling the record in a Commission proceeding. Materials referenced by hyperlink in an electronic document will not be considered part of the document or of the record in a Commission proceeding unless they are reproduced in their entirety in an attachment to the document. The filer, however, must take into consideration paragraph II(M) when reproducing such materials.

III. Duration

A. This Handbook is effective as of the date specified in a notice published in the **Federal Register**. These electronic filing procedures shall remain in effect until superceded or rescinded.

B. The Secretary shall, from time to time, amend this Handbook as necessary.

(Authority: 19 CFR 201.8(f))

By Order of the Commission.

Issued: November 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28405 Filed 11–7–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–431 (Preliminary)]

Drams and Dram Modules From Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase countervailing duty investigation No. 701–TA–431 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(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 Korea of DRAMs and DRAM modules, provided for in subheadings 8473.30.10 and 8542.21.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Korea. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach a preliminary determination in countervailing duty investigations in 45 days, or in this case by December 16, 2002. The Commission's views are due at Commerce within five business days thereafter, or by December 23, 2002.

For further information concerning the conduct of this investigation 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: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on November 1, 2002, by Micron Technology, Inc., Boise, ID.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation 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 investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation 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 this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, 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 this investigation for 9:30 a.m. on November 22, 2002, 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 November 20, 2002, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation 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 November 27, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. 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 investigation must be served on all other parties to the investigation (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: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: November 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28403 Filed 11–7–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Clean Diesel III

Notice is hereby given that, on October 1, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Clean Diesel III 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, The Lubrizol Corporation, Wickliffe, OH 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 Southwest Research Institute: Clean Diesel III intends to file additional written notification disclosing all changes in membership.

On January 12, 2000, Southwest Research Institute: Clean Diesel III 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 June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on March 12, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 2001 (66 FR 32439).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28422 Filed 11–7–02; 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—VSI Alliance

Notice is hereby given that, on October 9, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance 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, Adelante Technologies, Leuven, Belgium; HCL Technologies, Ltd., Chennai, India; Palmchip Corporation, San Jose, CA; Alfred Kwok (individual member), San Jose, CA; Hardy Pottinger (individual member), Rolla, MO; and Kumar Venkatramani (individual member), Saratoga, CA have been added as parties to this venture.

Also, Artisan Components, Inc., Sunnyvale, CA; D. K. Arvind (individual member), Edinburgh, Scotland, United Kingdom; Atmos Corporation, Toronto, Ontario, Canada, Mark Buckner (individual member), Oak Ridge, TN; Jean-Paul Calvez (individual member), Nantes, France; Circuit Semantics, Inc., San Jose, CA; Ellipsis Digital Systems, Inc., Carlsbad, CA; Frontier Design, Leuven, Belgium; Dr. Peter Green (individual member), Manchester, England, United Kingdom; Ken Hodor (individual member), Sunnyvale, CA; Jennie Ltd., South Yorkshire, England, United Kingdom; David Laone (individual member), San Jose, CA; Edward Lee (individual member), Berkeley CA; Tsung Lee (individual member), Kao-Hsiung, Taiwan; Malardalen University, Vasteras, Sweden; Nsine Limited, Reading, England, United Kingdom; Brahmaji Potu (individual member), Cupertino, CA; Wolfram Putzke-Roming (individual member), Oldenburg, Germany; Sandeep Shukla (individual member), Blacksburg, VA; Silicon Integration Initiative (SI2), Austin, TX; Sirius Communications NV, Rotselaar, Belgium; Sony Corporation, Tokyo, Japan; Teleraty Systems, Inc., Sunnyvale, CA; University of Kitakyushu (Dept. of Information), Fukuoka-ken, Japan; Vulcan Machines Limited, Royston, England, United Kingdom; Xi'an Swip Co., Ltd., Shaangxi, People's Republic of China; and Xylon, Zagreb, Croatia have been dropped as parties to this venture.

No other changes have been made in either the membership of planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of this Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 12, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 2002 (67 FR 52746).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28421 Filed 11–7–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Senior Community Service Employment Program Grants for PY 2003

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for the national grants portion of the Senior Community Service Employment Program.

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor (DOL or the Department), Division of Older Worker Programs (DOWP) of the Employment and Training Administration (ETA), announces a grant competition for the Senior Community Service Employment Program (SCSEP) authorized under title V of the Older Americans Act Amendments of 2000 (OAA Amendments), Pub. L. 106–501; 42 U.S.C. 3056 *et seq.* These projects will promote part-time employment opportunities in community service activities for unemployed, low-income individuals who are age 55 and over, and will foster increased prospects for their economic self-sufficiency. Under this solicitation, DOWP anticipates that approximately $342,000,000 will be available for grant awards in Program Year (PY) 2003 (July 1, 2003–June 30, 2004).

This notice describes the background, application process, program activities, and evaluation criteria for this SGA, and the current reporting requirements for SCSEP. The information and forms contained in the Supplementary Information Section constitute the official application package. All of the information needed to apply for grant funding is included. Additional information can be located on the SCSEP Web site at: *http://wdsc.doleta.gov/seniors.*

Notice: Federal regulations for the SCSEP are being developed. When final, they may change reporting and/or other requirements. Applicants must abide by the requirements that are in place at the time the grants are awarded. Note, however, that the requirements, including the regulations, may be revised during the grant period. Successful applicants will be responsible for adhering prospectively to any revised requirements that go into effect during the grant period, including, but not limited to, final regulations.

Closing Date: Applications, including those hand-delivered, must be received at the address below no later than 4:45 p.m., Eastern Time, February 6, 2003.

Notice: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as each applicant assumes the risk for ensuring a timely submission of its application. If, because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if the application was timely mailed, the Department will not consider the application. Therefore, it is recommended that applicants confirm receipt of their applications by contacting Lorraine Saunders, U.S. Department of Labor, Employment and Training Administration, telephone (202) 693–3336 before the closing deadline. [This is not a toll-free number].

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Lorraine Saunders, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. Her e-mail address is *lsaunders@doleta.gov.*

FOR FURTHER INFORMATION: Questions should be faxed to Jacquelyn Carter, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879. [This is not a toll-free number]. All inquiries should include the SGA number (DFA–02–111) and a contact name, fax and phone numbers. This announcement will be published on the Internet on ETA's Division of Older Worker Programs' homepage at *http://wdsc.doleta.gov/seniors.* Award notifications will also be published on the ETA homepage.

SUPPLEMENTARY INFORMATION:

I. Purpose and Background

The U.S. Department of Labor, Division of Older Worker Programs of the Employment and Training Administration is requesting grant applications for the provision of community service employment and unsubsidized placement of eligible participants (sometimes also referred to as enrollees) in accordance with title V of the Older Americans Act Amendments of 2000, Pub. L. 106–501, 42 U.S.C. § 3056 *et seq.* SCSEP is the only nationwide Federal program that focuses on training and placing older individuals into community service positions and unsubsidized employment.

SCSEP is currently authorized through 2005 and provides for at least 60,000 positions in which approximately 100,000 participants are served each year through part-time employment opportunities in community service activities. The purpose of the program is to foster useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years or older and who have poor employment prospects, and to foster individual economic self-sufficiency by increasing the number of participants who receive the benefits of unsubsidized employment in the public and private sectors. Program participants work at community service agencies usually for 20 hours a week and are paid the higher of the Federal or State minimum wage. (OAA Amendments § 502(b)(1)(J)).

The Department is holding a full and open competition for SCSEP national grant funds in order to provide better services to SCSEP participants, host agencies, employers, and the communities that the national grant program serves. Open competition is not only the preferred vehicle for obtaining new grantees, but in most cases, it is the required vehicle for obtaining new grantees. (Pub. L. 95–224; 43 FR 36860–65; DMLS–2 § 836 at 8–12; OAA Amendments). The Department favors full and open competition because it provides the Department with an opportunity to ensure that the best applicants are awarded grants and the program is administered to its full potential. It also allows new and different entities, including faith-based and community-based organizations, to become a part of the grantee community.

The Department is committed to minimizing disruptions to the extent possible and the requirements that applicants and grantees must meet reflect this commitment. A selected grantee may be required to negotiate with the Department on the geographic areas it will serve so that all positions are located in the same State and county in which positions are currently located, and to ensure that all geographic areas that are currently served continue to be served. Therefore, a winning grantee may not be awarded all areas that it proposes to serve and in some cases, a selected grantee may be required to serve one or more areas not included in its application. The Department will assure, through the selection and negotiation process, that all areas currently served continue to be served.

Currently, participants occupy nearly all SCSEP positions. If transitions are made from one grantee to another as a result of this competition, these participants must be given the opportunity to continue in the program. Therefore, selected grantees must agree to offer incumbent SCSEP participants in authorized positions the first opportunity to continue in an SCSEP position in the grantee's program (*e.g.*, ''right of first refusal''). As such, selected grantees must offer incumbent SCSEP participants the opportunity to continue in the SCSEP program in a position in the same geographic area, but not necessarily in the same host agency. Selected grantees may choose to move participants into new host agencies, or they may continue to utilize the current host agencies.

Further, the Department will work with the grantees to promote a seamless transition, if there is a new grantee in an area. Such transition assistance includes technical assistance, the approval to purchase equipment, obtaining office space, *etc.,* prior to the start of the grant period. The Department intends to hold a conference after it makes awards, which will allow grantees to network with each other and learn how to establish the necessary partnerships to make the SCSEP a more successful program.

II. Application Process

A. Eligible Applicants

Applicants may apply to receive a grant under one or more of the following three (3) categories.

(1) *General National Grant Funds.* Applications for general SCSEP national grant funds will be accepted from public and private nonprofit agencies and organizations, including faith-based and community-based organizations, and tribal organizations in accordance with section 502(b)(1) of the OAA Amendments, which have familiarity with the areas and populations to be served and can administer an effective program. ''Nonprofit'' is defined as an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. (OAA Amendments § 101(4)). ''Tribal organizations'' means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. (OAA Amendments § 101(7)). In any case in which a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe is a prerequisite to the letting or making of such contract or grant. Applicants must mark a ''G'' on the application and state specifically in the application that they are applying for general SCSEP national grant funds.

(2) *Indian and Native American Grant Funds.* Applications for Indian and Native American national grant funds will be accepted from public or nonprofit national Indian aging organizations with the ability to provide employment services to older Indians as required by section 506(a)(3) of the OAA Amendments. ''Indian'' means a person who is a member of an Indian tribe. (OAA Amendments § 101(5)). ''Indian tribe'' means any tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria. (OAA Amendments § 101(6)).

Applicants must mark an ''INA'' on the application and state specifically in the application that they are applying for Indian national grant funds.

(3) *Pacific Island and Asian American National Grant Funds.* Applications for Pacific Island and Asian American national grant funds will be accepted from national public or nonprofit Pacific Island and Asian American aging organizations with the ability to provide employment to older Pacific Island and Asian Americans as required by section 506(a)(3) of the OAA Amendments. ''Pacific Island and Asian American'' means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. (OAA Amendments § 516(3)). Applicants must mark an ''AP'' on the application and state specifically in the application that they are applying for Asian Pacific national grant funds.

Applicants applying for more than one category above must submit separate applications for each category for which they are applying.

Each applicant must submit a copy of its application to the Governor in each State that it proposes to serve before submitting an application to the Department as required by section 503(a)(5) of the OAA Amendments. Under this provision, the Governor of each State may submit a recommendation to the Secretary relating to the anticipated effect of an applicant's proposal on the overall distribution of positions within the State; recommendations for redistribution of positions to underserved areas; and recommendations for distribution of newly available positions.

Before receiving an award, applicants must meet the eligibility criteria and responsibility tests established in section 514 of the OAA Amendments and any applicable regulations.

Before receiving funding, all selected applicants must certify that they will comply with uniform cost principles and circulars issued by the Office of Management and Budget, keep records, and submit reports to the Department.

Before receiving funding, all selected applicants must agree to be evaluated on performance measures as a condition of the grant award. (OAA Amendments § 513(a)(5)).

Entities may apply as a consortium, but *each* member of the consortium must meet all eligibility and responsibility tests. Entities applying as a consortium are also jointly and severally liable for meeting all requirements for administering this Federally-funded program.

Section 18 of the Lobbying Disclosure Act of 1995, Pub. L. 104–65, prohibits the award of Federal funds to entities described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities. Therefore, such entities are not eligible to receive funds under this announcement.

The Grant Officer's determination for award under this SGA constitutes a final agency action. The receipt of funding in any prior year does not guarantee an award under this SGA.

B. Jurisdictions To Be Served

The OAA Amendments provide that when funds are awarded competitively, it should be done in a manner that minimizes disruptions of services to participants to the extent possible. National SCSEP resources are distributed by a formula to each State. At the sub-State level SCSEP positions are distributed largely on a proportional basis depending on the eligible population living in each county. Consequently, SCSEP participants are located in nearly every county in the nation. The geographic areas an applicant proposes to serve and the number of positions it proposes to place in each area must be based on the present location of positions. In developing this application, applicants must identify the area(s) they would serve. See Appendix E on the ETA homepage at *http://wdsc.doleta.gov/seniors* for a listing of the locations of current positions and the number of authorized positions by State and county. If selected, negotiations may result in the selected applicant serving areas that it did not propose to serve and not serving areas it included in its application. To ensure the integrity of the program and to minimize disruptions to current participants and community services, the Department retains the authority to approve or disapprove the distribution of all positions.

Currently, SCSEP national grantees operate projects in all States (including Puerto Rico and the District of Columbia) except Alaska, Delaware, Hawaii, and the territories. Projects in these latter jurisdictions are not covered by this SGA. Alaska, Delaware, and Hawaii have not been served by national grantees in the past. As a result of the ''hold harmless'' provisions in the current legislation, there is currently no available funding to support projects in these areas by national grantees. To compensate for the lack of national grantees in these areas, the Department has sufficiently funded these States to provide equitable services to their SCSEP participants. The territories, which include Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, receive funds directly through a specific reservation under the OAA Amendments.

C. Funding Levels

The total amount of funds available for this SGA is approximately $342,000,000. It is anticipated that from 10 to 20 awards may be made under this SGA, including at least one award to an Indian and Native American organization and at least one to an Asian Pacific Islander organization. The Department reserves the right to negotiate the amounts to be awarded under this competition.

No request for funds may be less than $6,000,000. In applying, applicants must list the location of positions by State(s) and counties where they plan to operate. The positions located in the combination of counties and State(s) where the applicant proposes to operate must not be less than 840. A grant request of $6,000,000 provides for approximately 840 positions. Please be advised that requests under $6,000,000 / 840 positions will not be considered and will be deemed non-responsive.

The Department has established this minimum level for grant requests based on the statutory 13.5 percent administrative cost limitation in the OAA Amendments at section 502(c)(3). Historically, the Department's smallest grant for this program has been $6,000,000. Based on experience, the Department believes that it becomes increasingly more difficult to provide administrative payroll systems, program oversight, and to maintain the fiduciary duties required of program oversight under the current statutory administrative cost limitations with a grant smaller than $6,000,000.

D. Administrative Requirements

Administrative Costs. The SCSEP has legislated limitations on the expenditure of Title V funds. The administrative cost limitation of an SCSEP project is 13.5 percent of the Federal share; however, the OAA Amendments allow the Secretary to increase this limit, but only up to 15 percent of the Federal share. (OAA Amendments § 502(c)(3)). Any applicant requesting an administrative cost higher than 13.5 percent must justify such a request as a part of its application. Note, however, that justification alone does not entitle the applicant to approval of a higher administrative cost limit. Any decision to approve a higher administrative limit will be made on a case-by-case basis.

Wages and Fringe Benefits. There is a minimum or ''floor'' on the amount that must be spent on participant wages and fringe benefits. That floor is 75 percent of the total Federal share, which reflects Congressional concern that low-income program participants be the primary beneficiaries of the funding. (OAA Amendments § 502(c)(6)(B)). The difference between (1) the total grant allotment and (2) the sum of the administrative costs and participant wages and fringe benefits is called ''Other Participant Costs.'' [total grant allotment—(administrative costs + wages and fringe benefits) = Other Participant Costs].

Other Participant Costs. Costs that are to be used for participant training, counseling, job development, and similar activities are called ''Other Participant Costs'' (OAA Amendments § 502(c)(6)(A)). The available Federal share for Other Participant Costs is that part of the Federal grant allocation that is not used for administrative costs or participant wages and fringe benefits.

Federal and non-Federal share. Applicants are reminded that not all project costs are Federal. The Federal share must not exceed 90 percent of the total project. (OAA Amendments § 502(c)(1)). The non-Federal share may be in cash or in-kind, but cannot be other Federal funds and must otherwise be an allowable charge used for SCSEP purposes.

Start-up costs. Specific start-up costs are not statutorily provided for SCSEP projects. However, according to section 502(c)(4) of the OAA Amendments, the cost of administration (limited to 13.5 percent or 15 percent with Department approval), includes the costs associated with goods and services, such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space. Generally, these costs are incurred after the beginning of a grant period. However, the Department will allow new grantees to obtain such items up to one month before the beginning of the program year (July 1, 2003) to assist with the transition between incumbents and new grantees. This intent will be conveyed through the grant agreement with such grantees.

E. Period of Performance

Successful applicants under this SGA are expected to commence program operations on July 1, 2003. The period of performance will initially be for one (1) year, with an option to be funded for an additional two (2) years at the Department's discretion, if regulations are finalized and performance measures are established as required by section 514(a) of the OAA Amendments.

F. Submission of Proposals

A cover letter, an original plus two (2) copies of the proposal, and one (1) blue ink-signed original SF 424 must be timely submitted to the U.S. Department of Labor, Employment and Training Administration, Division of Financial Assistance, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. This proposal must have two parts: (1) A technical proposal; and (2) a cost proposal.

G. Acceptable Methods of Submission

Notice: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as each applicant assumes the risk for ensuring a timely submission of its application. If, because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if the application was timely mailed, the Department will not consider the application. Therefore, it is recommended that applicants confirm receipt of their application by contacting Lorraine Saunders, U.S. Department of Labor, Employment and Training Administration, telephone (202) 693–3336 prior to the closing deadline. [This is not a toll-free number].

Hand-delivered applications. To be considered for funding, hand-delivered applications must be received not later than 4:45 p.m., Eastern Time, on the closing date, at the specified address.

Electronic applications. Due to the erratic mail delivery in the Washington, DC area, in addition to using the U.S. Postal Service or overnight delivery services, applicants have the option of submitting their applications via e-mail to Lorraine Saunders at *lsaunders@doleta.gov.* Should the applicant choose to use e-mail, the return receipt option must be utilized in order to verify receipt of the application (*see instructions below*), and an originally signed signature sheet of the SF 424, along with a copy of the grantee's e-mail/written verification of receipt, must follow *via* overnight mail. E-mailed applications will be accepted in Microsoft WORD only.

Before sending the e-mail, click on ''file,'' go to ''properties, return notification,'' and finally click on ''mail receipt.'' The sender will automatically receive an e-mail notification when the e-mail is opened.

Please note that faxed applications will not be accepted. Applications not received by the deadline will not be accepted.

Withdrawal of applications. Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative, if the representative's identity is made known and the representative signs a receipt for the application.

Failure to adhere to the above instructions will be basis for a determination of non-responsiveness.

H. Required Content

An application must consist of two (2) separate and distinct parts: a technical proposal and a cost proposal.

The technical proposal must consist of a narrative not to exceed forty (40) double-spaced pages, including all attachments with the exception of required vitae and the list of prior government grants and contracts, with a font size of no less than 11 pt., and typewritten on one side of the paper only. The required vitae will not count against the page limitation and must be attached as a separate appendix to the SGA. Applicants must include as a separate appendix, a list of all government grants and contracts that it or any of its affiliates has had in the past three (3) years, including grant officer contact information. For purposes of this SGA, the term ''affiliate'' refers to the applicant's subsidiaries, divisions, predecessors, and successors. All other attachments count against the 40-page limitation and must be limited to meaningful information that contributes to, and/or verifies the proposed activities, such as letters of commitment. The content of the technical proposal is described in section III of this SGA.

The cost proposal must contain the required standard forms and budget information as described in section IV.

III. The Technical Proposal

A. Program Components

The purpose of this section is to give applicants a better sense of how the SCSEP operates and what functions and responsibilities are important to the program. It is not intended to be an all-inclusive description and does not reflect all the requirements of the program. Applicants that wish to learn more about the SCSEP are encouraged to review the legislation at Pub. L. 106–501 (42 U.S.C. § 3056). The legislation at section 502 contains a number of criteria that each grant must meet. An applicant's failure to demonstrate that its proposed program meets these criteria will make the application non-responsive. Applicants should also review the current regulations at 20 CFR Part 641 and the Older Worker (OW) Bulletins, which may be found on ETA's Division of Older Worker Program's homepage at *http://wdsc.doleta.gov/seniors.* Applicants may use this information when drafting their responses to the Rating Criteria in section III.C. of this SGA. The Department also intends to hold bidder's conferences for all interested applicants that want to learn more about the program and the competition process. The times and locations for these conferences will be posted on the Division of Older Worker Program's homepage at *http://wdsc.doleta.gov/seniors.* Applicants may review ETA's homepage at *http://wdsc.doleta.gov/sga/pdf/ApplyingGrants.pdf* for information on applying for ETA grants and *http://wdsc.doleta.gov/sga/* for forms and information relating to competition for ETA grants. Further, regulations covering the OAA Amendments are being developed and updates will be posted on the Division of Older Worker Program's homepage throughout the regulatory process.

Individual Employment Plans (IEP). Each SCSEP participant must be assessed to determine the skills and employment-related needs of that individual, and a plan must be developed to improve the participant's employability. The IEP generally includes an employment goal and an appropriate sequence of services for that participant based on the assessment. (Some programs may call this type of plan an IDP, or Individual Development Plan.)

Community Service Employment. Providing subsidized community service employment is a significant part of the SCSEP's purpose. Community service may include, but is not limited to, such activities as social, health, welfare and educational services, counseling services, including tax counseling, environmental efforts, weatherization efforts and economic development. Community service assignments are usually made at host agencies. Participants receive wages paid for by the grant.

Training. Training is an important tool to make the most effective use of the skills and talents of participants, to help them succeed in their community service assignments and to facilitate placement of participants in unsubsidized employment. How much training, and what types of training are necessary are based on each individual participant's IEP.

Services for Individuals with Multiple Barriers to Employment. One emphasis of this program is addressing the needs of minority, limited English-speaking, and, where applicable, Indian eligible individuals as well as eligible individuals who have the greatest economic need to remove their barriers to obtaining employment. ''Greatest economic need'' is defined as need resulting from an income level at or below the poverty line and need caused

by non-economic factors, which may include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently. (OAA Amendments § 101(27)).

Coordination with the Workforce Investment Act, One-Stop Career Centers and State and Area Agencies on Aging. All SCSEP activities are required to be coordinated with One-Stop centers operated under the Workforce Investment Act (WIA), Pub. L. 105–220 and the State aging network. With regard to One-Stops, the SCSEP is a required partner under WIA. As such, SCSEP activities must be coordinated with WIA. For instance, participant assessments of eligibility, needs, and competence under SCSEP will satisfy any condition for an assessment under WIA and vice-versa. Coordination with State and Area Agencies on Aging is required to ensure a ''seamless program,'' which ultimately benefits program participants. ETA also encourages grantees to coordinate efforts with other SCSEP grantees.

Host Agencies. Host agencies provide the worksites for program participants and may be public or private 501(c)(3) organizations, including community-based and faith-based organizations, authorized Federal agencies, State agencies, or local agencies. It is not uncommon for many of the SCSEP national grantees to function as host agencies by utilizing their organizations as the worksite for participants. Host agencies are an important component in that they serve the purposes of the program by supplying community service work assignments and by providing training and work experience for participants. The quality of the host agency directly affects the value of the work experience for the participants, and the participants' ability to obtain unsubsidized employment.

Geographic Areas. The Department allocates SCSEP positions or slots on an equitable basis, by State based on Census data of unemployed, low-income people who are 55 or older. (OAA Amendments § 503(a)(4)). ETA strives to ensure the equitable distribution of positions to cover both rural areas and urban areas adequately. Current positions are available at Appendix E, which is posted only on the ETA homepage at *http://wdsc.doleta.gov/seniors.* Currently, a State may have one or more grantees serving within its territory. Several grantees may operate in large population centers, focusing on the needs of specific population groups. To give applicants a better picture of how the positions and grantees work together currently within a State, applicants may review the ETA homepage at *http://wdsc.doleta.gov/seniors/html_docs/directory.html* for more information.

Placement into Unsubsidized Employment. One of the SCSEP objectives is to foster economic self-sufficiency through unsubsidized employment. The SCSEP program has a legislatively mandated, minimum placement goal of 20 percent of the number of authorized positions for each program grantee, and an overall Government Performance and Results Act of 1993 (GPRA) placement goal of 37 percent. The ability of a grantee to meet the unsubsidized placement goal depends largely on how successful the grantee is at targeting occupations, identifying job openings, training its participants, and successfully matching participants and jobs.

B. Rating Criteria for Award

A DOL panel will use the point scoring system and the Rating Criteria format specified below to review applications. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. It is required that all applicants use the Rating Criteria format when developing their SGAs.

The ranking will be the primary basis used to identify applicants as potential grantees. The Department may establish a competitive range, based upon the application evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. In deciding whether to award a grant to an applicant the Grant Officer may, when appropriate, also take into account the applicant's past performance in its prior Federal grants or contracts for the past three (3) years as it relates to the applicant's or its affiliate's demonstration of financial and administrative responsibility and program performance. The information the Grant Officer considers may include: (1) The applicant's level of cooperation with grant officer(s), the applicant's Federal technical representatives, and Federal auditors and investigators; and (2) the sufficiency of the administrative costs to subgrantees, subcontractors, or other affiliates. (A list of the applicant's prior grants and contracts must be attached to the proposal as described in section II. H. of this Solicitation). The Department reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Department further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, administrative costs (*e.g.*, cost per enrollment and placement), program goals (*e.g.*, serving the needs of minorities, limited English speakers, Indian eligible individuals, and those of greatest economic need), and geographical service areas. Such items will be negotiated before we award a grant. If the negotiations do not result in an acceptable submission, the Department has the right to decline to fund an applicant's proposal.

Before receiving an award, applicants must meet the eligibility criteria and responsibility tests established in section 514 of the OAA Amendments and any applicable regulations, regardless of the applicant's rating score.

Scoring: The following full review criteria totaling a maximum score of 100 points apply to all applicants.

(1) Program Design—Approach, Population(s) and Area(s) Served (20 Points)

The applicant must describe the overall plan for how it will realize the purposes of the program, which are to promote useful part-time employment opportunities in community service activities for unemployed, low-income persons, and to foster individual economic self-sufficiency, and to increase the number of persons who may enjoy the benefits of unsubsidized employment.

Although selected grantees must provide ''the right of first refusal'' to current participants, vacancies may occur for a number of reasons. Therefore, the applicant must describe the expected characteristics of the specific population(s) it will serve, including: those with greatest economic need (as defined by OAA Amendments § 101(27)), greatest social need (as defined by OAA Amendments § 101(28)), poor employment history or prospects, and those individuals who are over age 60, the range of services it will offer to meet the needs of the population(s), and the geographic area(s) that will be served by the proposed program.

The applicant must describe the methodology it will use to identify the population(s) it will serve. Applicants must include the number and percentage of those individuals who are expected to have multiple barriers to employment, including minorities, limited English-speaking, Indian eligible individuals, and eligible individuals

who have the greatest economic needs, and address how the services it will provide will overcome the barriers faced by individuals in the population(s) proposed to be served.

The applicant must describe its plan to recruit and select participants and must:

—Explain how eligibility will be determined and documented; and
—Describe efforts to assure participation of minority groups, those with greatest economic need and those with poor employment prospects.

The applicant must describe how it will certify the income of each participant upon entry into the program and re-certify the income of each participant at least once each program year. The applicant must indicate the schedule for certifying income eligibility of participants, and indicate what actions the applicant will take for those found to be no longer eligible. Applicants must also indicate where eligibility records will be maintained. (Information related to these requirements may be found in Older Worker Bulletins Nos. 96–5, 95–5, and 98–31. These and other bulletins and information may be found at *http://wdsc.doleta.gov/seniors*).

The applicant must include a detailed list of the States, counties, and in a few instances, cities where the project and its subprojects will be conducted, including the number of authorized positions to be established in each jurisdiction. The distribution of authorized positions by county and the estimated allocation of funds for each State should be listed. As discussed earlier, the Department and selected grantees may negotiate final State dollar amounts and number of positions that will be awarded to each grantee. For those applicants with a proposed project located in a city but also serving surrounding counties, the county where the city is located (unless the city is not in a county as listed in Appendix E) and the surrounding counties must be listed with the number of authorized positions. See Appendix E for a listing of the location of current projects and the number of authorized positions under each of these projects. Applicants will find Appendix E posted only on the ETA homepage at *http://wdsc.doleta.gov/seniors.*

The applicant must provide an outline of the procedures it will use to ensure that program participants will not displace other employees, (including partial displacement such as in the reduction of hours worked or benefits), workers on layoff or contract employees, as required by section 502(b)(1)(F) of the OAA Amendments.

The applicant must briefly discuss the complaint resolution system that it will use in cases where a participant wishes to dispute an adverse action or in cases where an applicant for enrollment wishes to dispute an unfavorable determination of eligibility. If available, provide as an attachment an example of the written explanation of the complaint resolution system that is to be given to each participant.

(2) Program Services—Community Services and Participant Services (20 Points)

Although a selected grantee may choose to use existing SCSEP positions or to create new ones and must offer incumbent participants the right of first refusal for continued participation, it must nonetheless discuss its preferred approach to selecting and providing community services. The applicant must describe the types of community services that will be provided by participants employed under its SCSEP projects. An applicant that chooses to take over existing positions must discuss its vision of how community services are to be provided. The applicant must list the types of services and agencies that will host participants to perform them. (A matrix format is suggested for ease of display within a limited page allocation). The applicant must also describe the method it will use to select and/or develop the host agencies and their community services, and how it proposes to maintain relationships with them. The applicant must outline how it will review these agencies to ensure on-the-job training, participant satisfaction, satisfactory health and safety conditions, adequate supervision, and fiscal integrity. The applicant must explain how it will ensure that these employment opportunities will be made available to participants in their immediate communities or nearby, and how the community services offered will benefit the community.

Host agencies providing the worksites for program participants must be publicly owned and operated facilities, or projects sponsored by 501(c)(3) organizations, including community-based and faith-based organizations. (OAA Amendments § 502(b)(1)(C)).

The applicant must describe the services that will be provided to the participants, either directly, through the One-Stop Center System, or through other service providers.

Physical Examinations. Applicants must describe the arrangements that will be made to offer physical examinations to participants.

Orientation. Applicants must describe participant and host agency orientation procedures. The description must include discussion of participant and agency responsibilities, permissible political activities, grievance procedures, etc.

Assessment. Applicants must describe the procedures to be followed in assessing the job aptitudes, job readiness, and job preferences of participants, as well as their potential for transition into unsubsidized employment. Applicants must address the types of training and supportive service that it will provide as part of a participant's assessment.

Individual Employment Plan (IEP). Applicants must describe how the assessment will be used to develop the IEP for each participant. The IEP includes the participant's goal and the steps to achieve that goal.

Training. Applicants must describe the training that will be provided to participants. Training should be related to the participant's assessment and IEP. Training may be related to the participant's community service job duties, unsubsidized employment goal, or it may be developmental, (*i.e.*, the skills developed will enhance the participant's unsubsidized employment opportunities).

Placement into Community Service Employment. Applicants must describe the methods to be used to place participants into community service employment. Include such factors as:

—The types of community service activities that will be emphasized in assigning participants to community service jobs;
—The extent to which participants will be placed in work assignments involving the administration of the project itself;
—The criteria for selecting work assignments;
—The average number of hours in participant work weeks;
—The average participant wage rate;
—Participant fringe benefits; and
—The procedures for assuring participants are given adequate work site supervision.

Supportive services. Applicants must describe the supportive services to be provided to participants and the source(s) of these services.

Participant transportation. Where applicable, applicants must describe the arrangements that will be made to provide transportation assistance to participants and/or the reimbursement rate for transportation.

(3) Program Services—Unsubsidized Placements (20 Points)

Placement into unsubsidized employment. Each year the grantee must place a minimum of 20 percent of the number of authorized positions (with a goal of 37%) into unsubsidized employment. Therefore, applicants must:

—Describe the steps that will be taken to transition participants into unsubsidized employment.
—Include examples or anticipated content of the cooperative arrangements that will be made with the Workforce Investment Board and One-Stop centers. (OAA Amendments Section 502(b)(1)(O)).
—Describe placement follow-up efforts that will be utilized.

Work with area employers. The applicant must describe how it plans to identify what the needs of area employers are, the skills in demand, how any skills gaps might be filled, the jobs expected to be available in the area, the strategies that it will use to provide participants with the skills needed by employers, and strategies it will use to match participants with employers.

(4) Program Coordination and Oversight (20 Points)

Coordination. The applicant must describe its plans for coordinating with One-Stop centers and State aging networks, and for recruiting host agencies, including community-based and faith-based organizations, in the communities it proposes to serve. The applicant must indicate any other cooperative relationships, or information-sharing arrangements that will assist program performance and assure equitable access to the program.

Program Oversight. The applicant must describe its procedures for managing any proposed subgrantees to ensure effective program operations. The applicant must provide, for example, an explanation of how it will ensure that adequate resources are made available for local level operations, and how it will establish a mechanism for the tracing of funds to a level of expenditure adequate to ensure that funds have been spent lawfully.

The applicant must describe the methods and procedures to be used to monitor and evaluate project activities, subgrantees, host agencies and contractors to determine if the project is being administered in accordance with Federal guidelines and regulations and if project goals and timetables are being met. Include in this explanation:

—How frequently monitoring/evaluation visits will be made to projects (generally local projects should be monitored no less than annually);
—Who will be responsible for monitoring/evaluation;
—What criteria will be used to monitor and evaluate project activities;
—What methods will be used for prescribing remedial action when necessary;
—What follow-up procedures will be used to ensure that any identified problem has been remedied; and
—How subgrantee or project reports will be validated and made part of permanent files.

Minimizing Disruptions. The applicant must describe its plan for carrying out activities designed to ensure minimal disruptions to existing participants in the event that the applicant replaces an incumbent grantee. The applicant must describe how on-board participants of the former grantee(s) (if applicable) will be transferred to its program with a minimum of disruption. It must describe how it will administer the participants' ''right of first refusal.'' The description must include an explanation of how and when the participants will be notified, what records will be turned over (if applicable), what efforts will be made to maintain the privacy of individual records, what efforts will be made to place program participants into other employment and training opportunities, if needed, and what other services might be provided to ease the transition. The applicant must describe its timeline for developing and initiating program operations and this transition process following notification of award.

Applicants must describe a plan for reassuring participants that efforts will be made to minimize disruptions to them in the program.

(5) Management Structure and Fiscal Integrity (20 Points)

Management Structure. The applicant must describe the management structure for the proposed project. The applicant must include a staffing plan or project organizational chart describing the relationship between it and planned subgrantees and/or key host agencies. The chart must identify staff with key management responsibilities and show their expected portion of time dedicated to the project (if less than 100 percent). The applicant must include a brief description of its specific, relevant experience (and, as appropriate, the experience of significant subgrantees) in serving senior populations, serving people with barriers to employment, and/or in administering other employment related or other Federal programs. The applicant must also include position descriptions and, if available, vitae for key staff in management and participant services.

Subgrants. Applicants that are considering utilizing subgrantees are also required to submit the criteria they plan to use in selecting subgrantees. Applicants must also demonstrate the sufficiency of the proposed level of administrative funding for such subgrantees. Applicants that intend to hold a competition for subgrantees are required to submit their criteria for that competition. Such applicants must provide a timeframe for competing and/or awarding subgrants, whether awarded competitively or non-competitively, including the planned dates of the awards and performance.

Program and Fiscal Integrity. The applicant must describe the mechanisms it plans to use to establish and maintain program and fiscal oversight and maintain appropriate program and fiscal management information/records, including a brief description of computer hardware and software support. The applicant must describe a record keeping system that is sufficient to prepare required reports, and to trace funds to adequate levels of expenditures to ensure lawful spending.

Financial Monitoring. Applicants must describe how the financial management system of subgrantees and projects will be monitored, including:

—who will be responsible for monitoring subgrantee and affiliate expenditures;
—how frequently monitoring of expenditures will be done;
—how financial reports will be validated; and
—what follow-up procedures will be used.

Audits. Applicants must describe coverage plans to audit projects as well as plans to audit the headquarters activities. If a current grantee, the applicant must provide specific references to the most recent audit and include the name of the audit firm and the date of that audit.

Points Summary

(1) Program Design—Approach, Population(s) and Area(s) Served (20 points)
(2) Program Services—Community Services and Participant Services (20 points)
(3) Program Services—Unsubsidized Placements (20 points)
(4) Program Coordination and Oversight (20 points)
(5) Management Structure and Fiscal Integrity (20 points)

Total=100 points.

IV. The Cost Proposal Requirements

A. Budget Forms and Narrative Information

Each applicant must submit a cost proposal containing a completed Standard Form 424, ''Application for Federal Assistance;'' a Standard Form 424A (Budget Information Form); and a detailed cost breakout for each column and line item from Section B of the Standard Form 424A. Copies of all required forms along with the instructions for completing the forms are provided in the appendices to this SGA and can be found on the ETA homepage at *http://wdsc.doleta.gov/seniors.*

In addition to these forms, the applicant must submit a ''detailed cost break out'' that provides specific information on each of the expenditures listed under Section B of the Standard Form 424A, including both Federal and non-Federal funds. Each expenditure will fall under one of the three major cost categories: Administrative; Enrollee Wages and Fringe Benefits; or Other Participant Costs. Explanations of these categories can be found earlier in these documents and in the SCSEP regulations at 20 CFR 641.404.

In addition to the cost proposal, applicants must include the Assurance and Certification signature page, provided in Appendix D.

B. Fiscal and Performance Reporting Requirments

Applicants must have current computer technology and ensure that their organizations have the capability to link to the Internet. Reporting must be done through the Internet.

In accordance with 29 CFR 97.40 or 29 CFR 95.51, each grantee must submit a Senior Community Service Employment Program Quarterly Progress Report (QPR). This report must be prepared to coincide with the ending dates for Federal fiscal year quarters and must be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the grant period ends on a date other than the last day of a federal fiscal year quarter, the last quarterly report covering the entire grant period must be submitted no later than 30 days after the ending date. The Department will provide instructions for the preparation of this report.

In accordance with 29 CFR 97.41 or 29 CFR 95.52, the following financial reporting requirements apply to title V grants:

—An SF–269, Financial Status Report (FSR), must be submitted to the Department within 30 days after the ending of each quarter of the program year.

— A final FSR must be submitted within 45 days after the end of the grant.

— All FSRs must be prepared on an accrual basis.

Signed at Washington, DC, this 5th day of November, 2002.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

Appendices

Appendix A: Application for Federal Assistance, Standard Form 424

Appendix B: Budget Information Sheet, Standard Form 424–A

Appendix C: Standard Form 424–A Clarifying Instructions

Appendix D: Assurances and Certifications Signature Page

Appendix E: Listing of Current Locations and Potential Areas to be Served— posted at *http://wdsc.doleta.gov/seniors*

BILLING CODE 4510–30–P

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application
☐ **Construction**
☐ **Non-Construction**

Preapplication
☐ **Construction**
☐ **Non-Construction**

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code):*

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

APPENDIX B

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

APPENDIX C

STANDARD FORM 424A CLARIFYING INSTRUCTIONS

The applicant must prepare the proposed budget using Standard Form 424A or comparable format.

Sections A, B, C, and D of the Budget Information Form should include budget estimates for the entire grant period. In Sections A and B, four basic grant function areas are required. They are: (1) Headquarters Administration; (2) Local Administration; (3) Enrollee Wages and Fringe Benefits; and (4) Other Enrollee Costs. Costs attributable to these functional areas are described in the regulations and Older Worker Bulletins. Applicants must ensure that the proportional distribution of the Federal funds among these functional areas meets the program requirements.

The following information is intended to clarify instructions for completing each section of the budget forms. The regulations at 20 CFR sections 641.401-407 should be reviewed as well as OW Bulletins. Local administration includes estimated sums associated with the administration of State and local SCSEP project activities, including subgrantees, subcontractors, or other affiliates. (Older Americans Act Amendments of 2000 § 502(b)(1)(R)).

Section A - Budget Summary

Lines 1 - 4, Columns (a) and (b).

Under Column (a), enter the following:

Line 1 - "Administration";
Line 2- "Local Admin. (Administration);
Line 2 - "EW/FB" (Enrollee Wages and Fringe Benefits);
Line 3 - "OEC" (Other Enrollee Costs).

Under Column (b) on Line 1, enter "17.235".

Lines 1 - 4, Column (c) through (g). Leave Columns (c) and (d) blank. For each line entry under Column (a), enter in Columns (e) (Federal), (f) (Non-Federal), and (g) (Total) the appropriate amounts of funds needed to support the project for the grant period.

Line 5. Show totals for all columns used. Applicants should note that the non-Federal share must be no less than 10 percent of the total cost of the project. The requirement for providing non-Federal funds is found in the legislation at section 502(c).

Section B - Budget Categories

In the column headings at Line 6 titled "Object Class Categories" columns (1) through (4), enter the titles of the grant program function areas (Administration, Local Admin., EW/FB, and OEC) shown on Lines 1 - 4, Column (a), Section A. For each program functional area fill in the total funds needed (Federal plus non-Federal) by object class categories. The object class categories are those listed in lines 6a. through 6k. including totals.

On Lines 6a. through 6h. (Personnel, Fringe Benefits, Travel, etc.) enter the estimated amount (include the Federal and non-Federal share) for each direct object class category under each column used. The columns represent the grant program function areas: Administration, EWFB, and OEC. All costs to be incurred under subgrants, contracts or affiliates should be reflected in line 6f (Contractual). The costs to be incurred under individual subgrants, subcontract, or affiliates must be properly attributed among the four basic program function areas (i.e., Administration, Local Administration, EW/FB, and OEC).

Under the Enrollee Wages and Fringe Benefits (EW/FB) column, entries may be made in three object class categories (line items): "Personnel", "Fringe Benefits" or "Contractual" (when funds for enrollee wages and fringe benefits are to be included in subgrants, subcontracts, or affiliates).

Line 6i. Show the total of entries made for lines 6a through 6h in each column.

Line 6j. Show the amount of indirect costs. A copy of the CURRENT indirect cost rate agreement must be sent with the application. If it is not available please provide an explanation and an estimate as to when it will be available.

Line 6k. Enter the totals of the amounts indicated on lines 6i and 6j. For all applications, the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. Indeed all of the Totals found in line K of Section B should match those in Column (g) of Section A for the respective program function.

Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Under the project narrative statement describe the nature and source of such income. Remember: Income generated by SCSEP projects must be used for SCSEP activities.

Section C - Source of Non-Federal Resources

Line 8. Enter amounts of non-Federal resources by source that will be used in the grant.

On Line (8) column (a) the only entry should be "SCSEP" (Senior Community Service Employment Program). A breakdown by functional areas is not necessary. Use Line (8) for entries under all columns. It is not necessary to make an entry under each column.

Column (b). Enter the amount of applicant cash and/or in-kind contributions to be made by the applicant organization.

Column (c). Enter the State government(s) contribution, if any.

Column (d). Enter the amount of cash and/or in-kind contributions to be made from all other sources.

Column (e). Enter totals of Columns (b), (c), and (d). The amount under Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Lines 9-11 should be left blank for all columns.

Line 12. Totals. Under each column enter the same figure entered in Line (8).

Section D - Forecasted Cash Needs

Make no entries.

Section E - Budget Estimates of Federal Funds Needed for Balance of Project

Make no entries.

Section F - Other Budget Information

Line 21 - Direct Charges. In the space provided type "A Detailed Cost Breakout is Attached."

A Detailed Cost Breakout is required with the grant application package. It is an attachment to the B In categorizing costs and their allocability, all sponsors must follow the Regulations at 20 CFR Part 641 Subpart D, sections 641.401, 402, 403, 404, 405, 406 and 407.

All applicants should prepare and submit a Detailed Cost Breakout. This Detailed Cost Breakout should be prepared so that the amounts can be traced to the individual entries on the SF 424A by object cost category and program function. It will provide in narrative form the detailed factors that were used to arrive at the numbers entered on the SF 424A. The applicant may be requested to provide additional information on the basis of its estimated costs by line item including the detail for the "Other" line item. Applicants are encouraged to provide sufficient information so that reviewers (panel members) can determine the nature and basis for the entries on the 424A. Extraordinary cost items such as planned conferences, travel, or unusual expenses should be described. When sponsors divide costs between the "Administration" and "Other Enrollee Cost" categories they should describe the basis for that division and include mention of surveys

or other methodologies used to determine the allocations to these two program functions. (See OW Bulletin 97-26).

Applicants must submit a copy of their travel policy as an attachment to the Detailed Cost Breakout. The Department of Labor reserves the right to require additional information on any budget line item or program function category.

Line 22 - Indirect Charges

Enter the type of indirect rate (provisional, predetermined, final, or fixed) that will be in effect during the grant period, and the nature and the amount of the base to which the rate is applied, and the total indirect charges.

The Grant Officer will advise the grant applicant of the documents and materials that must accompany the grant application in support of the request. Where indirect charges are approved, the terms and conditions relating to the payment of indirect costs, which are subject to negotiation by the Department, will be specified in the grant document. Those national nonprofit grantees proposing to utilize an indirect cost rate must submit a roster showing all positions and individuals that are direct grant charges and those positions that are in the indirect cost pool.

Include a copy of your agency's approved indirect cost rate agreement. It should cover the entire grant period. If not, state that a new one will be provided when available.

Line 23 - Remarks. Provide any other explanations or comments deemed necessary.

NOTE: APPLICANTS SHOULD HAVE CURRENT COMPUTER TECHNOLOGY AND ENSURE THEIR ORGANIZATIONS HAVE THE CAPABILITY TO LINK TO THE INTERNET. REPORTING WILL BE DONE THROUGH THE INTERNET.

APPENDIX D

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

APPENDIX E

DISTRIBUTION OF SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM NATIONAL SPONSOR (SCSEP) PARTICIPANTS BY COUNTY

The following information represents the location of national grantee SCSEP program participants by county. The information was obtained mainly from Equitable Distribution Reports that were submitted in the spring of 2002. When preparing their grant applications for program year 2003, applicants may use this information as a guide in deciding which areas it wishes to serve. Applicants are reminded that all current participants in authorized positions are to be offered employment (the right of first refusal) in those areas where the applicant will operate. The attached information is the best available but changes occur regularly as some participants leave and vacancies are filled but these changes are modest and should not significantly impact the proposal development. Moreover, since this information was collected there has been a minor increase in the Program Year 2002 national grantee positions in a few States. The information for South Dakota and Montana includes both the State Share and the national sponsor portion. Those positions are not currently distinguishable. If proposing service in these two states the applicant should propose to serve no more than 333 positions in South Dakota and 298 positions in Montana.

[FR Doc. 02–28489 Filed 11–7–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Adjustment-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Director of DTAA not later than November 10, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than November 18, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
60966H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,057	Fresh salmon.
67326G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,058	Fresh salmon.
60161A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,059	Fresh salmon.
58898N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,060	Fresh salmon.
58927U (CBO)	Togiak, AK	09/05/2002	NAFTA–7,061	Fresh salmon.
57914V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,062	Fresh salmon.
57325J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,063	Fresh salmon.
57453B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,064	Fresh salmon.
58423H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,065	Fresh salmon.
57312J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,066	Fresh salmon.
57355C (CBO)	Togiak, AK	09/05/2002	NAFTA–7,067	Fresh salmon.
66920F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,068	Fresh salmon.
55947S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,069	Fresh salmon.
57329E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,070	Fresh salmon.
64825K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,071	Fresh salmon.
66967R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,072	Fresh salmon.
55724E (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,073	Fresh salmon.
55914X (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,074	Fresh salmon.
57299F (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,075	Fresh salmon.
57448P (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,076	Fresh salmon.
57448P (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,077	Fresh salmon.
58467R (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,078	Fresh salmon.
67875V (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,079	Fresh salmon.
67324V (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,080	Fresh salmon.
57297U (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,081	Fresh salmon.
60547S (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,082	Fresh salmon.
55889N (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,083	Fresh salmon.
64904I (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,084	Fresh salmon.
64752U (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,085	Fresh salmon.
56109S (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,086	Fresh salmon.
65164Z (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,087	Fresh salmon.
60495Q (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,088	Fresh salmon.
60812Q (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,089	Fresh salmon.
57747B (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,090	Fresh salmon.
59461O (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,091	Fresh salmon.
65831O (CBO)	Chignik Lake, AK	09/05/2002	NAFTA–7,092	Fresh salmon.
55106R (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,093	Fresh salmon.
57412U (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,094	Fresh salmon.
60455A (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,095	Fresh salmon.
58778L (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,096	Fresh salmon.
64708K (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,097	Fresh salmon.
65877K (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,098	Fresh salmon.
56082V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,099	Fresh salmon.
58240K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,100	Fresh salmon.
57764U (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,101	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
64914G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,102	Fresh salmon.
65891B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,103	Fresh salmon.
60028Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,104	Fresh salmon.
64735B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,105	Fresh salmon.
63231O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,106	Fresh salmon.
59800U (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,107	Fresh salmon.
64913N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,108	Fresh salmon.
57924V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,109	Fresh salmon.
64740M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,110	Fresh salmon.
60472S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,111	Fresh salmon.
59043S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,112	Fresh salmon.
59907A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,113	Fresh salmon.
61422E (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,114	Fresh salmon.
61422E (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,115	Fresh salmon.
59644N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,116	Fresh salmon.
59644N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,117	Fresh salmon.
65485N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,118	Fresh salmon.
60404S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,119	Fresh salmon.
64748B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,120	Fresh salmon.
57727G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,121	Fresh salmon.
63231O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,122	Fresh salmon.
64849C (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,123	Fresh salmon.
65147G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,124	Fresh salmon.
65905Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,125	Fresh salmon.
60323N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,126	Fresh salmon.
59969W (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,127	Fresh salmon.
57969Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,128	Fresh salmon.
58935K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,129	Fresh salmon.
61256Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,130	Fresh salmon.
58935K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,131	Fresh salmon.
60557S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,132	Fresh salmon.
60577O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,133	Fresh salmon.
56631Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,134	Fresh salmon.
61851O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,135	Fresh salmon.
56229X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,136	Fresh salmon.
65639L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,137	Fresh salmon.
56023B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,138	Fresh salmon.
60320L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,139	Fresh salmon.
57362A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,140	Fresh salmon.
57362A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,141	Fresh salmon.
59208H (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,142	Fresh salmon.
65123P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,143	Fresh salmon.
56667O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,144	Fresh salmon.
56667O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,145	Fresh salmon.
56693N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,146	Fresh salmon.
59888Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,147	Fresh salmon.
59799X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,148	Fresh salmon.
64766M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,149	Fresh salmon.
60928C (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,150	Fresh salmon.
65823B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,151	Fresh salmon.
64872Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,152	Fresh salmon.
64872Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,153	Fresh salmon.
58717H (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,154	Fresh salmon.
59093I (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,155	Fresh salmon.
64681M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,156	Fresh salmon.
65650A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,157	Fresh salmon.
60323N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,158	Fresh salmon.
598980 (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 159	Fresh salmon.
55581X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 160	Fresh salmon.
59758O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 161	Fresh salmon.
64746Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 162	Fresh salmon.
57250J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 163	Fresh salmon.
57251B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 164	Fresh salmon.
58769G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 165	Fresh salmon.
58769G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 166	Fresh salmon.
60868K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 167	Fresh salmon.
59840L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 168	Fresh salmon.
64912V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 169	Fresh salmon.
59044L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 170	Fresh salmon.
66515L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 171	Fresh salmon.
65848J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 172	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
64971P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 173	Fresh salmon.
60476N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 174	Fresh salmon.
64925V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 175	Fresh salmon.
59799X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 176	Fresh salmon.
59802F (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 177	Fresh salmon.
65417N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 178	Fresh salmon.
58140B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 179	Fresh salmon.
59971G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 180	Fresh salmon.
64749S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 181	Fresh salmon.
59909K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 182	Fresh salmon.
60506M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 183	Fresh salmon.
64124J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 184	Fresh salmon.
64806J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 185	Fresh salmon.
64739V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 186	Fresh salmon.
59092P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 187	Fresh salmon.
65124I (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 188	Fresh salmon.
60348V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 189	Fresh salmon.
55949G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 190	Fresh salmon.
64929P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 191	Fresh salmon.
65868F (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 192	Fresh salmon.
59885O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 193	Fresh salmon.
61231Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 194	Fresh salmon.
59801M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 195	Fresh salmon.
61256Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 196	Fresh salmon.
64699Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 197	Fresh salmon.
59896F (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 198	Fresh salmon.
56740G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 199	Fresh salmon.
64416W (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 200	Fresh salmon.
59862Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 201	Fresh salmon.
64920J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 202	Fresh salmon.
59261W (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 203	Fresh salmon.
60356J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 204	Fresh salmon.
59859P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 205	Fresh salmon.
64790B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 206	Fresh salmon.
60660E (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 207	Fresh salmon.
59580B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 208	Fresh salmon.
60455A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 209	Fresh salmon.
64726V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,210	Fresh salmon.
55445R (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,211	Fresh salmon.
67337X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,212	Fresh salmon.
57123J (CBO)	Egegik, AK	09/05/2002	NAFTA–7,213	Fresh salmon.
60370A (CBO)	Egegik, AK	09/05/2002	NAFTA–7,214	Fresh salmon.
61882A (CBO)	Egegik, AK	09/05/2002	NAFTA–7,215	Fresh salmon.
65878C (CBO)	Egegik, AK	09/05/2002	NAFTA–7,216	Fresh salmon.
59796V (CBO)	Egegik, AK	09/05/2002	NAFTA–7,217	Fresh salmon.
59914V (CBO)	Egegik, AK	09/05/2002	NAFTA–7,218	Fresh salmon.
59825C (CBO)	Egegik, AK	09/05/2002	NAFTA–7,219	Fresh salmon.
59436I (CBO)	Egegik, AK	09/05/2002	NAFTA–7,220	Fresh salmon.
68161S (CBO)	Egegik, AK	09/05/2002	NAFTA–7,221	Fresh salmon.
60957E (CBO)	Egegik, AK	09/05/2002	NAFTA–7,222	Fresh salmon.
60819N (CBO)	Egegik, AK	09/05/2002	NAFTA–7,223	Fresh salmon.
59300B (CBO)	Egegik, AK	09/05/2002	NAFTA–7,224	Fresh salmon.
60833F (CBO)	Egegik, AK	09/05/2002	NAFTA–7,225	Fresh salmon.
64412C (CBO)	Egegik, AK	09/05/2002	NAFTA–7,226	Fresh salmon.
60920N (CBO)	Egegik, AK	09/05/2002	NAFTA–7,227	Fresh salmon.
58934R (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,228	Fresh salmon.
59918P (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,229	Fresh salmon.
60644C (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,230	Fresh salmon.
60661V (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,231	Fresh salmon.
63415G (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,232	Fresh salmon.
59918P (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,233	Fresh salmon.
56549U (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,234	Fresh salmon.
59463Z (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,235	Fresh salmon.
60440P (CBO)	King Salmon, AK′	09/05/2002	NAFTA–7,236	Fresh salmon.
56816A (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,237	Fresh salmon.
56862U (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,238	Fresh salmon.
57459I (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,239	Fresh salmon.
59910B (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,240	Fresh salmon.
60768B (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,241	Fresh salmon.
57388A (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,242	Fresh salmon.
64891C (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,243	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
58575Q (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,244	Fresh salmon.
60091M (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,245	Fresh salmon.
65619P (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,246	Fresh salmon.
61514Z (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,247	Fresh salmon.
64924O (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,248	Fresh salmon.
60024F (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,249	Fresh salmon.
58844H (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,250	Fresh salmon.
65824S (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,251	Fresh salmon.
64903P (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,252	Fresh salmon.
58418X (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,253	Fresh salmon.
59115S (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,254	Fresh salmon.
59894U (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,255	Fresh salmon.
60964Z (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,256	Fresh salmon.
60314I (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,257	Fresh salmon.
60363F (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,258	Fresh salmon.
56843Q (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,259	Fresh salmon.
58261X (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,260	Fresh salmon.
56033Z (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,261	Fresh salmon.
56034Q (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,262	Fresh salmon.
64829H (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,263	Fresh salmon.
60827B (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,264	Fresh salmon.
64724L (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,265	Fresh salmon.
64928X (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,266	Fresh salmon.
59457V (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,267	Fresh salmon.
64830X (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,268	Fresh salmon.
56934U (CBO)	Koliganek, AK	09/05/2002	NAFTA–7,269	Fresh salmon.
60435F (CBO)	Koliganek, AK	09/05/2002	NAFTA–7,270	Fresh salmon.
57450B (CBO)	Levelock, AK	09/05/2002	NAFTA–7,271	Fresh salmon.
65875A (CBO)	Levelock, AK	09/05/2002	NAFTA–7,272	Fresh salmon.
58445O (CBO)	Levelock, AK	09/05/2002	NAFTA–7,273	Fresh salmon.
56856Q (CBO)	Levelock, AK	09/05/2002	NAFTA–7,274	Fresh salmon.
66980S (CBO)	Levelock, AK	09/05/2002	NAFTA–7,275	Fresh salmon.
60097Q (CBO)	Levelock, AK	09/05/2002	NAFTA–7,276	Fresh salmon.
65876R (CBO)	Levelock, AK	09/05/2002	NAFTA–7,277	Fresh salmon.
64927G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,278	Fresh salmon.
60517C (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,279	Fresh salmon.
64911E (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,280	Fresh salmon.
58255U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,281	Fresh salmon.
65919Q (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,282	Fresh salmon.
64953F (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,283	Fresh salmon.
59976R (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,284	Fresh salmon.
58784O (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,285	Fresh salmon.
65874I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,286	Fresh salmon.
60242I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,287	Fresh salmon.
55655I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,288	Fresh salmon.
65003L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,289	Fresh salmon.
64753M (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,290	Fresh salmon.
60691O (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,291	Fresh salmon.
57684H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,292	Fresh salmon.
65401L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,293	Fresh salmon.
64733Q (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,294	Fresh salmon.
64733Q (CBO)	Manokotak, AK		NAFTA–7,295	Fresh salmon.
60785U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,296	Fresh salmon.
65873P (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,297	Fresh salmon.
64868G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,298	Fresh salmon.
58083L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,299	Fresh salmon.
60027H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,300	Fresh salmon.
65405G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,301	Fresh salmon.
64983X (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,302	Fresh salmon.
58837L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,303	Fresh salmon.
64973A (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,304	Fresh salmon.
65439S (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,305	Fresh salmon.
58531G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,306	Fresh salmon.
64871H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,307	Fresh salmon.
57390J (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,308	Fresh salmon.
64734J (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,309	Fresh salmon.
64992S (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,310	Fresh salmon.
65424J (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,311	Fresh salmon.
64686Z (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,312	Fresh salmon.
59828F (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,313	Fresh salmon.
59877B (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,314	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
64750K (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,315	Fresh salmon.
65434H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,316	Fresh salmon.
61881I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,317	Fresh salmon.
65478R (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,318	Fresh salmon.
64765U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,319	Fresh salmon.
58629G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,320	Fresh salmon.
62119A (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,321	Fresh salmon.
64901G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,322	Fresh salmon.
65887I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,323	Fresh salmon.
57353U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,324	Fresh salmon.
57507R (CBO)	Naknek, AK	09/05/2002	NAFTA–7,325	Fresh salmon.
61297I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,326	Fresh salmon.
59937S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,327	Fresh salmon.
59906I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,328	Fresh salmon.
65507Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,329	Fresh salmon.
57511L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,330	Fresh salmon.
65830W (CBO)	Naknek, AK	09/05/2002	NAFTA–7,331	Fresh salmon.
65846Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,332	Fresh salmon.
58138R (CBO)	Naknek, AK	09/05/2002	NAFTA–7,333	Fresh salmon.
57456G (CBO)	Naknek, AK	09/05/2002	NAFTA–7,334	Fresh salmon.
60891H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,335	Fresh salmon.
55415Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,336	Fresh salmon.
55630A (CBO)	Naknek, AK	09/05/2002	NAFTA–7,337	Fresh salmon.
58023Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,338	Fresh salmon.
65135X (CBO)	Naknek, AK	09/05/2002	NAFTA–7,339	Fresh salmon.
58646Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,340	Fresh salmon.
60440P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,341	Fresh salmon.
58494L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,342	Fresh salmon.
59332F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,343	Fresh salmon.
60565H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,344	Fresh salmon.
65846Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,345	Fresh salmon.
60096Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,346	Fresh salmon.
57450B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,347	Fresh salmon.
59912L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,348	Fresh salmon.
60840A (CBO)	Naknek, AK	09/05/2002	NAFTA–7,349	Fresh salmon.
58965E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,350	Fresh salmon.
57416O (CBO)	Naknek, AK	09/05/2002	NAFTA–7,351	Fresh salmon.
59919I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,352	Fresh salmon.
60518U (CBO)	Naknek, AK	09/05/2002	NAFTA–7,353	Fresh salmon.
58022H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,354	Fresh salmon.
64847R (CBO)	Naknek, AK	09/05/2002	NAFTA–7,355	Fresh salmon.
56629I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,356	Fresh salmon.
59852S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,357	Fresh salmon.
59853L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,358	Fresh salmon.
59854E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,359	Fresh salmon.
65821Q (CBO)	Naknek, AK	09/05/2002	NAFTA–7,360	Fresh salmon.
59881U (CBO)	Naknek, AK	09/05/2002	NAFTA–7,361	Fresh salmon.
64955O (CBO)	Naknek, AK	09/05/2002	NAFTA–7,362	Fresh salmon.
57535B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,363	Fresh salmon.
58641M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,364	Fresh salmon.
600940 (CBO)	Naknek, AK	09/05/2002	NAFTA–7,365	Fresh salmon.
59906I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,366	Fresh salmon.
62878G (CBO)	Naknek, AK	09/05/2002	NAFTA–7,367	Fresh salmon.
59358F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,368	Fresh salmon.
60473L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,369	Fresh salmon.
58673P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,370	Fresh salmon.
59941M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,371	Fresh salmon.
64414M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,372	Fresh salmon.
57646A (CBO)	Naknek, AK	09/05/2002	NAFTA–7,373	Fresh salmon.
60473L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,374	Fresh salmon.
60707W (CBO)	Naknek, AK	09/05/2002	NAFTA–7,375	Fresh salmon.
59934Q (CBO)	Naknek, AK	09/05/2002	NAFTA–7,376	Fresh salmon.
59883F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,377	Fresh salmon.
60241P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,378	Fresh salmon.
59928N (CBO)	Naknek, AK	09/05/2002	NAFTA–7,379	Fresh salmon.
64867N (CBO)	Naknek, AK	09/05/2002	NAFTA–7,380	Fresh salmon.
60941B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,381	Fresh salmon.
60849H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,382	Fresh salmon.
58976S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,383	Fresh salmon.
65892S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,384	Fresh salmon.
65851K (CBO)	Naknek, AK	09/05/2002	NAFTA–7,385	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
68176E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,386	Fresh salmon.
66424I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,387	Fresh salmon.
63412E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,388	Fresh salmon.
604110 (CBO)	Naknek, AK	09/05/2002	NAFTA–7,389	Fresh salmon.
66551I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,390	Fresh salmon.
59942F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,391	Fresh salmon.
65872X (CBO)	Naknek, AK	09/05/2002	NAFTA–7,392	Fresh salmon.
57957Q (CBO)	Naknek, AK	09/05/2002	NAFTA–7,393	Fresh salmon.
65838L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,394	Fresh salmon.
65134G (CBO)	Naknek, AK	09/05/2002	NAFTA–7,395	Fresh salmon.
65896N (CBO)	Naknek, AK	09/05/2002	NAFTA–7,396	Fresh salmon.
51572W (CBO)	Naknek, AK	09/05/2002	NAFTA–7,397	Fresh salmon.
58225B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,398	Fresh salmon.
64437K (CBO)	Naknek, AK	09/05/2002	NAFTA–7,399	Fresh salmon.
60851P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,400	Fresh salmon.
58455M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,401	Fresh salmon.
59876J (CBO)	Naknek, AK	09/05/2002	NAFTA–7,402	Fresh salmon.
59879L (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,403	Fresh salmon.
60427Q (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,404	Fresh salmon.
56574B (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,405	Fresh salmon.
65153J (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,406	Fresh salmon.
65036H (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,407	Fresh salmon.
57929I (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,408	Fresh salmon.
65881E (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,409	Fresh salmon.
56867H (CBO)	Newhalen, AK	09/05/2002	NAFTA–7,410	Fresh salmon.
56738W (CBO)	Newhalen, AK	09/05/2002	NAFTA–7,411	Fresh salmon.
58233O (CBO)	Newhalen, AK	09/05/2002	NAFTA–7,412	Fresh salmon.
66587G (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,413	Fresh salmon.
65030C (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,414	Fresh salmon.
65175O (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,415	Fresh salmon.
65886P (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,416	Fresh salmon.
64782N (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,417	Fresh salmon.
64951U (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,418	Fresh salmon.
64670W (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,419	Fresh salmon.
65111I (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,420	Fresh salmon.
58779E (CBO)	Pedro Bay, AK	09/05/2002	NAFTA–7,421	Fresh salmon.
59935J (CBO)	Pedro Bay, AK	09/05/2002	NAFTA–7,422	Fresh salmon.
59954M (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,423	Fresh salmon.
58234H (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,424	Fresh salmon.
58352B (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,425	Fresh salmon.
65050X (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,426	Fresh salmon.
59641L (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,427	Fresh salmon.
65907J (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,428	Fresh salmon.
58385W (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,429	Fresh salmon.
58139K (CBO)	Port Alsworth, AK	09/05/2002	NAFTA–7,430	Fresh salmon.
58140B (CBO)	Port Alsworth, AK	09/05/2002	NAFTA–7,431	Fresh salmon.
65423Q (CBO)	Port Heiden, AK	09/05/2002	NAFTA–7,432	Fresh salmon.
59894U (CBO)	Port Heiden, AK	09/05/2002	NAFTA–7,433	Fresh salmon.
65856W (CBO)	Port Heiden, AK	09/05/2002	NAFTA–7,434	Fresh salmon.
59857G (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,435	Fresh salmon.
59927V (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,436	Fresh salmon.
60834W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,437	Fresh salmon.
60290M (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,438	Fresh salmon.
58833Q (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,439	Fresh salmon.
60185R (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,440	Fresh salmon.
57510S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,441	Fresh salmon.
58777S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,442	Fresh salmon.
51572W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,443	Fresh salmon.
57783X (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,444	Fresh salmon.
59897W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,445	Fresh salmon.
55165M (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,446	Fresh salmon.
58751S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,447	Fresh salmon.
58963S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,448	Fresh salmon.
58296E (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,449	Fresh salmon.
59803W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,450	Fresh salmon.
58117F (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,451	Fresh salmon.
56213V (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,452	Fresh salmon.
57389R (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,453	Fresh salmon.
65820Z (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,454	Fresh salmon.
58296E (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,455	Fresh salmon.
58963S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,456	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
60431K (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,457	Fresh salmon.
59811K (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,458	Fresh salmon.
59938L (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,459	Fresh salmon.
65617G (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,460	Fresh salmon.
65649J (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,461	Fresh salmon.
64743O (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,462	Fresh salmon.
58418X (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,463	Fresh salmon.
59903G (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,464	Fresh salmon.
65623J (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,465	Fresh salmon.
57797P (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,466	Fresh salmon.
65069C (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,467	Fresh salmon.
59863J (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,468	Fresh salmon.
60044A (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,469	Fresh salmon.
65860P (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,470	Fresh salmon.
60854R (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,471	Fresh salmon.
65820Z (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,472	Fresh salmon.
65633H (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,473	Fresh salmon.
59882M (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,474	Fresh salmon.
59892K (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,475	Fresh salmon.
60491W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,476	Fresh salmon.
65928W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,477	Fresh salmon.
60128I (CBO)	Togiak, AK	09/05/2002	NAFTA–7,478	Fresh salmon.
68318S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,479	Fresh salmon.
60853A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,480	Fresh salmon.
59973P (CBO)	Togiak, AK	09/05/2002	NAFTA–7,481	Fresh salmon.
64444G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,482	Fresh salmon.
64738E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,483	Fresh salmon.
66267J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,484	Fresh salmon.
60019S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,485	Fresh salmon.
65849B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,486	Fresh salmon.
59797N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,487	Fresh salmon.
59917X (CBO)	Togiak, AK	09/05/2002	NAFTA–7,488	Fresh salmon.
66274F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,489	Fresh salmon.
64729X (CBO)	Togiak, AK	09/05/2002	NAFTA–7,490	Fresh salmon.
60708O (CBO)	Togiak, AK	09/05/2002	NAFTA–7,491	Fresh salmon.
65416V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,492	Fresh salmon.
60432C (CBO)	Togiak, AK	09/05/2002	NAFTA–7,493	Fresh salmon.
60766Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,494	Fresh salmon.
65438B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,495	Fresh salmon.
56241F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,496	Fresh salmon.
65839E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,497	Fresh salmon.
59702V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,498	Fresh salmon.
60875G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,499	Fresh salmon.
64943H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,500	Fresh salmon.
60764H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,501	Fresh salmon.
57326E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,502	Fresh salmon.
65434H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,503	Fresh salmon.
65068M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,504	Fresh salmon.
64683W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,505	Fresh salmon.
59648I (CBO)	Togiak, AK	09/05/2002	NAFTA–7,506	Fresh salmon.
61253W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,507	Fresh salmon.
60519M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,508	Fresh salmon.
65018V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,509	Fresh salmon.
59976R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,510	Fresh salmon.
64734J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,511	Fresh salmon.
56196W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,512	Fresh salmon.
63410S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,513	Fresh salmon.
65397M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,514	Fresh salmon.
57394E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,515	Fresh salmon.
64199G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,516	Fresh salmon.
60931E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,517	Fresh salmon.
66266Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,518	Fresh salmon.
59167R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,519	Fresh salmon.
65880L (CBO)	Togiak, AK	09/05/2002	NAFTA–7,520	Fresh salmon.
64982G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,521	Fresh salmon.
64744H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,522	Fresh salmon.
64429W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,523	Fresh salmon.
60354Z (CBO)	Togiak, AK	09/05/2002	NAFTA–7,524	Fresh salmon.
59878S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,525	Fresh salmon.
65826E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,526	Fresh salmon.
64840V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,527	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
55487S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,528	Fresh salmon.
60085J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,529	Fresh salmon.
59948J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,530	Fresh salmon.
60709H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,531	Fresh salmon.
60958V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,532	Fresh salmon.
66268B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,533	Fresh salmon.
55895Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,534	Fresh salmon.
56932K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,535	Fresh salmon.
56933C (CBO)	Togiak, AK	09/05/2002	NAFTA–7,536	Fresh salmon.
64719A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,537	Fresh salmon.
64695F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,538	Fresh salmon.
64763K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,539	Fresh salmon.
65091H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,540	Fresh salmon.
60764H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,541	Fresh salmon.
65886U (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,542	Fresh salmon.
66274F (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,543	Fresh salmon.
55786C (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,544	Fresh salmon.
58333X (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,545	Fresh salmon.
60018B (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,546	Fresh salmon.

[FR Doc. 02–28473 Filed 11–7–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas 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.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020002 (Mar. 01, 2002)
NJ020003 (Mar. 01, 2002)
NJ020007 (Mar. 01, 2002)

Volume II

Pennsylvania
PA020005 (Mar. 01, 2002)
PA020026 (Mar. 01, 2002)
PA020031 (Mar. 01, 2002)

Volume III

Kentucky
KY020001 (Mar. 01, 2002)

KY020002 (Mar. 01, 2002)
KY020003 (Mar. 01, 2002)
KY020004 (Mar. 01, 2002)
KY020007 (Mar. 01, 2002)
KY020025 (Mar. 01, 2002)
KY020027 (Mar. 01, 2002)
KY020029 (Mar. 01, 2002)
KY020035 (Mar. 01, 2002)
KY020049 (Mar. 01, 2002)

Volume IV

Illinois
IL020001 (Mar. 01, 2002)
IL020008 (Mar. 01, 2002)
IL020011 (Mar. 01, 2002)
IL020012 (Mar. 01, 2002)
IL020019 (Mar. 01, 2002)
Minnesota
MN020007 (Mar. 01, 2002)

Volume V

Missouri
MO020001 (Mar. 01, 2002)
MO020002 (Mar. 01, 2002)
MO020003 (Mar. 01, 2002)
MO020004 (Mar. 01, 2002)
MO020006 (Mar. 01, 2002)
MO020007 (Mar. 01, 2002)
MO020009 (Mar. 01, 2002)
MO020011 (Mar. 01, 2002)
MO020013 (Mar. 01, 2002)
MO020015 (Mar. 01, 2002)
MO020016 (Mar. 01, 2002)
MO020019 (Mar. 01, 2002)
MO020020 (Mar. 01, 2002)
MO020042 (Mar. 01, 2002)
MO020043 (Mar. 01, 2002)
MO020044 (Mar. 01, 2002)
MO020045 (Mar. 01, 2002)
MO020046 (Mar. 01, 2002)
MO020048 (Mar. 01, 2002)
MO020050 (Mar. 01, 2002)
MO020052 (Mar. 01, 2002)
MO020054 (Mar. 01, 2002)
MO020057 (Mar. 01, 2002)
MO020058 (Mar. 01, 2002)
MO020061 (Mar. 01, 2002)

Volume VI

None

Volume VII

California
CA020001 (Mar. 01, 2002)
CA020002 (Mar. 01, 2002)
CA020004 (Mar. 01, 2002)
CA020009 (Mar. 01, 2002)
CA020013 (Mar. 01, 2002)
CA020019 (Mar. 01, 2002)
CA020023 (Mar. 01, 2002)
CA020025 (Mar. 01, 2002)
CA020028 (Mar. 01, 2002)
CA020029 (Mar. 01, 2002)
CA020030 (Mar. 01, 2002)
CA020031 (Mar. 01, 2002)
CA020032 (Mar. 01, 2002)
CA020033 (Mar. 01, 2002)
CA020035 (Mar. 01, 2002)
CA020036 (Mar. 01, 2002)
CA020037 (Mar. 01, 2002)

Hawaii

HI020001 (Mar. 01, 2002)
Nevada
NV020005 (Mar. 01, 2002)
NV020009 (Mar. 01, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

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 subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six 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 will be distributed to subscribers.

Signed at Washington, DC, this 31st day of October, 2002.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–28207 Filed 11–7–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–130]

NASA Advisory Council, Space Science Advisory Committee; Structure and Evolution of the Universe Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Tuesday, December 3, 2002, 8:30 a.m. to 5:30 p.m., and Wednesday, December 4, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

Status of Astronomy and Physics Programs

—Status of Explorer Program

—Report on Space Science Strategic Plan

—Report from Astronomy & Physics Working Group

—Report from Space Archives Working Group

—Report from National Astronomy & Astrophysics Advisory Committee

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–28416 Filed 11–7–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–131]

NASA Advisory Council, Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Monday, December 2, 2002, 8:30 a.m. to 5:30 p.m., and Tuesday, December 3, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—James Webb Space Telescope

—Wide Field Camera 3

—Committee on the Origin and Evolution of Life

—Origins Roadmap

—Structure and Evolution of the Universe Roadmap

—Astronomy & Physics Working Group

—Science Archives Working Group

—National Astronomy & Astrophysics Committee

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–28417 Filed 11–7–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[IA–02–022]

Ms. Patricia A. McGinn; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

From December 1995 to May 2000, Ms. Patricia A. McGinn was a Human Resources Coordinator for Cataract/RCM Technologies, Inc., (Cataract/RCM or Contractor) located at 2500 McClellan Avenue, Suite 350, Pennsauken, New Jersey 08109. Cataract/RCM was a contractor to facilities licensed by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50.

On September 29, 2000, the NRC's Office of Investigations (OI) initiated an investigation to determine whether Patricia A. McGinn, while employed by Cataract/RCM Technologies, Inc., deliberately falsified background information that was used to support the granting of unescorted access authorizations at Tennessee Valley Authority (TVA) and other NRC licensee facilities.

As background, 10 CFR 73.56, ''Personnel access authorization requirements for nuclear power plants,'' requires that background investigations be conducted prior to allowing unescorted access to protected and vital areas of nuclear power plants. At a minimum, a background investigation must verify an individual's true identity, and develop information concerning an individual's employment history, education history, credit history, criminal history, military service, and verify an individual's character and reputation.

The investigation determined that on January 6, 1998, TVA received the results of an employee's (Employee A) criminal history check from the Federal Bureau of Investigation (FBI) indicating that Employee A had prior misdemeanor charges. This information had not been highlighted or identified during the process conducted by Cataract/RCM to issue Employee A a temporary unescorted access authorization clearance. This process included documenting answers to criminal history questions from the employee that reasonably should have revealed the existence of the prior misdemeanor charges. No such history was documented in the records produced by Cataract/RCM. When confronted, Employee A indicated that he had not been questioned about his criminal history. Ms. McGinn, the Cataract/RCM Human Resources Coordinator at the time, claimed that the employee had been asked the questions, yet had not disclosed anything derogatory.

Subsequently, the TVA Office of the Inspector General (OIG) conducted an investigation. The TVA OIG investigation concluded that Ms. McGinn did not contact four of the five references for Employee A which she documented as having contacted. TVA OIG also concluded that Ms. McGinn had falsified information in Cataract/RCM's security files for three other individuals. TVA OIG determined from the background investigation files for three other individuals that documentation of reference checks existed for references who either did not exist, did not remember being contacted by Ms. McGinn, or did not make the statements attributed to them.

OI contacted 13 individuals whom Ms. McGinn reportedly contacted in the course of her background investigations for other licensees. These individuals denied knowing or providing the names given by the Human Resources Coordinator as developed references. Some questioned the responses attributed to them, stating that the information provided on the Cataract/RCM Reference Forms was, in part, inaccurate or incomplete.

OI subsequently interviewed Ms. McGinn. During that interview Ms. McGinn provided similar information as she did during the TVA OIG interview. Based on the interviews and records reviews discussed above, OI concluded she deliberately falsified Cataract/RCM background investigations, allowing unescorted access for numerous contractors at TVA and other NRC-licensed facilities.

Based on the above, the NRC has concluded that Ms. McGinn's actions constitute a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately submitting to the NRC, a licensee, or a licensee's contractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The inaccurate information was material in that it was relied upon to grant unescorted access to individuals who potentially could have presented a security threat to nuclear power plants.

Ms. McGinn's actions in deliberately falsifying information relating to numerous background investigations, and her unresponsiveness to the NRC, have raised serious doubt as to whether she can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed

activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Ms. McGinn were permitted at this time to be involved in NRC licensed activities. Therefore, the public health, safety and interest require that Ms. McGinn be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Ms. McGinn is required to notify the NRC of her first employment in NRC-licensed activities at any time following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the deliberate nature of Ms. Patricia A. McGinn's conduct described above, in a sensitive area like nuclear security, is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 53, 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

1. Ms. Patricia A. McGinn is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Ms. Patricia A. McGinn is currently involved with another licensee in NRC-licensed activities, she must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. At any time after the three year period of prohibition has expired, Ms. Patricia A. McGinn shall, within 20 days of acceptance of her first employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities. In the notification, Ms. McGinn shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Patricia A. McGinn of good cause.

In accordance with 10 CFR 2.202, Ms. Patricia A. McGinn must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Patricia A. McGinn or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth St. SW, Suite 23T85, Atlanta, GA 30303–8931, and to Ms. Patricia A. McGinn if the answer or hearing request is by a person other than Ms. Patricia A. McGinn. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than Ms. Patricia A. McGinn requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[1]

If a hearing is requested by Ms. Patricia A. McGinn or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Patricia A. McGinn, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 31st day of October 2002.

For the Nuclear Regulatory Commission.

William F. Kane,

Deputy Executive Director for Reactor Programs.

[FR Doc. 02–28482 Filed 11–7–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

RAILROAD RETIREMENT BOARD

2003 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance

(RUI) Account, as of June 30, 2002, is $39,708,270.49;

2. The September 30, 2002, balance of any new loans to the RUI Account, including accrued interest, is $8,008,135.40;

3. The system compensation base is $3,138,111,805.91 as of June 30, 2002;

4. The cumulative system unallocated charge balance is ($246,803,499.90) as of June 30, 2002;

5. The pooled credit ratio for calendar year 2003 is zero;

6. The pooled charged ratio for calendar year 2003 is zero;

7. The surcharge rate for calendar year 2003 is 2.5 percent;

8. The monthly compensation base under section 1(i) of the Act is $1,120 for months in calendar year 2003;

9. The amount described in section 1(k) of the Act as ''2.5 times the monthly compensation base'' is $2,800 for base year (calendar year) 2003;

10. The amount described in section 2(c) of the Act as ''an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $1,447 for months in calendar year 2003;

11. The amount described in section 3 of the Act as ''2.5 times the monthly compensation base'' is $2,800 for base year (calendar year) 2003;

12. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the monthly compensation base'' is $2,800 with respect to disqualifications ending in calendar year 2003;

13. The maximum daily benefit rate under section 2(a)(3) of the Act is $55 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2003.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2002. The balance in notice (2) is based on data as of September 30, 2002. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2003. The determinations made in notices (8) through (12) are effective January 1, 2003. The determination made in notice (13) is effective for registration periods beginning after June 30, 2003.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Pub. L. 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2002, the computation of the calendar year 2003 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2003, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2003.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2002 was $3,138,111,805.91. The ratio of $3,138,111,805.91 to $2,763,287,237.04 is 1.13564445. Multiplying 1.13564445 by $100 million yields $113,564,445. Multiplying $50 million by 1.13564445 produces $56,782,223. The Account balance on June 30, 2002, was $39,708,270.49. Accordingly, the surcharge rate for calendar year 2003 is 2.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2003 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2003 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2003 tier 1 tax base is $87,000. Subtracting $37,800 from $87,000 produces $49,200. Dividing $49,200 by $56,700 yields a ratio of 0.86772487. Adding one gives 1.86772487. Multiplying $600 by the amount 1.86772487 produces the amount of $1,120.63, which must then be rounded to $1,120. Accordingly, the monthly compensation base is determined to be $1,120 for months in calendar year 2003.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2003 monthly compensation base of $1,120 produces $2,800. Accordingly, the amount determined under section 1(k) is $2,800 for calendar year 2003.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account. The calendar year 2003 monthly compensation base is $1,120. The ratio of $1,120 to $600 is 1.86666667. Multiplying 1.86666667 by $775 produces $1,447. Accordingly, the amount determined under section 2(c) is $1,447 for months in calendar year 2003.

Under section 3, an employee shall be a ''qualified employee'' if his/her base

year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2003 monthly compensation base of $1,120 produces $2,800. Accordingly, the amount determined under section 3 is $2,800 for calendar year 2003.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 2003 monthly compensation base of $1,120 produces $2,800. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,800 for calendar year 2003.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2003, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2002 monthly compensation base is $1,100. Multiplying $1,100 by 0.05 yields $55.00, an even multiple of $1. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2003, is determined to be $55.

Dated: November 4, 2002.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–28459 Filed 11–7–02; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25792; File No. 812–12875]

Allstate Life Insurance Company, et al.; Notice of Application

November 4, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended (''Act'') granting exemptions from the provisions of Sections 2(a)(231) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: Allstate Life Insurance Company (''Allstate''), Allstate Life Insurance Company of New York (''Allstate Life of New York''), Glenbrook Life & Annuity Company (''Glenbrook''), Lincoln Benefit Life Company (''Lincoln Benefit''), Northbrook Life Insurance Company (''Northbrook,'' together with Allstate, Allstate Life of New York, Glenbrook and Lincoln Benefit, the ''Life Companies''), Allstate Life Insurance Company Separate Account A (''Allstate Separate Account A''), and Allstate Distributors, L.L.C., (''Allstate Distributors'') (collectively, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to amend an Existing Order (described below) to grant exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Applicants to recapture certain bonuses applied to contributions made under (a) certain amended deferred variable annuity contracts an certificates, described herein, including certain amended certificate data pages and endorsements, that Allstate will issue in the future through Allstate Separate Account A (the ''Amended Contracts''), and (b) under contracts and certificates, including certain certificate data pages and endorsements, that the Life Companies may issue in the future through any separate account of the Life Companies (''Future Account'') and that are substantially similar in all material respects to the Amended Contracts (''Future Contracts''). Applicants also request that the order being sought extend to the Allstate LifeContracts,'' ''Future Contracts'' (hereinafter ''Future Contracts Covered by the Existing Order''), and ''Affiliated Broker-Dealers'' as defined in the application for the Existing Order (''Prior Application'') which definitions are described below, and to broker-dealers who are not affiliated with the Life Companies (''Unaffiliated Broker-Dealers'').

FILING DATE: The application (''Application'') was filed on August 28, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 4, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Angela King, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062; with a copy to Richard T. Choi, Esq., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. On June 5, 2001, the Commission issued an order (''Existing Order'') [1] exempting certain transactions of the Life Companies, the Existing Separate Accounts (defined below), Allstate Distributors, and ALFS, Inc. (''ALFS'') (collectively, the ''Prior Applicants''), from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1, thereunder. The Existing Order provides relief to the extent necessary to permit the recapture, under specified circumstances, of certain credits

[1] *Allstate Life Insurance Company,* Investment Company Act Release No. 24998 (June 5, 2001)(File No. 812–12386).

(''Credits'') applied to contributions made under Contracts or Future Contracts Covered by the Existing Order (defined below).

2. As described in the Prior Application, Allstate, Allstate New York, Lincoln Benefit, and Northbrook are all stock life insurance companies organized under the law of Illinois, New York, Nebraska, and Illinois respectively. Glenbrook is a stock life insurance company organized under the laws of Illinois and redomesticated under the laws of Arizona in 1998.

3. The Existing Order covers ''Contracts,'' which the Prior Application defines to mean certain deferred variable annuity contracts and certificates issued by Allstate, Lincoln Benefit, and Glenbrook (hereinafter, the ''Allstate Contracts, the ''Lincoln Benefit Contracts,'' and the ''Glenbrook Contracts,'' respectively). The Existing Order also covers ''Future Contracts covered by the Existing Order,'' which the Prior Application defines to mean certain other deferred variable annuity contracts and certificates that the Life Companies may issue in the future through the Existing Separate Accounts (defined below) or through other separate accounts that the Life Companies may establish in the future, and that are substantially similar in all material respects to the Contracts. The Existing Order also covers ''Affiliated Broker-Dealers,'' which, under the Prior Application, means any other NASD member broker-dealer controlling or controlled by, or under common control with, Allstate whether existing or created in the future, that serves as a distributor or principal underwriter for Contracts or Future Contracts Covered by the Existing Order.

4. The Existing Separate Accounts covered by the Existing Order include: Allstate Separate Account A, Allstate Life Insurance Company of New York Separate Account A (''ALNY Separate Account''), Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Life & Annuity Company Separate Account A (''Glenbrook Separate Account A''), Glenbrook Scudder Variable Account (A), and Lincoln Benefit Life Variable Annuity Account (''Lincoln Separate Account'') (collectively, the ''Existing Separate Accounts''). Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Separate Account A, and Glenbrook Scudder Variable Account (A) are hereinafter referred to as the ''Glenbrook Separate Accounts.''

5. Each of the Existing Separate Accounts is a segragated asset account of the corresponding Life Company that serves as its depositor, and each is registered with the Commission as unit investment trust under the 1940 Act. Each of the Existing Separate Accounts is divided into multiple subaccounts, each of which invests in shares of a corresponding portfolio (''Portfolio'') that serves as an investment option under Contracts issued through the separate account.

6. As described in the Prior Application, Allstate Distributors and ALFS each serves as distributor of certain deferred variable annuity contracts, including certain Contracts, issued by the Life Companies through the Existing Separate Accounts. Each is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the National Association of Securities Dealers, Inc. (''NASD''). The Contracts issued by Allstate are offered through registered representatives of broker-dealers that are registered under the 1934 Act and members of the NASD, and that have selling agreements with Allstate Distributors. The Contracts (other than the Contracts issued by Allstate) are offered through registered representatives of broker-dealers that are registered under the 1934 Act and members of the NASD, and that have selling agreements with ALFS.

7. As described in the Prior Application, all of the Life Companies, Allstate Distributors, and ALFS are direct or indirect wholly-owned subsidiaries of Allstate Insurance Company.

8. The variable portions of the Lincoln Benefit Contracts, Glenbrook Contracts, and Allstate Contracts are registered under the Securities Act of 1933 (the ''1933 Act''). The variable portions of the Future Contracts Covered by the Existing Order also will be registered under the 1933 Act. That portion of the assets of each Existing Separate Account that is equal to the reserves and other contract liabilities with respect to Contracts is not chargeable with liabilities arising out of any other business of the corresponding Life Company. Any income, gains or losses, realized or unrealized, from assets allocated to a Existing Separate Account will be, in accordance with such Account's Contracts, credited to or charged against such Existing Separate Account, without regard to other income, gains or losses of the corresponding Life Company.

9. Under the Allstate Contracts, Glenbrook Contracts, and Lincoln Benefit Contracts, each time the relevant Life Company receives a purchase payment from an owner of such a Contract, it will add the applicable Credit to the owner's contract value, and will allocate the Credit among the available Portfolios according to the allocation instructions in effect for the purchase payments. Each Life Company will fund Credits from its general account assets.

10. Under the Allstate Contracts and Lincoln Benefit Contracts, the Credit is equal to 4% of the purchase payment amount. Under the Glenbrook Contracts, there are two credit options available as follows:

a. Under option 1, Glenbrook will add to the owner's contract value a Credit equal to 4% of the purchase payment amount.

b. Under option 2, Glenbrook will add to the owner's contract value a Credit equal to 2% of the purchase payment amount. In addition, on every 5th contract anniversary during the accumulation phase, Glenbrook will add to the owner's contract value a Credit equal to 2% of the owner's contract value as of such contract anniversary.

11. The Allstate Contracts, Glenbrook Contracts, and Lincoln Benefit Contracts all provide for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among subaccounts, dollar cost averaging, and other features.

12. The Allstate Contracts contain the following charges: (a) A withdrawal charge as a percentage of purchase payments surrendered, which is 8% in years one, two, and three, 7% in year four, 6% in year five, 5% in year six, 3% in year eight, and 9% thereafter; (b) a mortality and expense risk fee of 1.60% annually; and (c) a transfer fee of .50% of the amount transferred on transfers in excess of twelve within a calendar year. (The Allstate Contract does not assess an annual contract maintenance charge or annual administrative fee.)

13. The Lincoln Benefit Contracts contain the following charges: (a) A contingent deferred sales charge as a percentage of purchase payments surrendered, which is 8% in year one, 7% in years two and three, 6% in years four and five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (b) a $35 annual administrative charge (which is waived if total purchase payments exceed $50,000); (c) a mortality and expense risk fee of 1.30% annually; (d) an administrative charge of 0.10% annually; and (e) a transfer fee of $10 per transfer with certain exceptions, which currently is being waived.

14. The Glenbrook Contracts contain the following charges: (a) A withdrawal charge as a percentage of purchase payment surrendered, which is 8% in year one and two, 7% in years three and four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (b) a $35 annual administrative charge (which is waived if total purchase payments exceed $50,000); (c) a mortality and expense risk fee of 1.40% annually; and (d) a transfer fee of $10 on transfers in excess of twelve in any Contract year, which currently is being waived.

15. Under the Allstate Contracts, Glenbrook Contracts and Lincoln Benefit Contracts, each Life Company also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the subaccounts are charged with the operating expenses of the Portfolios.

16. The Existing Order provides exemptive relief to the extent necessary to permit the recapture of Credits if an Allstate Contract is returned during the free look period.

17. Applicants believe that the Allstate Contracts covered by the Existing Order and the Amended Contracts are substantially similar in all material respects relevant to the Existing Order and that the Amended Contracts would constitute Future Contracts covered by the Existing Order. Nevertheless, Applicants are filing the Application to avoid any uncertainty that may arise as a result of the following differences between the Allstate Contracts and the Amended Contracts:

(a) Separate Account Charges

Allstate Contracts have a mortality and expense risk charge at the annual rate of 1.60% and no administrative expense charge. Amended Contracts have a lower mortality and expense risk charge at the annual rate of 1.40%, and an administrative expense charge of 0.19%. Allstate reserves the right to raise the administrative expense charge to 0.35%. However, Allstate will not increase the charge for a Contract once it issues a Contract.

(b) Death Benefit Options and Death Benefit Charges

Allstate Contracts offer a basic death benefit including a ''maximum anniversary value'' death benefit at no additional charge, and an ''enhanced beneficiary protection option'' for an additional morality and expense risk charge at the annual rate of 0.15%. Amended Contracts offer a basic death benefit. The Amended Contracts also offer the following optional death benefits for the following additional mortality and expense risk charges:

MAV Death Benefit Option.	0.15% (up to 0.30% for Options added in the future).
Enhanced Beneficiary Protection Option.	0.15% (up to 0.30% for Options added in the future).
Earnings Protection Death Benefit Option (issue age 0–70).	0.25% (up to 0.35% for Options added in the future).
Earnings Protection Death Benefit Option (issue age 71–79).	0.40% (up to 0.50% for Options added in the future).
Spousal Protection Benefit Option.	0.00% (up to 0.15% for Options added in the future).

(c) Income Benefit

Allstate Contracts offer nine income plans to receive payments. Amended Contracts offer seven income plans to receive income payments, and allow owners to modify the length and frequency of income payments during the payout phase. Allstate Contracts offer a Retirement Income Guarantee (''RIG'') Rider for a rider fee at the annual rate of 0.05% of the income base in effect on each Contract anniversary, and a second RIG Rider for a rider fee at the annual rate of 0.30% of the income base in effect on each Contract anniversary. Amended Contracts offer different RIG options with different charges. Amended Contracts offer a RIG Option for a rider fee at the annual rate of 0.25% (up to 0.50% for Options added in the future) of the income base in effect on a Contract anniversary, and a second RIG Option for an additional rider fee at the annual rate of 0.45% (up to 0.75% for Options added in the future) of the income base in effect on a Contract anniversary. Amended Contracts also offer an Income Protection Benefit Option for a charge of 0.50% (up to 0.75% for Options added in the future) of the average daily net separate account assets supporting the variable income payments to which the Income Protection Benefit Option applies. The charge for the Income Protection Benefit Option applies during the payout phase.

(d) Contract Maintenance Charge

Allstate Contracts do not impose a contract maintenance fee. Amended Contracts have an annual contract maintenance fee of $30 (deducted from account value on each contract anniversary, or upon full surrender). The charge is waived once total purchase payments equal $50,000 or more, or if all money is allocated to the fixed account.

(e) Transfer Charges

Under Allstate Contracts Allstate may assess a charge on transfers among investment options equal to 0.50% of the amount transferred. The charge applies to transfers in excess of 12 in a contract year. The charge is currently waived. Under Amended Contracts Allstate may assess a charge on transfers among investment options equal to 1.00% (up to 2.00% in the future) of the amount transferred. The charge applies to transfers in excess of 12 in a contract year.

(f) Contract Withdrawal Charge

Allstate Contracts and Amended Contracts impose a withdrawal charge equal to a percentage of contributions determined by the contract year in which such contributions are withdrawn as follows:

COMPLETE YEARS SINCE ALLSTATE RECEIVED PAYMENT BEING WITHDRAWN

[In percent]

	0	1	2	3	4	5	6	7	8+
Charge (Allstate Contracts)	8	8	8	7	6	5	4	3	0
Charge (Amended Contracts)	8.5	8.5	8.5	7.5	6.5	5.5	4	2.5	0

Allstate Contracts offer an annual ''free withdrawal amount'' equal to 15% of purchase payments. Amended Contracts offer an annual ''free withdrawal amount'' equal to 15% of all purchase payments that are subject to a

withdrawal charge as of the beginning of that contract year, plus 15% of the purchase payments added to the contract during the contract year.[2]

(g) Fixed Investment Options

Allstate Contracts offer a standard fixed account option. Amended Contracts offer a standard fixed account option, a dollar cost averaging fixed account option, and a market value adjusted fixed account option.

(h) Minimum Purchase Payments

Allstate Contracts require a minimum initial purchase payment of $500 for qualified contracts. Amended Contracts require a minimum initial purchase payment of $2,000 for qualified contracts. Subsequent purchase payments must be at least $500 for all Allstate Contracts. Subsequent purchase payments must be at least $1,000 for all Amended Contracts.

(i) Change of Annuitant

Allstate Contracts permit a new annuitant to be named upon the death of the current annuitant. Amended Contracts do not permit a change of annuitant.

(j) Credits

Allstate Contracts offer 4% Credits on purchase payments. Under Allstate Contracts, the oldest contract owner and oldest annuitant must be age 85 or younger on the date Allstate receives the completed application for the contract (''Application Date''). Amended Contracts offer credits of up to 5% (''5% Credits'') as follows:

- 4% credits on purchase payments if the oldest contract owner and oldest annuitant are age 85 or younger on the Application Date,
- 2% credits on purchase payments if the oldest contract owner or oldest annuitant is age 86 or older and both are 90 or younger on the Application Date,
- an additional 0.5% credit on purchase payments if the cumulative purchase payments less cumulative withdrawals exceed $500,000, and
- an additional 1% credit on purchase payments if the cumulative purchase payments less cumulative withdrawals exceed $1,000,000.

18. Allstate Separate Account A will fund the variable benefits available under the Amended Contracts. Units of interest in Allstate Separate Account A under the Amended Contracts they fund will be registered under the 1933 Act. Allstate may issue Future Contracts through Allstate Separate Account A. Allstate also may issue Future Contracts through Future Accounts.

19. That portion of the assets of Allstate Separate Account A that is equal to the reserves and other Amended Contract liabilities with respect to Allstate Separate Account A is not chargeable with liabilities arising out of any other business of Allstate. Any income, gains or losses, realized or unrealized, from assets allocated to Allstate Separate Account A are, in accordance with Allstate Separate Account A's Amended Contracts, credited to or charged against Allstate Separate Account A, without regard to other income, gains or losses of Allstate. The same will be true of any Future Account of the Life Companies.

20. Allstate will recapture the 5% Credit if the owner returns the Amended Contract for a refund during the free look period applicable under state law. Allstate will not seek to recapture 5% Credits under Amended Contracts under any other circumstance.

21. The free look period is the period during which an owner may return an Amended Contract after it has been delivered and received a full refund of the contract value, less any 5% Credits. No other charges will apply to the refund, but the owner bears the investment risk from the time of purchase until he or she returns the Amended Contract. The owner also will bear any expenses charged with respect to the credit amount incurred prior to return of the Amended Contract, e.g., any mortality and expense risk charge. The refund amount may be more or less than the purchase payment the owner made, unless state insurance law requires that the full amount of the purchase payment be refunded.

Applicants' Legal Analysis

1. Section 6(c) of the act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants submit that the recapture of 5% Credits under the Amended Contracts will not raise concerns under sections 2(a)(32) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, for the same reasons given in support of the Existing order, namely:

(a) It is not administratively feasible to track the 5% Credit amount in the subaccounts of Allstate Separate Account A. Accordingly, the asset-based charges applicable to the subaccounts will be assessed against the entire amounts held in the subaccounts, including the 5% Credit amount, during the ''free look'' period. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's contract value did not include the 5% Credit.

(b) The 5% Credit recapture provisions of the Amended Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the 5% Credit amount allocated to his or her contract value upon receipt of a purchase payment is not vested until the applicable free-look period has expired without return of the Amended Contract. Until the free look period has expired and any 5% Credit amount is vested, Applicants submit that Allstate retains the right and interest in the 5% Credit amount, although not in the earnings attributable to the amount. Thus, Applicants argue that when Allstate recaptures any 5% Credit, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of Allstate Separate Account A's assets.

(c) Permitting an owner to retain a 5% Credit under a contract upon the exercise of the free look period would not only be unfair, but would also encourage individuals to purchase an Amended Contract with no intention of keeping it, and simply to return it for a quick profit.

(d) The 5% Credit will be attractive to and in the interest of investors because it will permit owners to put from 102% to 105% of their purchase payments to work for them in the selected subaccounts. In addition, the owner will retain any earnings attributable to the 5% Credit, as well as the principal amount of the 5% Credit if he or she does not cancel the Amended Contract.

(e) The recapture of a 5% Credit does not involves either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (a) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (b) other unfair results including speculative trading practices. To effect a recapture of a 5% Credit, Allstate will redeem an owner's interest in a subaccount at a price determined on the basis of current net asset value

[2] The free withdrawal amount applicable to Charitable Remainder Trusts is described in the prospectus for the Amended Contracts (File No. 333–96115).

of the subaccount. The amount recaptured will equal the amount of the 5% Credits paid out of its general account assets. Although the owner will be entitled to retain any investment gain attributable to the 5% Credit, the amount of such gain will be determined on the basis of the current net asset value of the relevant subaccounts. Thus, no dilution will occur upon the recapture of the 5% Credit. Also, the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the 5% Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit the recapture of the 5% Credits under the Amended Contracts and Future Contracts.

3. Applicants submit that their request for an order, which applies to any Future Contracts that are substantially similar in all material respects to the Amended Contracts described herein, to Contracts described herein, and Future Contracts Covered by the Existing Order, that are substantially similar in all material respects to the Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the viable annuity market by eliminating the need to file redundant exemptive applications in the future, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources, Applicants state that requiring them to file additional Applications would impair their ability effectively to take advantage of business opportunities as they arise, and that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this Application.

Conclusion

Applicants submit that their request for an order of exemption that applies to the recapture of bonus credits paid on the Amended Contracts described herein or Future Contracts that are substantially similar in all material respects to the Amended Contracts and underwritten or distributed by Allstate Distributors, Affiliated Broker-Dealers, or Unaffiliated Broker-Dealers, and to Future Accounts Covered by the Existing Order, Contracts and Future Contracts Covered by the Existing Order, is appropriate in the public interest for the reasons described above. Applicants submit, based on the ground summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28484 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46759; File No. SR–BSE–2002–14]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Interpretation of its Execution Guarantee Rule

November 1, 2002.

I. Introduction

On September 5, 2002, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through occurs in an exchange-traded funds (''ETFs'') tracking the Nasdaq-100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard & Poor's 500 Index (''SPDRs'').

The proposed rule change was published for comment in the **Federal Register** on October 8, 2002.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

The BSE is a participant in the Intermarket Trading System (''ITS''). The ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations (''SROs'') based on current quotation information emanating from their markets. The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.[4]

Section 8(d)(i) of the ITS Plan provides that absent reasonable justification or excuse, a member of a Participant Exchange should not effect trade-throughs.[5] If, however, a trade-through does occur and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.[6] Each Participant Exchange, including the Phlx,[7] has adopted and obtained Commission approval of a ''trade-through rule,'' which is substantively the same as that provided in the ITS Plan.

In a recent Order, the Commission recognized that the ITS trade-through provisions were designed to encourage market participants to display their trading interest, and to help achieve best execution for customer orders in exchange-listed securities.[8] The Commission also acknowledged, however, that these rules were designed at a time when ''the order routing and

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46580 (October 1, 2002), 67 FR 62839. The proposed rule change is currently in effect as a pilot. *See* Securities Exchange Act Release Nos. 46482 (September 10, 2002), 67 FR 58662 (September 17, 2002) (notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002); 46651 (October 11, 2002), 67 FR 64669 (October 21, 2002) (notice of immediate effective of extension of pilot to November 3, 2002.)

[4] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CSE''), the Cincinnati Stock Exchange, Inc. (''Cincinnati''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Stock Exchange, Inc. (''PCX''), and the Phlx (collectively ''Participant Exchanges'').

[5] A trade-through results when a member purchases (or sells) a security at a price that is higher (lower) than the price offered in one or more of the other ITS participant's markets. *See* ITS Plan, Section 8(d)(i).

[6] *See* ITS Plan, Exhibit B.

[7] *See* Phlx Rule 2001A.

[8] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 (''ITS Exemption Order'').

execution facilities of markets were much slower, intermarket competition was less keen, and the minimum quote increment for exchange-listed securities was ⅛ of a dollar ($ 0.125).'' [9] The Commission noted that with the introduction of decimal pricing and technology changes that greatly reduced execution times, the trade-through provisions of the ITS Plan have limited the ability of a Participant to provide an automated execution when a better price is displayed by another Participant that does not offer automated executions.[10] In support of this conclusion, the Commission explained that certain electronic systems are able to deliver executions in a fraction of a second, while ITS participants have, at a minimum, thirty seconds to respond to a commitment to trade. Because of this, ''an ITS Participant seeking to execute a transaction at a price inferior to the price quoted by another ITS Participant must generally either (i) attempt to access the other Participant's quote, which could delay the customer's transaction by thirty seconds or more, or (ii) become potentially liable to the other Participant for the amount by which its quote was traded through.'' [11]

In its Order, the Commission stated that the ITS trade-through provisions were particularly restrictive in the case of the QQQs, DIAMONDs and SPDRs, as these ETFs are highly liquid securities, and their value is derived form the values of the underlying shares. The Commission noted that immediate execution of these securities might be more important than the opportunity to obtain a better price to certain investors.[12] To address this issue, the Commission granted a *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in the QQQs, DIAMONDs and SPDRs that are effected at a price no more than three cents away from the best bid and offer quoted in the Consolidated Quote System (''CQS''). This exemption, which went into effect on September 4, 2002 and will remain in effect until June 4, 2003, allows Participants to execute transactions, through automatic execution or otherwise, without attempting to access the quotes of other Participants when the expected price improvement would not be significant.[13]

B. Applicability to the BSE

Chapter II, *Dealings on the Exchange,* Section 33, *Execution Guarantee,* of the BSE Rules paragraph (c)(2) states that ''(a)ll agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market * * *'' There are similar provisions in various sections of Chapter XV, *Dealer Specialists.*[14] These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limit price. When the BSE specialist provides this trade-through protection to its customer limit orders, he is permitted to seek relief through ITS.

Under the Commission's ITS Exemption Order, however, certain primary market trades-through in the QQQs, DIAMONDS and SPDRs will constitute exempt trades-through, and therefore the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market even though the BSE Rules will require the BSE specialists to provide trade-through protection. Therefore, the BSE has proposed to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange,* Section 33, *Execution Guarantee,* of the BSE that will permit the Exchange to not enforce the provisions of Paragraph (c)(2) of Section 33 following a *de minimis* trade through of certain ETFs outlined in the ITS Exemption Order.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act [16] because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. By adopting the proposed exemption, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was one the BSE assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the BSE to make.[17] Further the Commission notes that it approved similar proposed rule changes for the Chicago Stock Exchange, Inc. (''CHX'') and the Philadelphia Stock Exchange, Inc. (''PHLX''), and believes that it is appropriate to grant the same relief to the BSE in a timely manner.[18]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–BSE–2002–14) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28430 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

[9] *Id.*

[10] *Id.*

[11] *Id.* at 56607–8.

[12] *Id.*

[13] *Id.* at 56608.

[14] *See, e.g.,* the Commentary to Section 1, *Specialists,* which sets forth a specialist's obligations in relation to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities,* which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book,* which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists,* which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

[15] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] The Commission notes that the BSE's proposed rule change will remain in effect only until the expiration of the Commission's ITS Exemption Order on June 4, 2003.

[18] *See* Securities Exchange Act Release Nos. 46760 (November 1, 2002) (order approving SR–CHX–2002–31); and 46761 (November 1, 2002)(order approving SR–Phlx–2002–49.

[19] 15 U.S.C. 78f(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46760; File No. SR–CHX–2002–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Execution of Limit Orders Following Exempted ITS Trade-Through

November 1, 2002.

I. Introduction

On September 20, 2002, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through occurs in an exchange-traded funds (''ETFs'') tracking the Nasdaq–100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard & Poor's 500 Index (''SPDRs'').

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

The CHX is a participant in the Intermarket Trading System (''ITS''). The ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations (''SROs'') based on current quotation information emanating from their markets. The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.[4]

Section 8(d)(i) of the ITS Plan provides that absent reasonable justification or excuse, a member of a Participant Exchange should not effect trade-throughs.[5] If, however, a trade-through does occur and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.[6] Each Participant Exchange, including the Phlx,[7] has adopted and obtained Commission approval of a ''trade-through rule,'' which is substantively the same as that provided in the ITS Plan.

In a recent Order, the Commission recognized that the ITS trade-through provisions were designed to encourage market participants to display their trading interest, and to help achieve best execution for customer orders in exchange-listed securities.[8] The Commission also acknowledged, however, that these rules were designed at a time when ''the order routing and execution facilities of markets were much slower, intermarket competition was less keen, and the minimum quote increment for exchange-listed securities was ⅛ of a dollar ($ 0.125).'' [9] The Commission noted that with the introduction of decimal pricing and technology changes that greatly reduced execution times, the trade-through provisions of the ITS Plan have limited the ability of a Participant to provide an automated execution when a better price is displayed by another Participant that does not offer automated executions.[10] In support of this conclusion, the Commission explained that certain electronic systems are able to deliver executions in a fraction of a second, while ITS participants have, at a minimum, thirty seconds to respond to a commitment to trade. Because of this, ''an ITS Participant seeking to execute a transaction at a price inferior to the price quoted by another ITS Participant must generally either (i) attempt to access the other Participant's quote, which could delay the customer's transaction by thirty seconds or more, or (ii) become potentially liable to the other Participant for the amount by which its quote was traded through.'' [11]

In its Order, the Commission stated that the ITS trade-through provisions were particularly restrictive in the case of the QQQs, DIAMONDs and SPDRs, as these ETFs are highly liquid securities, and their value is derived from the values of the underlying shares. The Commission noted that immediate execution of these securities might be more important than the opportunity to obtain a better price to certain investors.[12] To address this issue, the Commission granted a *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in the QQQs, DIAMONDs and SPDRs that are effected at a price no more than three cents away from the best bid and offer quoted in the Consolidated Quote System (''CQS''). This exemption, which went into effect on September 4, 2002 and will remain in effect until June 4, 2003, allows Participants to execute transactions, through automatic execution or otherwise, without attempting to access the quotes of other Participants when the expected price improvement would not be significant.[13]

B. Applicability to the CHX

CHX Article XX, Rules 37(a)(3) and 37(b)(6) govern the execution of limit orders in a CHX specialist's book. Specifically, these rules require a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market. The CHX specialist, in turn, is entitled to seek satisfaction for these orders pursuant to the ITS Plan's provisions governing trade-throughs.

However, pursuant to the Commission's ITS Exemption Order, certain primary market trade-throughs in the QQQs, DIAMONDS and SPDRs that would trigger a CHX specialist's obligation to provide trade-through protection will now be permitted, and thus will leave the CHX specialist without recourse to seek satisfaction from the primary market. Therefore, the Exchange is proposing to amend CHX Article XX, Rules 37(a)(3) and 37(b)(6) to permit, but not require, a CHX specialist to fill limit orders in his book

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46556 (September 26, 2002), 67 FR 61940. The proposed rule change is currently in effect as a pilot. *See* Securities Exchange Act Release Nos. 46577 (September 26, 2002), 67 FR 61941 (October 2, 2002)(notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002); 46616 (October 8, 2002), 67 FR 63719 (October 15, 2002)(notice of immediate effective of extension of pilot to November 3, 2002.)

[4] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CSE''), the Cincinnati Stock Exchange, Inc. (''Cincinnati''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Stock Exchange, Inc. (''PCX''), and the Phlx (collectively ''Participant Exchanges'').

[5] A trade-through results when a member purchases (or sells) a security at a price that is higher (lower) than the price offered in one or more of the other ITS participant's markets. *See* ITS Plan, Section 8(d)(i).

[6] *See* ITS Plan, Exhibit B.

[7] *See* Phlx Rule 2001A.

[8] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 (''ITS Exemption Order'').

[9] *Id.*

[10] *Id.*

[11] *Id.* at 56607–8.

[12] *Id.*

[13] *Id.* at 56608.

when a trade-through that is exempted pursuant to the Commission's ITS Exemption Order occurs in the primary market.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act[15] because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

By adopting the proposed exemption, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was on the CHX assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the CHX to make.[16]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CHX–2002–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28428 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

[14] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes that the CHX's proposed rule change will remain in effect only until the expiration of the Commission's ITS Exemption Order on June 4, 2003.

[17] 15 U.S.C. 78f(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46762; File No. SR–CHX–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection and Amendment No. 1 Thereto

November 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on September 13, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On October 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37(a)(3) to clarify the rules relating to the execution of limit orders in the specialist's book in the event of a trade through in the primary market. The proposed rule change mirrors a change made to another CHX rule relating to the automated execution of limit orders, which required that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for limit order protection. The text of the proposed rule change is available from the Office of the Secretary, the Commission, and the CHX.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 29, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected typographical errors contained in the proposed rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved a proposed rule change submitted by the Exchange amending Article XX, Rule 37(b)(6) of the Exchange's rules, which, among other things, governs execution of limit orders in the specialist's book in the event of a trade through in the primary market.[6] That proposal required that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for limit order protection.

Another provision of the CHX rules, however, also addresses the execution of agency limit orders and should have been amended as part of the Exchange's original proposal.[7] Through this submission, the Exchange modifies CHX Article XX, Rule 37(a)(3) to eliminate any confusion about the impact of the earlier rule change.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] Specifically, the proposed rule is consistent with section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in

[6] *See* Securities Exchange Act Release No. 45271, 66 FR 2712 (January 18, 2002)(order approving SR–CHX–2001–17).

[7] *See* CHX Article XX, Rule 37(a)(3).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not:

(1) Significantly affect the protection of investors or the public interest;

(2) Impose any significant burden on competition; and

(3) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

The Exchange requested that the Commission accelerate the operative date of the proposed rule change. The Commission believes that accelerating the operative date of the proposed rule change is consistent with the protection of investors and the public interest. The Commission notes that the substance of the proposed rule change has already been subject to a full notice and comment period as part of another proposal, which was approved by the Commission.[12] The instant proposed rule change simply amends another Exchange rule to be consistent with the previously approved change. As a result, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–30 and should be submitted by November 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28485 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* note 6, *supra.*

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46756; File No. SR–NASD–2002–156]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Primex Auction System'

October 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2002, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and subparagraph (f)(2) of Rule 19b–5.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System'' (''Primex'' or ''System'') as a Pilot Trading System, pursuant to Rule 19b–5 of the Act,[5] until November 30, 2002, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of Rule 19b–5,[6] Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System (''PTS''), as defined in paragraph (c)(2) of Rule 19b–5 of the Act.[7] As such, Nasdaq was not required to file a proposed rule change under Rule 19b–4 of the Act [8] as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of Rule 19b–5, a system

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–5(f)(2).

[5] 17 CFR 240.19b–5.

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 240.19b–5(c)(2).

[8] 17 CFR 240.19b–4.

must comply with three criteria to maintain its status as a PTS.[9] One such criteria is that, for each security traded in the PTS, the PTS cannot trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex exceeded this threshold for many securities. Therefore, Nasdaq filed a proposed rule change seeking permanent approval of Primex.[10] Nasdaq also filed a proposed rule change to continue operating the System for up to six months while the Commission considered granting permanent approval.[11] This six-month period expires on October 31, 2002. The Commission is still considering Nasdaq's filing seeking permanent approval of Primex. Accordingly, Nasdaq is filing this proposed rule change to continue operating Primex as a PTS until November 30, 2002, or until the Commission grants permanent approval, whichever period is shorter. Primex continues to operate in the manner described in the Form PILOT filing, as amended.[12]

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Sections 15A(b)(6)[13] and 11A(a)(1) of the Act.[14] Section 15A(b)(6) of the Act[15] requires the rules of the NASD to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act[16] sets forth a finding of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes this proposed rule change is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because it will allow Nasdaq to continue operating Primex while the Commission considers permanent approval. Among other things, the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. To ensure the protection of investors, orders will not be executed at prices inferior to the National Best Bid or Offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[17] and subparagraph (f)(2) of Rule 19b–5 thereunder,[18] because the proposal will permit Nasdaq to continue operating Primex as a PTS while the Commission considers granting permanent approval. The proposal does not modify any rule or the operation of Primex.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,[19] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–156 and should be submitted by November 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28429 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46761; File No. SR–Phlx–2002–49]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PACE Guarantee Exemption

November 1, 2002.

I. Introduction

On September 12, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to exempt specialists from the requirement to execute certain orders that are traded-through by another

[9] Pursuant to Rule 19b–5(c)(2), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization.

[10] Securities Exchange Act Release No. 45983 (May 23, 2002) 67 FR 38152 (May 31, 2002).

[11] Securities Exchange Act Release No. 45982 (May 23, 2002) 67 FR 38163 (May 31, 2002).

[12] Form PILOT–NASD–2001–01.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

market if those orders are for the exchange-traded funds (''ETFs'') tracking the Nasdaq-100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard & Poor's 500 Index (''SPDRs'').[3]

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

The Phlx is a participant in the Intermarket Trading System (''ITS''). The ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations (''SROs'') based on current quotation information emanating from their markets. The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.[5]

Section 8(d)(i) of the ITS Plan provides that absent reasonable justification or excuse, a member of a Participant Exchange should not effect trade-throughs.[6] If, however, a trade-through does occur and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.[7] Each Participant Exchange, including the Phlx,[8] has adopted and obtained Commission approval of a ''trade-through rule,'' which is substantively the same as that provided in the ITS Plan.

In a recent Order, the Commission recognized that the ITS trade-through provisions were designed to encourage market participants to display their trading interest, and to help achieve best execution for customer orders in exchange-listed securities.[9] The Commission also acknowledged, however, that these rules were designed at a time when ''the order routing and execution facilities of markets were much slower, intermarket competition was less keen, and the minimum quote increment for exchange-listed securities was ⅛ of a dollar ($ 0.125).''[10] The Commission noted that with the introduction of decimal pricing and technology changes that greatly reduced execution times, the trade-through provisions of the ITS Plan have limited the ability of a Participant to provide an automated execution when a better price is displayed by another Participant that does not offer automated executions.[11] In support of this conclusion, the Commission explained that certain electronic systems are able to deliver executions in a fraction of a second, while ITS participants have, at a minimum, thirty seconds to respond to a commitment to trade. Because of this, ''an ITS Participant seeking to execute a transaction at a price inferior to the price quoted by another ITS Participant must generally either (i) attempt to access the other Participant's quote, which could delay the customer's transaction by thirty seconds or more, or (ii) become potentially liable to the other Participant for the amount by which its quote was traded through.''[12]

In its Order, the Commission stated that the ITS trade-through provisions were particularly restrictive in the case of the QQQs, DIAMONDs and SPDRs, as these ETFs are highly liquid securities, and their value is derived from the values of the underlying shares. The Commission noted that immediate execution of these securities might be more important than the opportunity to obtain a better price to certain investors.[13] To address this issue, the Commission granted a *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in the QQQs, DIAMONDs and SPDRs that are effected at a price no more than three cents away from the best bid and offer quoted in the Consolidated Quote System (''CQS''). This exemption, which went into effect on September 4, 2002 and will remain in effect until June 4, 2003, allows Participants to execute transactions, through automatic execution or otherwise, without attempting to access the quotes of other Participants when the expected price improvement would not be significant.[14]

B. Applicability to the Phlx

Phlx Rule 229.10(a)(iii) requires a Phlx specialist to execute certain orders that are traded-through by another market center.[15] Although the Exchange Rule imposes this obligation on the specialist, the specialist is entitled to satisfaction of those orders pursuant to Section 8(d) of the ITS Plan. However, for trade-throughs that are enumerated in the ITS Exemption Order and therefore are no longer prohibited by the ITS Plan, the specialist does not have recourse to seek satisfaction for these orders and is alone responsible for those executions. Therefore, the Phlx believes that its provision guaranteeing an execution no longer makes sense, and further believes that the provision now unduly burdens specialists by requiring a specialist to execute orders in situations where the specialist does not have access to trading at that price. Thus, the Exchange is proposing to amend Phlx Rule 229 Supplementary Material Section 10(a)(iii) to state that the obligations described therein shall not apply to the ETFs that are the subject of the ITS Exemption Order for so long as the exemption granted in the order remains in effect.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. [16] In particular, the

[3] The Exchange does not currently trade DIAMONDs or SPDRs but may determine to do so in the future. The Exchange does trade QQQs.

[4] *See* Securities Exchange Act Release No. 46545 (September 24, 2002), 67 FR 61944. The proposed rule change is currently in effect as a pilot. *See* Securities Exchange Act Release Nos. 46481 (September 10, 2002), 67 FR 58669 (September 17, 2002)(notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002); 46615 (October 8, 2002), 67 FR 63723 (October 15, 2002)(notice of immediate effectiveness of extension of pilot to November 3, 2002.)

[5] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CSE''), the Cincinnati Stock Exchange, Inc. (''Cincinnati''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Stock Exchange, Inc. (''PCX''), and the Phlx (collectively ''Participant Exchanges'').

[6] A trade-through results when a member purchases (or sells) a security at a price that is higher (lower) than the price offered in one or more of the other ITS participant's markets. *See* ITS Plan, Section 8(d)(i).

[7] *See* ITS Plan, Exhibit B.

[8] *See* Phlx Rule 2001A.

[9] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 (''ITS Exemption Order'').

[10] *Id.*

[11] *Id.*

[12] *Id.* at 56607–8.

[13] *Id.*

[14] *Id.* at 56608.

[15] Specifically, this Rule provides that if 100 or more shares print through the limit price on any exchange(s) eligible to compose the PACE Quote, which is the best bid/ask quote among the Amex, BSE, Cincinnati, CSE, NYSE, PCX, Phlx, and the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES''), after the time of entry of any such order into PACE, the specialist shall execute all such orders at the limit price without waiting for an accumulation of 1000 shares to price at the limit price on the NYSE. *See also* Phlx Rule 229, Supplementary Material Section .10(a)(ii).

[16] In approving this rule proposal, the Commission notes that it has also considered the

Continued

Commission finds that the proposed rule is consistent with the requirements of Section 6(b)(5) of the Act[17] because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

By adopting the proposed exemption, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was one the Phlx assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the Phlx to make.[18]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Phlx–2002–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28427 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] The Commission notes that the Phlx's proposed rule change will remain in effect only until the expiration of the Commission's ITS Exemption Order on June 4, 2003.

[19] 15 U.S.C. 78f(b)(2).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4202]

Culturally Significant Objects Imported for Exhibition Determinations: ''Old Master Galleries''

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), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *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 object to be included in the exhibition ''Old Master Galleries,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about November 17, 2002, to on or about November 17, 2004, and at possible additional venues yet to be determined, 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, including a list of the exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: November 4, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–28513 Filed 11–7–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–BUF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Buffalo Niagara International Airport, and Use Only at Niagara Falls International Airport, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport and use only at Niagara Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 9, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Vito J. Sportelli, of the Niagara Frontier Transportation Authority at the following address: 181 Ellicott Street, Buffalo, New York 14203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Niagara Frontier Transportation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, PFC Program Manager, Regional Office, 1 Aviation Plaza, Jamaica, New York 11434–4848 at (718) 553–3354. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport and use at Niagara Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 9, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Niagara Frontier Transportation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 18, 2003.

The following is a brief overview of the application.

PFC Application No.: 02–04–C–00–BUF.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2006.

Proposed charge expiration date: January 1, 2010.

Total estimated PFC revenue: $24,561,653.

Brief description of proposed project(s) at Buffalo Niagara International Airport:

—Relocation of Security Checkpoints.
—Perform Runway 14–32 Safety Area Improvements.
—Purchase Safety Equipment—Air Rescue Fire Fighting Vehicles.

—Purchase Snow Removal Equipment (for both Buffalo Niagara International and Niagara Falls International).
—Purchase Passenger Movement Shuttle Buses.
—Procurement of Security Vehicles.
—Upgrade Security Badging System.
—PFC Planning and Program Administration.
—Series 1999 Debt Service—East Concourse Terminal Extension, and Apron Expansion, and East Access Improvement.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York, 114.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Niagara Frontier Transportation Authority.

Issued in Jamaica, New York on October, 2002.

Eleanor Schifflin,

PFC Program Manager, Eastern Region.

[FR Doc. 02–28374 Filed 11–06–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; City of Kokomo, Howard County, Tipton County, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for highway improvements on U.S. Route 31 corridor in the City of Kokomo, Howard County, and Tipton County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dirks, Environmental Engineer, Federal Highway Administration, Room 254, Federal Office Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, telephone (317) 226–7492, or email *robert.dirks@fhwa.dot.gov;* or Mr. James Juricic, Manager of the Environmental Assessment Section, Indiana Department of Transportation, Room N848, 100 N. Senate Avenue, Indianapolis, Indiana 46204, telephone (317) 232–5305, or email *jjuricic@indot.state.in.us.* Please refer to Project Designation Number 0200094 in any correspondence.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for improvements to the U.S. Route 31 corridor in the City of Kokomo, Howard County, and the northern end of Tipton County, Indiana. The project's logical termini, or the rational end points for the sufficient review of environmental impacts, are located approximately two miles south of State Road 26 at the southern end of the project and one mile north of U.S. Route 35 at the northern end of the project, a distance of approximately 12 miles. The proposed project is part of the state's effort to provide a Statewide Mobility Corridor between I–465 North Leg in Indianapolis and US 20 in South Bend. Preparation of the EIS follows the completion of the U.S. Route 31 Howard County Major Investment Study (MIS) in May of 1995.

Early Coordination Letters will be distributed with initial project information to the appropriate federal, state, and local agencies. Section 106 Consulting Parties will also be identified and contacted for participation in the project. Following early coordination, the project's purpose and need will be determined and documented based on existing and future traffic congestion, safety, and local and statewide planning.

The range of alternatives under consideration include the no-action alternative; alternatives that use other transportation modes; alternatives that maximize the efficiency of the present transportation system; alternatives that reduce highway capacity needs by reducing travel demand; and different build alternatives that would increase the capacity of U.S. Route 31, including adding lanes to the existing U.S. Route 31 facility; upgrading U.S. Route 31 to a fully access-controlled, multilane highway; and possible relocations of the existing U.S. Route 31 facility. A preliminary alternatives' screening process will be conducted to determine which alternatives will be carried forward for more detailed analysis in the Draft EIS.

The public involvement program for the project will consist of the establishment of a project web site; distribution of three project newsletters; two public meetings; three citizen advisory group meetings, and one public hearing following the distribution of the Draft EIS.

Three interagency review meetings will be held at project milestones in order to provide project information to the appropriate Federal, State, and local agencies and to obtain their input and comments. Meetings and coordination with the Section 106 Consulting Parties will be conducted.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA 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: November 1, 2002.

Robert Dirks,

Environmental Engineer, FHWA, Indianapolis, Indiana.

[FR Doc. 02–28406 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13746]

Application of Foreign Underwriters To Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from AXIS Specialty Ltd. of Bermuda, to write marine hull insurance on Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Comments regarding this information collection should refer to the docket number which appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the internet at *http://dmses.dot.gov/submit.* All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., EST

Monday through Friday, except federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Dated: November 5, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–28487 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–156 (Sub–No. 22X)]

Delaware & Hudson Railway Company d/b/a Canadian Pacific Railway—Discontinuance of Trackage Rights Exemption—in Niagara County, NY

Delaware & Hudson Railway Company d/b/a Canadian Pacific Railway (D&H) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 0.15-mile portion of trackage owned by Canada Southern Railway Company (CSR) from a point on the international railway bridge at Niagara Falls, milepost 0.15, to a point where the trackage joins the CSX Transportation, Inc. trackage, milepost 0.0, in Niagara County, NY.[1] The line traverses United States Postal Service Zip Code 14305.

D&H 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 1105.11 (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 discontinuance 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 December 10, 2002, unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by November 18, 2002. Petitions to reopen [3] must be filed by November 29, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to D&H representative: Diane P. Gerth, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: October 29, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28070 Filed 11–7–02; 8:45 am]

BILLING CODE 4915–00–P

[1] D&H notes that the 0.15-mile trackage rights sought to be discontinued are overhead rights over trackage owned by CSR, for which CSR is seeking abandonment authority in *Canada Southern Railway Company—Abandonment Exemption—in Niagara County, NY,* STB Docket No. AB–584 (Sub-No. 1X) (STB served Oct. 22, 2002).

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not appropriate. This proceeding is exempt from environmental and historic reporting requirements. D&H only intends to discontinue service over the line. Because D&H's discontinuance of trackage rights will merely result in the cessation of service over the line, and has not sought abandonment authority, this proceeding is exempt from the reporting requirements listed above and no environmental documentation will be prepared. *See* 49 CFR 1105.6(c)(6) and 1105.8(a) and (b). Because CSR is seeking abandonment authority with respect to this line in STB Docket No. AB–584 (Sub-No. 1X), *See* supra note 1, environmental issues related to abandonment will be addressed in this proceeding.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–550 (Sub–No. 2X)]

R.J. Corman Railroad Company/Allentown Lines, Inc.—Abandonment Exemption—in Erie County, NY

R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon: (1) The Walden Running Track between approximately milepost 413.90 and approximately milepost 418.50; and (2) the JD Industrial Track between approximately milepost 0.00 and approximately milepost 0.60, a total distance of approximately 5.20 miles in Erie County, NY.[1] The line traverses United States Postal Service Zip Codes 14086, 14031, 14225, 14227, and 14206.

RJCN has certified that: (1) No local traffic has moved over the line for the past 2 years; (2) there is no overhead traffic on the line; (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 December 11, 2002 unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 18,

[1] RJCN notes that it acquired the subject line from Consolidated Rail Corporation pursuant to an offer of financial assistance in *Consolidated Rail Corporation—Abandonment Exemption—in Erie County, NY,* STB Docket No. AB–167 (Sub–No. 1164X) (Served Sept. 30, 1996).

[2] 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 (SEA) 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.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 29, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to RJCN's representative: Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RJCN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 15, 2002. 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) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) 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), RJCN shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by RJCN's filing of a notice of consummation by November 8, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: October 29, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28073 Filed 11–7–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2002–11604]

Security Programs For Aircraft 12,500 Pounds or More

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: This notice extends the date on which operators must be in compliance with the Twelve-Five Standard Security Program, from December 1, 2002 to February 1, 2003.

DATES: Compliance date: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Emily Chodkowski, Transportation Security Specialist, Office of Security Regulation and Policy, telephone: (202) 385–1838, email: *Emily.Chodkowski@tsa.dot.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2002, TSA published a final rule in the **Federal Register** (67 FR 8205), known as the ''Twelve-Five Rule,'' that, in part, required new security measures for operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. See 49 CFR part 1544. Under the rule, these operators must adopt and carry out certain security measures approved by TSA, generally known as the ''Twelve-Five Security Program.'' As published, the effective date of the Twelve-Five Rule was June 24, 2002. This document does not alter that date. On August 28, 2002, TSA published a notice in the **Federal Register** (67 FR 55308) announcing that it would issue the Twelve-Five Security Program to affected entities for review and comment. Security programs constitute sensitive security information (SSI), which can be disclosed only to persons with a need to know, in accordance with 49 CFR part 1520. Therefore, the Twelve-Five Security Program could be distributed only to affected operators for comment. TSA also stated in the Notice that all operators were required to operate in accordance with the security program by December 1, 2002.

Many of the operators subject to the Twelve-Five Security Program are small entities that were not subject to aviation security regulations prior to issuance of this rule. Consequently, these operators have not previously conducted fingerprint-based criminal history record checks (CHRC) on their employees, trained staff, and flight crew on security measures, or operated in accordance with a security program. There are approximately 850 operators subject to this new standard, and many are having a great deal of difficulty completing the CHRC and training requirements, for a variety of reasons.

Many operators are located in remote areas where there are no aviation organizations available that typically assist with the fingerprinting process. Some operators have attempted to capture fingerprints by using a local law enforcement agency or other security establishment, and the fingerprints are not taken correctly, or the appropriate chain of custody does not exist, and so these prints must be disqualified. In addition, many of the operators do not have access to the databases that contain CHRC information, and so completing the search is not possible. Finally, many of the operators have just one or two employees, and so special procedures must be put in place to prevent an operator from reviewing his or her own CHRC information, or the CHRC of an employee who may be a family member or friend. TSA is working internally and with these operators to establish processes that will facilitate completing the CHRC requirement to avoid all of these problems. However, it is clear that a large number of affected operators will not be able to meet the December 1, 2002, compliance date on flight crew CHRCs.

The security program requires security training for individuals involved in Twelve-Five operations. Due to the high number of operators, their lack of prior exposure to security training programs, and the decentralized nature of this sector of the industry, an organized training regime has not been established. TSA is developing a template curriculum that will provide operators with the appropriate information to create a security training program.

For all of the foregoing reasons, TSA has determined that the compliance date for the Twelve-Five Security Program must be extended to February 1, 2003.

Issued in Washington, DC, on November 1, 2002.

Thomas Blank,

Associate Under Secretary for Security Regulation and Policy.

[FR Doc. 02–28644 Filed 11–6–02; 12:02 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 7, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0100, 250 E Street, SW, Washington, DC 20219. Due to delays in the OCC's mail service since September 11, 2001, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to ''Country Exposure Report, 7100-0035,'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by electronic mail to regs.comments@Federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. All comments should refer to ''Country Exposure Report, 3064–0017.'' Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: comments@fdic.gov]. Comments also may be hand–delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to jlackeyj@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: additional information or a copy of the collection may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to Revise the Filing Method and to Extend For Three Years The Following Currently Approved Collections of Information.

Report Title: Country Exposure Report/Country Exposure Information Report

Form Number: FFIEC 009 and FFIEC 009a Frequency of Response: Quarterly

Affected Public: Business or other for profit

For OCC:

OMB Number: 1557–0100

Estimated Number of Respondents: 21 (FFIEC 009); 21 (FFIEC 009a)

Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a)

Estimated Total Annual Burden: 2,520 burden hours (FFIEC 009); 441 burden hours (FFIEC 009a)

For Board:

OMB Number: 7100–0035

Estimated Number of Respondents: 31 (FFIEC 009); 16 (FFIEC 009a)

Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a)

Estimated Total Annual Burden: 3720 burden hours (FFIEC 009); 336 burden hours (FFIEC 009a)

For FDIC:

OMB Number: 3064–0017

Estimated Number of Respondents: 22 (FFIEC 009); 22 (FFIEC 009a)

Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a)

Estimated Total Annual Burden: 2,640burden hours (FFIEC 009); 462 burden hours (FFIEC 009a)

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 and 1817 (for national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (for state member

banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (for insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment. Small businesses (i.e., small banks) are not affected.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Current Action

The agencies propose to require electronic submission of all FFIEC 009 and 009a reports effective with the March 31, 2003, report date. The agencies would no longer accept paper (hard copy) reports from banks and bank holding companies after the December 31, 2002, report date. The submission deadline would remain 45 calendar days after the report date. No changes are proposed to the FFIEC 009 and 009a reporting forms.

Type of Review: Revision of a currently approved collection.

Proposed Change in Submission Method

The agencies propose to require electronic submission of the FFIEC 009 and 009a reports as part of an ongoing effort to improve data quality and the efficiency of the data collection process. Over the past five years, the agencies have implemented an electronic submission requirement for bank Reports of Condition and Income (Call Reports) and have realized efficiencies in the collection process with minimal increase in burden to reporting institutions. In addition, the agencies have allowed foreign banks to electronically submit the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of Non–U.S. Branches that are Managed or Controlled by a U.S. Branch or Agency of a Foreign Bank (FFIEC 002s), which has improved the efficiency of the collection process for those reports. The agencies believe that requiring electronic submission of FFIEC 009 and 009a reports can result in similar benefits.

The agencies propose to have the Board collect and process the FFIEC 009 and 009a reports on their behalf via the Federal Reserve System's Internet Electronic Submission (IESUB) system. The Board, which collects and processes the FFIEC 002 and 002s for the three agencies, currently allows foreign banks to submit these reports via IESUB. Electronic filing capability via IESUB is available on the Internet through the use of data entry or a file transfer feature. These methods are secure and result in a minimal burden to banks and bank holding companies. Reporting institutions must enroll and be authenticated before IESUB will accept a report submission.

The file transfer feature allows institutions to submit reports over the Internet in a pre–defined file format. The files can be created from a spreadsheet (e.g., Microsoft Excel (c), Lotus 123 (c)) or any other back–end system that a reporting institution uses to generate its data. When an institution submits its FFIEC 009 and 009a reports either through data entry or a pre–defined file format, IESUB will check the validity of the data and provide the institution with a receipt containing the data submitted and the date and time that IESUB received the file. A complete description of IESUB, including the system requirements, security and file transfer features is available at the Federal Reserve System reporting website http://www.reportingandreserves.org/req.html.

The agencies believe that this revision would not be a significant burden to banks or bank holding companies because of advancements in, and the common use of, computer technology currently available for the filing of regulatory reports.

Request for Comment

Public comment is requested on all aspects of this proposal. In addition, comments are invited on:

(a) Whether the proposed revisions to the FFIEC 009 and 009a collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

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

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: October 28, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, October 31, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this 28th day of October, 2002.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–28118 Filed 11–7–02; 8:45 am]

BILLING CODES OCC: 4810–33–S 1/3; Board: 6210–01–S 1/3; FDIC: 6714–01–S 1/3

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve

System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 7, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. Due to disruptions in the OCC's mail service since September 11, 2001, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Consolidated Reports of Condition and Income, 3064–0052.'' Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments also may be hand–delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Draft copies of the proposed revisions to the Call Report forms may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–2204, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collections of information:

The effect of the proposed revisions in reporting requirements will vary from bank to bank depending on (1) the bank's involvement with the types of activities or transactions to which proposed new items relate, (2) whether the bank has or has had more than one foreign office, and (3) the number and type of edit exceptions the agencies' validation process identifies in the bank's Call Report. The agencies estimate that, on average for all 8,700 banks, each bank would need approximately an additional 0.5 to 1.5 hours to complete its Call Report each quarter if the revisions were implemented as proposed. However, the proposed revisions may result in a significantly larger increase in burden, perhaps as much as 40 hours, for about 40 banks, including the very largest banks in the U.S. The following burden estimates include the proposed revisions.

Report Title: Consolidated Reports of Condition and Income (Call Report)

Form Number: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for–profit.

For OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,200 national banks.

Estimated Time per Response: 43.29 burden hours.

Estimated Total Annual Burden: 381,000 burden hours.

For Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 978 state member banks.

Estimated Time per Response: 49.50 burden hours.

Estimated Total Annual Burden: 193,644 burden hours.

For FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,480 insured state nonmember banks.

Estimated Time per Response: 33.91 burden hours.

Estimated Total Annual Burden: 743,393 burden hours.

The estimated time per response for the Call Report is an average, which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size

distribution of institutions, types of activities in which they are engaged, and number of banks with foreign offices). For the Call Report, the time per response for a bank is estimated to range from 15 to 600 hours, depending on individual circumstances.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks, and for all banks for deposit information). Except for selected items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on–site and off–site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Action

I. Overview

The agencies' request for comment addresses a number of different types of changes to the Call Report requirements. These changes relate to the content of the Call Report itself, the submission deadline for certain banks, and the agencies' process for validating and releasing the data that banks report. First, the agencies are proposing several revisions to the content of the Call Report that are focused on improving the information they collect from banks that engage in certain specific activities. This focus means that the proposed new or revised Call Report items that pertain to each of these activities will be applicable to small percentages of banks rather than to most or all banks. The agencies also would clarify an instruction and the scope of one group of items. This first group of proposed revisions, which would take effect as of March 31, 2003, include:

• adding five items dealing with accrued fees and finance charges on credit card accounts, allowances for uncollectible accrued fees and finance charges, and charge–offs of such accrued amounts, which would be reported by banks with a significant volume of credit card activity;

• breaking down the existing item in the securitization schedule (Schedule RC–S) for seller–provided credit enhancements to the bank's securitization structures (other than credit–enhancing interest–only strips) into separate items for those enhancements that are in the form of on–balance sheet assets and those enhancements that are in some other form;

• splitting the current income statement (Schedule RI) item for income from insurance activities into separate items for insurance underwriting income and income from other insurance activities;

• adding a yes/no question asking whether any of the bank's Internet Web sites has transactional capability, i.e., allows the bank's customers to execute transactions on their accounts;

• eliminating the exemption from disclosing the fair values of derivative contracts for banks with less than $100 million in assets in Schedule RC–L – Derivative and Off–Balance Sheet Items, because accounting standards require derivatives to reported on the balance sheet as assets or liabilities at fair value;

• changing the income statement (Schedule RI) item in which banks report any provisions for allocated transfer risk, which also affects the reconciliation of the allowance for loan and lease losses in Schedule RI–B, part II, and a related disclosure in the explanations schedule (Schedule RI–E);

• creating a supplement to the Call Report, in which the agencies, in response to a future event giving rise to an immediate and critical need for specific information, would be authorized to collect a limited amount of data from certain banks;

• clarifying the instructions to describe the limited circumstances in which loans may be reported as held for trading purposes; and

• explaining on both the report form and in the instructions that, for the Memorandum items in the insurance assessments schedule (Schedule RC–O) on the number and amount of deposit accounts by size of account, the dollar amount for the size of an account (currently $100,000) represents the deposit insurance limit in effect on the report date.

Second, the agencies are proposing to shorten the Call Report submission deadline for certain banks with foreign offices so that the same submission deadline applies to all banks. In general, banks with more than one foreign office currently are permitted to take an additional 15 days beyond the standard 30 days applicable to all other banks for filing their Call Reports. The agencies are proposing a reduction in the filing period to 30 days effective June 30, 2003, for banks with more than one foreign office. In a related change, the agencies are proposing to authorize the FDIC, in connection with its responsibility to set insurance premium assessment rates semiannually, to obtain certain deposit data from those banks with foreign offices whose March 2003 Call Reports have not been filed within the standard 30–day filing period. The FDIC would contact these banks in early May 2003 and direct them to disclose to the agency the amounts then available from their Call Report preparation process for two Call Report items: total domestic office deposits and estimated uninsured deposits.

Third, beginning perhaps as early as the March 31, 2003, Call Reports, the agencies would begin to make individual bank Call Reports available to the public on the FDIC's Web site as soon as the data validation process for a bank's report had been completed. At present, all of the Call Reports for a specific report date are released to the public simultaneously some 60–75 days after the quarter–end report date. Under this proposal, after the edit exceptions, if any, in an individual bank's Call Report have been resolved and the analysis of the report has been completed, the report will be made publicly available. This will make individual bank data available to the public on a more timely basis than at present.

Finally, the agencies' currently plan to implement a new business model for collecting and validating Call Reports in March 2004. In connection with the introduction of this new business model, the agencies are proposing that a bank's Call Report must pass all validity edits and must include an explanatory comment addressing each quality edit exception identified in the bank's report in order for the agencies to accept the bank's Call Report submission. Otherwise, the bank's report will not be accepted and the bank will need to make appropriate corrections to its report data, add any required explanatory comments, and resubmit its data file by the submission deadline.

Type of Review: Revision of a currently approved collection.

The proposed revisions to the Call Report have been approved for publication by the FFIEC. Unless otherwise indicated, the agencies would implement these proposed Call Report changes as of the March 31, 2003, report date. Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31, 2003, report date only, reasonable estimates may be provided for any new or revised item

taking effect as of that date for which the requested information is not readily available. The specific wording of the captions for the new and revised Call Report items discussed in this proposal and the numbering of these items in the report forms should be regarded as preliminary.

The agencies note that on July 12, 2002, they requested comment on the addition of a proposed new Call Report schedule that would collect data on consumer loans in subprime lending programs beginning March 31, 2003 (67 FR 46250). The agencies are currently reviewing the comments received on this separate proposal.

II. Discussion of Proposed Revisions

A. Charge–offs of Accrued Fees and Finance Charges on Credit Card Accounts

Many institutions engaged in credit card lending have adopted the practice of ''purifying'' charge–offs for financial reporting purposes. ''Purification'' refers to the practice of reversing uncollectible accrued fees and finance charges against earnings rather than accounting for them as charge–offs against the allowance for loan and lease losses. This practice obscures charge–off ratios (i.e., charge–offs divided by loan balances) because the charged–off amount does not include the accrued fees and finance charges while the aggregate loan balance does include them. Thus, the transparency of financial reports is diminished.

Further, the effect of this practice on credit card lending institutions' financial statements has become more material as the level of accrued but uncollected finance charges and fees have become more significant during the past several years. Most if not all of the accrued fees and finance charges reversed under the purification practice are included in credit card loan balances, or in other words, have been capitalized into the credit card loan balances.

The proposed additional Call Report items will collect information on reversals of credit card fees and finance charges that are not reported as charge–offs against the loan loss allowance. The proposed additions will also collect information on the outstanding amount of fees and finance charges included in credit card receivables and the related allowance, whether it is a component of the allowance for loan and lease losses or a separate contra–asset account. These new items will cover both bank–owned portfolios and securitized portfolios of credit cards. The five proposed items would be included as memorandum items in Schedule RI–B, parts I and II, Schedule RC–C, part I, and Schedule RC–S. Additionally, these proposed changes to the Call Report include clarifications to the instructions for four items: Schedule RC–S, items 1, 5.a, and 8, column C, and Schedule RI, item 1.a.(3)(a) on the FFIEC 041 (item 1.a.(1)(d)(1) on the FFIEC 031). The proposed items with their instructions and the instructional clarifications are presented at the end of this section.

The proposed changes will improve financial reporting transparency for losses on credit card accounts and permit Call Report users to calculate loss rates for credit card loan receivables that are comparable across credit card lending institutions. Users of Call Report data will have more complete loss information relating to credit card fees and finance charges that are written off as uncollectible. Furthermore, the changes will provide better information regarding the composition of and level of credit risk in credit card loan receivables that the institution manages both for its own account and in securitizations. The items regarding outstanding credit card fees and finance charges will provide useful information to facilitate the agencies' supervision of credit card lending activities.

The proposed new items would be completed only by those banks that: (1) either individually or on a combined basis with their affiliated depository institutions, report outstanding credit card receivables that exceed, in the aggregate, $500 million as of the report date. Outstanding credit card receivables will be measured as the sum of Schedule RC–C, part I, item 6.a (column B on the FFIEC 041, column A on the FFIEC 031); Schedule RC–S, item 1, column C; and Schedule RC–S, item 6.a, column C. (Include comparable data on managed credit card receivables for any affiliated savings association.) or (2) are credit card specialty banks as defined for purposes of the Uniform Bank Performance Report (UBPR). According to the UBPR Users Guide, credit card specialty banks are currently defined as those that exceed 50% for the following two criteria:

(a) Credit Cards plus Securitized and Sold Credit Cards divided by Total Loans plus Securitized and Sold Credit Cards.

(b) Total Loans plus Securitized and Sold Credit Cards divided by Total Assets plus Securitized and Sold Credit Cards.

Based on these reporting criteria, the agencies estimate that fewer than 100 banks will be subject to this proposed new reporting requirement.

The proposed new items, with their instructions, are as follows:

(1) Schedule RI–B, part I, Memorandum item 4, ''Uncollectible credit card fees and finance charges reversed against income (i.e., not included in charge–offs against the allowance for loan and lease losses).'' Report the amount of credit card fees and finance charges that the bank reversed against either interest and fee income or a separate contra–asset account during the calendar year–to–date. Exclude from this item credit card fees and finance charges reported as charge–offs against the allowance for loan and lease losses in Schedule RI–B, part I, item 5.a, column A.

(2) Schedule RI–B, part II, Memorandum item 1, ''Separate valuation allowance for uncollectible credit card fees and finance charges.'' Report the amount of any valuation allowance or contra–asset account that the bank maintains separate from the allowance for loan and lease losses to account for uncollectible credit card fees and finance charges. Because this amount is separate from the amount included in Schedule RC, item 4.c, and Schedule RI–B, part II, item 7, this Memorandum item is only applicable for those banks that maintain an allowance or contra–asset account separate from the allowance for loan and lease losses.

(3) Schedule RI–B, part II, Memorandum item 2, ''Amount of allowance for loan and lease losses attributable to credit card fees and finance charges.'' Report in this item the amount of the allowance for loan and lease losses that is attributable to outstanding credit card fees and finance charges. This amount should have been included within the amount reported in Schedule RC, item 4.c, and Schedule RI–B, part II, item 7.

(4) Schedule RC–C, part I, Memorandum item 6, ''Outstanding credit card fees and finance charges.'' Report the amount of fees and finance charges included in the amount of credit card receivables reported in Schedule RC–C, part I, item 6.a (column A on the FFIEC 031; column B on the FFIEC 041).

(5) Schedule RC–S, Memorandum item 4, ''Outstanding credit card fees and finance charges.'' Report the amount of fees and finance charges included in the credit card receivables that the bank has reported as securitized and sold in Schedule RC–S, item 1, column C.

As proposed, these five new items would be added to four separate schedules. However, as indicated above, the agencies will collect this information from a limited number of banks, i.e., banks with a significant volume of credit card lending. The agencies therefore request comment on whether it would be preferable to group these items together in a separate Call Report schedule that would be

completed only by these credit card banks rather than having the five items appear at scattered locations in the Call Report.

The proposed clarifications to existing instructions are as follows:

(1) Schedule RI, item 1.a.(3)(a) on the FFIEC 041, item 1.a.(1)(d)(1) on the FFIEC 031, ''Interest and fee income on credit cards.'' The following sentence would be added to the instructions for this item: Include in this item, as a reduction of income, the amount of uncollectible credit card fees and finance charges the bank has reversed against interest and fee income and the amount charged to earnings for additions to any contra–asset account for uncollectible credit card fees and finance charges that the bank maintains and reports separately from its allowance for loan and lease losses.

(2) Schedule RC–S, item 1, ''Outstanding principal balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller–provided credit enhancements.'' The following sentence would be added to the instructions for this item: For credit card receivables, include in column C any fees and finance charges capitalized into the credit card receivable balances that the reporting bank has securitized and sold.

(3) Schedule RC–S, item 5.a, ''Charge–offs'' [on assets sold and securitized with servicing retained or with recourse or other seller–provided credit enhancements (calendar year–to–date)]. The following sentence would be added to the instructions for this item: Include in column C charge–offs or reversals of uncollectible credit card fees and finance charges that had been capitalized into the credit card receivable balances that have been securitized and sold.

(4) Schedule RC–S, item 8.a, ''Charge–offs'' [on loan amounts included in interests reported as securities in item 6.a (calendar year–to–date)]. The following sentence would be added to the instructions for this item: Include in column C the amount of credit card fees and finance charges written off as uncollectible that were attributable to the credit card receivables included in ownership interests reported as securities in item 6.a, column C.

B. Breakdown of Seller–provided Credit Enhancements to the Bank's Securitization Structures

Banks currently report the maximum amount of credit exposure from seller–provided credit enhancements to securitization structures (other than credit–enhancing interest–only strips, which are reported separately) in Schedule RC–S, item 2.b. These credit enhancements include both on–balance sheet assets (such as subordinated securities, spread accounts, and cash collateral accounts) and enhancements that are not assets (such as recourse liabilities and standby letters of credit). When credit enhancements are in the form of assets, credit losses on the securitized loans result in reduced cash inflows to the asset holder. In contrast, when seller–provided credit enhancements take some other form, cash outflows from the seller are required to cover credit losses on the securitized loans. In addition, under the agencies' risk–based capital standards that were revised as of January 1, 2002, seller–provided credit enhancements that are on–balance sheet assets are ''residual interests'' subject to a dollar–for–dollar capital charge unless they qualify for the ratings–based approach. The capital charge for enhancements that are not assets generally is capped at 8 percent of the assets enhanced.

To distinguish between the amount of a bank's seller–provided credit enhancements that are on–balance sheet assets (other than credit–enhancing interest–only strips) and those that are not, item 2.b would be split into two items. This proposed revision will enable the agencies to better understand the types of credit support that banks are providing to their securitizations, including which types are typically used for different types of securitized loans. In revised item 2.b, banks would disclose the carrying value of ''Subordinated securities and other residual interests'' carried as on–balance sheet assets that have been retained in connection with the securitization structures reported in Schedule RC–S, item 1. In new item 2.c, ''Standby letters of credit and other enhancements,'' banks would disclose the unused portion of standby letters of credit and the maximum contractual amount of recourse or other credit exposure not in the form of an on–balance sheet asset that have been provided or retained in connection with the securitization structures reported in Schedule RC–S, item 1.

C. *Income from Insurance Activities*

In Schedule RI, item 5.h, ''Insurance commissions and fees,'' banks report their income from insurance and reinsurance underwriting, sales of insurance and annuities, insurance agency and brokerage operations, and management fees for insurance products. The risks arising from insurance and reinsurance underwriting are significantly different from those arising from other insurance activities. Given this distinction in risk, the agencies are proposing to split the current single income statement item for insurance–related income into two items so that underwriting income can be separately identified. This will enable the agencies to more clearly identify institutions engaged in underwriting and to better monitor the results of these underwriting activities.

In new item 5.h.(1), ''Insurance and reinsurance underwriting income,'' banks would report all income from insurance and reinsurance underwriting, including the amount of premiums earned by property–casualty insurers and the amount of premiums written by life and health insurers. This item would also include the bank's proportionate share of the income or loss before extraordinary items and other adjustments from its investments in equity method investees that are principally engaged in insurance and reinsurance underwriting.

In new item 5.h.(2), ''Income from other insurance and reinsurance activities,'' banks would report income from insurance agency and brokerage operations (including sales of annuities and supplemental contracts); service charges, commissions, and fees from the sale of insurance (including credit life insurance), reinsurance, and annuities; and management fees from separate accounts, deferred annuities, and universal life products. This item would also include the bank's proportionate share of the income or loss before extraordinary items and other adjustments from its investments in equity method investees that are principally engaged insurance activities other than insurance underwriting.

The agencies request comment on whether the instructional language in the two preceding paragraphs clearly describes insurance activities, including underwriting, and the types of income to be reported in each item.

D. Transactional Capability of Bank Web Sites

An increasing number of banks' Internet Web sites allow customers to execute transactions on their accounts at the bank. These transactional Web sites present greater security risks to a bank than sites that provide only information to customers and the public. For examination planning and risk scoping purposes and to monitor industry trends in this area, the agencies are proposing to add a yes/no question to the Call Report (as new item 8 of Schedule RC–M) asking ''Do any of the bank's Internet Web sites have transactional capability, i.e., allow the bank's customers to execute transactions on their accounts through the Web site.''

E. Disclosure of the Fair Value of Derivative Contracts

Schedule RC–L, item 15, collects data on the fair values of derivatives, with gross positive and negative fair values reported separately by type of exposure for contracts held for trading (items 15.a.(1) and (2)) and for those held for purposes other than trading (items 15.b.(1) and (2)). At present, banks with domestic offices only and less than $100 million in assets are exempt from this disclosure requirement. This exemption originated when derivative contracts were considered off–balance sheet items and predates FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities (FAS 133), which took effect in 2001. FAS 133 requires all derivatives to be measured at fair value and reported on the balance sheet as assets or liabilities. Because banks with less than $100 million in assets that have derivatives now have to regularly determine their fair value for balance sheet purposes, these banks have the information necessary to disclose the fair value of their derivatives in Schedule RC–L. Accordingly, the agencies are proposing to eliminate this disclosure exemption. The fair value data on derivatives will complement the data that banks with less than $100 million in assets currently report on the notional amount of their derivative contracts. The number of banks in this size range that have derivative contracts and will therefore be affected by this proposed change is less than 200.

F. Provisions for Allocated Transfer Risk

Prior to 2001, the Call Report income statement (Schedule RI) included a specific line item for ''Provision for allocated transfer risk,'' but amounts were reported in this item only infrequently and only by a small number of banks. This separate item was removed from the face of the income statement in 2001 and banks were instructed to include these provisions in ''Other noninterest expense'' on Schedule RI (item 7.d). However, in reviewing the continuing merits of this instructional change, the agencies found that institutions exposed to transfer risk generally view these provisions more like provisions for loan losses than a noninterest expense. As a result, the agencies concluded that it would be preferable for banks to include the ''Provision for allocated transfer risk'' with the ''Provision for loan and lease losses'' in item 4 on the Call Report income statement and are proposing to make this change.

In addition, in order for the end–of–period allowance in the reconciliation of the ''Allowance for loan and lease losses'' in Schedule RI–B, part II, to equal the loan loss allowance on the balance sheet (Schedule RC, item 4.c), which excludes the ''Allocated transfer risk reserve,'' the instructions for Schedule RI–B, part II, will also be revised. More specifically, the instructions for Schedule RI–B, part II, item 6, ''Adjustments,'' will direct banks to report as a negative number in item 6 the amount of any ''Provision for allocated transfer risk'' included in the amount of ''Provision for loan and lease losses'' reported in item 4 of the income statement (Schedule RI). Additionally, as with all items reported in Schedule RI–B, part II, item 6, ''Adjustments,'' the amount of any ''Provision for allocated transfer risk'' would need to be itemized and described in item 6 of the explanations schedule (Schedule RI–E).

G. Call Report Supplement for Future Data Needs

The agencies are proposing to obtain authority to collect a supplement to the Call Report so that, should there be an immediate need for the agencies to collect certain critical information from a segment of the banking industry, the necessary items could be collected on this supplement to the Call Report at the earliest practicable date. Such a need could arise, for example, because of a statutory change or an unexpected market event or change in credit conditions that has a material effect on certain institutions. While the Paperwork Reduction Act has emergency procedures for obtaining authority to collect information on a one–time basis, the agencies believe it would be preferable to take a proactive approach and establish in advance of a possible critical future data need their authority to collect such data. The agencies further note that the Board currently has comparable authority to collect a supplement to the FR Y–9C bank holding company report.

The agencies would expect to use their authority to collect a Call Report supplement infrequently. Furthermore, to ensure that the exercise of this authority is subject to proper oversight and control, the agencies would require the members of the Federal Financial Institutions Examination Council to approve the specific use of the supplement. Thus, the Examination Council's Reports Task Force would not have the delegated authority to institute a data collection using the Call Report supplement.

For purposes of obtaining the authority for this supplement for future data needs, the agencies estimate that the burden of any data collection using this supplement would be imposed on no more than 10 percent of the banks under each agencies' supervision. In addition, the estimated reporting burden imposed on these banks in connection with reporting the requested data on the supplement would not exceed one hour per quarter. As a consequence, the burden of any specific supplemental items that the Examination Council would approve for collection under this authority in the future could not exceed the approved burden estimates. The burden estimates disclosed above for the three agencies include the estimated burden of this proposed supplement.

H. Loans Held for Trading Purposes

The General Instructions for Schedule RC–C, Part I – Loans and Leases, advise banks to exclude from Schedule RC–C ''all loans and leases held for trading purposes'' and to report them instead as ''Trading assets'' on the Call Report balance sheet (Schedule RC, item 5) and in Schedule RC–D – Trading Assets and Liabilities, if this latter schedule is applicable. However, the instructions for the balance sheet item for ''Trading assets'' and for Schedule RC–D do not explicitly refer to loans (and leases) as trading assets, nor does the Glossary entry for ''Trading Account.'' Accordingly, questions have been raised concerning the circumstances in which it may be appropriate to categorize certain loans (and leases) as trading assets. Trading assets are carried on the balance sheet at fair value, with changes in fair value (unrealized holding gains and losses) recognized in earnings.

The agencies have reviewed the accounting literature for guidance on the financial statement presentation and disclosure of loans designated as held for trading. This review included consideration of Financial Accounting Standards Board (FASB) No. 65, Accounting for Certain Mortgage Banking Activities (FAS 65), as amended; FASB Statement No. 91, Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases (FAS 91), as amended; FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities (FAS 115); the FASB staff's Implementation Guide for FAS 115; and chapters 5, 6, and 8 of the current (May 2000) edition of Audit and Accounting Guide – Banks and Savings Institutions (Audit Guide), published by the American Institute of Certified Public Accountants.

In particular, paragraph 6.74 of the Audit Guide's chapter on loans explains that ''management's disclosure in the summary of significant accounting policies should include the basis of accounting for loans and lease financings, both held in a portfolio and held for sale.'' In the two introductory paragraphs of the loan chapter's section

entitled ''Accounting and Financial Reporting'' (paragraphs 6.48 and 6.49), the Audit Guide describes the basis of reporting for ''portfolio'' loans and ''held–for–sale'' loans, neither of which is the market (fair) value reporting basis applicable to trading assets. Paragraph 6.01 of the Audit Guide notes that banks ''sell loans or portions of loans, and securitize loans'' and states that these two activities are discussed in chapter 8, but does not mention loans held for trading purposes. A review of chapter 8, ''Mortgage Banking Activities and Loan Sales,'' also reveals no references to loans held for trading purposes or carried at market (fair) value.

Question 35 in the FASB staff's Implementation Guide for FAS 115 asks whether an institution that acquires a security without the intent to sell it in the near term may classify the security in the trading category. The staff answered this question is in the affirmative, stating that the ''[c]lassification of a security as trading is not precluded simply because the enterprise does not intend to sell it in the near term.'' However, Appendix C (paragraph 137) of FAS 115 defines both ''security'' and ''debt security'' for purposes of this accounting standard. The definition of the term ''debt security'' states that ''loans receivable arising from consumer, commercial, and real estate lending activities of financial institutions are examples of receivables that do not meet the definition of security; thus, those receivables are not debt securities (unless they have been securitized, in which case they would meet the definition).'' Therefore, loans do not fall within the scope of FAS 115.

Given the relatively extensive amount of guidance in the accounting literature on accounting for loans as ''portfolio'' loans and ''held–for–sale'' loans, but the sparse guidance on loans ''carried at market value'' or designated as trading assets, the agencies believe that, under generally accepted accounting principles, it is appropriate in only limited circumstances for banks to designate loans as held for trading and account for them at fair value, with changes in fair value recognized in earnings. In this regard, the agencies do not believe that the trading classification option accorded securities at acquisition by the FASB's response to Question 35 in the FAS 115 Implementation Guide should be extended to loans.

Accordingly, the agencies propose to provide guidance for regulatory reporting purposes on the use of the trading account designation for loans by revising the Glossary entry for ''Trading Account'' in the Call Report instructions. Conforming changes would be made elsewhere in the instructions where appropriate. A new second paragraph of the ''Trading Account'' Glossary entry would read as follows:

There is a rebuttable presumption that loans and leases (hereafter, loans) should not be reported as trading assets. In order to overcome this presumption for particular loans, a bank must demonstrate, from the pattern and practice of its activity, that it is acquiring these loans principally for the purpose of selling them in the near term with the objective of generating profits on short–term differences in price. Thus, such loans are held for only a short period of time (generally not months or years). This presumption is not overcome if a bank acquires loans (through origination or purchase) with the intent or expectation that they may or will be sold at some date in the future. In addition, loans acquired and held for securitization purposes should not be reported as trading assets, but should be reported as loans held for sale.

I. Number and Amount of Deposit Accounts

Schedule RC–O, Memorandum item 1, collects information on the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000. This information provides the basis for calculating ''simple estimates'' of the amount of insured and uninsured deposits. The captions for these memorandum items explicitly refer to $100,000, which is the current deposit insurance limit. Given the purpose of these memorandum items, the dollar amount cited in the caption would need to be changed if the deposit insurance limit were to change, which Congress is considering. To ensure that the dollar amount cited in the caption changes automatically as a function of the deposit insurance limit in effect on the report date, the caption for Memorandum item 1 would be footnoted to state that the specific dollar amounts used as the basis for reporting the number and amount of deposit accounts in Memorandum items 1.a and 1.b reflect the deposit insurance limits in effect on the report date. The instructions for this Memorandum item would be similarly clarified.

J. Reduction in the Filing Period for Banks with More than One Foreign Office

Banks are required to submit their Call Reports electronically so that the reported data are received by the banking agencies' electronic collection agent no later than 30 days after the quarter–end report date, e.g., by July 30 for the June 30 report. This 30–day filing period applies to nearly all banks. However, fewer than one half of one percent of all banks are permitted an additional 15 days to file their Call Report data, e.g., by August 14 for the June 30 report. The approxmiately 40 banks that are eligible for this lengthier filing period are institutions that have more than one foreign office, other than a ''shell'' branch or an International Banking Facility. Of these banks, nearly half have only 2 foreign offices and just 6 have more than 20 foreign offices. The 9 largest banks with more than one foreign office each have more than $100 billion in total assets, with the assets of the remaining banks ranging down to less than $5 billion.

The number of banks with between $5 and $100 billion in total assets that do not have more than one foreign office exceeds the number in this size range that have more than one foreign office. The banks in this former group are required to submit their Call Reports within 30 days after quarter–end, while the banks in the latter group have the additional 15–day filing period available to them.

The longer filing period for banks with more than one foreign office delays the availability to the agencies, as well as to banks and the general public, of timely data on the condition and performance of the banking industry and the direction in which various indicators, such as deposit flows and earnings, are moving. Critical to the agencies' analyses of the industry are the data from the largest banks, nearly all of which have 45 days in which to file their Call Reports because they have more than one foreign office. With more timely receipt of Call Report data from all institutions, the agencies can identify the risks in the banking industry sooner and provide the results of their analyses back to bankers and the marketplace earlier when the data may be more useful for decision–making purposes. The importance of making information available to the marketplace within shorter timeframes can be seen in the Securities and Exchange Commission's decision on August 27, 2002, to accelerate the filing deadlines for the quarterly and annual reports that are required from larger public companies under the federal securities laws.

Accordingly, the agencies are proposing to eliminate the additional 15–day period that banks with more than one foreign office have for filing their Call Reports, effective with the reports for June 30, 2003. Thus, the submission deadline for the second quarter 2003 Call Reports for all banks would be July 30, 2003.

The agencies acknowledge that banks with foreign offices are asked to report a larger amount of data in their Call Reports than banks without foreign offices are required to provide in their reports. The agencies also recognize, from comments received on previous proposals to reduce the filing period for banks with more than one foreign office and from more recent conversations with bankers, that shortening this period will impose additional costs on the affected institutions. These banks will need to implement changes in their systems and quality review processes to ensure that their publicly–available Call Report data continue to be of high quality despite the reduced amount of time for completing these reports. Therefore, the agencies believe that scheduling the effective date for the reduction in the filing period to be June 30, 2003, rather than March 31, 2003, the quarter when changes in Call Report requirements are customarily implemented, will provide a more reasonable amount of time for affected banks to update their systems and processes in a manner that considers both the burden of this change and the benefit of expedited collection of the data.

K. Early Collection of Deposit Items from Certain Banks with Foreign Offices

The FDIC is required to maintain the deposit insurance funds that it administers at a minimum level known as the Designated Reserve Ratio, which is set at 1.25 percent of estimated insured deposits.[1] The insurance fund ratios are calculated by dividing the insurance fund level by the estimated amount of insured deposits. The FDIC Board of Directors is required semiannually to set assessment rates for the premiums to be paid by insured depository institutions to ensure that the insurance fund ratios are maintained at the Designated Reserve Ratio. To do this effectively and without burdening institutions with unnecessary insurance premiums, the FDIC needs a timely and reliably estimated measure of insurance fund ratios, particularly when those levels are likely to be near or below the statutory target of 1.25 percent.

Among the information that banks report in the Call Report is the amount of total deposits in domestic offices (Schedule RC, item 13.a) and the estimated amount of uninsured deposits (Schedule RC–O, Memorandum item 2). These amounts are used to calculate the insurance fund ratio. For most banks, Call Reports must be received not later than 30 days after the end of the quarter. However, for banks with more than one foreign office, which includes most of the largest banks in the United States, the Call Report must be received not later than 45 days after quarter–end until the proposed elimination of this extended filing period takes effect in June 2003 as discussed above. About 40 banks are eligible for this 45–day submission period.

Because of the timing of the semiannual assessment rate–setting schedule and the proposed June 2003 effective date for the elimination of the extended filing period, the FDIC may need insured deposit data from the banks that have 45 days in which to file their March 2003 Call Report earlier than the May 15, 2003, submission deadline for these banks. To meet statutory and regulatory timeframes, which currently require the FDIC Board to announce the semiannual assessment rate schedules on approximately May 15 and November 15 each year, the Board must meet to decide on the rate schedule for the next semiannual period in early May and November. If any of the banks with more than one foreign office files its March 2003 Call Report near the 45–day submission deadline of May 15, 2003, then the most reliable estimate of the amount of insured deposits available to the FDIC Board when it sets assessment rates for the next semiannual period early in those months will include Call Report data that is approximately 4 1/2 months old, i.e., data as of the preceding December 31.

Using 4 1/2–month old data is problematic for the FDIC when there is a reasonable likelihood that an insurance fund ratio, such as the Bank Insurance Fund ratio, could fall below its 1.25 percent Designated Reserve Ratio, which is a distinct possibility any time that a fund ratio is near that target ratio. If the data that the FDIC Board uses to determine an insurance fund ratio suggests that the ratio has fallen below the Designated Reserve Ratio, the Board may determine that it is necessary to charge institutions higher insurance premiums to increase assessment revenue and bring the fund ratio ratio back up to its statutory requirement.

Using incomplete Call Report data also could lead the FDIC Board to make improper pricing decisions about insurance premiums. The data on domestic office deposits and estimated uninsured deposits received from institutions that file their Call Reports within 30 days of the March 31, 2003, report date may not be representative of the overall industry–wide trend for that date. Accordingly, the absence of the March 31, 2003, data from institutions that file their reports within 45 days after this dates could contribute to a decision by the FDIC Board that results in an overpricing or underpricing of assessment rates.

Thus, the FDIC proposes to obtain information on the level of domestic office deposits and estimated uninsured deposits from certain institutions on or about May 1, 2003, which is approximately two weeks before the date by which these institutions are required to submit this information in their Call Reports. This information–gathering effort would be accomplished via telephone calls from the FDIC to appropriate staff at these institutions, who would then supply the requested information over the telephone, by e–mail, or by fax. At that stage in their Call Report preparation process, the FDIC expects that these institutions will already have at least preliminary numbers for these two deposit items. Based on historical experience, fewer than 20 institutions with multiple foreign offices would be directed to provide the FDIC with the amounts then available for these two items from their Call Report preparation process. The preliminary information reported by these institutions will not be provided to the public. Nevertheless, with this information, the FDIC staff will be able to more confidently advise the FDIC Board of the insurance fund ratios in early May 2003 and thereby avoid mispricing decisions.

The FDIC has separately requested and received approval from OMB pursuant to OMB's emergency processing procedures to collect information in early November 2002 on domestic office deposits and estimated uninsured deposits as of September 30, 2002, from not more than 20 large banks with multiple foreign offices. (OMB Control No. 3064–0144, which expires December 31, 2002.) (See 67 Fed. Reg. 60684, September 26, 2002.) Under these emergency processing procedures, however, OMB's approval of the FDIC's proposal enables the FDIC to contact these institutions on a one–time basis in early November 2002. Accordingly, the FDIC is now seeking the authority to collect these two items on a preliminary basis in May 2003 from not more than 20 banks with multiple foreign offices. The FDIC would exercise this authority only if the insurance fund ratio as of May 31, 2003, is expected to be at or near the Designated Reserve Ratio level of 1.25 percent.

L. Earlier Release of Individual Bank Call Reports

At present, the agencies wait until they have completed the data validation

[1] See Section 7(b)(2)(A)(iv)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(iv)(1)).

process for all 8,500 banks that file Call Reports before the Call Reports for a particular quarter–end report date are made available to the public. This simultaneous release of all bank Call Reports occurs some 60–75 days after the report date. However, the data validation process for most bank Call Reports is generally completed at a much earlier date. By delaying the release of these reports, the information about a bank's condition and performance contained in its most recent quarter–end report is less useful to the public than if the report data had been made available at an earlier date.

Because the usefulness of a bank's report data goes hand–in–hand with the timeliness of the data, the agencies are proposing to change their release date for individual bank Call Reports. Under this proposal, beginning perhaps as early as the Call Reports for March 31, 2003, the agencies would begin to make each bank's Call Report available to the public on the FDIC's Internet Web site (*www.fdic.gov*) as soon as they complete the data validation process for that bank's report. This would mean that, after any edit exceptions identified in a bank's Call Report have been resolved and the analysis of the report has been completed, the public would be able to access the report (except for any confidential information). As a result, individual bank data would be available to the public on a more timely basis than at present.

M. Criteria for Acceptance of Call Reports

On August 1, 2002, the FFIEC, on behalf of the agencies, issued a Request for Proposal for the design and implementation of a new business model for processing Call Reports with a target effective date of March 2004. A principal feature of this new model would be a central data repository to collect, validate, manage and distribute Call Report information. As part of the introduction of this new business model, the agencies would change the manner in which Call Reports would be edited.

Currently, after the agencies receive a bank's electronically submitted Call Report, the report is subjected to numerous edit checks to assess the accuracy and reasonableness of the data the bank has submitted. Validity edits verify the accuracy of reported data, e.g., whether the individual items in a report schedule add up to the reported total and whether an item reported in one schedule agrees with the amount reported for the same item in another schedule. Validity edits include both mathematical and logical tests. Quality edits test the reasonableness of data and include tests against historical performance and other relational tests, e.g., whether the amount reported for a year–to–date item is greater than or equal to the amount reported for the same item in the previous quarter and whether the fair value reported for a category of securities falls within a specified range of the amortized cost reported for these securities.

If this validation process identifies any edit exceptions in a bank's report, an agency Call Report analyst normally contacts the bank and explains the edit exceptions detected in the bank's report. The bank then reviews the reported data associated with these edit exceptions and provides the Call Report analyst with any necessary corrections and/or describes the underlying facts and circumstances that explain why the data are correct as reported. The agencies' follow–up with a bank on edit exceptions typically occurs by telephone and takes place anywhere from one day to three or four weeks after a bank has submitted its report.

Under the new business model, the validation process will take place in conjunction with a bank's submission of its Call Report data to the agencies. The central data repository will contain all of the edit criteria and formulas, where they would be publicly available. This will enable the edits to be incorporated into the Call Report software a bank uses to prepare and submit its report to the agencies, which means that edit exceptions will be identified while a bank is completing its report. The bank will then be able to correct its report data to eliminate any validity edit exceptions. The bank will also be provided a method for supplying explanatory comments concerning any quality edit exceptions.

Once the central data repository is implemented, which is targeted for March 2004, the agencies are proposing that they will not accept a bank's Call Report submission if it contains any validity edit exceptions and lacks explanatory comments for any quality edit exceptions. Because a bank will be aware of any edit exceptions while its staff is completing its Call Report, the bank's follow–up on these exceptions will be immediate rather than after–the–fact as it is under the agencies' current approach to data validation. Thus, although the agencies are proposing to change the manner in which banks provide information to respond to edit exceptions identified in their Call Reports, including requiring the submission of explanatory comments concerning quality edit exceptions, this change should produce a net decrease in reporting burden on banks by reducing subsequent questions from the agencies. Furthermore, it should result in quicker validation, acceptance, disclosure and use of individual bank Call Report data.

In anticipation of this change in the data validation process, the agencies note that they have established a single set of validation criteria and have published the criteria for the March, June and September 2002 Call Report data on the FFIEC web site for banks' reference and use. The agencies also have made this material available to the Call Report software vendors. Beginning in September 2002, some Call Report software products will include a feature that enables a bank, at its option, to provide explanatory comments for edit exceptions to the banking agencies.

III. Request for Comment

Public comment is requested on all aspects of this proposal. In addition, comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

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

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: October 23, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division,Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 4, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this the 23rd day of October, 2002.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman,

Executive Secretary

[FR Doc. 02–28435 Filed 11–7–02; 8:45 am]

BILLING CODE: OCC: 4810–33–S 1/3; Board: 6210–01–S; 1/3; FDIC: 6714–01–S; 1/3

DEPARTMENT OF THE TREASURY

Customs Service

Modification and Clarification of Procedures of the National Customs Automation Program Test Regarding Reconciliation; Correction

AGENCY: Customs Service, Treasury.

ACTION: General notice; correction.

SUMMARY: On September 27, 2002, Customs published a document in the **Federal Register** which announced modifications to the Customs Automated Commercial System (ACS) Reconciliation prototype test and clarified certain aspects of the test. The notice stated that among the topics related to the test for which Customs was providing clarifications and reminders was the ''right to file Reconciliation entries.'' The language reminding test participants who has the right to file entries under the test was inadvertently omitted from the notice. This document sets forth the omitted language.

DATES: Effective as of November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. John Leonard at (202) 927–0915 or Ms. Christine Furgason at (202) 927–2293. Additional information regarding the test can be found at *http://www.customs.gov/recon.* Email inquiries may be sent to: *Recon.Help@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

A general notice document was published in the **Federal Register** (67 FR 61200) on Friday September 27, 2002, to announce certain modifications to the Automated Commercial System (ACS) Reconciliation Prototype test regarding NAFTA Reconciliation entries, the method for filing Reconciliation entries covering flagged entry summaries for which liquidated damages have been assessed, acceptance of compact disks for Reconciliation spreadsheets, and applicability to test participants of previously suspended regulatory provisions of part 111, Customs Regulations. The notice also provided clarifications and reminders to test participants regarding certain other aspects of the test and announced a new address for Reconciliation submissions for the port of NY/Newark.

In the third paragraph of the ''Background'' section of the general notice, it stated that among the topics related to the test for which Customs was providing clarifications and reminders was the ''right to file Reconciliation entries.'' Inadvertently, the language reminding Reconciliation test participants who has the right to file entries under the test was omitted from the ''Clarifications and Reminders'' section of the notice.

This document sets forth the omitted language.

Correction

In general notice FR Doc 02–24588, published on September 27, 2002 (67 FR 61200), make the following correction:

On page 61204, in the second column, immediately before the section entitled ''Updated Address and ABI Filing Information for NY/Newark Port 1001,'' insert the following section:

Right to File Reconciliation Entries

Customs reminds test participants that the filing of a Reconciliation entry, like the filing of a regular consumption entry, is governed by 19 U.S.C. 1484 and can be done only by the importer of record as defined in that statute.

Dated: November 5, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–28464 Filed 11–7–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–54–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–54–89 (TD 8444). Applicable Conventions Under the Accelerated Cost Recovery System (§ 1.168(d)–1(b)(7)).

DATES: Written comments should be received on or before January 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Applicable Conventions Under the Accelerated Cost Recovery System.

OMB Number: 1545–1146. Regulation Project Number: PS–54–89 Final.

Abstract: The regulations describe the time and manner of making the notation required to be made on Form 4562, under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with section 168 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 700.

Estimated Time Per Respondent: 6 min.

Estimated Total Annual Burden Hours: 70 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–28545 Filed 11–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held from Wednesday, November 20, 2002, through Friday, November 22, 2002, from 8:30 a.m. until 5 p.m. each day, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 230, Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans, and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

On November 20, the Committee will review its prior years' annual report recommendations and discuss methods to effectively measure results and streamline its reporting process. During the afternoon session, the Committee will receive briefings from key VA staff members concerning the recommendations submitted to the Secretary in its 8th Annual Report (2002). Briefings will be conducted by Veterans Health Administration, Veteran Benefits Administration, Acquisition Policy, Office of Small and Disadvantaged Business, National Cemetery and Memorial Affairs, Office of Human Resources and Native American Home Loan Program.

On November 21, the Committee will focus on its strategic plan for 2003, determine achievable strategic goals and develop an executable plan of action. On November 22, the Committee will meet with the VA Deputy Secretary in the morning. The Center for Minority Veterans will brief the Committee on recent site visits and findings related to minority veterans and the latest initiatives undertaken by the Center.

No time will be allocated for oral presentations from the public. However, the Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority veterans. Such comments should be referred to the Committee at Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or further information should contact Ms. Ruby Miller at (202) 273–6708.

Dated: October 31, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28548 Filed 11–7–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special Disabilities Programs will be held December 3–4, 2002, at VA Headquarters, 810 Vermont Avenue, NW., Washington, DC. The meeting will be held in Room 830 on December 3 and in Room 530 on December 4. Meeting sessions will convene at 8:30 a.m. on both days and will adjourn at 4:30 p.m. on December 3 and at 12 noon on December 4. The meeting is open to the public.

The purpose of the Committee is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

On the morning of December 3, the Committee will receive briefings by the Chief Consultant, Rehabilitation Strategic Healthcare Group, and the Director, Capital Asset Realignment for Enhanced Services (CARES) Program. In the afternoon, the Committee will be briefed by the directors of VA's special disability programs—spinal cord injury, blind rehabilitation, prosthetics, audiology and speech pathology. Additional briefings will be provided by the program directors of ophthalmology and optometry. On the morning of December 4, the Committee will be briefed by the Director of the Rehabilitation Research and Development Service and will review the most recent report on maintaining treatment capacity in VA's special disability programs.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Ms. Cynthia Wade, Veterans Health Administration, Patient Care Services, Rehabilitation Strategic Healthcare Group (117), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Wade at (202) 273–8485.

Dated: October 31, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28547 Filed 11–7–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
November 8, 2002

Part II

Environmental Protection Agency

40 CFR Parts 89 et al.

Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89, 90, 91, 94, 1048, 1051, 1065, and 1068

[AMS–FRL–7380–2]

RIN 2060–AI11

Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, we are adopting emission standards for several groups of nonroad engines that have not been subject to EPA emission standards. These engines are large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. Nationwide, these engines and vehicles cause or contribute to ozone, carbon-monoxide, and particulate-matter nonattainment, as well as other types of pollution impacting human health and welfare.

We expect that manufacturers will be able to maintain or even improve the performance of their products when producing engines and equipment meeting the new standards. Many engines will substantially reduce their fuel consumption, partially or completely offsetting any costs associated with the emission standards. Overall, the gasoline-equivalent fuel savings associated with the anticipated changes in technology resulting from this rule are estimated to be about 800 million gallons per year once the program is fully phased in. Health and environmental benefits from the controls included in today's rule are estimated to be approximately $8 billion per year once the controls are fully phased in. There are also several provisions to address the unique limitations of small-volume manufacturers.

DATES: This final rule is effective January 7, 2003.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of January 7, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket Numbers A–98–01 and A–2000–01 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

For further information on electronic availability of this action, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline, (734) 214–4636, *asdinfo@epa.gov;* Alan Staut, (734) 214–4805.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action will affect companies that manufacture or introduce into commerce any of the engines or vehicles subject to emission standards. These include: spark-ignition industrial engines such as those used in forklifts and compressors; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. This action will also affect companies buying engines for installation in nonroad equipment. There are also requirements that apply to those who rebuild any of the affected nonroad engines. Regulated categories and entities include:

Category	NAICS Codes [a]	SIC Codes [b]	Examples of potentially regulated entities
Industry	333618	3519	Manufacturers of new nonroad spark-ignition engines, new marine engines.
Industry	333111	3523	Manufacturers of farm equipment.
Industry	333112	3531	Manufacturers of construction equipment, recreational marine vessels.
Industry	333924	3537	Manufacturers of industrial trucks.
Industry	811310	7699	Engine repair and maintenance.
Industry	336991		Motorcycle manufacturers.
Industry	336999		Snowmobiles and all-terrain vehicle manufacturers.
Industry	421110		Independent Commercial Importers of Vehicles and Parts.

[a] North American Industry Classification System (NAICS)
[b] Standard Industrial Classification (SIC) system code.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether this action regulates particular activities, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Final Regulatory Support Document, and other rule documents are also available electronically from the EPA Internet web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the day of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA-AIR/* (either select desired date or use Search feature)
2. *http://www.epa.gov/otaq/* (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

Table of Contents

I. Introduction
A. Overview
B. How Is This Document Organized?
C. What Categories of Vehicles and Engines Are Covered in This Final Rule?
D. What Requirements Are We Adopting?
E. Why Is EPA Taking This Action?

II. Nonroad: General Provisions
A. Scope of Application
B. Emission Standards and Testing
C. Demonstrating Compliance
D. Other Concepts
III. Recreational Vehicles and Engines
A. Overview
B. Engines Covered by This Rule
C. Emission Standards
D. Testing Requirements
E. Special Compliance Provisions
F. Technological Feasibility of the Standards
IV. Permeation Emission Control
A. Overview
B. Vehicles Covered by This Provision
C. Permeation Emission Standards
D. Testing Requirements
E. Special Compliance Provisions
F. Technological Feasibility
V. Large Spark-ignition (SI) Engines
A. Overview
B. Large SI Engines Covered by This Rule
C. Emission Standards
D. Testing Requirements and Supplemental Emission Standards
E. Special Compliance Provisions
F. Technological Feasibility of the Standards
VI. Recreational Marine Diesel Engines
A. Overview
B. Engines Covered by This Rule
C. Emission Standards for Recreational Marine Diesel Engines
D. Testing Equipment and Procedures
E. Special Compliance Provisions
F. Technical Amendments
G. Technological Feasibility
VII. General Nonroad Compliance Provisions
A. Miscellaneous Provisions (Part 1068, Subpart A)
B. Prohibited Acts and Related Requirements (Part 1068, Subpart B)
C. Exemptions (Part 1068, Subpart C)
D. Imports (Part 1068, Subpart D)
E. Selective Enforcement Audit (Part 1068, Subpart E)
F. Defect Reporting and Recall (Part 1068, Subpart F)
G. Hearings (Part 1068, Subpart G)
VIII. General Test Procedures
A. General Provisions
B. Laboratory Testing Equipment
C. Laboratory Testing Procedures
D. Other Testing Procedures
IX. Projected Impacts
A. Environmental Impact
B. Cost Estimates
C. Cost Per Ton of Emissions Reduced
D. Economic Impact Analysis
E. Do the Benefits Outweigh the Costs of the Standards?
X. Public Participation
XI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act
K. Plain Language

I. Introduction

A. Overview

Emissions from the engines regulated in this rule contribute to serious air-pollution problems, and will continue to do so in the future absent regulation. These air pollution problems include exposure to carbon monoxide (CO), ground-level ozone, and particulate matter (PM), which can cause serious health problems, including premature mortality and respiratory problems. Fine PM has also been associated with cardiovascular problems, such as heart rate variability and changes in fibrinogen (a blood clotting factor) levels, and hospital admissions and mortality related to cardiovascular diseases. These emissions also contribute to other serious environmental problems, including visibility impairment and ecosystem damage. In addition, many of the hydrocarbon (HC) pollutants emitted by these engines are air toxics.

This rule addresses these air-pollution concerns by adopting national emission standards for several types of nonroad engines and vehicles that are currently unregulated. These include large spark-ignition engines used in industrial and commercial applications such as those used in forklifts and airport equipment; recreational spark-ignition vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines.[1] These new standards are a continuation of the process of establishing emission standards for nonroad engines and vehicles, under Clean Air Act section 213(a).

We conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991, as directed by the Clean Air Act, section 213(a) (42 U.S.C. 7547(a)). Based on the results of that study, we determined that emissions of oxides of nitrogen (NO_X), volatile organic compounds, and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires us to establish (and from time to time revise) emission standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have determined that the engines covered by this final rule cause or contribute to such air pollution (see the final finding for recreational vehicles and nonroad spark-ignition engines over 19 kW published on December 7, 2000 (65 FR 76790), the final rule for marine diesel engines published on December 29, 1999 (64 FR 73301)[2], Section II of the preamble to the proposed rule (66 FR 51098, October 5, 2001), this preamble, and the Final Regulatory Support Document).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) of the Act authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that cause or contribute to such air pollution. Pursuant to section 213(a)(4) of the Act, we are finalizing a finding that emissions from new nonroad engines, including construction equipment, farm tractors, boats, locomotives, marine engines, nonroad spark-ignition engines over 19 kW, recreational vehicles (including off-highway motorcycles, all-terrain-vehicles, and snowmobiles), significantly contribute to regional haze and visibility impairment in federal Class I areas and where people live, work and recreate. These engines, particularly recreational vehicles such as snowmobiles, are significant emitters of pollutants that are known to impair visibility in federal Class I areas (see Section I.E of this preamble and the Final Regulatory Support Document). We have also determined that engines covered by this final rule, particularly recreational vehicles including snowmobiles, contribute to such pollution. Thus, we are finalizing HC standards for snowmobiles to reduce PM-related visibility impairment.

[1] Diesel-cycle engines, referred to simply as ''diesel engines'' in this document, may also be referred to as compression-ignition (or CI) engines. These engines typically operate on diesel fuel, but other fuels may also be used. Otto-cycle engines (referred to here as spark-ignition or SI engines) typically operate on gasoline, liquefied petroleum gas, or natural gas.

[2] This rule also found that PM emissions from marine diesel engines contribute to PM nonattainment.

B. How Is This Document Organized?

This final rule covers engines and vehicles that vary in design and use, and many readers may be interested in only one or two of the applications. We have grouped engines by common application (for example, recreational land-based engines, marine diesel recreational engines, large spark-ignition engines used in commercial applications). This document is organized in a way that allows each reader to focus on the applications of particular interest.

Section II describes general provisions that are relevant to all of the nonroad engines covered by this rulemaking. Section III through VI present information specific to each of the affected nonroad applications, including standards, effective dates, testing information, and other specific requirements.

Sections VII and VIII describe a wide range of compliance and testing provisions that apply generally to engines and vehicles from all the nonroad engine and vehicle categories included in this rulemaking. Several of these provisions apply not only to manufacturers, but also to equipment manufacturers installing certified engines, remanufacturing facilities, operators, and others. Therefore, all affected parties should read the information contained in these sections.

Section IX summarizes the projected impacts and a discussion of the benefits of this rule. Finally, Sections X and XI contain information about public participation and various administrative requirements.

The remainder of this section summarizes the new requirements and the air quality need for the rulemaking.

C. What Categories of Vehicles and Engines Are Covered in This Final Rule?

This final rule establishes regulatory programs for new nonroad vehicles and engines not yet subject to EPA emission standards, including the following engines:

- Land-based spark-ignition recreational engines, including those used in snowmobiles, off-highway motorcycles, and all-terrain vehicles. For the purpose of this rule, we are calling this group of engines ''recreational vehicles,'' even though all-terrain vehicles can be used for commercial purposes.
- Land-based spark-ignition engines rated over 19 kW, including engines used in forklifts, generators, airport baggage tow trucks, and various farm, construction, and industrial equipment. This category also includes auxiliary marine engines, but does not include propulsion marine engines or engines used in recreational vehicles. For purposes of this rule, we refer to this category as ''Large SI engines.''
- Recreational marine diesel engines.

This final rule covers new engines that are used in the United States, whether they are made domestically or imported.[3] A more detailed discussion of the meaning of the terms ''new'' and ''imported'' that help define the scope of application of this rule is in Section II of this preamble.

D. What Requirements Are We Adopting?

The fundamental requirement for nonroad engines and vehicles is meeting EPA's emission standards. Section 213(a)(3) of the Act requires that standards to control emissions related to ozone or CO achieve the greatest degree of emission reduction achievable through the application of technology that will be available, giving appropriate consideration to cost, noise, energy, and safety factors. Section 213 (a)(4) of the Act requires that standards for emissions related to other air pollution problems be appropriate and take into account costs, noise, safety, and energy impacts of applying technology that will be available. Other requirements such as applying for certification, labeling engines, and meeting warranty requirements define a process for implementing the program in an effective way.

With regard to Large SI engines, we are adopting a two-phase program. The first phase of the standards go into effect in 2004 and are the same as those adopted in October 1998 by the California Air Resources Board for 2004. These standards will reduce combined HC and NO_X emissions by nearly 75 percent, based on emission measurements during steady-state operation. In 2007, we supplement these standards by setting limits that will require optimizing the same technologies and will base emission measurements on a transient test cycle. New requirements for evaporative emissions and engine diagnostics also start in 2007.

For recreational vehicles, we are adopting separate emission standards for snowmobiles, off-highway motorcycles, and all-terrain vehicles. For snowmobiles, we are adopting a first phase of standards for HC and CO emissions based on a mixture of technologies ranging from clean carburetion and engine modifications to direct fuel injection two-stroke technology and some conversion to four-stroke engines, and second and third phases of emission standards for snowmobiles that will involve significant use of direct fuel injection two-stroke technology and conversion to four-stroke engines. For off highway motorcycles and all-terrain vehicles, we are adopting standards based mainly on moving these engines from two-stroke to four-stroke technology with the use of some secondary air injection. We are also adopting requirements to address permeation emissions from all three types of recreational vehicles.

The emission standards for recreational marine diesel engines are comparable to those already established for commercial marine diesel engines. Manufacturers generally have additional time to meet emission standards for the recreational models and several specific rulemaking provisions are tailored to the unique characteristics of these engines.

We are also adopting more stringent voluntary Blue Sky Series emission standards for recreational marine diesel engines and Large SI engines. Blue Sky Series emission standards are more stringent than the mandatory emission standards and are intended to encourage the introduction and more widespread use of low-emission technologies. Manufacturers may be motivated to exceed emission requirements either to gain early experience with certain technologies or as a response to market demand or local government programs. For recreational vehicles, we are not adopting voluntary standards but rather providing consumers with consumer labeling, which will provide information and opportunity to buy lower-emissions models.

We have also conducted extensive analysis on the costs and benefits of this rulemaking effort, with specific details found in Section IX below and in the Final Regulatory Support Document. In summary, we estimate that annually, the cost to manufacturers is approximately $210 million, the social gain is approximately $550 million, and the quantified benefits are approximately $8 billion. Social gain is defined as the economic cost of the rule minus the estimated fuels savings. Quantified benefits reflect the health benefits primarily associated with particulate matter controls.

E. Why Is EPA Taking This Action?

There are important public health and welfare reasons supporting the new

[3] For this final rule, we consider the United States to include the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

emission standards. As described below and in the Final Regulatory Support Document, these engines contribute to air pollution that causes public health and welfare problems.

Nationwide, these engines and vehicles are a significant source of mobile source air pollution. As described below, of all mobile source emissions in 2000 they accounted for about 9 percent of HC emissions, 4 percent of CO emissions, 3 percent of NO_X emissions, and 2 percent of direct PM emissions. The emissions from Large SI engines contributed 2 to 3 percent of the HC, NO_X, and CO emissions from mobile sources in 2000. Recreational vehicles by themselves account for about 6 percent of national mobile source HC emissions and about 2 percent of national mobile source CO emissions. By reducing these emissions, the standards will aid states facing ozone and CO air quality problems, which can cause a range of adverse health effects, especially in terms of respiratory disease and related illnesses. The engine categories subject to this rule contribute to regional haze and visibility impairment in Class I areas and near where people live, work and recreate. Within national parks, emissions from snowmobiles in particular contribute to ambient concentrations of fine PM, a leading cause of visibility impairment. States are required to develop plans to address visibility impairment in national parks, and the reductions required in this rule would assist states in those efforts.

The standards will also help reduce acute exposure to CO and air toxics for forklift operators, equipment users or riders, national and state park attendants, and other people who may be at particular risk because they operate or work or are otherwise in close proximity to this equipment due to their occupation or as riders. Emissions from these vehicles and equipment can be very high on a per-engine basis. In addition, the equipment using these engines (especially forklifts) is often operated in enclosed areas. Similarly, exposure to CO and air toxics can be intensified for snowmobile riders who follow a group of other riders along a trail, since those riders are exposed to the emissions of all the other snowmobiles riding ahead.

When the emission standards are fully implemented in 2030, we expect a 75-percent reduction in HC emissions, 82-percent reduction in NO_X emissions, and 61-percent reduction in CO emissions, and a 60-percent reduction in direct PM emissions from these engines, equipment, and vehicles (see Section IX below). These emission reductions will reduce ambient concentrations of CO, ozone, and PM fine; fine particles are a public health concern and contributes to visibility impairment. The standards will also reduce exposure for people who operate or who work with or are otherwise in close proximity to these engines and vehicles.

We believe technology can be applied to these engines that will reduce emissions of these harmful pollutants. Manufacturers can reduce two-stroke engine emissions by improving fuel management and calibration. This can be achieved by making improvements to carbureted fuel systems and/or converting to electronic and direct fuel injection. In addition, many of the existing two-stroke engines in these categories can be converted to four-stroke technology. Finally, there are modifications that can be made to four-stroke engines, often short of requiring catalysts, that can reduce emissions even further.

1. Health and Welfare Effects

Exposure to CO, ground-level ozone, and PM can cause serious respiratory problems, including premature mortality and respiratory problems. Fine PM has also been associated with cardiovascular problems, such as heart rate variability and fibrinogen (a blood clotting factor) levels, and hospital admissions and mortality related to cardiovascular diseases. These emissions also contribute to other serious environmental problems, including visibility impairment and ecosystem damage. In addition, some of the HC pollutants emitted by these engines are air toxics. (The health and welfare effects are described in more detail in the Final Regulatory Support Document.)

CO enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

Exposures to ozone has been linked to increased hospital admissions and emergency room visits for respiratory problems.[4] Repeated exposure to ozone can increase susceptibility to respiratory infection and lung inflammation. It can aggravate preexisting respiratory diseases, such as asthma. Prolonged (6 to 8 hours), repeated exposure to ozone can cause inflammation of the lung, impairment of lung defense mechanisms, and possibly irreversible changes in lung structure, which over time could lead to premature aging of the lungs and/or chronic respiratory illnesses such as emphysema and chronic bronchitis. Children, the elderly, asthmatics and outdoor workers are most at risk from ozone exposure. Evidence also exists of a possible relationship between daily increases in ozone levels and increases in daily mortality levels. In addition to human health effects, ozone adversely affects crop yield, vegetation and forest growth, and the durability of materials.

PM, like ozone, has been linked to a range of serious respiratory health problems.[5] The key health effects associated with ambient 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, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human non-cancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States, including many of our national parks and in places where people live and work. Visibility effects are manifest in two principal ways: (1) as local impairment (for example,

[4] U.S. EPA Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–007. June 1996. A copy of this document can be found in Docket A–99–06, Document II–A–22.

[5] U.S. EPA Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013. 1996. Docket Number A–99–06, Documents Nos. II–A–18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm.*

localized hazes and plumes) and (2) as regional haze. The emissions from engines covered by this rule can contribute to both types of visibility impairment.

The engines covered by this rule also emit air toxics that are known or suspected human or animal carcinogens, or have serious non-cancer health effects. These include benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein.

2. What Is the Inventory Contribution From the Nonroad Engines and Vehicles That Would Be Subject to This Rule?

The contribution of emissions from the nonroad engines and vehicles that will be subject to this final rule to the national inventories of pollutants is considerable. To estimate nonroad engine and vehicle emission contributions, we used the latest version of our NONROAD emissions model, updated with information received during the public comment period. This model computes nationwide, state, and county emission levels for a wide variety of nonroad engines, and uses information on emission rates, operating data, and population to determine annual emission levels of various pollutants. A more detailed description of the model and our estimation methodology can be found in the Chapter 6 of the Final Regulatory Support Document.

Baseline emission inventory estimates for the year 2000 for the categories of engines and vehicles covered by this rule are summarized in Table I.E–1. This table shows the relative contributions of the different mobile source categories to the overall national mobile source inventory. Of the total emissions from mobile sources, the categories of engines and vehicles covered by this rule contribute about 9 percent, 3 percent, 4 percent, and 2 percent of HC, NO_X, CO, and PM emissions, respectively, in the year 2000. The results for Large SI engines indicate they contribute approximately 2 to 3 percent to HC, NO_X, and CO emissions from mobile sources. The results for land-based recreational engines reflect the impact of the significantly different emissions characteristics of two-stroke engines. These engines are estimated to contribute about 6 percent of HC emissions and 2 percent of CO from mobile sources. Recreational marine diesel engines contribute less than 1 percent to NO_X mobile source inventories. When only nonroad emissions are considered, the engines and vehicles that will be subject to the standards account for a larger share.

Our draft emission projections for 2020 and 2030 for the nonroad engines and vehicles subject to this rule show that emissions from these categories are expected to increase over time if left uncontrolled. The projections for 2020 and 2030 are summarized in Tables I.E–2 and I.E–3, respectively. The projections for 2020 and 2030 indicate that the categories of engines and vehicles covered by this rule are expected to contribute approximately 25 percent, 10 percent, 5 percent, and 5 percent of mobile source HC, NO_X, CO, and PM emissions, respectively, if left uncontrolled. Engine population growth and the effects of other regulatory control programs are factored into these projections. The relative importance of uncontrolled nonroad engines in 2020 and 2030 is higher than the projections for 2000 because there are already emission-control programs in place for the other categories of mobile sources which are expected to reduce their emission levels. The effectiveness of all control programs is offset by the anticipated growth in engine populations.

Regarding PM specifically, this information and information in Section I.3(ii) below show that the engines being regulated in this rule, snowmobiles and other recreational vehicles in particular, contribute to PM concentrations that may reasonably be anticipated to endanger public health and welfare both because of the health effects associated with PM and because of the effects on visibility discussed below.

TABLE I.E–1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2000

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source
Total for engines subject to this final rule*	351	2.6	645	8.8	2,860	3.8	14.6	2.1
Highway Motorcycles	8	0.1	84	1.2	331	0.4	0.4	0.1
Nonroad Industrial SI >19 kW*	308	2.3	226	3.1	1,734	2.3	1.6	0.2
Recreational SI*	5	0.0	418	5.7	1,120	1.5	12.0	1.7
Recreational Marine Diesel*	38	0.3	1	0.0	6	0.0	1	0.1
Marine SI Evap	0	0.0	100	1.4	0	0.0	0	0.0
Marine SI Exhaust	32	0.2	708	9.7	2,144	2.8	38	5.4
Nonroad SI <19 kW	106	0.8	1,460	20.0	18,359	24.3	50	7.1
Nonroad diesel	2,625	19.5	316	4.3	1,217	1.6	253	35.9
Commercial Marine Diesel	963	7.2	30	0.4	127	0.2	41	5.8
Locomotive	1,192	8.9	47	0.6	119	0.2	30	4.3
Total Nonroad	5,269	39	3,305	45	24,826	33	427	60
Total Highway	7,981	59	3,811	52	49,813	66	240	34
Aircraft	178	1	183	3	1,017	1	39	6
Total Mobile Sources	13,428	100	7,300	100	75,656	100	706	100
Total Man-Made Sources	24,532	.....	18,246	.....	97,735	.....	3,102	.....
Mobile Source percent of Total Man-Made Sources	55	.....	40	.....	77	.....	23	

TABLE I.E–2.—MODELED ANNUAL BASELINE EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2020

[thousand short tons]

Category	NO_X		HC		CO		PM	
	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source
Total for engines subject to this final rule*	547	8.8	1,305	24.1	4,866	5.6	34.1	5.2
Highway Motorcycles	14	0.2	142	2.6	572	0.7	0.8	0.1
Nonroad Industrial SI > 19 kW*	472	7.6	318	5.9	2,336	2.7	2.3	0.4
Recreational SI*	14	0.2	985	18.2	2,521	2.9	30.2	4.6
Recreational Marine Diesel*	61	1.0	2	0.0	9	0.0	1.6	0.2
Marine SI Evap	0	0.0	114	2.1	0	0.0	0	0.0
Marine SI Exhaust	58	0.9	284	5.2	1,985	2.3	28	4.3
Nonroad SI < 19 Kw	106	1.7	986	18.2	27,352	31.7	77	11.8
Nonroad Diesel	1,791	28.8	142	2.6	1,462	1.7	261	40.0
Commercial Marine Diesel	819	13.2	35	0.6	160	0.2	46	7.0
Locomotive	611	9.8	35	0.6	119	0.1	21	3.2
Total Nonroad	3,932	63	2,901	54	35,944	42	467	71
Total Highway	2,050	33	2,276	42	48,906	56	145	22
Aircraft	232	4	238	4	1,387	2	43	7
Total Mobile Sources	6,214	100	5,415	100	86,237	100	655	100
Total Man-Made Sources	16,190	.....	15,475	.....	109,905	.....	3,039	.....
Mobile Source percent of Total Man-Made Sources	38	.....	35	.....	79	.....	22	.....

TABLE I.E–3.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2030

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source
Total for engines subject to this final rule*	640	10.0	1,411	23.5	5,363	5.4	36.5	4.8
Highway Motorcycles	17	0.3	172	2.9	693	0.7	1.0	0.1
Nonroad Industrial SI > 19 kW*	553	8.6	371	6.2	2,703	2.7	2.7	0.4
Recreational SI*	15	0.2	1,038	17.3	2,649	2.7	31.9	4.2
Recreational Marine Diesel*	72	1.1	2	0.0	11	0.0	1.9	0.3
Marine SI Evap	0	0.0	122	2.0	0	0.0	0	0.0
Marine SI Exhaust	64	1.0	269	4.5	2,083	2.1	29	3.8
Nonroad SI < 19 kW	126	2.0	1,200	20.0	32,310	32.4	93	12.3
Nonroad Diesel	1,994	31.0	158	2.6	1,727	1.7	306	40.4
Commercial Marine Diesel	1,166	18.1	52	0.9	198	0.2	74	9.8
Locomotive	531	8.3	30	0.5	119	0.1	18	2.4
Total Nonroad	4,521	70	3,242	54	41,800	42	557	74
Total Highway	1,648	26	2,496	42	56,303	56	158	21
Aircraft	262	4	262	4	1,502	2	43	6
Total Mobile Sources	6,431	100	6,000	100	99,605	100	758	100
Total Man-Made Sources	16,639	—	17,020	—	123,983	—	3,319	—
Mobile Source percent of Total Man-Made Sources	39	—	35	—	80	—	23	—

3. Why are Controls to Protect against CO Nonattainment and to Protect Visibility Needed From the Nonroad Engines and Vehicles That Would Be Subject to This Rule?

i. Why are We Controlling CO Emissions from Nonroad Engines and Vehicles that Would be Subject to this Rule?

Engines subject to this rule contributed about 3.8 percent of CO from mobile sources in 2000. Over 22.4 million people currently live in the 13 nonattainment areas for the CO National Ambient Air Quality Standard (NAAQS). Industry association comments questioned the need for CO control and snowmobile contribution, in particular. First, the statute envisions that categories should be considered in determining contribution because otherwise, it would be possible to continue to arbitrarily divide subcategories until the contribution from any subcategory becomes minimal while the cumulative effect of the air pollution remains. EPA previously determined that the category of Large SI engines and recreational vehicles cause or contribute to ambient CO and ozone in more than one nonattainment area (65 FR 76790, December 7, 2000). EPA also examined recreational vehicles separately and found that recreational vehicles subject to this rule contribute to CO nonattainment in areas such as Los Angeles, Phoenix, Anchorage, and Las Vegas (see RSD chapter 2). Thus, if considered as a category, recreational vehicles contribute to CO nonattainment.[6] Moreover, when we examined snowmobiles separately, they met the contribution criteria.

The International Snowmobile Manufacturers Association (ISMA) stated in its public comments that snowmobiles in particular are not operated in many of the CO nonattainment areas because of lack of snow (although they may be stored in those areas). The commenters also contended that northern areas have experienced improved CO air quality. Many areas are making progress in improving their air quality. However, an area cannot be redesignated to attainment until it can show EPA that it has had air quality levels within the level required for attainment and that it has a plan in place to maintain such levels. Until areas have been redesignated, they remain nonattainment areas.[7] Snowmobiles contribute to CO nonattainment in more than one of these areas.

Snowmobiles have relatively high per-engine CO emissions, and they can be a significant source of ambient CO levels in CO nonattainment areas. Despite the fact that snowmobiles are largely banned in CO nonattainment areas by the state of Alaska, the state estimated (and a National Research Council study confirmed) that snowmobiles contributed 0.3 tons/day in 2001 to Fairbanks' CO nonattainment area or 1.2 percent of a total inventory of 23.3 tons per day in 2001.[8,9] While Fairbanks has made significant progress in reducing ambient CO concentrations, existing climate conditions make achieving and maintaining attainment challenging. Anchorage, AK, reports a similar contribution of snowmobiles to their emissions inventories (0.34 tons per day in 2000). Furthermore, a recent National Academy of Sciences report concludes that ''Fairbanks will be susceptible to violating the CO health standards for many years because of its severe meteorological conditions. That point is underscored by a December 2001 exceedance of the standard in Anchorage which had no violations over the last 3 years.''[10]

ISMA commented that it agreed with EPA that there is a snowmobile trail within the Spokane, WA, CO nonattainment area, although they noted that snowmobile operation alone would not result in CO nonattainment. However, emissions from regulated categories need only contribute to, not themselves cause, nonattainment. Concentrations of NAAQS-related pollutants are by definition a result of multiple sources of pollution.

Several states that contain CO nonattainment areas also have large populations of registered snowmobiles and nearby snowmobile trails in adjoining counties, which are an indication of where they are operated (see Table I.E–4). EPA requested comment on the volume and nature of snowmobile use in these and other CO nonattainment areas. ISMA commented on the proximity of trails to northern CO nonattainment areas, assuming that snowmobiles are operated only on trails. A search of the available literature indicates that snowmobiles are ridden in areas other than trails. For example, a 1998 report by the Michigan Department of Natural Resources indicates that from 1993 to 1997, of the 146 snowmobile fatalities studied, 46 percent occurred on a state or county roadway (another 2 percent on roadway shoulders) and 27 percent occurred on private lands. Furthermore, accident reports in CO nonattainment area Fairbanks, AK, demonstrate that snowmobiles driven on streets have collided with motor vehicles. On certain days there may be concentrations of snowmobiles operated in nonattainment areas due to public events such as snowmachine races (such as the Iron Dog Gold Rush Classic, which finishes in Fairbanks, AK), during which snowmobiles will be present and operated.

TABLE I.E–4.—SNOWMOBILE USE IN SELECTED CO NONATTAINMENT AREAS

City and state	CO nonattainment classification	2001 State snowmobile population[a]
Anchorage, AK		
Fairbanks, AK	Serious	[b] 35576
Spokane, WA	Serious	31532
Fort Collins, CO	Moderate	32500
Medford, OR	Moderate	16809

[6] Likewise, Large SI equipment and recreational marine diesel engines also contribute to CO in nonattainment areas.

[7] There are important reasons to focus on redesignation status, as compared to just current air quality. Areas with a few years of attainment data can and often do have exceedances following such years of attainment because of several factors including different climatic events during the later years, increases in inventories, etc. Control of emissions from nonroad engines can help to avoid potential future air quality problems.

[8] Draft Anchorage Carbon Monoxide Emission Inventory and Year 2000 Attainment Projections, Air Quality Program, May 2001, Docket Number A–2000–01, Document II–A–40; Draft Fairbanks 1995–2001 Carbon Monoxide Emissions Inventory, June 1, 2001, Docket Number A–2000–01, Document II–A–39.

[9] National Research Council. The Ongoing Challenge of Managing Carbon Monoxide Pollution in Fairbanks, AK. May 2002. Docket A–2000–01, Document No. IV–A–115.

[10] National Research Council. The Ongoing Challenge of Managing Carbon Monoxide Pollution in Fairbanks, AK. May 2002. Docket A–2000–01, Document IV–A–115.

TABLE I.E–4.—SNOWMOBILE USE IN SELECTED CO NONATTAINMENT AREAS—Continued

City and state	CO nonattainment classification	2001 State snowmobile population[a]
Missoula, MT	Moderate	23440

[a] Source: ISMA U.S. Snowmobile Registration History, May 15, 2001; various studies prepared for state snowmobile associations included in Docket A–2000–01.
[b] Point of sale registration was not mandatory in Alaska prior to 1998, so the statewide registered population is likely to underestimate the total population.

Exceedances of the 8-hour CO standard were recorded in three of seven CO nonattainment areas located in the northern portion of the country over the five year period from 1994 to 1999: Fairbanks, AK; Medford, OR; and Spokane, WA.[11] Given the variability in CO ambient concentrations due to weather patterns such as inversions, the absence of recent exceedances for some of these nonattainment areas should not be viewed as eliminating the need for further reductions to consistently attain and maintain the standard. A review of CO monitor data in Fairbanks from 1986 to 1995 shows that while median concentrations have declined steadily, unusual combinations of weather and emissions have resulted in elevated ambient CO concentrations well above the 8-hour standard of 9 ppm. Specifically, a Fairbanks monitor recorded average 8-hour ambient concentrations at 16 ppm in 1988, around 9 ppm from 1990 to 1992, and then a steady increase in CO ambient concentrations at 12, 14 and 16 ppm during some extreme cases in 1993, 1994 and 1995, respectively.[12]

In addition, there are 6 areas that have not been classified as nonattainment where air quality monitoring indicated a need for CO control. For example, CO monitors in northern locations such as Des Moines, IA, and Weirton, WV/Steubenville, OH, registered levels above the level of the CO standards in 1998.

ii. Why are Controls Needed From the Nonroad Engines and Vehicles That Would Be Subject to this Rule to Protect Visibility?

(1) Visibility is Impaired by Fine PM and Precursor Emissions From Nonroad Engines and Vehicles That Would Be Subject to This Rule.

Visibility can be defined as the degree to which the atmosphere is transparent to visible light.[13] Visibility degradation is an easily noticeable effect of fine PM present in the atmosphere, and fine PM is the major cause of reduced visibility in parts of the United States, including many of our national parks and in places across the country where people live, work, and recreate. Fine particles with significant light-extinction efficiencies include organic matter, sulfates, nitrates, elemental carbon (soot), and soil.

Visibility is an important effect because it has direct significance to people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, both in where they live and work, and in places where they enjoy recreational opportunities. Visibility is highly valued in significant natural areas such as national parks and wilderness areas, because of the special emphasis given to protecting these lands now and for future generations.

To quantify changes in visibility, we compute a light-extinction coefficient, which shows the total fraction of light that is decreased per unit distance. Visibility can be described in terms of PM concentrations, visual range, light extinction or deciview.[14] In addition to limiting the distance that one can see, the scattering and absorption of light caused by air pollution can also degrade the color, clarity, and contrast of scenes.

Visibility effects are manifest in two main ways: as local impairment (for example, localized hazes and plumes) and as regional haze. In addition, visibility impairment has a time dimension in that it might relate to a short-term excursion or to longer periods (for example, worst 20 percent of days or annual average levels).

Local-scale visibility degradation is commonly seen as a plume resulting from the emissions of a specific source or small group of sources, or it is in the form of a localized haze such as an urban ''brown cloud.'' Plumes are comprised of smoke, dust, or colored gas that obscure the sky or horizon relatively near sources. Impairment caused by a specific source or small group of sources has been generally termed as ''reasonably attributable.''

The second type of impairment, regional haze, results from pollutant emissions from a multitude of sources located across a broad geographic region. It impairs visibility in every direction over a large area, in some cases over multi-state regions. Regional haze masks objects on the horizon and reduces the contrast of nearby objects. The formation, extent, and intensity of regional haze is a function of meteorological and chemical processes, which sometimes cause fine particulate loadings to remain suspended in the atmosphere for several days and to be transported hundreds of kilometers from their sources.

On an annual average basis, the concentrations of non-anthropogenic fine PM are generally small when compared with concentrations of fine particles from anthropogenic sources. Anthropogenic contributions account for about one-third of the average extinction coefficient in the rural West and more than 80 percent in the rural East. Because of significant differences related to visibility conditions in the eastern and western U.S., we present information about visibility by region. Furthermore, it is important to note that even in those areas with relatively low

[11] Technical Memorandum to Docket A–2000–01 from Drew Kodjak, Attorney-Advisor, Office of Transportation and Air Quality, ''Air Quality Information for Selected CO Nonattainment Areas,'' July 27, 2001, Docket Number A–2000–01, Document Number II–B–18.

[12] Air Quality Criteria for Carbon Monoxide, U.S. EPA, EPA 600/P–99/001F, June 2000, at 3–38, Figure 3–32 (Federal Bldg, AIRS Site 020900002). Air Docket A–2000–01, Document Number II–A–29. This document is also available at *http://www.epa.gov/ncea/coabstract.htm.*

[13] National Research Council, 1993. Protecting Visibility in National Parks and Wilderness Areas. National Academy of Sciences Committee on Haze in National Parks and Wilderness Areas. National Academy Press, Washington, DC. This document is available on the internet at *http://www.nap.edu/books/0309048443/html/.* See also U.S. EPA Air Quality Criteria Document for Particulate Matter (1996) and Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information. These documents can be found in Docket A–99–06, Documents No. II–A–23 and IV–A–130–32.

[14] Visual range can be defined as the maximum distance at which one can identify a black object against the horizon sky. It is typically described in miles or kilometers. Light extinction is the sum of light scattering and absorption by particles and gases in the atmosphere. It is typically expressed in terms of inverse megameters (Mm-1), with larger values representing worse visibility. The deciview metric describes perceived visual changes in a linear fashion over its entire range, analogous to the decibel scale for sound. A deciview of 0 represents pristine conditions. Under many scenic conditions, a change of 1 deciview is considered perceptible by the average person.

concentrations of anthropogenic fine particles, such as the Colorado plateau, small increases in anthropogenic fine particle concentrations can lead to significant decreases in visual range. This is one of the reasons Class I areas have been given special consideration under the Clean Air Act.

Nonroad engines that are subject to this final rule contribute to ambient fine PM levels in two ways. First, they contribute through direct emissions of fine PM. As shown in Table I.E–1, these engines emitted 14,600 tons of PM (over 2 percent of all mobile source PM) in 2000. Second, these engines contribute to indirect formation of PM through their emissions of gaseous precursors which are then transformed in the atmosphere into particles. For example, these engines emitted over 8 percent of the HC tons from mobile sources. Furthermore, recreational vehicles, such as snowmobiles and all-terrain vehicles emit high levels of organic carbon (as HC) on a per-engine basis. Some organic emissions are transformed into particles in the atmosphere and other volatile organics can condense if emitted in cold temperatures, as is the case for emissions from snowmobiles, for example. Organic carbon accounts for between 27 and 36 percent of ambient fine particle mass depending on the area of the country.

(A) Visibility Impairment Where People Live, Work and Recreate

The secondary PM NAAQS is designed to protect against adverse welfare effects such as visibility impairment. In 1997, the secondary PM NAAQS was set as equal to the primary (health-based) PM NAAQS (62 **Federal Register** No. 138, July 18, 1997). EPA concluded that PM can and does produce adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. In 1997, EPA demonstrated that visibility impairment is an important effect on public welfare and that visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote Federal Class I areas.

In many cities having annual mean $PM_{2.5}$ concentrations exceeding 17 μg/m^3, improvements in annual average visibility resulting from the attainment of the annual $PM_{2.5}$ standard are expected to be perceptible to the general population (*e.g.*, to exceed 1 deciview). Based on annual mean monitored $PM_{2.5}$ data, many cities in the Northeast, Midwest, and Southeast as well as Los Angeles would be expected to experience perceptible improvements in visibility if the $PM_{2.5}$ annual standard were attained. For example, in Washington, DC, where the IMPROVE monitoring network shows annual mean $PM_{2.5}$ concentrations at about 19 μg/m^3 during the period of 1992 to 1995, approximate annual average visibility would be expected to improve from 21 km (29 deciview) to 27 km (27 deciview), a change of 2 deciviews. The $PM_{2.5}$ annual average in Washington, DC, was 18.9 μg/m^3 in 2000.

The updated monitored data and air quality modeling presented in the RSD confirm that the visibility situation identified during the NAAQS review in 1997 is still likely to exist. Thus, the determination in the NAAQS rulemaking about broad visibility impairment and related benefits from NAAQS compliance are still relevant. Levels above the fine PM NAAQS cause adverse welfare impacts, such as visibility impairment (both regional and localized impairment).

Furthermore, in setting the PM NAAQS, EPA acknowledged that levels of fine particles below the NAAQS may also contribute to unacceptable visibility impairment and regional haze problems in some areas, and Clean Air Act Section 169 provides additional authorities to remedy existing impairment and prevent future impairment in the 156 national parks, forests and wilderness areas labeled as Class I areas.

In making determinations about the level of protection afforded by the secondary PM NAAQS, EPA considered how the Section 169 regional haze program and the secondary NAAQS would function together. Regional strategies are expected to improve visibility in many urban and non-Class I areas as well. The following recommendation for the National Research Council, Protecting Visibility in National Parks and Wilderness Areas (1993), addresses this point:

Efforts to improve visibility in Class I areas also would benefit visibility outside these areas. Because most visibility impairment is regional in scale, the same haze that degrades visibility within or looking out from a national park also degrade visibility outside it.

The 1999–2000 $PM_{2.5}$ monitored values, which cover about a third of the nation's counties, indicate that at least 82 million people live in areas where long-term ambient fine particulate matter levels are at or above 15 μg/m^3.[15] Thus, these populations (plus those who travel to those areas) could be experiencing visibility impairment that is unacceptable, and emissions of PM and its precursors from engines in these categories contribute to this unacceptable impairment.[16]

Because the chemical composition of the PM affects visibility impairment, we used EPA's Regulatory Model System for Aerosols and Deposition (REMSAD)[17] model to project visibility conditions in 2030 accounting for the chemical composition of the particles and to estimate visibility impairment directly as changes in deciview. Our projections included anticipated emissions from the engines subject to this rule, and although our emission predictions reflected our best estimates of emissions projections at the time the modeling was conducted, we now have new estimates, as discussed in the RSD Chapter 1. Based on public comment for this rule and new information, we have revised our emissions estimates in some categories downwards and other categories upwards; however, on net, we believe the modeling underestimates the PM air quality levels that would have been predicted if new inventories were used.

The most reliable information about the future visibility levels would be in areas for which monitoring data are available to evaluate model performance for a base year (*e.g.*, 1996). Accordingly, we predicted that in 2030, 49 percent of the population will be living in areas where fine PM levels are above 15 μg/m^3 and monitors are available.[18] This can be compared with the 1996 level of 37 percent of the population living in areas where fine PM levels are above 15 μg/m^3 and monitors are available. Thus, a substantial percent of the population would experience unacceptable visibility impairment in areas where they live, work and recreate.

As shown in Table I.E–5, in 2030, we expect visibility in the East to be about

[15] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, ''Summary of 1999 Ambient Concentrations of Fine Particulate Matter,'' November 15, 2000. Air Docket A–2000–01, Document No. II–B–12.

[16] These populations would obviously also be exposed to PM concentrations associated with the adverse health impacts related to $PM_{2.5}$.

[17] Additional information about the Regulatory Model System for Aerosols and Deposition (REMSAD) and our modeling protocols can be found in our Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420–R–00–026, December 2000. Docket No. A–2000–01, Document No. A–II–13. This document is also available at *http://www.epa.gov/otaq/disel.htm#documents.*

[18] Technical Memorandum, EPA Air Docket A–99–06, Eric O. Ginsburg, Senior Program Advisor, Emissions Monitoring and Analysis Division, OAQPS, Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years, December 6, 2000, Table P–2. Docket Number 2000–01, Document Number II–B–14.

19 deciviews (or visual range of 60 kilometers) on average, with poorer visibility in urban areas, compared to the visibility conditions without man-made pollution of 9.5 deciviews (or visual range of 150 kilometers). Likewise, we expect visibility in the West to be about 9.5 deciviews (or visual range of 150 kilometers) in 2030, compared to the visibility conditions without man-made pollution of 5.3 deciviews (or visual range of 230 kilometers).

Nonroad engines contribute significantly to these effects. As shown in Tables I.E–1 through I.E–3, nonroad engines emissions contribute a large portion of the total PM emissions from mobile sources and anthropogenic sources, in general. These emissions occur in and around areas with PM levels above the annual $PM_{2.5}$ NAAQS. The engines subject to the final rule will contribute to these effects. They are estimated to emit 36,500 tons of direct PM in 2030, which is 1.1 percent of the total anthropogenic PM emissions in 2030. Similarly, for PM precursors, the engines subject to this rule will emit 640,000 tons of NO_X and 1,411,000 tons HC in 2030, which are 3.8 and 8.3 percent of the total anthropogenic NO_X and HC emissions, respectively, in 2030. Recreational vehicles in particular contribute to these levels. In Table I.E–1 through I.E–3, we show that recreational vehicles emitted about 1.7 percent of mobile source PM emissions in 2000. Similarly, recreational vehicles are modeled to emit over 4 percent of mobile source PM in 2020 and 2030. Thus, the emissions from these sources contribute to the visibility impairment modeled for 2030 summarized in the table.

Furthermore, for 20 counties across nine states, snowmobile trails are found within or near counties that registered ambient $PM_{2.5}$ concentrations at or above 15 $\mu g/m^3$, the level of the $PM_{2.5}$ NAAQS.[19] Fine particles may remain suspended for days or weeks and travel hundreds to thousands of kilometers, and thus fine particles emitted or created in one county may contribute to ambient concentrations in a neighboring county.[20, 21]

TABLE I.E–5—SUMMARY OF 2030 NATIONAL VISIBILITY CONDITIONS BASED ON REMSAD MODELING

[Deciviews]

Regions [a]	Predicted 2030 visibility [b] (annual average)	Natural background visibility
Eastern		
U.S.	18.98	9.5
Urban	20.48	
Rural ..	18.38	
Western		
U.S.	9.54	5.3
Urban	10.21	
Rural ..	9.39	

[a] Eastern and Western Regions are separated by 100 degrees north longitude. Background visibility conditions differ by region.

[b] The results incorporate earlier emissions estimates from the engines subject to this rule, as discussed in the Final Regulatory Support Document. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, we believe that the net results would underestimate future PM emissions.

(B) Visibility Impairment in Class I Areas

The Clean Air Act establishes special goals for improving visibility in many national parks, wilderness areas, and international parks. In the 1977 amendments to the Clean Air Act, Congress set as a national goal for visibility the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution'' (CAA section 169A(a)(1)). The Amendments called for EPA to issue regulations requiring States to develop implementation plans that assure ''reasonable progress'' toward meeting the national goal (CAA Section 169A(a)(4)). EPA issued regulations in 1980 to address visibility problems that are ''reasonably attributable'' to a single source or small group of sources, but deferred action on regulations related to regional haze, a type of visibility impairment that is caused by the emission of air pollutants by numerous emission sources located across a broad geographic region. At that time, EPA acknowledged that the regulations were only the first phase for addressing visibility impairment. Regulations dealing with regional haze were deferred until improved techniques were developed for monitoring, for air quality modeling, and for understanding the specific pollutants contributing to regional haze.

In the 1990 Clean Air Act amendments, Congress provided additional emphasis on regional haze issues (see CAA section 169B). In 1999 EPA finalized a rule that calls for States to establish goals and emission reduction strategies for improving visibility in all 156 mandatory Class I national parks and wilderness areas. In this rule, EPA established a ''natural visibility'' goal. In that rule, EPA also encouraged the States to work together in developing and implementing their air quality plans. The regional haze program is focused on long-term emissions decreases from the entire regional emissions inventory comprised of major and minor stationary sources, area sources and mobile sources. The regional haze program is designed to improve visibility and air quality in our most treasured natural areas from these broad sources. At the same time, control strategies designed to improve visibility in the national parks and wilderness areas will improve visibility over broad geographic areas. In the 1997 PM NAAQS rulemaking, EPA also anticipated the need in addition to the NAAQS and Section 169 regional haze program to continue to address localized impairment that may relate to unique circumstances in some Western areas. For mobile sources, there is a need for a Federal role in reduction of those emissions, particularly because mobile source vehicles are regulated primarily at the federal level.

Visibility impairment is caused by pollutants (mostly fine particles and precursor gases) directly emitted to the atmosphere by several activities (such as electric power generation, various industry and manufacturing processes, truck and auto emissions, construction activities, etc.). These gases and particles scatter and absorb light, removing it from the sight path and creating a hazy condition. Visibility impairment is caused by both regional haze and localized impairment. As described above, regional haze is caused

[19] Memo to file from Terence Fitz-Simons, OAQPS, Scott Mathias, OAQPS, Mike Rizzo, Region 5, ''Analyses of 1999 PM Data for the PM NAAQS Review,'' November 17, 2000, with attachment B, 1999 $PM_{2.5}$ Annual Mean and 98th Percentile 24-Hour Average Concentrations. Docket No. A–2000–01, Document No. II–B–17.

[20] This information also shows that snowmobiles contribute to concentrations of fine PM that are above the primary health-related NAAQS, which indicates that emissions from snowmobiles also contribute to primary and secondary PM pollution that may reasonably be anticipated to endanger public health and welfare.

[21] Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment for Scientific and Technical Information, OAQPS Staff Paper, EPA–452\R–96–013, July, 1996, at IV–7. This document is available from Docket A–99–06, Document II–A–23.

by the emission from numerous sources located over a wide geographic area.[22]

Because of evidence that fine particles are frequently transported hundreds of miles, all 50 states, including those that do not have Class I areas, participate in planning, analysis, and, in many cases, emission control programs under the regional haze regulations. Even though a given State may not have any Class I areas, pollution that occurs in that State may contribute to impairment in Class I areas elsewhere. The rule encourages states to work together to determine whether or how much emissions from sources in a given state affect visibility in a downwind Class I area.

The regional haze program calls for states to establish goals for improving visibility in national parks and wilderness areas to improve visibility on the haziest 20 percent of days and to ensure that no degradation occurs on the clearest 20 percent of days (64 FR 35722. July 1, 1999). The rule requires states to develop long-term strategies including enforceable measures designed to meet reasonable progress goals toward natural visibility conditions. Under the regional haze program, States can take credit for improvements in air quality achieved as a result of other Clean Air Act programs, including national mobile source programs.[23]

In the PM air quality modeling described above, we also modeled visibility conditions in the Class I areas, and we summarize the results by region in Table I.E–6.

TABLE I.E–6—SUMMARY OF 2030 VISIBILITY CONDITIONS IN CLASS I AREAS BASED ON REMSAD MODELING

[Annual Average Deciview]

Region [a]	Predicted 2030 visibility [b]	Natural background visibility
Eastern	.....	9.5
Southeast	25.02	.....
Northeast/Midwest	21.00	.....
Western	.....	5.3
Southwest	8.69	.....
California	11.61	.....
Rocky Mountain	12.30	.....
Northwest	15.44	.....
National Class I Area Average	14.04	.....

[a] Regions are depicted in Figure VI–5 in the Regulatory Support Document for the highway Heavy Duty Engine/Diesel Fuel RIA (EPA 420–R–00–026, December 2000.) Background visibility conditions differ by region: Eastern natural background is 9.5 deciviews (or visual range of 150 kilometers) and in the West natural background is 5.3 deciviews (or visual range of 230 kilometers).

[b] The results incorporate earlier emissions estimates from the engines subject to this rule, as discussed in the Final Regulatory Support Document. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, we believe that the net results underestimate future PM emissions.

Nonroad engines represent a sizeable portion of the total inventory of anthropogenic emissions related to PM2.5, as shown in the tables above. Numerous types of nonroad engines may operate near Class I areas (*e.g.*, mining equipment, recreational vehicles, and agricultural equipment). We have reviewed contributions from snowmobile in particular.

Emissions from nonroad engines, in particular snowmobiles, contribute significantly to visibility impairment in Class I areas.[24] Visibility and PM monitoring data are available for eight Class I areas where snowmobiles are commonly used. These are: Acadia, Boundary Waters, Denali, Mount Rainier, Rocky Mountain, Sequoia and Kings Canyon, Voyageurs, and Yellowstone.[25] Fine particle monitoring data for these parks are set out in Table I.E–7. This table shows the number of monitored days in the winter that fell within the 20-percent worst visibility days for each of these eight parks. Monitors collect data 2 days a week for a total of about 104 days of monitored values. Thus, for a particular site, a maximum of 21 worst possible days of these 104 days with monitored values constitute the set of 20-percent worst visibility days during a year which are tracked as the primary focus of regulatory efforts.[26] With the exception of Denali in Alaska, we defined the snowmobile season as January 1 through March 15 and December 15 through December 31 of the same calendar year, consistent with the methodology used in the Regional Haze Rule, which is calendar-year based. For Denali in Alaska, the snowmobile season is October 1 to April 30.

[22] U.S. EPA Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013. 1996. Docket Number A–99–06, Documents Nos. II–A–18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm*.

[23] In a recent case, *American Corn Growers Association* v. *EPA*, 291 F. 3d 1 (D.C. Cir 2002), the court vacated the BART provisions of the Regional Haze rule, but the court denied industry's challenge to EPA's requirement that state's SIPs provide for reasonable progress towards achieving natural visibility conditions in national parks and wilderness areas and the ''no degradation'' requirement. Industry did not challenge requirements to improve visibility on the haziest 20 percent of days. A copy of this decision can be found in Docket A–2000–01, Document IV–A–113.

[24] The results incorporate earlier emissions estimates from the engines subject to this rule, as discussed in the Final Regulatory Support Document. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, we believe that the net results would underestimate future PM emissions.

[25] No data were available at five additional parks where snowmobiles are also commonly used: Black Canyon of the Gunnison, CO, Grand Teton, WY, Northern Cascades, WA, Theodore Roosevelt, ND, and Zion, UT.

[26] Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number II–B–28.

TABLE I.E–7—WINTER DAYS THAT FALL WITHIN THE 20 PERCENT WORST VISIBILITY DAYS AT NATIONAL PARKS USED BY SNOWMOBILES

NPS unit	States	Number of sampled wintertime days within 20 percent worst visibility days (maximum of 21 out of 104 monitored days)			
		1996	1997	1998	1999
Acadia NP	ME	4	4	2	1
Denali NP and Preserve	AK	10	10	12	9
Mount Rainier NP	WA	1	3	1	1
Rocky Mountain NP	CO	2	1	2	1
Sequoia and Kings Canyon NP	CA	4	9	1	8
Voyageurs NP (1989–1992)	MN	1989	1990	1991	1992
		3	4	6	8
—Boundary Waters USFS Wilderness Area (close to Voyaguers with recent data).	MN	2	5	1	5
Yellowstone NP	ID, MT, WY	0	2	0	0

Source: Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number II–B–28.

According to the National Park Service, ''[s]ignificant differences in haziness occur at all eight sites between the averages of the clearest and haziest days. Differences in mean standard visual range on the clearest and haziest days fall in the approximate range of 115–170 km.'' [27] We examined future air quality predictions to whether the emissions from recreational vehicles, such as snowmobiles, contribute to regional visibility impairment in Class I areas. We present results from the future air quality modeling described above for these Class I areas in addition to inventory and air quality measurements. Specifically, in Table I.E–8, we summarize the expected future visibility conditions in these areas without these regulations.

TABLE I.E–8—ESTIMATED 2030 VISIBILITY IN SELECTED CLASS I AREAS [a,b]

Class I area	County	State	Predicted 2030 visibility (annual average deciview)	Natural background visibility (annual average deciview)
Eastern areas				9.5
Acadia	Hancock Co	ME	23.42	
Boundary Waters	St. Louis Co	MN	22.07	
Voyageurs	St. Louis Co	MN	22.07	
Western areas				5.3
Grand Teton NP	Teton Co	WY	11.97	
Kings Canyon	Fresno Co	CA	10.39	
Mount Rainier	Lewis Co	WA	16.19	
Rocky Mountain	Larimer Co	CO	8.11	
Sequoia-Kings	Tulare Co	CA	9.36	
Yellowstone	Teton Co	WY	11.97	

[a] Natural background visibility conditions differ by region because of differences in factors such as relative humidity: Eastern natural background is 9.5 deciviews (or visual range of 150 kilometers) and in the West natural background is 5.3 deciviews (or visual range of 230 kilometers).

[b] The results incorporate earlier emissions estimates from the engines subject to this rule. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, on net, we believe that HD07 analyses would underestimate future PM emissions from these categories.

The information presented in Table I.E–7 shows that visibility data support a conclusion that there are at least 8 Class I Areas (7 national parks and one wilderness area) frequented by snowmobiles with one or more wintertime days within the 20-percent worst visibility days of the year, and in many cases several days. For example, Rocky Mountain National Park in Colorado was frequented by about 27,000 snowmobiles during the 1998–1999 winter. Of the monitored days characterized as within the 20-percent worst visibility monitored days, 2 of those days occurred during the wintertime when snowmobile emissions such as hydrocarbons contributed to visibility impairment.

The information in Table I.E–8 shows that these areas also are predicted to have high annual average deciview levels in the future. Emissions from snowmobiles and other recreational vehicles, as well as other nonroad engines contributed to these levels.[28]

[27] Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number II–B–28.

[28] See Chapter 1 in the RSD for a discussion or U.S. EPA Technical Support Document for Heavy-duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements—Air Quality Modeling Analyses December 2000. Docket No. A–2000–01, Docket Number IV–A–218. This document is also avaiable at *www.epa.gov/otaq/hdmodels.htm.*

Ambient concentrations of fine particles are the primary pollutant responsible for visibility impairment. The classes of fine particles principally responsible for visibility impairment are sulfates, nitrates, organic carbon particles, elemental carbon, and crustal material. Hydrocarbon emissions from automobiles, trucks, snowmobiles, and other industrial processes are common sources of organic carbon. The organic carbon fraction of fine particles ranges from 47 percent in Western areas such as Denali National Park, to 28 percent in Rocky Mountain National Park, to 13 percent in Acadia National Park.[29]

In the winter months, HC emissions from snowmobiles can be significant, and these HC emissions can be more than half of the organic carbon fraction of fine particles which are largely responsible for visibility impairment. In Yellowstone, a park with high snowmobile usage during the winter months, snowmobile HC emissions can exceed 500 tons per year, as much as several large stationary sources.[30] Other parks with less snowmobile traffic are also impacted although to a lesser extent by these HC emissions.[31]

Table I.E–9 shows estimated tons of four pollutants during the winter season in five Class I national parks for which we have estimates of snowmobile use. The national park areas outside of Denali in Alaska are open to snowmobile operation in accordance with special regulations (36 CFR part 7). Denali National Park permits snowmobile operation by local rural residents engaged in subsistence uses (36 CFR part 13).

TABLE I.E–9.—WINTER SEASON SNOWMOBILE EMISSIONS

[tons; 1999 Winter Season]

NPS unit	HC	CO	NO_X	PM
Denali NP & Preserve	>9.8	>26.1	>0.08	>0.24
Grand Teton NP	13.7	36.6	0.1	0.3
Rocky Mountain NP	106.7	284.7	0.8	2.6
Voyageurs NP	138.5	369.4	1.1	3.4
Yellowstone NP	492	1311.9	3.8	12

Source: Letter from Aaron J. Worstell, Environmental Engineer, National Park Service, Air Resources Division, to Drew Kodjak, August 21, 2001, particularly Table 1. Docket No. A–2000–01, Document No. II–G–178.

Inventory analysis performed by the National Park Service for Yellowstone National Park suggests that snowmobile emissions are a significant source of total annual mobile source emissions for the park year round. The proportion of snowmobile emissions to emissions from other sources affecting air quality in these parks is likely to be similar to that in Yellowstone.

Furthermore, public comments from an industry-initiated study contained modeling showing a 4 to 8 percent contribution to perceptible impairment from snowmobile exhaust in Yellowstone National Park. Although we believe the modeling technique may not be fully appropriate, the study still indicates a significant contribution from snowmobiles. EPA conducted independent modeling using a more appropriate visibility model, and we confirmed that snowmobiles would be creating perceptible plumes at all park entrances, impairing visibility. This evidence shows that snowmobiles contribute significantly to visibility impairment in several Class I areas.

(C) Regulation of HC Is a Good Proxy for Regulation of Fine PM Emissions From Current Snowmobile Engines

We believe the best way to regulate the contribution to ambient concentrations of fine PM from current snowmobile engines is to set standards to control HC emissions. The current fleet of snowmobiles consists almost exclusively of two-stroke engines. Two-stroke engines inject lubricating oil into the air intake system where it is combusted with the air and fuel mixture in the combustion chamber. This is done to provide lubrication to the piston and crankshaft, since the crankcase is used as part of the fuel delivery system and cannot be used as a sump for oil storage as in four-stroke engines. As a result, in addition to products of incomplete combustion, two-stroke engines also emit a mixture of uncombusted fuel and lubricant oil. HC-related emissions from snowmobiles increase PM concentrations in two ways. Snowmobile engines emit HC directly as particles (such as droplets of lubricant oil). Snowmobile engines also emit HC gases, as well as raw unburned HC from the fuel which either condenses in cold temperatures to particles or reacts chemically to transform into particles as it moves in the atmosphere. As discussed above, fine particles can cause a variety of adverse health and welfare effects, including visibility impairment.

We believe measurements of HC emissions will serve as a reasonable surrogate for measurement of fine particles for snowmobiles for several reasons. First, emissions of PM and HC from these engines are related. Test data show that over 70 percent of the average volatile organic fraction of PM from a typical two-stroke snowmobile engine is organic hydrocarbons, largely from lubricating oil components.[32] The HC measurements (which use a 191° C heated flame-ionization detector (FID)) would capture the volatile component, which in ambient temperatures would be particles (as droplets).

Second, many of the technologies that will be employed to reduce HC emissions are expected to reduce PM (four-stroke engines, pulse air, and direct fuel injection techniques for example). The organic emissions are a mixture of fuel and oil, and reductions in the organic emissions will likely yield both HC and PM reductions. HC measurements would capture the reduction from both the gas and particle (at ambient temperature) phases. For example, the HC emission factor for a

[29] Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number II–B–28.

[30] Emissions of NO_X from snowmobiles contribute to the total amount of particulate nitrate, although the total NO_X emissions from snowmobiles are considerably less than HC or direct PM emissions from these engines.

[31] Technical Memorandum, Aaron Worstell, Environmental Engineer, National Park Service, Air Resources Division, Denver, Colorado, particularly Table 1. Docket No. A–2000–01, Document Number II–G–178.

[32] Memo to Docket, Mike Samulski. ''Hydrocarbon Measurements as an Indicator for Particulate Matter Emissions in Snowmobiles,'' with attachments. September 6, 2002, Docket A–2000–01; Document No. IV–B–42.

typical two-stroke snowmobile is 111 g/hp-hr. The HC emission factor for a direct fuel injection engine is 21.8, and for a four-stroke is 7.8 g/hp-hr, representing a 80-percent and 99-percent reduction, respectively. Similarly, the PM emission factor for a typical two-stroke snowmobile is 2.7 g/hp-hr. The corresponding PM emission factor for a direct fuel injection engine is 0.57, and for a four-stroke is 0.15 g/hp-hr, representing a 75 percent and 93 percent reduction, respectively.

Thus, manufacturers will generally reduce PM emissions as a result of reducing HC emissions, making separate PM standards less necessary. Moreover, PM standards would cover only the PM directly emitted at the tailpipe. It would not measure the gaseous or semi-volatile organic emissions which would condense or be converted into PM in the atmosphere. The HC measurements would also include the gaseous HC which would condense or be converted into PM in the atmosphere. Consequently, the HC measurement would be a more comprehensive measurement. Also, HC standards actually will reduce secondary PM emissions that would not necessarily be reduced by PM standards.

Finally, from an implementation point of view, PM is not routinely measured in snowmobiles. There is no currently established protocol for measuring PM and substantial technical issues would need to be overcome to create a new method. Establishing additional PM test procedures would also entail additional costs for manufacturers. HC measurements are more routinely performed on these types of engines, and these measurements currently serve as a more reliable basis for setting a numeric standard. Thus, we believe that regulation of HC is the best way to reduce PM emissions and PM contributions from current snowmobile engines.

We included a NO_X standard for snowmobiles. This standard will essentially cap NO_X emissions from these engines to prevent backsliding. We are not promulgating standards that would require substantial reductions in NO_X because we believe that standards which force substantial NO_X reductions would likely not lead to reductions in PM and may in fact increase PM levels. NO_X emissions from snowmobiles are very small, particularly compared to levels of HC. In fact, technologies that reduce HC and CO are likely to increase levels of NO_X and vice versa, because technologies to reduce HC and CO emissions would result in leaner operation. A lean air and fuel mixture causes NO_X emissions to increase. These increases are minor, however, compared to the reductions of HC (and therefore PM) that result from these techniques.

On the other hand, substantial control of NO_X emissions may have the counter-effect of increasing HC emissions and the greater PM emissions associated with those HC emissions. The only way to reduce NO_X emissions from four-stroke engines (at the same time as reducing HC and CO levels) would be to use a three-way catalytic converter. We do not have enough information at this time on the durability or safety implications of using a three-way catalyst with a four-stroke engine in snowmobile applications. Three-way catalyst technology is well beyond the technology reviewed for this rule and would need substantial additional review before being contemplated for snowmobiles. Thus, given the overwhelming level of HC compared to NO_X, and the secondary PM expected to result from these levels, it would be premature and possibly counterproductive to promulgate NO_X standards that require significant NO_X reductions from snowmobiles at this time. We have therefore decided to structure our long term HC+NO_X standard for 2012 and later model year snowmobiles to require only a cap on NO_X emissions from the advanced technology engines which will be the dominant technology in the new snowmobiles certified at that time.

II. Nonroad: General Provisions

This section describes general provisions concerning the emission standards adopted in this final rule and the ways in which a manufacturer shows compliance with these standards. Clean Air Act section 213(a)(3) requires us to set standards that achieve the greatest degree of emission reduction achievable through the application of technology that will be available, giving appropriate consideration to cost, noise, energy, and safety factors. Section 202(a)(4) provides further authority to adopt standards for pollution beyond that regulated under section 202(a)(3). In addition to emission standards, this document describes a variety of other provisions necessary for implementing the proposed emission-control program in an effective way, such as applying for certification, labeling engines, and meeting warranty requirements.

The discussions in this section are general and are meant to cover all the nonroad engines and vehicles subject to the new standards. In this Section II, the term engine is sometimes used to include both nonroad engines and nonroad vehicles. Refer to the discussions of specific programs, contained in Sections III through VI, to determine whether the regulations are being applied to the entire vehicle or just the engine, as well as for more information about specific requirements for different categories of nonroad engines and vehicles.

This section describes general nonroad provisions related to certification prior to sale or introduction into commerce. Section VII describes several compliance provisions that apply generally to nonroad engines, and Section VIII similarly describes general testing provisions.

A. Scope of Application

This final rule covers recreational marine diesel engines, nonroad spark-ignition engines rated over 19 kW, and recreational spark-ignition vehicles introduced into commerce in the United States. The following sections describe generally when emission standards apply to these products. These provisions are generally consistent with prior nonroad and motor-vehicle rulemakings. Refer to the specific program discussion below for more information about the scope of application and timing of new standards.

1. What Engines and Vehicles Are Subject to the Standards?

The scope of this rule is broadly set by Clean Air Act section 213(a), which instructs us to set emission standards for new nonroad engines and new nonroad vehicles. Generally speaking, this rule is intended to cover all new engines and vehicles in the categories listed above (including any associated equipment or vessels) for their entire useful lives, as defined in the regulations.[33] Once the emission standards apply to a group of engines or vehicles, manufacturers of a new engine must have an approved certificate of conformity from us before selling them in the United States.[34] This also applies to importation by any person and any other means of introducing new engines and vehicles into commerce. We also require equipment manufacturers that install engines from other companies to install only certified engines into new equipment once emission standards

[33] For recreational vehicles, we are adopting vehicle-based standards. For these applications, the term ''engine'' in this document applies equally to the vehicles.

[34] The term ''manufacturer'' includes any individual or company that manufactures any new engine for sale or otherwise introduces a new engine into commerce in the United States. It also includes importers for resale.

apply. The information we require of manufacturers applying for certification (with the corresponding engine labels) provides assurance that manufacturers have met their obligation to make engines that meet emission standards over the useful life we specify in the regulations.

2. How Do I Know if My Engine or Equipment Is New?

We are defining ''new'' consistent with previous rulemakings. We will consider a nonroad engine (or nonroad equipment) to be new until its title has been transferred to the ultimate purchaser or the engine has been placed into service. This definition applies to both engines and equipment, so the nonroad equipment using these engines, including all-terrain vehicles, snowmobiles, off-highway motorcycles, and other land-based nonroad equipment will be considered new until their title has been transferred to an ultimate buyer. In Section II.B.1 we describe how to determine the model year of individual engines and vehicles.

To further clarify the definition of new nonroad engine, we specify that a nonroad engine, vehicle, or equipment is placed into service when it is used for its intended purpose. An engine subject to emission standards is used for its functional purpose when it is installed in an all-terrain vehicle, snowmobile, off-highway motorcycle, marine vessel, or other piece of nonroad equipment. We need to make this clarification because some engines are made by modifying a highway or land-based nonroad engine that has already been installed on a vehicle or other piece of equipment. For example, someone can install an engine in a recreational marine vessel after it has been used for its functional purpose as a land-based highway or nonroad engine. We believe our approach is reasonable because the practice of adapting used highway or land-based nonroad engines may become more common if these engines are not subject to emission standards.

In summary, an engine may be subject to emission standards if it is:

- Freshly manufactured, whether domestic or imported; this may include engines produced from engine block cores
- Installed for the first time in nonroad equipment after having powered an automobile or a category of nonroad equipment subject to different emission standards
- Installed in new nonroad equipment, regardless of the age of the engine
- Imported (freshly manufactured or used) and was originally manufactured after the effective date of our standards

3. When Do Imported Engines Need To Meet Emission Standards?

The emission standards apply to all new engines sold in the United States. Consistent with Clean Air Act section 216, engines that are imported by any person, whether freshly manufactured or used are considered ''new'' engines.[35] Thus, we include engines that are imported for use in the United States, whether they are imported as loose engines or if they are already installed on a marine vessel, recreational vehicle, or other piece of nonroad equipment, built elsewhere. All imported engines manufactured after our standards begin to apply need an EPA-issued certificate of conformity to clear customs, with limited exemptions (as described below).

An engine or marine vessel, recreational vehicle, or other piece of nonroad equipment that was built after emission standards take effect cannot be imported without a currently valid certificate of conformity. We would consider it to be a new engine, vehicle, or vessel, which would trigger a requirement to comply with the applicable emission standards. Thus, for example, a marine vessel manufactured in a foreign country in 2007, then imported into the United States in 2010, would be considered ''new.'' The engines on that vessel would have to comply with the requirements for the 2007 model year, assuming no other exemptions apply. This provision is important to prevent manufacturers from avoiding emission standards by building vessels or vehicles abroad, transferring their title, and then importing them as used vessels or vehicles.

Imported engines are generally subject to emission standards. However, we are not adopting a definition of ''import'' in this regulation. We will defer to the U.S. Customs Service for determinations of when an engine or vehicle is imported into the U.S.

4. Do the Standards Apply to Exported Engines or Vehicles?

Engines or vehicles intended for export are generally not required to meet the emission standards or other requirements adopted in this rule. However, engines that will be exported and subsequently re-imported into the United States must be covered by a certificate of conformity. For example, this would occur when a foreign company purchases engines manufactured in the United States for installation on a marine vessel, recreational vehicle, or other nonroad equipment for export back to the United States. Those engines would be subject to the emission standards that apply on the date the engine was originally manufactured. If the engine is later modified and certified (or recertified), the engine is subject to emission standards that apply on the date the modification is complete. So, for example, foreign boat builders buying U.S.-made engines without recertifying the engines will need to make sure they purchase complying engines for the products they sell in the U.S. We also do not exempt engines exported to countries that share our emission standards.

5. Are Any New Engines or Vehicles in the Applicable Categories Not Subject to Emission Standards of This Rule?

We are extending our basic nonroad exemptions to the engines and vehicles covered by this rulemaking. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the national-security exemption. These exemptions are described in more detail in Section VII.C.

In addition, the Clean Air Act does not consider stationary engines or engines used solely for competition to be nonroad engines, so the emission standards do not apply to them. Refer to the program discussions below for a description of how these exclusions or exemptions apply for different categories of engines.

B. Emission Standards and Testing

1. Which Pollutants Are Covered by Emission Standards?

Engines subject to the exhaust emission standards must meet standards based on measured levels of specified pollutants, such as NO_X, HC, or CO, though not all engines have standards for each pollutant. Diesel engines generally must also meet a PM emission standard. In addition, there may be standards or other requirements for crankcase, evaporative, or permeation emissions, as described below.

The emission standards are effective on a model-year basis. We define model year much like we do for passenger cars. It generally means either the calendar year or some other annual production period based on the manufacturer's production practices. A model year may include January 1 from only one year.

[35] The definition in Clean Air Act section 216 applies specifically to ''new motor vehicles,'' but we have interpreted ''new nonroad engine'' consistently with the definition in section 216.

For example, manufacturers could start selling 2006 model year engines as early as January 2, 2005, as long as the production period extends until at least January 1, 2006. All of a manufacturer's engines from a given model year must meet emission standards for that model year. For example, manufacturers producing new engines in the 2006 model year need to comply with the 2006 standards. The model year of a particular engine is determined based on the date that the engine is fully assembled. In the case of recreational vehicles, this generally applies to the final assembly of the whole vehicle, since the emission standards apply to the vehicle. Refer to the individual program discussions below or the regulations for additional information about model year periods, including how to define what model year means in less common scenarios, such as installing used engines in new equipment.

2. What Standards Apply to Crankcase, Evaporative, Permeation, and Other Emissions?

Blow-by of combustion gases and the reciprocating action of the piston can cause exhaust emissions to accumulate in the crankcase of four-stroke engines. Uncontrolled engine designs route these vapors directly to the atmosphere, where they contribute to ambient levels of hydrocarbons. We have long required that automotive engines prevent emissions from their crankcases. Manufacturers typically do this by routing crankcase vapors through a valve into the engine's air intake system. We generally require in this rulemaking that engines control crankcase emissions.

Vehicles with spark-ignition engines use fuel that is volatile and the unburned fuel can be released into the ambient air. We are adopting standards to limit evaporative emissions from the fuel. Evaporative emissions result from heating gasoline or other volatile fuels in a tank that is vented to the atmosphere or from permeation through plastic fuel tanks and rubber hoses. Section IV describes the permeation standards for recreational vehicles. Section V provides additional information on the evaporative emission standards for Large SI engines.

We are also adopting a general requirement that all engines subject to this final rule may not cause or contribute to an unreasonable risk to public health, welfare, or safety, especially with respect to noxious or toxic emissions that may increase as a result of emission-control technologies. The regulatory language has been modified consistent with the alternate language suggested in the proposal. This alternate language implements sections 202(a)(4) and 206(a)(3) of the Act and clarifies that the purpose of this requirement is to prevent control technologies that would cause unreasonable risks, rather than to prevent trace emissions of any noxious compounds. For example, this requirement would prevent the use of emission-control technologies that produce high levels of pollutants for which we have not set emission standards, but nevertheless pose a risk to the public. However, it should be noted that this would generally not apply to exhaust gas recirculation systems on gasoline- or diesel-fueled engines.

3. What Duty Cycles Is EPA Adopting for Emission Testing?

Testing an engine for exhaust emissions typically consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine or chassis dynamometer. The duty cycle used to measure emissions for certification, which is generally derived from typical operation from the field, is critical in evaluating the likely emissions performance of engines designed to emission standards. Testing for recreational marine diesel engines and Large SI engines may also include additional operation not included in the specific duty cycles.

Steady-state testing consists of engine operation for an extended period at several speed-load combinations. Associated with these test points are weighting factors that allow calculation of a single weighted-average steady-state emission level in g/kW. Transient testing involves a continuous trace of specified engine or vehicle operation; emissions are collected over the whole testing period for a single mass measurement.

See Section VIII.C for a discussion of how we define maximum test speed and intermediate speed for engine testing. Refer to the program discussions below for more information about the type of duty cycle required for testing the various engines and vehicles. Those sections also include information regarding testing provisions that do not rely on specific operating cycles (*i.e.*, field-testing, not-to exceed testing, and evaporative testing).

4. How Do Adjustable Engine Parameters Affect Emission Testing?

Many engines are designed with components that can be adjusted for optimum performance under changing conditions, such as varying fuel quality, high altitude, or engine wear. Examples of adjustable parameters include spark timing, idle-speed setting, and fuel-injection timing. While we recognize the need for this practice, we are also concerned that engines maintain an appropriate level of emission control for the whole range of adjustability. Manufacturers must therefore show that their engines meet emission standards over the full adjustment range. Manufacturers must also provide a physical stop to prevent adjustment outside the established range. Operators are then prohibited by the anti-tampering provisions from adjusting engines outside this range.

5. What Are Voluntary Low-Emission Engines and Blue Sky Standards?

Several state and environmental groups and manufacturers of emission controls have supported our efforts to develop incentive programs to encourage engine technologies that go beyond federal emission standards. Some companies have already significantly developed these technologies. In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as ''Blue Sky Series'' engines (63 FR 56967, October 23, 1998). We included similar programs for commercial marine diesel engines. The general purposes of such programs are to provide incentives to manufacturers to produce clean products, as well as to create market choices and opportunities for environmental information for consumers regarding such products.

We are adopting voluntary Blue Sky Series standards for some of the engines subject to this final rule. Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure adequate in-use performance, will be a step forward in advancing emission-control technologies. While these are voluntary standards, they become binding once a manufacturer chooses to participate. EPA certification will therefore provide protection against false claims of environmentally beneficial products.

C. Demonstrating Compliance

We are adopting a compliance program to accompany the final emission standards. This consists first of a process for demonstrating that new engine models comply with the emission standards. In addition to new-engine testing, several provisions ensure that emission-control systems will continue to function over long-term

operation in the field. Most of these certification provisions are consistent with previous rulemakings for other nonroad engines. Refer to the discussion of the specific programs below for additional information about these requirements for each engine category.

1. How Do I Certify My Engines?

We are adopting a certification process similar to that already established for other nonroad engines. Manufacturers generally test representative prototype engines and submit the emission data along with other information to EPA in an application for a Certificate of Conformity. If we approve the application, EPA issues a Certificate of Conformity which allows the manufacturer to produce and sell the engines described in the application in the U.S.

Manufacturers certify their engine models by grouping them into engine families that have similar emission characteristics. The engine family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. The regulations include specific engine characteristics for grouping engine families for each category of engines. To address a manufacturer's unique product mix, we may approve using broader or narrower engine families.

Engine manufacturers are responsible to build engines that meet the emission standards over each engine's useful life. The useful life we adopt by regulation is intended to reflect the period during which engines are designed to properly function without being remanufactured or the average service life. Useful life values, which are expressed in terms of years or amount of operation (in hours or kilometers), vary by engine category, as described in the following sections. Consistent with other recent EPA programs, we generally consider this useful life value in amount of operation to be a minimum value, requiring manufacturers to comply for a longer period in those cases where their engines operate longer than the minimum useful life.

The emission-data engine is the engine from an engine family that will be used for certification testing. To ensure that all engines in the family meet the standards, manufacturers must select the engine most likely to exceed emission standards in a family for certification testing. In selecting this ''worst-case'' engine, the manufacturer uses good engineering judgment. Manufacturers consider, for example, all engine configurations and power ratings within the engine family and the range of installed options allowed. Requiring the worst-case engine to be tested helps the manufacturer be sure that all engines within the engine family are complying with emission standards. Manufacturers estimate the rate of deterioration for each engine family over its useful life and show that engines continue to meet standards after incorporating the estimated deterioration. We may also test the engines ourselves.

Manufacturers must include in their application for certification the results of emission tests showing that the engine family meets emission standards. In addition, we may ask the manufacturer to include any additional data from their emission-data engines, including any diagnostic-type measurements (such as ppm testing) and invalidated tests. This complete set of test data ensures that the valid tests forming the basis of the manufacturer's application are a robust indicator of emission-control performance, rather than a spurious or incidental test result.

We are adopting test-fuel specifications intended to represent in-use fuels. Engines must be able to meet the standards on fuels with properties anywhere in the specified ranges. The test fuel is generally to be used for all testing associated with the regulations, including certification, production-line testing, and in-use testing. Refer to the program discussions below related to test fuel specifications.

We require engine manufacturers to give engine buyers instructions for properly maintaining their engines. We are including limitations on the frequency of scheduled maintenance that a manufacturer may specify for emission-related components to help ensure that emission-control systems don't depend on an unreasonable expectation of maintenance in the field. These maintenance limits also apply during any service accumulation that a manufacturer may do to establish deterioration factors. This approach is common to all our engine programs. It is important to note, however, that these provisions don't limit the maintenance an operator may perform; it merely limits the maintenance that operators can be expected to perform on a regularly scheduled basis. Refer to the discussion of the specific programs below for additional information about the allowable maintenance intervals for each category of engines.

Once an engine family is certified, we require every engine a manufacturer produces from the engine family to have a label with basic identifying information. The design and content of engine labels is specified in the regulations.

2. What Warranty Requirements Apply to Certified Engines?

Consistent with our current emission-control programs, manufacturers must provide a design and defect warranty covering emission-related components for a minimum period specified in the regulations. This minimum period is generally half of the useful life period. The regulations also provide that the manufacturer's emission warranty period could be adjusted to a value higher than the minimum period for those cases where the manufacturer provides a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. Any such adjustment would be dependent on the average service life of the vehicle as well. The manufacturer generally does not need to include scheduled maintenance or other routine maintenance under the emission warranty. See the regulation language for a detailed description of the components that are considered to be emission-related.

If an operator makes a valid warranty claim for an emission-related component during the warranty period, the engine manufacturer is generally obligated to replace the component at no charge to the operator. The engine manufacturer may deny warranty claims, however, if the operator caused the component failure by misusing the engine or failing to do necessary maintenance.

We are also adopting a defect reporting requirement that applies separate from the emission-related warranty (see Section VII.F). In general, defect reporting applies when a manufacturer discovers a pattern of component failures, whether that information comes from warranty claims, voluntary investigation of product quality, or other sources.

3. Can I Use Emission Averaging To Show That I Meet Emission Standards?

Many of our mobile source emission-control programs include voluntary use of emission credits to facilitate implementation of emission controls. An emission-credit program is an important factor we take into consideration in setting emission standards that are appropriate under Clean Air Act section 213. An emission-credit program can improve the technological feasibility and reduce the cost of achieving standards, allowing us to consider a more stringent emission standard than might otherwise be

appropriate, including a compliance date for the standards earlier than would otherwise be appropriate. Manufacturers gain flexibility in product planning and introduction of product lines meeting a new standard. Emission-credit programs also create an incentive for the early introduction of new technology, which allows certain engine families to act as trailblazers for new technology. This can help provide valuable information to manufacturers on the technology before they apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

Emission-credit programs may involve averaging, banking, or trading. Averaging allows a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, as long as the increased emissions from that engine family are offset by one or more engine families certified below the applicable standards. The over-complying engine families generate credits that are used by the under-complying engine families. Compliance is determined taking into account differences in production volume, power and useful life among engine families. The average of all the engine families for a particular manufacturer's production must be at or below the level of the applicable emission standards. This calculation generally factors in sales-weighted average power, production volume, and useful life. Banking allows a manufacturer to generate emission credits and bank them for future use in its own averaging program in later years. Trading allows transfer of credits to another company.

In general, a manufacturer choosing to participate in an emission-credit program certifies each participating engine family to a Family Emission Limit. In its certification application, a manufacturer determines a separate Family Emission Limit for each pollutant included in the emission-credit program. The Family Emission Limit selected by the manufacturer becomes the emission standard for each engine in that engine family. Emission credits are based on the difference between the emission standard that applies to the family and the Family Emission Limit. Manufacturers must meet the Family Emission Limit for all emission testing of any engine in that family. At the end of the model year, manufacturers must show that the net effect of all their engine families participating in the emission-credit program is a zero balance or a net positive balance of credits. A manufacturer may generally choose to include only a single pollutant from an engine family in the emission-credit program or, alternatively, to establish a Family Emission Limit for each of the regulated pollutants. Refer to the program discussions below for more information about emission-credit provisions for individual engine categories.

4. What Are the Production-Line Testing Requirements?

We are adopting production-line testing requirements for recreational marine diesel engines, recreational vehicles, and Large SI engines. Manufacturers must routinely test production-line engines to help ensure that newly assembled engines control emissions at least as well as the emission-data engines tested for certification. Production-line testing serves as a quality-control step, providing information to allow early detection of any problems with the design or assembly of freshly manufactured engines. This is different than selective enforcement auditing, in which we would give a test order for more rigorous testing for a small subset of production-line engines in a particular engine family (see Section VII.E). Production-line testing requirements are already common to several categories of nonroad engines as part of their emission-control program.

If an engine fails to meet an emission standard, the manufacturer must modify it to bring that specific engine into compliance. Manufacturers may adjust the engine family's Family Emission Limit to take into account the results from production-line testing (if applicable). If too many engines exceed emission standards, this indicates it is more of a family-wide problem and the manufacturer must correct the problem for all affected engines. The remedy may involve changes to assembly procedures or engine design, but the manufacturer must, in any case, do sufficient testing to show that the engine family complies with emission standards before producing more engines. The remedy may also need to address engines already produced since the last showing that production-line engines met emission standards.

The production-line testing programs for Large SI engines and for recreational vehicles depend on the Cumulative Sum (CumSum) statistical process for determining the number of engines a manufacturer needs to test (see the regulations for the specific calculation methodology). Each manufacturer generally selects engines randomly at the beginning of each new quarter.[36] If engines must be tested at a facility where final assembly is not yet completed, manufacturers must randomly select engine components and assemble the test engine according to their established assembly instructions. The Cumulative Sum program uses the emission results to calculate the number of tests required for the remainder of the year to reach a pass or fail determination for production-line testing. If tested engines have emissions close to the standard, the statistical sampling method calls for an increased number of tests to show whether to make a pass or fail determination for the engine family. The remaining number of tests is recalculated after the manufacturer tests each engine. Engines selected should cover the broadest range of production configurations possible. Tests should also be distributed evenly throughout the sampling period to the extent possible.

If an engine family fails the production-line testing criteria, we may suspend the Certificate of Conformity. Under the CumSum approach, individual engines can exceed the emission standards without causing the whole engine family to exceed the production-line testing criteria. The production-line testing criteria are designed to determine if there is a problem that applies broadly across the engine family. Whether or not the production-line testing criteria are met, manufacturers must adjust or repair every failing engine and retest it to show that it meets the emission standards. Note also that all production-line emission measurements must be included in the periodic reports to us. This includes any type of screening or surveillance tests (including ppm measurements), all data points for evaluating whether an engine controls emissions ''off-cycle,'' and any engine tests that exceed the minimum required level of testing.

The regulations allow us to reduce testing requirements for engine families that consistently pass the production-line testing criteria. For engine families that pass all of the production-line test requirements for two consecutive years, the manufacturer may request a reduced testing rate. The minimum testing rate is one test per engine family for one year. Our approval for a reduced testing rate may be limited to a single model year,

[36] We consider an engine to be randomly selected if it undergoes normal assembly and manufacturing procedures. An engine is not randomly selected if it has been built with any kind of special components or procedures.

but manufacturers may continue to request reduced testing rates.

As we have concluded in other engine programs, some manufacturers may have unique circumstances that call for different methods to show that production engines comply with emission standards. A manufacturer may therefore suggest an alternate plan for testing production-line engines, as long as the alternate program is as effective at ensuring that the engines will comply. A manufacturer's petition to use an alternate plan should address the need for the alternative and should justify any changes from the regular testing program. The petition must also describe in detail the equivalent thresholds and failure rates for the alternate plan. If we approve the plan, we will use these criteria to determine when an engine family passes or fails the production-line testing criteria. It is important to note that this allowance is intended only as a flexibility, and is not intended to affect the stringency of the standards or the production-line testing program.

Refer to the specific program discussions below for additional information about production-line testing for different types of engines.

D. Other Concepts

1. What Are Emission-Related Installation Instructions?

Manufacturers selling loose engines to equipment manufacturers must develop a set of emission-related installation instructions. These instructions include anything the installer needs to know to ensure that the engine operates within its certified design configuration. For example, the installation instructions could specify a total capacity needed from the engine cooling system, placement of catalysts after final assembly, or specification of parts needed to control evaporative or permeation emissions. We approve emission-related installation instructions as part of the certification process. If equipment manufacturers fail to follow the established emission-related installation instructions, we will consider this tampering, which may subject them to significant civil penalties. Refer to the program discussions below for more information about specific provisions related to installation instructions.

2. Are There Special Provisions for Small Manufacturers of These Engines and Vehicles?

The scope of this rule includes many engine and vehicle manufacturers that have previously not been subject to our mobile source regulations or certification process. Some of these manufacturers are small businesses, with unique concerns relating to the compliance burden from the general regulating program. The sections describing the emission-control program include discussion of special compliance provisions designed to address this for the different engine categories.

III. Recreational Vehicles and Engines

A. Overview

We are adopting new exhaust emission standards for snowmobiles, off-highway motorcycles, and all-terrain vehicles (ATVs). The engines used in these vehicles are a subset of nonroad SI engines.[37] In our program to set exhaust emission standards for nonroad spark-ignition engines below 19 kW (Small SI), we excluded recreational vehicles because they have different design characteristics and usage patterns than certain other engines in the Small SI category. For example, engines typically found in the Small SI category are used in lawn mowers, chainsaws, trimmers, and other lawn and garden applications. These engines tend to have low power outputs and operate at constant loads and speeds, whereas recreational vehicles can have high power outputs with highly variable engine loads and speeds. This suggests that these engines should be regulated differently than Small SI engines. In the same way, we treat snowmobiles, off-highway motorcycles, and ATVs separately from our Large SI engine program, which is described in Section V. Recreational vehicles that are not snowmobiles, off-highway motorcycles, or ATVs, will be subject to the standards that otherwise apply to small nonroad spark-ignition engines (see Section III.B.2).

We are adopting exhaust emission standards for HC and CO from all recreational vehicles. We are adopting an additional requirement to control NO_X from off-highway motorcycles and ATVs. We believe that vehicle and engine manufacturers will be able to use technology already established for other types of engines, such as highway motorcycles, small spark-ignition engines, and marine engines, to meet these standards. We recognize that some small businesses manufacture recreational vehicles; we are therefore adopting several special compliance provisions to reduce the burden of emission regulations on small businesses.

1. What Are Recreational Vehicles and Who Makes Them?

We are adopting new exhaust emission standards for off-highway motorcycles, ATVs, and snowmobiles. Eight large manufacturers dominate the sales of these recreational vehicles. Of these eight manufacturers, seven of them manufacture two or more of the three main types of recreational vehicles. For example, there are four companies that manufacture both off-highway motorcycles and ATVs. There are three companies that manufacture ATVs and snowmobiles; one company manufactures all three. These eight companies represent approximately 95 percent of all domestic sales of recreational vehicles.

a. Off-highway motorcycles. Motorcycles are two-wheeled, self-powered vehicles that come in a variety of configurations and styles. Off-highway motorcycles are similar in appearance to highway motorcycles, but there are several important distinctions between the two types of machines. Off-highway motorcycles are not street-legal and are primarily operated on public and private lands over trails and open areas. A significant number are used in competition events. Off-highway motorcycles tend to be much smaller, lighter and more maneuverable than their larger highway counterparts. They are equipped with relatively small-displacement single-cylinder two- or four-stroke engines ranging from 48 to 650 cubic centimeters (cc) in size. The exhaust systems for off-highway motorcycles are distinctively routed high on the frame to prevent damage from brush, rocks, and water. Off-highway motorcycles are designed to be operated over varying surfaces, such as dirt, sand, or mud, and are equipped with knobby tires to give better traction in off-road conditions. Unlike highway motorcycles, off-highway motorcycles have fenders mounted far from the wheels and closer to the rider to keep dirt and mud from spraying the rider and clogging between the fender and tire. Off-highway motorcycles are also equipped with more advanced suspension systems than those for highway motorcycles. This allows the operator to ride over obstacles and make jumps safely.

Five companies dominate sales of off-highway motorcycles. They are long-established, large corporations that manufacture several different products including highway and off-highway motorcycles. These five companies account for 90 to 95 percent of all

[37] Almost all recreational vehicles are equipped with spark-ignition engines. Any diesel engines used in these applications must meet our emission standards for nonroad diesel engines.

domestic sales of off-highway motorcycles. There are also several relatively small companies that manufacture off-highway motorcycles, many of which specialize in competition machines.

b. All-terrain vehicles. The earliest ATVs were three-wheeled off-highway models with large balloon tires that existed in the early 1970's. Due to safety concerns, the three-wheeled ATVs were phased-out in the mid-1980s and replaced by the current and more popular four-wheeled vehicle known as ''quad runners'' or simply ''quads.'' Quads resemble the earlier three-wheeled ATVs except that the single front wheel was replaced with two wheels. The ATV steering system uses motorcycle handlebars, rather than a steering wheel. The operator sits on and rides the quad much like a motorcycle. The engines used in quads tend to be very similar to those used in off-highway motorcycles—relatively small, single-cylinder two- or four-stroke engines. Quads are typically divided into utility and sport models. The utility quads are designed for multi-function use and have the ability to perform many utility functions, such as plowing snow, tilling gardens, and mowing lawns in addition to use for recreational riding. They are typically heavier and equipped with relatively large four-stroke engines and automatic transmissions with a reverse gear. Sport quads are smaller and lighter and designed primarily for recreational purposes. They are equipped with two- or four-stroke engines and manual transmissions. Presently utility ATVs comprise about 75 percent of the market and sport models about 25 percent.

Of all of the types of recreational vehicles, ATVs have the largest number of major manufacturers. All but one of the companies noted above for off-highway motorcycles and below for snowmobiles are significant ATV producers. These seven companies represent over 95 percent of total domestic ATV sales. The remaining 5 percent of sales come from importers, which tend to import less expensive, youth-oriented ATVs.

As discussed below, we are requiring utility vehicles capable of speeds above 25 mph to comply the regulations for ATVs.

c. Snowmobiles. Snowmobiles, also referred to as ''sleds,'' are tracked vehicles designed to operate over snow. Snowmobiles have some similarities to off-highway motorcycles and ATVs. A snowmobile rider sits on and rides a snowmobile similar to an ATV. Snowmobiles use high-powered two- and three-cylinder two-stroke engines that look similar to off-highway motorcycle engines. Rather than wheels, snowmobiles are propelled by a track system similar to what is used on a bulldozer. The snowmobile is steered by two skis at the front of the sled. Snowmobiles use handlebars similar to off-highway motorcycles and ATVs. The typical snowmobile seats two riders comfortably. Over the years, snowmobile performance has steadily increased to the point that many snowmobiles currently have engines over 100 horsepower and are capable of exceeding 100 miles per hour. The definition for snowmobiles includes a limit of 1.5-meter width to differentiate conventional snowmobiles from ice-grooming machines and snow coaches, which use very different engines.

There are four major snowmobile manufacturers, accounting for more than 99 percent of all domestic sales. The remaining sales come from very small manufacturers who tend to specialize in high-performance designs.

d. Other recreational vehicles. Currently, our Small SI nonroad engine regulations cover all recreational engines that are under 19 kW (25 hp) and have either an installed speed governor or a maximum engine speed less than 5,000 revolutions per minute (rpm). Recreational vehicles currently covered by the Small SI standards include go-carts, golf carts, and small mini-bikes. Although some off-highway motorcycles, ATVs and snowmobiles have engines with rated horsepower less than 19 kW, they all have maximum engine speeds greater than 5,000 rpm. Thus they have not been included in the Small SI regulations. The only other types of small recreational engines not covered by the Small SI rule are those engines under 19 kW that aren't governed and have maximum engine speed of at least 5,000 rpm. There are relatively few such vehicles with recreational engines not covered by the Small SI regulations. The best example of vehicles that fit in this category are stand-on scooters and skateboards that have been equipped with very small gasoline spark-ignition engines. The engines used on these vehicles are typically the same as those used in string trimmers or other lawn and garden equipment, which are covered under the Small SI regulations. Because these engines are generally already covered by the Small SI regulations and are the same as, or very similar to, engines as those used in lawn and garden applications, we are revising the Small SI rules to cover these engines under the Small SI regulations. To avoid any problems in transitioning to meet emission standards, we are applying these standards beginning in 2006. We did not receive any comments on this approach.

2. What Is the Regulatory History for Recreational Vehicles?

The California Air Resources Board (California ARB) established standards for off-highway motorcycles and ATVs, which took effect in January 1997 (1999 for vehicles with engines of 90 cc or less). California has not adopted standards for snowmobiles. The standards, shown in Table III.A–1, are based on the highway motorcycle chassis test procedures. Manufacturers may certify ATVs to optional standards, also shown in Table III.A–1, which are based on the utility engine test procedure.[38] This is the test procedure over which Small SI engines are tested. The stringency level of the standards was based on the emission performance of small four-stroke engines and advanced two-stroke engines with a catalytic converter. California ARB anticipated that the standards would be met initially by using high-performance four-stroke engines.

III.A–1—CALIFORNIA OFF-HIGHWAY MOTORCYCLE AND ATV STANDARDS FOR MODEL YEAR 1997 AND LATER

[1999 and later for engines at or below 90 cc]

	HC	NO_X	CO	PM
Off-highway motorcycle and ATV standards (g/km)	[a] 1.2		15	

[38] Notice to Off-Highway Recreational Vehicle Manufacturers and All Other Interested Parties Regarding Alternate Emission Standards for All-Terrain Vehicles, Mail Out #95–16, April 28, 1995, California ARB (Docket A–2000–01, document II–D–06).

	HC + NO_X	CO	PM
Optional standards for ATV engines below 225 cc (g/bhp–hr)	[a] 12.0	300	.....
Optional standards for ATV engines at or above 225 cc (g/bhp–hr)	[a] 10.0	300	.....

a Corporate-average standard.

California revisited the program because a lack of certified off-highway motorcycles from manufacturers was reportedly creating economic hardship for dealerships. The number of certified off-highway motorcycle models was particularly inadequate.[39] In 1998, California revised the program, allowing the uncertified products in off-highway vehicle recreation areas with regional/seasonal use restrictions. Currently, noncomplying vehicles may be sold in California and used in attainment areas year-round and in nonattainment areas during months when exceedances of the state ozone standard are not expected. For enforcement purposes, certified and uncertified products are identified with green and red stickers, respectively. Only about one-third of off-highway motorcycles selling in California are certified. All certified products have four-stroke engines.

B. Engines Covered by This Rule

We are adopting new emission standards for new off-highway motorcycles, ATVs, and snowmobiles. (We are also applying existing Small SI emission standards to other recreational equipment, as described above.) The engines used in recreational vehicles tend to be small, air- or liquid-cooled, reciprocating Otto-cycle engines that operate on gasoline.[40] Engines used in vehicle applications experience engine performance that is characterized by highly transient operation, with a wide range of engine speed and load capability. Maximum engine speed are typically well above 5,000 rpm. Also, with the exception of snowmobiles, the vehicles are typically equipped with transmissions rather than torque converters to ensure performance under a variety of operating conditions.[41]

1. Two-Stroke vs. Four-Stroke Engines

The engines used by recreational vehicles can be separated into two distinct designs: two-stroke and four-stroke. The distinction between two-stroke and four-stroke engines is important for emissions because two-stroke engines tend to emit much greater amounts of unburned HC and PM than four-stroke engines of similar size and power. Two-stroke engines have lower NO_X emissions than do four-stroke engines because they experience a significant amount of internal exhaust gas recirculation resulting from exhaust gases being drawn back into the combustion chamber on the piston's downward stroke while the exhaust port is uncovered. Exhaust gas is inert and displaces fresh fuel and air that could otherwise be combusted, which creates lower in-cylinder temperatures and thus less NO_X. Two-stroke engines also have greater fuel consumption than four-stroke engines, but they also tend to have higher power output per-unit displacement, lighter weight, and better cold-starting performance. These, and other characteristics, tend to make two-stroke engines popular as a power unit for recreational vehicles. With the exception of a few youth and touring models, almost all snowmobiles use two-stroke engines. Currently, about 63 percent of all off-highway motorcycles (predominantly in high-performance, youth, and entry-level bikes) and 20 percent of all ATVs sold in the United States use two-stroke engines.

The basis for the differences in engine performance and exhaust emissions between two-stroke and four-stroke engines can be found in the fundamental differences in how two-stroke and four-stroke engines operate. Four-stroke operation takes place in four distinct steps: intake, compression, power, and exhaust. Each step corresponds to one up or down stroke of the piston or 180° of crankshaft rotation. The first step of the cycle is for an intake valve in the combustion chamber to open during the intake stroke, allowing a mixture of air and fuel to be drawn into the cylinder while the piston moves down the cylinder. The intake valve then closes and the momentum of the crankshaft causes the piston to move back up the cylinder, compressing the air and fuel mixture. At the very end of the compression stroke, the air and fuel mixture is ignited by a spark from a spark plug and begins to burn. As the air and fuel mixture burns, increasing temperature and pressure cause the piston to move back down the cylinder. This is referred to as the ''power'' stroke. At the bottom of the power stroke, an exhaust valve opens in the combustion chamber and as the piston moves back up the cylinder, the burnt gases are pushed out through the exhaust valve to the exhaust manifold, and the cycle is complete.

In a four-stroke engine, combustion and the resulting power stroke occur only once every two revolutions of the crankshaft. In a two-stroke engine, combustion occurs every revolution of the crankshaft. Two-stroke engines eliminate the intake and exhaust strokes, leaving only compression and power strokes. This is due to the fact that two-stroke engines do not use intake and exhaust valves. Instead, they have intake and exhaust ports in the sides of the cylinder walls. With a two-stroke engine, as the piston approaches the bottom of the power stroke, it uncovers exhaust ports in the wall of the cylinder. The high pressure combustion gases blow into the exhaust manifold. As the piston gets closer to the bottom of the power stroke, the intake ports are uncovered, and fresh mixture of air and fuel are forced into the cylinder while the exhaust ports are still open. Exhaust gas is ''scavenged'' or forced into the exhaust by the pressure of the incoming charge of fresh air and fuel. In the process, however, some mixing between the exhaust gas and the fresh charge of air and fuel takes place, so that some of the fresh charge is also emitted in the exhaust. Losing part of the fuel out of the exhaust during scavenging causes very high hydrocarbon emission characteristics of two-stroke engines. The other major reason for high HC emissions from two-stroke engines is their tendency to misfire under low-load conditions due to greater combustion instability.

2. Applicability of Small SI Regulations

In our regulations for Small SI engines, we established criteria, such as rated engine speed at or above 5,000 rpm and the use of a speed governor, that excluded engines used in certain types of recreational vehicles (see 40 CFR 90.1(b)(5)). Engines used in some other types of recreational vehicles may be covered by the Small SI standards, depending on the characteristics of the engines. For example, lawnmower-type

[39] Initial Statement of Reasons, Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-highway Recreational Vehicles and Engines, California ARB, October 23, 1998 (Docket A–2000–01, document II–D–08).

[40] Otto-cycle is another name for a reciprocating, internal-combustion engine that uses a spark to ignite a homogeneous air and fuel mixture, in which air-fuel mixing may occur inside or outside the combustion chamber.

[41] Snowmobiles use continuously variable transmissions, which tend to operate like torque converters.

engines used in go carts are typically covered by the Small SI standards because they don't operate above 5000 rpm. Similarly, engines used in golf carts are included in the Small SI program. As discussed above, we are revising the Small SI regulations to include all recreational engines except those in off-highway motorcycles, ATVs, snowmobiles, and hobby engines. Golf cart and go-cart engines will remain in the Small SI program because the vehicles are not designed for operation over rough terrain and do not meet the definition of ATV. We are accordingly removing the 5,000 rpm and speed governor criteria from the applicability provisions of the Small SI regulations.

3. Utility Vehicles

We proposed to define ATV as a ''nonroad vehicle with three or more wheels and a seat designed for operation over rough terrain and intended primarily for transportation'', and that it would include ''both land-based and amphibious vehicles''. We requested comment on the proposed definition and based on comments, we are modifying the definition to clearly exclude utility vehicles not capable of reaching 25 mph. Utility vehicles differ from ATVs in several ways. As stated earlier, an ATV is operated and ridden very similar to a motorcycle, with the rider straddling the seat and using handlebars to steer the vehicle. The throttle and brakes are located on the handle bars, similar to a motorcycle and snowmobile. Utility vehicles look and operate very similarly to golf carts. The operator sits on a bench seat with a back support that holds two or more passengers. Rather than handlebars, utility vehicles use a steering wheel and have throttle and brake pedals on the floor, similar to an automobile. Utility vehicles also typically have a cargo box or bed (similar to that found on a pick-up truck) used for hauling cargo. We define an off-highway utility vehicle as a ''nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload of 350 pounds or more or seating for six or more passengers.'' We are requiring utility vehicles capable of high speed operation (speeds greater than 25 mph) to meet ATV standards. For utility vehicles that are permanently governed and not capable of reaching 25 mph, manufacturers must either continue to certify them to the Small SI standards (or Large SI standards, if applicable) or optionally certify them to the new ATV standards.

We received comments from the Outdoor Power Equipment Institute (OPEI) that the definition should be clarified to exclude utility vehicles. Most utility vehicles are equipped with engines that are currently required to meet EPA Small SI standards. OPEI commented that utility vehicles are designed specifically for work related tasks and are equipped with seating for passengers, a bed for cargo, and riding-mower-style controls.

The industry differentiates between utility vehicles based on vehicle speed. The vast majority of utility vehicles are considered ''low-speed utility vehicles'' (LUVs) and are vehicle speed governed with maximum speed of less than 25 mph. The engines used in such vehicles are generally below 25 hp and are typically used in other lawn and garden or utility applications such as generators or lawn tractors. The engines differ significantly from those used in recreational products which are designed for higher rpm operation with an emphasis on higher performance. OPEI also provided comment on a newer type of utility vehicle, which uses a more powerful (over 19kW) ATV-based engine and is capable of speeds of up to 40 mph.

We are finalizing the approach described. The engines used in low-speed utility vehicles are more similar in design and use to utility engines than ATVs. The engines used to power these vehicles are often used in other utility applications, such as lawn and garden tractors and generators and are typically produced by companies that specialize in utility and lawn equipment rather than power sport vehicles. These products are already certified to the Small SI standards.

However, we have some concerns with continuing to use the Small SI program test cycle for engines used in applications that operate at broad engine speeds. The cycle was developed primarily for push lawnmowers and other equipment that operates in a narrow band of engine speeds. The Small SI test cycle measures emissions only at a single high engine speed. We are concerned that the Small SI test cycle may not achieve the same emission reductions for off-highway utility vehicles in use as it would for lawnmowers, especially as more stringent standards go into effect. The concern also applies to other large ride-on equipment in the Small SI program, such as riding lawn mowers, where engine speed is inherently variable. While the ATV program may not be appropriate for these low-speed utility applications due to operating and design differences, the Small SI program as it is currently designed may not be completely appropriate either. Since we did not propose changes for the Small SI program which currently applies to utility vehicles and need to further study the issues, we are not finalizing such changes to the Small SI program in this Final Rule. We plan to continue to study the issue and, if necessary, address it through a future rulemaking for the Small SI program.

In addition to test cycle, there are other reasons we plan to continue to examine the appropriateness of the Small SI program for large ride-on equipment. With respect to useful life, we are concerned that off-highway utility vehicles may be designed to last significantly longer than the typical lawnmower. 40 CFR 90.105 specifies useful life values that vary by application with the longest useful life being 1000 hours. It is not clear that this maximum value is high enough to address the expected life of in-use off-highway utility vehicles, especially those that are used commercially. Finally, with respect to the level of the standards, we are concerned about the relative stringency of the Small SI standards relative to the long-term standards for ATVs and other nonroad vehicles. Nevertheless, given the low-speed operation of these vehicles, and other differences, we do not believe that they should be treated the same as higher speed ATVs. We did not propose changes for the Small SI program to address the above issues and need to study them further. However, these vehicles are unique in many ways, and should be addressed in a future rulemaking.

Given the utility nature of the low-speed vehicles, we believe that at least for now, it is appropriate to continue to certify them under 40 CFR part 90. For vehicles capable of higher speeds (*e.g.*, greater than 25 mph), the engine designs and vehicle in-use operation is likely to be more like ATVs. The test procedures and standards for ATVs will better fit these high speed vehicles than those in the Small SI program. For regulatory purposes, we are defining an off-highway utility vehicle as a nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload capacity of 350 pounds or more or total seating for six or more passengers.

4. Hobby Engines

The Small SI rule categorized spark-ignition engines used in model cars, boats, and airplanes as recreational engines and exempted them from the

Small SI program.[42] We are continuing to exclude hobby engines from the Small SI program because of significant engine design and use differences. We also believe that hobby engines are substantially different than engines used in recreational vehicles and, as proposed, we are not including spark-ignition hobby engines in this final rule. We received no comment on our proposed treatment of hobby engines or any additional information on their design or use.

There are about 8,000 spark-ignition engines sold per year for use in scale-model aircraft, cars, and boats.[43] This is a very small subsection of the overall model engine market, most of which are glow-plug engines that run on a mix of castor oil, methyl alcohol, and nitro methane.[44] A typical spark-ignition hobby engine is approximately 25 cc with a horsepower rating of about 1–3 hp, though larger engines are available. These spark-ignition engines are specialty products sold in very low volumes, usually not more than a few hundred units per engine line annually. Many of the engines are used in model airplanes, but they are also used in other types of models such as cars and boats. These engines, especially the larger displacement models, are frequently used in competitive events by experienced operators. The racing engines sometimes run on methanol instead of gasoline. In addition, the engines are usually installed and adjusted by the hobbyist who selects an engine that best fits the particular model being constructed.

The average annual hours of operation has been estimated to be about 12.2 hours per year.[45] The usage rate is very low compared to other recreational or utility engine applications due to the nature of their use. Much of the hobby revolves around building the model and preparing the model for operation. The engine and model must be adjusted, maintained, and repaired between uses.

Spark-ignition model engines are highly specialized and differ significantly in design compared to engines used in other recreational or utility engine applications. While some of the basic components such as pistons may be similar, the materials, airflow, cooling, and fuel delivery systems are considerably different.[46] [47] Some spark-ignition model engines are scale replicas of multi-cylinder aircraft or automobile engines and are fundamentally different than spark-ignition engines used in other applications. Model-engine manufacturers often select lighter-weight materials and simplified designs to keep engine weight down, often at the expense of engine longevity. Hobby engines use special ignition systems designed specifically for the application to be lighter than those used in other applications. To save weight, hobby engines typically lack pull starters that are found on other engines. Hobby engines must be started by spinning the propeller. In addition, the models themselves vary significantly in their design, introducing packaging issues for engine manufacturers.

We are not including spark-ignition hobby engines in the recreational vehicles program. The engines differ significantly from other recreational engines in their design and use, as noted above. Emission-control strategies envisioned for other recreational vehicles may not be well suited for hobby engines because of their design, weight constraints, and packaging limitations. Approaches such as using a four-stroke engine, a catalyst, or fuel injection all would involve increases in weight, which would be particularly problematic for model airplanes. The feasibility of these approaches for these engines is questionable. Reducing emissions, even if feasible, would likely involve fundamental engine redesign and substantial R&D efforts. The costs of achieving emission reductions are likely to be much higher per engine than for other recreational applications because the R&D costs would be spread over very low sales volumes. The cost of fundamentally redesigning the engines could double the cost of some engines.

By contrast, because of their very low sales volumes, annual usage rates, and relatively short engine life cycle, spark-ignition hobby engine emission contributions are extremely small compared to recreational vehicles. The emission reductions possible from regulating such engines would be minuscule (we estimate that spark-ignition hobby engines as a whole account for less than 30 tons of HC nationally per year, much less than 0.01 percent of mobile source HC emissions).[48]

In addition, hobby engines differ significantly in their in-use operating characteristics compared to small utility engines and other recreational vehicle engines. It is unclear if the test procedures developed and used for other types of spark-ignition engine applications would be sufficiently representative or even technically practical for hobby engines. We are not aware of any efforts to develop an emission test cycle or conduct any emission testing of these engines. Also, because installing, optimizing, maintaining, and repairing the engines are as much a part of the hobby as operating the engine, emission standards could fundamentally alter the hobby itself. Engines with emission-control systems would be more complex and the operator would need to be careful not to make changes that would cause the engine to exceed emission standards. EPA will continue to review these issues, as necessary, in the future and reconsider adoption of regulations if appropriate.

5. Competition Exemptions

a. Off-Highway motorcycles. Currently, a large portion of off-highway motorcycles are designed as competition/racing motorcycles. These models often represent a manufacturer's high-performance offerings in the off-highway market. Most such motorcycles are of the motocross variety, although some high-performance enduro models are marketed for competition use.[49] [50] These high-performance motorcycles are

[42] 80 FR 24292, April 25, 2000.

[43] Comments submitted by Hobbico on behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A–2000–01, document II–D–58.

[44] Hobby engines with glow plugs are considered compression-ignition (diesel) engines because they lack a spark-ignition system and a throttle (see the definition of compression-ignition, 40 CFR 89.2). The nonroad diesel engine regulations 40 CFR part 89 generally do not apply to hobby engines, so these engines are unregulated.

[45] Comments submitted by Hobbico on behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A–2000–01, document II–D–58.

[46] E-mail from Carl Maroney of the Academy of Model Aeronautics to Christopher Lieske, of EPA, June 4, 2001, Docket A–2000–01, document II–G–144.

[47] Comments submitted by Hobbico on Behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A–2000–01, document II–D–58.

[48] For further information on the feasibility, emission inventories, and costs, see ''Analysis of Spark Ignition Hobby Engines'', Memorandum from Chris Lieske to Docket A–2000–01, document II–G–144.

[49] A motocross bike is typically a high-performance off-highway motorcycle that is designed to be operated in motocross competition. Motocross competition is defined as a circuit race around an off-highway closed-course. The course contains numerous jumps, hills, flat sections, and bermed or banked turns. The course surface usually consists of dirt, gravel, sand, and mud. Motocross bikes are designed to be very light for quick handling and easy maneuverability. They also come with large knobby tires for traction, high fenders to protect the rider from flying dirt and rocks, aggressive suspension systems that allow the bike to absorb large amounts of shock, and are powered by high-performance engines. They are not equipped with lights.

[50] An enduro bike is very similar in design and appearance to a motocross bike. The primary difference is that enduros are equipped with lights and have slightly different engine performance that is more geared towards a broader variety of operation than a motocross bike. An enduro bike

largely powered by two-stroke engines, though some four-stroke models have been introduced in recent years.

Competition events for motocross motorcycles mostly involve closed-course or track racing. Other types of off-highway motorcycles, such as enduros and trials bikes, are usually marketed for trail or open-area use. When used for competition, these models are likely to be involved in point-to-point competition events over trails or stretches of open land. There are also specialized off-highway motorcycles that are designed for competitions such as ice racing, drag racing, and observed trials competition. A few races involve professional manufacturer-sponsored racing teams. Amateur competition events for off-highway motorcycles are also held frequently in many areas of the U.S.

Clean Air Act subsections 216 (10) and (11) exclude engines and vehicles ''used solely for competition'' from nonroad engine and nonroad vehicle regulations. In the proposal we stated that in previous nonroad engine emission-control programs, we have generally defined the term as follows:

Used solely for competition means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

Most motorcycles marketed for competition do not appear to have obvious physical characteristics that constrain their use solely to competition. In fact, they are usually sold by dealers from the showroom floor. Upon closer inspection, however, there are several features and characteristics for many competition motorcycles that make recreational use unlikely. For example, motocross bikes are not equipped with lights or a spark arrester, which prohibits them from legally operating on public lands (such as roads, parks, state land, and federal land).[51] Vehicle performance of modern motocross bikes is so advanced (for example, with extremely high power-to-weight ratios and advanced suspension systems) that it is highly unlikely that these machines will be used for recreational purposes. In addition, motocross and other competition off-highway motorcycles typically do not come with a warranty, which further deters purchasing and using competition bikes for recreational operation.[52] We believe these features are sufficient in distinguishing competition motorcycles from recreational motorcycles. Therefore, we are specifically adopting the following features as indicative of motorcycles used solely for competition: *absence of a headlight or other lights; the absence of a spark arrester; suspension travel greater than 10 inches; an engine displacement greater than 50 cc; absence of a manufacturer warranty; and the absence of a functional seat.*

Manufacturers must specifically request and receive an exemption from EPA to sell off-highway motorcycles without a certificate under the competition exemption. Vehicles not meeting the applicable criteria listed above will be exempted only in cases where the manufacturer has clear and convincing evidence that the vehicles for which the exemption is being sought will be used solely for competition. Examples of this type of evidence may be technical rationale explaining the differences between a competition and non-competition motorcycle, marketing and sales information indicating the intent of the motorcycle for competition purposes, and survey data from users indicating the competitive nature of the motorcycle.

Although there are several features that generally distinguish competition motorcycles from recreational motorcycles, several parties have commented that they believe motorcycles designed for competition use are also used for recreational purposes, rather than solely for competition. This is of particular concern because competition motorcycles represent about 29 percent of total off-highway motorcycle sales or approximately 43,000 units per year. However, a study on the characterization of off-highway motorcycle usage found that there are numerous—and increasingly popular—amateur off-highway motorcycle competitions across the country, especially motocross.[53] The estimated number of off-highway motorcycle competitors is as high as 80,000. Since it is very common for competitive riders to replace their machines every one to two years, the sale of 43,000 off-highway competition motorcycles appears to be a reasonable number, considering the number of competitive participants. We are therefore confident that, although we are excluding a high percentage of off-highway motorcycles as being competition machines, the criteria laid out above are indicative of motorcycles used solely for competition.

However, we do recognize that it is possible that some competition motorcycles will be used for recreational purposes. We are therefore adopting a provision within the regulations that allows the Agency to deny a manufacturer's claim for exemption from the standards for any models, including models that meet the six specified criteria, where other information is available that indicates these off-highway motorcycle models are not used solely for competition. This same provision allows the Agency to deny claims for exemptions in later years even if they had been granted previously. Examples of this type of information can be state registration data that indicate a significant number of competition exempt models being registered to operate on public lands. Off-highway competition motorcycles designed for motocross competition are not typically required to be registered with states, since most motocross competitions occur on closed-circuit courses on private, not public land, and motocross machines lack spark arresters which are required to operate on public land. We believe the possibility of losing an exemption for competition motorcycles will encourage manufacturers to take proper actions in promoting, marketing, and guaranteeing that competition machines are sold to those individuals who will use them solely for competition.

b. *Snowmobiles and ATVs.* Snowmobiles and ATVs are also used in competition events; however, the percentage of snowmobiles or ATVs used solely for competition is not nearly as large as that for off-highway motorcycles. Since snowmobile and ATV competition have typically not been as popular as off-highway motorcycle competitions, there has not been the demand for competition machines that exists with off-highway motorcycles. As a result, manufacturers have not manufactured and sold directly from their dealers competition snowmobiles and ATVs like they have off-highway motorcycles. Most snowmobiles and ATVs used in competition events are modified recreational vehicles, rather than stock racing machines bought directly from the dealer, as is the case with off-highway motorcycles. As a result, there isn't the same concern over potential misuse of competition snowmobiles and ATVs for recreational purposes.

needs to be able to cruise at high speeds as well as operate through tight woods or deep mud.

[51] A spark arrester is a device located in the end of the tailpipe that catches carbon sparks coming from the engine before they get out of the exhaust system. This is important when a bike is used off-highway, where hot carbon sparks falling in grassy or wooded areas could result in fires.

[52] Most manufacturers of motocross racing motorcycles do not offer a warranty. Some manufacturers do, however, offer very limited (1 to 3 months) warranties under special conditions.

[53] ''Characterization of Off-Road Motorcycle Use,'' ICF Consulting, September 2001, A–2000–1 document II–A–81.

Competition snowmobiles and ATVs aren't currently sold directly at the dealership. Therefore, manufacturers can receive a competition exemption from EPA for snowmobiles and ATVs meeting all of the following criteria: *the vehicle or engine may not be displayed for sale in any public dealership; sale of the vehicle must be limited to professional racers or other qualified racers; and the vehicle must have performance characteristics that are substantially superior to noncompetitive models.*

As with off-highway motorcycles, snowmobiles and ATVs not meeting the applicable criteria listed above will be exempted only in cases where the manufacturer has clear and convincing evidence that the vehicles for which the exemption is being sought will be used solely for competition. We are also adopting the same provision as for off-highway motorcycles within the regulations that allows the Agency to deny a manufacturer's claim for exemption from the standards for any models where other information is available that indicates these snowmobiles and ATVs models are not used solely for competition. As with off-highway motorcycles, this same provision allows the Agency to deny claims for exemptions in later years even if they had been granted previously.

C. Emission Standards

1. What Are the Emission Standards and Compliance Dates?

a. Off-highway motorcycles. We are adopting HC plus NO_X and CO standards for off-highway motorcycles. We expect the largest benefit to come from reducing HC emissions from two-stroke engines. Two-stroke engines have very high HC emission levels. Baseline NO_X levels are relatively low for engines used in these applications and therefore including NO_X in the standard serves only to cap NO_X emissions for these engines. Comparable CO reductions can be expected from both two-stroke and four-stroke engines, as CO levels are similar for the two engine types. We are also adopting averaging, banking and trading provisions for off-highway motorcycles, as discussed below.

In the current off-highway motorcycle market, consumers can choose between two-stroke and four-stroke models in most sizes. Each engine type offers unique performance characteristics. Some manufacturers specialize in two-stroke or four-stroke models, while others offer a mix of models. The HC standard is likely to be a primary determining factor for what technology manufacturers choose to employ to meet emission standards overall. HC emissions can be reduced substantially by switching from two-stroke to four-stroke engines. Four-stroke engines are very common in off-highway motorcycle applications. Approximately 55 percent of non-competition off-highway motorcycles are four-stroke. Certification results from California ARB's emission-control program for off-highway motorcycles, combined with our own baseline emission testing, provides ample data on the emission-control capability of four-stroke engines in off-highway motorcycles. Off-highway motorcycles certified to California ARB standards for the 2000 model year have HC certification levels ranging from 0.4 to 1.0 g/km. These motorcycles have engines ranging in size from 48 to 650 cc; none of these use catalysts.

The emission standards for off-highway motorcycles take effect beginning in the 2006 model year. We will allow a phase-in of 50-percent implementation in the 2006 model year with full implementation in 2007. These standards apply to testing with the highway motorcycle Federal Test Procedure (FTP) test cycle. For HC+NO_X emissions, the standard is 2.0 g/km (3.2 g/mi). For CO emissions, the standard is 25.0 g/km (40.5 g/mi). Both of these standards are based on averaging with a cap on the Family Emission Limit (FEL) of 20 g/km for HC+NO_X and 50 g/km for CO. Banking and trading provisions are also included in the program, as described in Section III.C.2. These emission standards allow us to set near-term requirements to introduce the low-emission technologies for substantial emission reductions with minimal lead time. We expect manufacturers to meet these standards using four-stroke engines with some low-level modifications to fuel-system calibrations. These systems are similar to those used for many years in highway motorcycle applications, but with less overall sophistication for off-highway applications.

We received comments from several states and environmental groups encouraging us to harmonize our off-highway motorcycle standards with California. The comments focused on the perceived difference in stringency between the two programs. For California, the standard is an HC-only standard of 1.2 g/km. Our standard is a HC+NO_X standard of 2.0 g/km. We believe it is prudent to set a HC+NO_X standard in lieu of a HC-only standard since the main emission-control strategy is expected to be the use of four-stroke engines in lieu of two-stroke engines. Two-stroke engines emit extremely low levels of NO_X. Four-stroke engines, on the other hand, have higher NO_X emission levels, in the range of 0.3 g/km on average. This is part of the reason why we proposed a somewhat higher numeric standard compared to California.

The California standards, which were adopted in 1994, were stringent enough that manufacturers were unable to certify several models of off-highway motorcycles, even some with four-stroke engine technology. The result was a substantial shortage of products for dealers to sell in California. The shortage led California to change their program to allow manufacturers to sell noncompliant off-highway motorcycles under some circumstances. As a result, approximately a third of the off-highway motorcycles sold in California are compliant with the standards. The uncertified models being sold in California include both two-stroke and four-stroke machines.

EPA received comments from dealers and consumers concerned that a similar shortage could arise nationwide if EPA adopted the California standards. EPA shared this concern and proposed standards that were somewhat less stringent than that of California, based on test data from high-performance four-stroke machines. We are finalizing this approach to ensure the four-stroke technology can be implemented broadly across the product line in the 2006 time-frame. Although the approach we are finalizing contains somewhat less stringent standards than the California program, we believe it will achieve reductions beyond that of the California program because more products will be certified (even when the competition exemption is taken into account). The vast majority of the HC reductions achieved by the program come from shifting away from conventional two-stroke engines which have HC emissions levels in the range of 35 g/km. The 2.0 g/km standard represents about a 95-percent reduction in emissions for these vehicles.

If we were to go beyond this level of reduction, manufacturers would need to employ on a widespread basis additional technology that presents significant technical issues concerning their application to off-highway motorcycles given their extreme usage patterns and issues such as safety, packaging, and weight. For example, technologies such as electronic fuel injection and secondary air injection raise concerns about their durability and reliability in the harsh operating environments to which off-highway motorcycles are sometimes exposed.

The use of catalytic converters poses concerns over packaging, durability and safety. Off-highway motorcycles are very light and narrow. These attributes are necessary for operating through tight forest trails and other harsh conditions. This leaves little room for packaging a catalyst so that it won't be damaged from engine vibration, shock resulting from jumps and hopping logs, and falling over and hitting objects, such as trees and rocks. These technologies may become compatible for off-highway motorcycles in the future, but we do not believe that it is appropriate to promulgate emission standards based on these technologies at this time, given the technical problems currently associated with their use. Four-stroke engine technology has advanced considerably since the California regulations went into effect. Manufacturers are now capable of offering four-stroke engines that provide excellent performance. This performance can be achieved only as long as manufacturers are allowed to operate four-stroke engines with a slightly rich air and fuel mixture, which can result in somewhat higher HC and CO emissions. Although the standards we are setting are higher than those in California, we believe they will require four-stroke engines that are well calibrated for emissions control without significantly sacrificing performance. For these reasons, we believe the standards we are establishing are appropriate.

As discussed above in Section III.B.5, the Clean Air Act requires us to exempt from emission standards off-highway motorcycles used for competition. We expect several competition two-stroke off-highway motorcycle models to continue to be available. We are concerned that setting standards as stringent as California's would result in a performance penalty for some four-stroke engines that would be unacceptable to the consumers. This could encourage consumers who want performance-oriented off-highway motorcycles to purchase competition vehicles (and use them recreationally) in lieu of purchasing compliant machines that don't provide the desired performance. We believe that our emission standards will allow the continued advancement of four-stroke technology and properly considers available emission-control technology while taking vehicle performance into consideration and avoiding significant adverse impacts on performance.

As proposed, we are also finalizing an option allowing off-highway motorcycles with an engine displacement of 50 cc or less to be certified using the Small SI emission standards for non-handheld Class I engines. These youth-oriented models may not be able to operate over the FTP due to the higher speeds of the test cycle. We did not receive comment on this provision.

Optional Standards

During the comment period, we received several comments expressing concern that our proposed standard of 2.0 g/km HC+NO_X for off-highway motorcycles would effectively prohibit the use of two-stroke engines in non-competition applications. These engines currently have typical HC+NO_X levels of about 35 g/km. The commenters argued that two-stroke engines possess several unique attributes, such as high power and light weight, that make two-stroke powered off-highway motorcycles more desirable to some operators, especially smaller, lighter riders, than heavier four-stroke powered off-highway motorcycles.

We also received comments from several states and environmental organizations expressing strong concern over the number of competition off-highway motorcycles that would be exempt from our regulations as a result of our competition exemption. They felt that people purchasing exempt competition motorcycles would use them for recreational purposes instead of solely for competition.

One manufacturer indicated that they were planning on building high-performance off-highway motorcycles equipped with direct fuel-injection two-stroke engines that would potentially be capable of meeting a HC+NO_X standard of 4.0 g/km. To enable use of this technology, they suggested that we should adopt a standard of 4.0 g/km instead of the proposed standard of 2.0 g/km. The commenter believes that direct injection could be used to make clean competition machines and also argued that the technology is robust and not as susceptible to user modifications as other technologies such as catalysts. The commenter wanted an opportunity to develop and certify their product because it perceives a benefit to the purchaser not only in performance but also in the ability for the owner to resell the competition vehicle into the secondary market without concerns about potential misuse. In addition, the owner would be able to use the vehicle both for competition and recreation.

It is clear that if manufacturers were able to certify and bring to market clean competition machines as described by the commenter, significant reductions in emissions would be gained over conventional two-stroke technology. Some competition models we tested had baseline HC and CO emissions in excess of 50 g/km and 40 g/km, respectively. We believe it is appropriate to provide an avenue for the development and voluntary certification of clean competition motorcycles. Therefore, we are finalizing an optional set of standards for off-highway motorcycles of 4.0 g/km HC+NO_X and 35.0 g/km CO. For manufacturers to utilize this option, however, they must certify all of their models, including their competition models, to the optional standards. To qualify for this option, a manufacturer must show that ten percent or more of their sales would otherwise meet the competition definition.

The optional standard was derived from the fact that non-competition four-stroke engines can meet a 2.0 g/km level and competition two-stroke machines with advanced direct fuel-injection technology could meet a 8.0 g/km level. Since approximately one-third of the total off-highway motorcycle fleet are competition machines and the other two-thirds would be non-competition four-stroke recreational machines, the weighting of the 2.0 g/km level by two-thirds and the 8.0 g/km level by one-third results in a weighted standard of 4.0 g/km. This presumes that emissions from four-stroke engines will not increase under this option and that non-competition engines will be almost exclusively four-stroke engines. These assumptions are discussed below. The significant reductions in otherwise unregulated competition engines means that this option should produce even greater overall reductions than the base 2.0 g/km standard. We recognize that for some manufacturers this program will increase opportunities to make a limited number of non-competition recreational two-stroke machines; however, we believe that the number of two-stroke non-competition engines developed under this program will be limited by the fact that the required technology (direct fuel-injection) would be too expensive and complex for the recreational motorcycle market. The majority of non-competition recreational off-highway motorcycles that use two-stroke engines are entry-level and youth motorcycles, where cost and simplicity are important factors. There is also the fact that for every two stroke non-competition engine manufactured under this program, a manufacturer must make one less competition engine or must make more four-stroke engines. Further, we believe that any increase in the number of non-competition two-stroke engines is justified given the fact that this program will overall bring levels from off-highway engines down

considerably and the fact that the technology needed to reduce emissions from competition machines will only be made available and used if, under this optional approach, manufacturers have an incentive to use the technologies.

One major incentive in using this approach is the fact that once these machines are certified, a consumer will be able to use these machines legally for non-competition uses, which increases the value of the competition machines. This approach thus will also reduce the incentive for manufacturers to manufacturer all of their two-stroke machines as competition machines to avoid regulation, and thus reduce the incentive for users to circumvent the regulations. This may mean that any increase in two-stroke non-competition engines under this approach would not lead to an increase in total two-stroke sales, because manufacturers will not have an incentive to increase the number of two-stroke competition vehicles to avoid regulation.

We believe this approach is responsive to all of the above comments. It directly addresses the concerns of the manufacturer developing the new competition motorcycle and also helps address the concerns of users, states, and environmental groups. The successful development and certification of clean competition models increases the choices for consumers in the marketplace. Offered the option of a certified high-performance two-stroke off-highway motorcycle that can be used both for competition and recreation, consumers may not feel the need to purchase exempt competition motorcycles. This option has the potential to significantly decrease the number of conventional two-stroke competition machines sold under the competition exemption and is likely to decrease the potential for misuse of competition machines. Conventional competition two-stroke motorcycles generate extremely high levels of HC emissions, as noted above. For every conventional two-stroke competition machine replaced by a certified competition machine, HC emissions would be reduced by 80 percent, or more.

While the 4.0 g/km standard is higher than the 2.0 g/km standard contained in the base program, we do not expect any loss in emissions reductions from four-stroke models. We continue to believe most off-highway motorcycles will continue to be powered by four-stroke engines. Most non-competition off-highway motorcycles are already four-stroke motorcycles, and the trend towards four-stroke is continuing even in the absence of these regulations. We are convinced that there will be no backsliding of emissions control for motorcycles using four-stroke engines, because the dirtiest of the four-stroke models tend to be competition machines, and our emissions testing indicates that competition four-stroke off-highway motorcycles have $HC+NO_X$ emission levels below 2.0 g/km. Since these motorcycles are optimized for power and racing conditions, there is no incentive for manufacturers to increase $HC+NO_X$ emissions from their current levels. In fact, increasing the emission levels would mean increasing the air-to-fuel mixture, which would tend to reduce the engines performance.

As with the primary program, these optional standards would take effect in 2006 with 50-percent implementation and full implementation in 2007 and manufacturers could switch between the options from model year to model year. The $HC+NO_X$ standard can be met through averaging with some families certified above the standards and some below. If averaging is used, the FEL cap would be 8.0 g/km.

We are retaining the averaging approach for this option because it may be a critical flexibility for manufacturers pursuing clean competition products. The commenter based its recommendation for a 4.0 g/km standard on their projections for a single prototype model equipped with a medium sized engine. This engine is in the early stages of development and there is some uncertainty as to what emissions level the final product can achieve. Also, manufacturers may want to apply their approach to other engines that may not be able to achieve this same level of control. Manufacturers could find that they can produce competition products that are very clean relative to the baseline but with higher emissions than 4.0 g/km. For example, larger engine sizes could have emissions levels somewhat higher than the 4.0 g/km suggested by the commenter. We are not satisfied at this time that two-stroke off-highway motorcycles, particularly those used in competition could meet the 4.0 g/km standard, especially considering the special performance needs of competition motorcycles. Therefore, rather than keeping a 2.0 g/km standard for four-stroke engines and having a standard higher than 4.0 g/km for two-stroke engines (a standard as high as 8.0 g/km might be appropriate), we are using a 4.0 g/km standard that permits averaging. Averaging provides flexibility for manufacturers to bring cleaner two-stroke, particularly cleaner competition two-stroke, engines to market without creating a disincentive to building four-stroke engines. One way of taking advantage of the averaging program in this way would be for a manufacturer to maximize its sales of four-stroke models as part of its sales mix, and average the emissions from these engines against the higher emissions of the two-stroke competition engines which still would need to be much cleaner than if they were unregulated. This approach therefore requires the substantial use of cleaner four-stroke technologies while at the same time encouraging manufacturers to substantially reduce emissions from motorcycles that would otherwise be unregulated competition motorcycles. We have capped the emissions levels at 8.0 g/km $HC+NO_X$ because we want to ensure that products certified under this option provide large emissions reductions compared to baseline levels and that the option provides environmental benefits in all cases. Competition motorcycles certified to the 8.0 g/km level would continue to provide over a 75-percent reduction in HC emissions over baseline levels.

One of the challenges facing manufacturers selecting this option is the potentially high CO emissions from competition machines. We tested competition models and found CO emissions to be in the range 25 to 50 g/km. Although this option contains a somewhat higher CO standard (35 g/km compared to 25 g/km) than the base program, manufacturers are still expected to need to control CO emissions through tight engine calibrations. We are not including averaging for the less stringent CO standard. As noted by the manufacturer supporting the 4.0 g/km option, direct injection technology is likely to reduce CO from two-stroke engines. We believe that through proper calibration, the 35 g/km standard will be achievable and will not significantly impede manufacturers in selecting this option.

b. ATVs. We are adopting HC plus NO_X and CO standards for ATVs. We expect the largest benefit to come from reducing HC emissions from two-stroke engines. Two-stroke engines have very high HC emission levels. Baseline NO_X levels are relatively low for engines used in these applications and therefore including NO_X in these standards serves only to cap NO_X emissions for these engines. Comparable CO reductions can be expected from both two-stroke and four-stroke engines, as CO levels are similar for the two engine types. We are also adopting averaging, banking and trading provisions for ATVs, as discussed below.

In the current ATV market, consumers can choose between two-stroke and four-stroke models, although the

majority, approximately eighty-percent of sales, are four-stroke. Each engine type offers unique performance characteristics. Some manufacturers specialize in two-stroke or four-stroke models, but most manufacturers offer a mix of models. The HC standard is likely to be a primary determining factor for which technology manufacturers choose to employ to meet emission standards overall. HC emissions can be reduced substantially by switching from two-stroke to four-stroke engines. Certification results from California ARB's emission-control program for ATVs, combined with our own baseline emission testing, provides ample data on the emission-control capability of four-stroke engines in ATVs.

In the proposal we included two phases of ATV standards. The first phase of standards, 2.0 g/km HC+NO_X and 25 g/km CO, was proposed to be phased in at 50 percent of production in 2006 with the remainder phased-in for 2007. We proposed a second set of standards that included a more stringent 1.0 g/km HC+NO_X standard with no change to the CO standards. It was to be met in 2009/2010 using the same 50-percent and 100-percent phase-in scheme as Phase 1. We proposed that both phases of HC+NO_X standards could be met through averaging.

We received comments from several environmental groups stating that we should harmonize our Phase 1 standards with the California FTP-based standards. Manufacturers did not comment on the level of our proposed Phase 1 HC+NO_X standards. However, in a letter sent to the Agency in August 6, 2001, just before we published the proposal, the Motorcycle Industry Council stated that the most cost-effective approach to setting standards for ATVs would be to adopt the California HC standards of 1.2 g/km. They did comment on the fact that almost all of the CO nonattainment areas identified in the Draft Regulatory Support Document are now in compliance and that ATV activity is typically so far removed from congested urban areas, that we should delete the proposed CO standard.[54] Manufacturers stated generally that CO standards will make it more difficult to meet the HC+NO_X standards but did not provide additional specific comments on the feasibility or costs of the CO level proposed. In subsequent meetings with manufacturers, they suggested that if we were not going to delete the CO standard, it should be set sufficiently high so that it would not be an impediment to meeting the HC+NO_X standard. They suggested a level of 50.0 g/km.

We have decided to finalize only one set of HC+NO_X emission standards for the 2006 model year that are essentially equivalent to the California standard. The emission standards for ATVs take effect beginning in the 2006 model year. We will allow a phase-in of 50-percent implementation in the 2006 model year with full implementation in 2007. These standards apply to testing with the highway motorcycle Class I FTP test cycle. For HC+NO_X emissions, the standard is 1.5 g/km (2.4 g/mi). The California program has a HC-only standard of 1.2 g/km. We have made the standard 1.5 g/km to account for NO_X emissions. For CO emissions, we agree with manufacturers that CO standards can make it more difficult to meet the HC+NO_X standard. Based on our emission test data, we feel that a standard of 35.0 g/km (56.4 g/mi) is more appropriate than the 25.0 g/km standard we proposed or the 50.0 g/km standard suggested by the manufacturers. A standard of 35.0 g/km will still result in an overall reduction in CO emissions from high emitting ATVs, but will also allow manufacturers to balance CO control with the need to meet stringent NO_X levels. The HC+NO_X standard may be met through averaging. Banking and trading provisions for HC+NO_X are also being included in the program, as discussed in C.2., below.

Our decision to finalize a 1.5 g/km value rather than the 2.0 g/km value is consistent with the manufacturers technical capability in the 2006/2007 time-frame. The 1.5 g/km HC+NO_X and 35 g/km CO standards require the use of engine technology changes and add-on devices such as secondary air systems, which are clearly available for ATV application in this time frame. We proposed a 1.0 g/km HC+NO_X standard for a 2009/2010 phase-in which could require use of catalytic converter technology in many models of ATVs. As discussed below, we are not finalizing that proposal now, and thus find it appropriate to finalize more stringent Phase 1 standards which are technologically feasible and otherwise consistent with statutory criteria related to cost, safety, noise, and energy considerations.

Aligning our emission standards with those currently in place in California allows us to set requirements to introduce the low-emission technologies for substantial emission reductions with reasonable lead time and will for the most part allow manufacturers to sell one model in all fifty states. This ''harmonization'' between federal and California requirements is valued by industry because it allows the development and production of one emission-control technology per model/family. However, in a few cases, we expect emissions reductions under the EPA program that go beyond that of the California program because California allows the sale of uncertified ATVs, including two-stroke models, under their red sticker provisions. With the exception of competition exempt ATVs, all ATV models subject to the EPA program will need to be certified. We expect manufacturers to meet these standards using four-stroke engines with some modifications to fuel-system calibrations and some limited use of secondary air systems. These systems are similar to those used for many years in highway applications, but will likely require lesser sophistication than used in highway motorcycle applications.

In addition to being consistent with the California standards, we feel the 1.5 g/km HC+NO_X standard is more appropriate than the proposed 2.0 g/km standard because our testing has shown that emission levels from four-stroke ATVs can vary considerably. We stated in the proposed rule that a standard of 2.0 g/km HC+NO_X would be a four-stroke enforcing standard, which would most likely result in the elimination of any two-stroke engines, but not necessarily require any additional control from the four-stroke engines. As stated above, a standard of 1.5 g/km HC+NO_X will require the use of engine technology changes and add-on devices such as secondary air systems, which are clearly available for ATV application in this time frame.

At this point, we do not believe it is appropriate to promulgate Phase 2 standards. In the proposal, we projected significant use of secondary air systems and catalysts for meeting the Phase 2 standards. Since that time, we have been conducting testing on ATVs with the type of catalysts and secondary air systems we envisioned for the Phase 2 standards to demonstrate feasibility. However, the testing we have done to date has not been sufficient to reach an affirmative conclusion on the feasibility of the Phase 2 standards. Testing with secondary air systems and catalysts have not shown consistent results and we have had only partial success in demonstrating the feasibility of the proposed Phase 2 standards using these technologies. In testing on a utility-type ATV, these technologies have provided only small emissions reductions.[55] The

[54] We respond to these comments in Section II of the Summary and Analysis of Comments.

[55] Utility-type ATVs, it should be noted, are not the same as utility vehicles. Utility vehicles are not

Continued

results of our preliminary testing are discussed further in Section III.F and in the Final Regulatory Support Document. It is unclear if the level of technology we projected in the proposal would be sufficient to meet the Phase 2 standards. We have not done enough research or testing on other potential technologies, such as electronic or direct fuel injection, to finalize a decision based on these technologies. We plan to continue to evaluate the technologies that would be needed to meet the Phase 2 levels and determine if those levels can be met with the level of technology we projected in the proposal or with other technology. We also received comments that we underestimated costs for Phase 2 and we will continue to evaluate costs as well.

In addition, we received comments that the emissions inventories we projected for ATVs were too large, and that if we adjusted them appropriately, we would see that Phase 2 was not needed. This is provided in detail in the public docket.[56] We have studied and evaluated in-depth the new and additional information provided by the commenters after we published the proposal. As is shown in our revised analysis, the emissions inventory projections for ATVs have been reduced by more than 75 percent in response to the significant new information we received after publishing the proposal. Our analysis of the appropriate standards for 2006/2007 described above was made using this new information, and future analysis of Phase 2 standards would also use these revised inventory numbers. However, it is important to note that the revised inventories still show that these vehicles contribute to nonattainment.

Engine-based Standards

California allows ATVs to be optionally tested using the California ARB utility engine test cycle (SAE J1088) and procedures. In California, manufacturers using the J1088 engine test cycle option must meet the California Small Off-Road Engine emission standards. Some manufacturers do not have chassis testing facilities and at the time California finalized its program were concerned about the cost of doing FTP testing for California-only requirements. To use this option, manufacturers were required by California to submit some emission data from the various modes of the J1088 test cycles to show that emissions from these modes were comparable to FTP emissions. Although a good correlation was not found between the two test cycles, California allowed this option because the goal of their program was to encourage four-stroke engine technology in ATVs.

As described above, we are finalizing standards based on vehicle testing over the FTP that are essentially harmonized with the California FTP standards. We did not propose a permanent option of engine testing using J1088 due to strong concerns that the test cycle misses substantial portions of ATV operation because it contains test points at only one engine speed. We understand that vehicle testing would be a significant change for manufacturers who currently conduct emissions testing on the engine rather than the vehicle for California. Due to the costs and lead-time requirements associated with switching to vehicle-based testing, we proposed a transitional program to allow the J1088 option for models years 2006 through 2008. To facilitate the phase-in of ATV standards, we proposed to allow manufacturers to optionally certify ATVs using the California utility cycle and standards, shown in Table III.C–1, instead of the FTP standards.

TABLE III.C–1.—CALIFORNIA UTILITY ENGINE EMISSION STANDARDS

Engine displacement	$HC+NO_X$	CO
Less than 225 cc	12.0 g/hp-hr (16.1 g/kW-hr)	300 g/hp-hr (400 g/kW-hr)
Greater than 225 cc	10.0 g/hp-hr (13.4 g/kW-hr)	300 g/hp-hr (400 g/kW-hr)

We are finalizing this approach, but will eliminate the J1088 option (including both the test cycle and the utility engine emission standards) for certification in model year 2009. The last model year to use the J1088 cycle and emission standards is 2008. We received comments that the FTP is also not representative of ATV operation and that the J1088 option should remain available until a new test cycle and accompanying standards can be developed and made available to manufacturers. Although it may not be completely representative of ATV operation, we believe the FTP to be greatly superior to the J1088 test cycle because the cycle is transient, emissions are measured at a variety of speeds and it is more likely to result in robust emission-control designs that reduce emissions in-use. We continue to be very concerned that the vast majority of ATV operation is missed with the J1088 test because the engine is tested at only one engine speed. ATV operation is inherently transient in nature because the user controls the throttle position to vary vehicle speed. We believe the J1088 test is not sufficient to ensure robust emissions control development and use for ATVs. Given the choice of available test procedures for the long-term, we could not justify retaining the J1088 option.

For small displacement ATVs of 70 cc or less, we proposed that they would have the permanent option to certify to the proposed FTP-based ATV standards discussed above or meet the Phase 1 Small SI emission standards for non-handheld Class 1 engines. These standards are 16.1 g/kW-hr $HC+NO_X$ and 610 g/kW-hr CO. Manufacturers argued that ATVs with engine displacements between 70 cc and 99 cc also should be allowed to certify to the Small SI standards, since the differences between a 70 cc and 99 cc engine is very small and the ATVs equipped with 99

considered ATVs due to fundamental differences in the vehicle characteristics. Most utility vehicles are currently regulated by the Small SI program, with a small subset of utility vehicles required by the Final Rule to meet ATV standards. See section III.B.3. above, for a complete discussion of utility vehicles. When we say utility-type ATV, we are referring to ATVs that have features that are work related such as cargo racks. These ATVs are often somewhat larger and bulkier than sport models and may have transmissions geared more for work related tasks rather than for high performance. However, they have ATV features such as four low pressure tires, a seat designed to be straddled by the operator, handlebars for steering controls, and are intended for use by a single operator. These vehicle must meet ATV requirements.

[56] Comments of the Motorcycle Industry Council, Inc., and the Specialty Vehicle Institute of America on the Notice of Proposed Rulemaking to Establish Mandatory Emission Standards for Nonroad Large Spark-Ignition Engines and Recreational Engines (Marine and Land-Based), Air Docket A–2000–01, IV–D–214.

cc engines face the same obstacles with the FTP test cycle as the 70 cc and below ATVs. They also argued that the Phase 1 Small SI standards are too stringent for these engines and recommended that EPA adopt the Phase 2 standards for Class 1B engines of 40 g/kW-hr for HC+NO_X and 610 g/kW-hr for CO.

We recognize that the vast majority of engine families, including 4-stroke engines, below 100 cc are not certified to the California standards, which is an indication to us that the standards proposed may not be feasible for most engines in this size range given the lead time provided. However, manufacturers did not provide supporting data and we do not have data to confirm that the level recommended by the manufacturers would result in an appropriate level of control. We examined the 2002 model year certification data for non-handheld Small SI engines certified to the Phase 2 Class I–A and I–B engine standards (engines below 100 cc). We found that the five engine families certified to these standards had average emissions for HC+NO_X of about 25 g/kW-hr. All of these engine families had CO emissions below 500 g/kW-hr and well below the 610 g/kW-hr level recommended by manufacturers. We believe these levels are more representative of the levels that can be achieved with the lead time provided through the use of 4-stroke engines than the standards recommended by the manufacturers. Therefore, we are finalizing a 25.0 g/kW-hr HC+NO_X standard and a 500 g/kW-hr CO standard for ATVs with engine displacements of 99 cc or less. These standards will be optional to the FTP-based standards and, unlike the J–1088 standards option for larger displacement engines, the option will not expire. We are retaining averaging for the HC+NO_X standard but do not believe averaging would be appropriate for the CO standard. This is consistent with the approach outlined above for J–1088 standards for engines above 100 cc.

The ATV standards are phased in at 50% of a manufacturer's production in 2006 and 100% in 2007. This phase-in applies to a manufacturer's overall ATV production regardless engine size or which option a manufacturer chooses for standards for particular models.

New Test Procedure for ATVs

We are comfortable with retaining the FTP as the basis of the long-term ATV program. However, EPA understands the manufacturers' concerns regarding the additional facility costs associated with FTP testing for ATVs. We also recognize that this approach is a significant deviation from their current practice in the California program. Throughout the development of the final rule, we have met with manufacturers and the State of California and have discussed the possibility of developing a new test cycle for ATVs. We intend to work further with all interested parties to determine whether a new test cycle and accompanying standards is appropriate. The standards, if developed for the new test cycle, would be of equivalent stringency to the FTP standards discussed above. If we do propose a new test cycle and accompanying standards for ATVs, it is likely that we would do so in concert with a decision on whether a second phase of standards is appropriate for ATVs. We are now developing a Memorandum of Understanding with manufacturers which describes in detail the steps that will be taken in furtherance of this task.[57] Other interested parties including the state of California will also be invited to participate in this process.

By finalizing the temporary availability of J1088, we are providing time to develop, and if appropriate, finalize and implement an alternative to the FTP that meets both the needs of the Agency, manufacturers and other parties. This allows for our program to remain harmonized with California during the transition to the new test procedure. However, we do not support allowing the use of J1088 for a period any longer than necessary to make this transition. We expect that developing a new test cycle will be relatively straightforward and that the MOU process cited above will provide a road map of how we will proceed. We expect to initiate this effort next year and conclude the work on the new test cycle in enough time to promulgate it through rulemaking and to provide industry adequate lead time to implement it in an orderly manner (nominally three years lead time). If we encounter unforeseen and unavoidable delays or complications in this process, we will consider extending the J1088 temporarily as part of our process of adopting changes to the ATV test cycle through rulemaking. We would expect such an extension to be at most for one model year.

c. Snowmobiles. We are adopting CO and HC emission standards for snowmobiles, effective in three phases, as discussed below. As discussed below, we are also adopting an emissions averaging banking and trading program for snowmobiles which includes provisions for the early generation of credits prior to the effective date of the standards. We are not adopting PM standards for snowmobiles at this time, because limits on HC emissions will serve to simultaneously reduce PM and because there are significant complications in accurately measuring PM that make requiring PM standards difficult in this time frame. Finally, we are not adopting limits for NO_X for the first two phases of standards, but manufacturers are required to measure NO_X emissions and report them in the application for certification. However, we have included NO_X in the Phase 3 standards to effectively cap NO_X emissions from snowmobiles.

The three phases of standards we are adopting will require progressively broader application of advanced technologies such as direct injection two-stroke technology, and four stroke engines. Only about two percent of current snowmobile production utilizes these advanced technologies. We expect that about seven percent of new snowmobiles will have them by 2005. With the Phase 1 standards we expect that ten percent of snowmobiles will require advanced technologies (in addition to less advanced emissions controls on most other snowmobiles). We project that the Phase 2 and Phase 3 standards will require the application of advanced technology on 50 and 70 percent of new snowmobiles, respectively.

Phase 1 Standards

We are adopting Phase 1 standards largely as proposed for snowmobiles to take effect for all models starting in the 2006 model year. However, given that the manufacturers will effectively have only three years to design and certify snowmobiles prior to the 2006 model year, as well as the fact that snowmobiles are currently unregulated, we believe that requiring 100 percent of models to certify in 2006 is not reasonable. Thus, we are including a phase in of the Phase 1 standards with 50 percent of sales required to comply with the 30 percent reduction standards in 2006 and 100 percent compliance required in 2007. The standards of 275 g/kW-hr (205 g/hp-hr) for CO and 100 g/kW-hr (75 g/hp-hr) for HC are to be met on average by each manufacturer. As described in the proposal, these standards represent a 30-percent reduction from the baseline CO and HC emission rates for uncontrolled snowmobiles. We expect manufacturers to meet these standards using a variety of technologies and strategies across their product lines. For the reasons

[57] See item IV–G–114, docket A–2000–01.

described below, we believe these are the most stringent standards feasible beginning in the 2006 model year.

Snowmobiles pose some unique challenges for implementing emission-control technologies and strategies. Snowmobiles are very sensitive to weight, power, and packaging constraints. Current snowmobile designs have very high power-to-weight ratios, to address performance considerations. The desire for low weight has been stated to be a concern, since weight (and weight distribution) affects handling and operators occasionally have to drag their sleds out of deep snow. This has especially been mentioned as a concern in the context of four-stroke engines given that they are heavier than their two-stroke counterparts of similar power. However, four-stroke engines have significantly better fuel economy than two-stroke engines, and for identical fuel tank sizes, would have significantly greater range. This of course would be a positive attribute. The size of a fuel tank on a four-stroke powered snowmobile could be reduced to provide similar range to that of a similarly powered two-stroke snowmobile, resulting in offsetting weight savings from both the smaller fuel tank and less fuel on board. However, this could still represent a change in the distribution of weight compared to current sleds.

The approach used to control emissions in compliance with the Phase 1 standards will vary according to a given manufacturers product line, technological capability, long term plans, and other factors. However, we expect all manufacturers to pursue a mix of technologies. Some manufacturers may focus more on clean carburetion and associated engine modifications and apply those widely across their entire product line with more limited implementation of advanced technology such as four-stroke and semi direct injection engines. Others may choose to be more aggressive in applying advanced technologies in their more expensive, high-performance sleds and be less aggressive in pursuing emission reductions from their lower-priced offerings to optimize the fit of different technologies (and their associated costs) to the various product offerings in the near term. As can be seen on their websites[58], all large manufacturers now have limited product offerings of advanced emissions technology snowmobiles. Snowmobiles must, on average and according to the phase in schedule, meet the first phase of emission standards beginning with the 2006 model year. Given the relative inexperience this industry has with designing effective snowmobile engines with advanced emissions controls and in certifying to EPA requirements, it is unlikely that any manufacturer could market enough of these advanced snowmobiles for model year 2006 to enable it to meet significantly more stringent standards. Due to the unique performance requirements for snowmobiles and the relatively short lead time to modify current engines or design new products, we believe our 2006/2007 standards will be technologically challenging for manufacturers and will result in cleaner snowmobiles.

Phase 2 and Phase 3 Standards

We believe the two most viable advanced technologies for use in snowmobiles are two-stroke direct (or semi-direct) injection technology and four-stroke engines. All four major snowmobile manufacturers either currently offer or are planning to offer in the next year or two one or more of these technologies on a limited number of snowmobile models. With sufficient resources and lead time for manufacturers, we believe it would be technologically possible to eventually apply such advanced technology broadly across most or all of the snowmobile fleet.

Manufacturers have indicated that with enough investment and sufficient time to design and implement direct injection technology for snowmobile use, two-stroke engines equipped with direct fuel injection systems can reduce HC emissions by 70 to 75 percent and reduce CO emissions by 50 to 70 percent. These projections are based largely on laboratory prototypes and generally do not account for in-use deterioration or the need for production compliance margins in the ultimate certification levels. Certification results for 2002 model year outboard engines and personal water craft support these projections.[59]

In addition to the direct injection two-stroke, a few four-stroke models are currently available, and more are expected to be introduced in the next few years. Based on testing of prototypes and other low-hour engines it appears that advanced four-stroke snowmobiles are capable of HC reductions ranging from 70 to 95 percent relative to current technology two-stroke snowmobile engines. However, CO reductions from four stroke engines vary quite a bit. For four-stroke engines used in low-power applications, CO reductions of 50 to 80 percent from baseline levels have been reported. However, the majority of the snowmobile market is for higher-powered performance machines, and CO reductions from higher powered four stroke engines are lower than those from low powered four strokes, with expected reductions of 20 to 50 percent from baseline levels. As discussed further in the RSD and Summary and Analysis of Comments document, we expect that many of the four-stroke snowmobile models offered in the future will not be current two-stroke models which have been modified to utilize a four-stroke engine, but rather new models designed specifically to take advantage of the unique characteristics of four-stroke engines. Thus, we expect that the lead time associated with the conversion to four-stroke engines and optimized sleds is even longer than that needed for conversion to direct injection two-stroke technology.

It is not obvious to us that either of these advanced technologies is better than the other or more suited to broad application in the snowmobile market. Each has its strong points regarding emissions performance, power, noise, cost, etc. For example, two-stroke engines equipped with direct fuel injection have the potential to have greater CO emission reductions than a comparably powered four-stroke engine, although they would have less HC reductions. For those applications where a light, powerful, compact engine is desired, a direct injection two-stroke engine may be preferred. However, for applications where pure power and speed is desired, a high-performance four-stroke engine may be preferred. Given the broad range of snowmobile model designs and applications it is apparent that one of these technologies could be preferable to the other in some situations. Further, given the broad range of snowmobile types offered, a mix of advanced technologies would provide the best opportunity for substantial average emission reductions while still maintaining customer satisfaction across the entire range of snowmobile types. Thus, we believe it is most appropriate to set emission standards for snowmobiles that are not based entirely on the use of either direct injection two-stroke technology or four-stroke engines, but rather a mix of the

[58] *http://www.arcticcat.com, http://www.polarisindustries.com, http://www.skidoo.com,* and *http://www.yamaha-motor.com.*

[59] See the snowmobile feasibility discussion in the Final Regulatory Support Document.

two, along with some other technologies in certain applications.

It is our belief that with sufficient resources and lead time, manufacturers can successfully implement technologies such as two-stroke direct injection and four-stroke engines in many models in their respective snowmobile fleets. The question at hand is how broadly this technology can be practically applied across the snowmobile fleet in the near term, taking into account factors such as the number of engine and snowmobile models currently available, and the capacity of the industry to perform the research and development efforts required to optimally apply advanced technology to each of these models.

Currently there are only four major snowmobile manufacturers, and each has different technological capabilities. Of these four, only two currently manufacturer all of their own engines, one has limited in-house engine manufacturing operations, the other has none. Beyond this, there are only two advanced technologies (direct injection two-stroke, and four stroke) that at this time appear to be feasible to provide significant reductions in snowmobile emissions. Further, given the small volume of snowmobile sales compared to other vehicles and equipment which use similar sized engines, these manufacturers may have difficulty in working with their engine suppliers to develop and optimize four-stroke or direct injection two-stroke technology quickly. Clearly, the nature of the relationship between these snowmobile manufacturers and their suppliers would result in a less efficient use of available lead time as compared to the manufacturers that have both technology and engine manufacturing available in-house. Thus, there is varying capability within the snowmobile industry to develop and implement advanced technology in the next five to ten years.

The amount of engine redesign or development work is another factor. While one snowmobile manufacturer currently offers four different engine models, the other three, including the two that do not manufacture their own engines, currently offer eight to twelve engine models each. Additionally, each of these engine models typically goes into more than one type of snowmobile. There are a variety of basic snowmobile types specifically designed for a variety of riding styles and terrains including high-performance trail riding, high-performance off-trail riding (including designs specifically for deep snow), mountain riding, touring (two person snowmobiles designed for use on groomed trails), and entry level snowmobiles (lower-powered and lower priced snowmobiles which utilize simpler technology and are specifically designed to appeal to first time buyers). Some snowmobile manufacturers also offer snowmobile models specifically for youth, and utility models for work in cold climates or to facilitate winter sports such as hauling winter camping gear, or hunting and fishing equipment. It is not surprising that some of these snowmobile models are much more popular than others. Thus, there can be quite a difference in the production volumes of the different snowmobile types, with performance models typically having large sales volumes, and more unique models such as utility and youth models selling far fewer units.

Considering the number of snowmobile types, and the fact that each engine model is typically used in several different snowmobile models, each manufacturer has potentially dozens of different engine/snowmobile combinations that it offers. An analysis of the manufacturers current product offerings shows that while one manufacturer has only about twelve unique engine/snowmobile model combinations, the other three offer significantly more—from around 30 to over 50. Each of these different snowmobile models is designed with specific power needs in mind, with the engine and clutching specifically suited for the application style for which the snowmobile was intended. This means that a given engine model may require slightly different calibrations for each different snowmobile model in which it is used. While the advanced technologies are known, they are not ''one size fits all'' technologies. These technologies need to be optimized not only for the specific engine model, but in some cases for the snowmobile the engine will be used in as well, as just described.

For all of the reasons just discussed, we believe that it is necessary to allow two additional years of lead time for compliance with the proposed Phase 2 standards, and are therefore adopting the ultimate phase of snowmobile standards effective for the 2012 model year rather than the 2010 model year as proposed. However, we expect that between the 2006 and 2012 model years there can and will be substantial development and application of advanced technologies on snowmobiles beyond that required in compliance with the Phase 1 standards. We believe that it is important to capture the emission benefits that these advances present, and are therefore adopting a new set of Phase 2 standards, effective with the 2010 model year, which will require 50 percent HC reductions and 30 percent CO reductions from average baseline levels. The Phase 2 standards are 275 g/kW-hr (205 g/hp-hr) for CO and 75 g/kW-hr (56 g/hp-hr) for HC. These Phase 2 standards will be followed by Phase 3 standards in 2012 which will effectively require the equivalent of 50 percent reductions in both HC and CO as compared to average baseline levels.

We believe that the 2010 and 2012 model years are appropriate for the second and third phases of snowmobile standards because they allow an additional four to six years beyond the Phase 1 standards for the further development and application of advanced emissions control technology. We expect that the manufacturers will utilize some level of advanced technology in compliance with the Phase 1 standards, and this will give the manufacturers some time to evaluate how the advanced technology they have already applied works in the field as well as give them several years to work with the certification and compliance programs before more stringent Phase 2 standards take effect in 2010. We believe that by the 2010/2012 time frame manufacturers could, at least in theory, apply advanced technology across essentially their entire product lines. However, the manufacturers are resource constrained, and they will need to focus their efforts on compliance with the Phase 1 and Phase 2 standards prior to the 2010 model year. There is a need for significant technology development and manufacturing learning to occur, and there is concern that in this time frame such technology could not be performance, emissions, and safety optimized for each application given the number of engine and snowmobile model combinations that would require optimization. This would be especially challenging for those manufacturers who rely on outside suppliers for their engines. Rather, we expect that by the 2012 model year the manufacturers could both apply and optimize advanced technology to their larger volume families while applying clean carburetion and electronic fuel injection technology to the rest of their production. Under this scenario we expect that the manufacturers could apply optimized advanced technology on around 50 percent of their production by the 2010 model year, and an additional 20 percent of their production by the 2012 model year. We do not believe that having only two

years lead time between the Phase 2 and Phase 3 standards presents any problems because compliance with the Phase 3 standards will be achieved through the broader application of technologies which will already be applied in compliance with the Phase 2 standards, rather than through the introduction of new technologies altogether.

As was previously discussed, four-stroke technology has the potential to significantly reduce HC emissions, even below levels expected from direct injection two-stroke technology. However, higher powered four-stroke engines are not currently capable of CO reductions on the order of those expected from direct injection two-stroke technology. This is significant given that a very large segment of the snowmobile market is in higher powered performance sleds. We are concerned that a straight 50 percent reduction in CO in the Phase 3 standards may deter technology development and constrain the use of four-stroke technology in this key portion of the snowmobile market. As the emissions standards become more stringent we believe that it is important to provide additional flexibility to assure compliance in a manner which minimizes costs and is consistent with the availability of technology and the realities of the snowmobile marketplace. Thus, to allow snowmobile manufacturers the flexibility to base their future product lines on higher percentages of four-stroke models, we are adopting a flexible Phase 3 standards scheme that will allow manufacturers to certify their production to levels which nominally represent 50 percent reductions in HC and CO. This overall reduction could be met by other combinations summing to 100 percent such as 70 percent reductions in HC and 30 percent reductions in CO, or any level between these two points (for example, 60 percent reductions in HC and 40 percent reductions in CO). However, in no case may a manufacturer's corporate average for the individual pollutants for Phase 3 be less than 50 percent on HC and 30 percent on CO (the Phase 2 standards).

Some manufacturers have raised safety concerns regarding the use of advanced technologies on snowmobiles, particularly four-stroke engines used in high-performance and mountain sleds. In particular, they raised issues regarding weight and the ability to start the snowmobile in cold weather. However, we believe these issues can be overcome with sufficient time and technology. For example, as noted above, smaller fuel tanks can significantly reduce the weight of four-stroke snowmobiles. The use of new light-weight materials can also reduce weight for four-stroke designs. Manufacturers have raised concerns over cold starting for four-stroke engines because the typical four-stroke design uses an oil distribution system where the pump and oil are located in the crankcase (referred to as a ''wet'' sump). During extremely cold temperatures, the oil becomes thick and provides an additional load the engine must overcome when starting. However, by using a ''dry'' sump, where the oil and pump are located in a separate tank (not in the crankcase), the concern over cold temperature starting loads due to thickened oil in the crankcase are gone. The new Yamaha RX–1 four-stroke snowmobile uses a smaller fuel tank and lighter materials to reduce weight and a dry sump to help cold starting, so clearly these issues can be addressed.

We believe that, given enough resources and lead time, it is ultimately feasible at some point beyond the 2012 model year to apply advanced technology successfully to all snowmobiles and perhaps to even resolve current design and operating issues with regard to the use of aftertreatment devices such as catalytic converters. However, it is difficult to predict at this point when this would be feasible, especially given the number of smaller volume snowmobile models that would need development effort once the larger volume models were optimized in compliance with the Phase 3 standards in 2012. We did consider standards based on the full application of optimized advanced technology to all snowmobiles, for example by setting the Phase 3 standards at a level that would require the full application of advanced technology to all snowmobiles. However, we believe that such standards are not feasible by 2012 and, we are not confident that we could choose the appropriate model year beyond 2012 for such standards given how far in the future such a requirement would be. Such an approach would also serve to eliminate the benefits associated with the Phase 3 standards in 2012. There are diverse capabilities and limiting factors within the industry, and time is needed for an orderly development and prove out of this advanced technology across the various models and applications before standards are set which require its use in all models. Additionally, as these engines have never previously been regulated or used advanced emission control technologies in large numbers, we believe it is appropriate to monitor the development and use of such technologies on snowmobiles before requiring these technologies for the entire fleet. Thus, we chose not to set standards at this time based on the optimized application of advanced technology to all snowmobiles. Nevertheless, we will monitor the development and application of the advanced technology as manufacturers work to comply with the Phase 3 standards in 2012 and will consider a fourth phase of snowmobile standards to take effect sometime after the 2012 model year.

We have not included a NO_X standard for the first two phases of the snowmobile regulations because NO_X emissions from snowmobiles, particularly two-stroke engines, are very small compared to levels of HC, CO and PM and we believe that stringent NO_X standards may require the use of technologies that will lead to increases in HC, PM and CO levels. Technologies that reduce NO_X are likely to increase levels of HC, PM and CO and vice versa, because technologies to reduce HC, PM and CO emissions would result in leaner operation. A lean air and fuel mixture causes NO_X emissions to increase. These increases are minor, however, compared to the reductions of HC, CO and PM that result from these techniques. On the other hand, any attempt to control the NO_X emissions may have the counter-effect of increasing HC, CO, and PM emissions, as well as causing the greater secondary PM concentrations associated with increased HC emissions. This is especially critical for HC and PM, because NO_X would be regulated primarily for its effect on secondary PM levels.

We are promulgating a NO_X standard (actually an HC plus NO_X standard) as part of the third phase of the snowmobile standards. This standard will essentially cap NO_X emissions from these engines. The reason we are including such standards in the final phase of the rule as that the third phase of the rule will result in increases in the use of four-stroke engines. While four-stroke engines greatly reduce HC and direct PM levels, they increase levels of NO_X. While NO_X levels remain substantially lower than HC and CO levels, they are higher than levels for two-stroke engines.

Thus, it is appropriate to place a cap on such levels to ensure that levels do not become so high as to become a substantial concern.

While we are promulgating an effective cap on such emissions, the standard will not mandate substantial reductions in NO_X. This is because the

emissions effect on reducing NO_X from four-stroke engines is the same as for two-stroke engines; that is, technologies that substantially reduce NO_X will increase levels of other pollutants of concern. The only way to reduce NO_X emissions from four-stroke engines (at the same time as reducing HC and CO levels) would be to use a three-way catalytic converter. We don't have enough information at this time on the durability or safety implications of using a three-way catalyst with a four-stroke engine in snowmobile applications. Three-way catalyst technology is well beyond the technology reviewed for this rule and would need substantial additional review before being contemplated for snowmobiles. Thus, given the overwhelming level of HC and CO compared to NO_X, and the secondary PM expected to result from these levels, it would be premature and possibly counterproductive to require substantial NO_X reductions from snowmobiles at this time.

2. Are There Opportunities for Averaging, Emission Credits, or Other Flexibilities?

a. Averaging, banking and trading. Historically, voluntary emission-credit programs have allowed a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more engine families certified below the applicable standards. With averaging alone, the average of all engine families for a particular manufacturer's production must be at or below that level of the applicable emission standards. We are adopting separate emission-credit programs for snowmobiles, off-highway motorcycles, and ATVs. We are adopting an emission-credit program for the optional ATV engine-based standards as well as the chassis-based standards.

In addition to the averaging program just described, the emission-credit program contains banking and trading provisions, which allow manufacturers to generate emission credits and bank them for future use in their own averaging program or sell them to another entity. We are not adopting a credit life limit or credit discounting for these credits. Unlimited credit life and no discounting increases the incentive to introduce the clean technologies needed to gain credits. To generate credits, the engine family's emissions level must be below the standard, so any credits will result from reducing emissions more than necessary to meet the standards.

ATVs and Off-highway Motorcycles

Emission credits from off-highway motorcycle and ATVs will be averaged separately because there are differing degrees of stringency in the standards for ATVs and off-highway motorcycles long-term and we do not want off-highway motorcycle credits to dilute the effectiveness of the ATV standards. This also avoids providing an advantage in the market to companies that offer both types of products over those that produce only one type. Also, ATVs certified to the chassis-based standards or engine-based standards are considered separate averaging groups with no credit exchanges between the two. We are not allowing credit exchanges between engine and chassis-based testing because there is little, if any, correlation between the two test cycles. Without a strong correlation, it is not possible to establish an exchange rate between the two programs. For the engine-based (J–1088) ATV standards, the standards vary by engine size (less than 100 cc, 100 cc up to 225 cc, and 225 cc and greater). We are allowing averaging, banking, and trading for each of the separate engine-based $HC+NO_X$ standards with no credit exchanges or averaging between the engine size categories.

We did not propose an averaging, banking, and trading program for CO for ATVs and off-highway motorcycles because it was not clear if such provisions would be needed to implement the expected technologies or if the need would warrant the additional complexity of an averaging program. We received comments that the 25 g/km CO standard could be technologically limiting in some instances. Manufacturers recommended that EPA drop CO the standard from the program and provided no comments regarding CO averaging. In addition, our recent testing indicates that the level of the standards may represent a significant technological challenge to the manufacturers in some cases.

We are retaining CO standards in the final program, and are establishing different CO standards for off-highway motorcycles and ATVs, as discussed in Section III.C.1. For ATVs, we are addressing the feasibility issues by finalizing a standard of 35 g/km. We are not including averaging or a credits program at this level. We are also adopting the 35 g/km CO standard for the optional off-highway motorcycle program with no averaging or credits program. At the 35 g/km level, we believe averaging is unnecessary and would greatly reduce the need to control CO, especially for larger manufacturers who have several engine families with which to average. The engine-based (J–1088) standards for CO also do not represent levels of stringency where we believe averaging would be appropriate or necessary. California certification test data shows that the engine-based (J–1088) CO standards can be achieved with reasonable compliance margins.

For the primary off-highway motorcycle program, we are retaining the proposed 25 g/km CO standard. We are providing the option of averaging for the 25 g/km CO standard, to help manufacturers balance the need to control CO while meeting stringent NO_X requirements. We believe that the final program with averaging for CO will enable manufacturers to develop a unified emission-control strategy to control HC, NO_X, and CO, rather than requiring them to develop unique control strategies driven by the need to meet the CO standards.

We are adopting FEL caps where we are allowing averaging standards. For ATVs certified to the 1.5 g/km FTP standard, there will be an FEL cap of 20 g/km $HC+NO_X$. This cap will also apply to off-highway motorcycles certified to the 2.0 g/km NO_X+HC standard. For off-highway motorcycles certified to the 25 g/km CO standard, the CO cap will be 50 g/km. For off-highway motorcycles, we are also finalizing an option that allows manufacturers to certify to an average $HC+NO_X$ standard of 4.0 g/km, if the manufacturer certifies all off-highway motorcycles including competition machines. Under this option, we are limiting FELs to 8.0 g/km. The goal of the option is to encourage the development and certification of clean competition products. Without a reasonable FEL limit, manufacturers could certify two-stroke machines at, or close to, baseline levels. This is a concern because the majority of manufacturers' product offerings are likely to be certified below the 4.0 g/km level and significant credits could be available. We believe the 8.0 g/km limit ensures significantly cleaner products compared to baseline levels for competition machines, while providing manufacturers with the incentive and flexibility to pursue innovative technologies for their competition products.

As noted above, we have also included engine-based J–1088 standards for ATVs. The $HC+NO_X$ portion of the J–1088 standards can be met through averaging and we have included reasonable emissions caps for these standards as well. For engines certified to the permanent optional J–1088 standards for ATV engines below 100 cc, the emissions cap is 40.0 g/kW-hr.

The NO_X+HC emissions cap is 32.2 g/kW-hr for engine certified to the temporary J–1088 standards which are available for all engine sizes.

Snowmobiles

For snowmobiles, we are adopting an emissions averaging and credit program for all three phases of standards. Averaging is available for each phase of standards. Once the program begins in 2006, manufacturers will make a demonstration of compliance with the applicable corporate average standards at the end of the model year. If a manufacturer has achieved a corporate average level below the corporate average standards, then the manufacturer may bank credits. Manufacturers may bank credits for use in a current phase of standards based on the difference between their corporate average and the standards. In order to bank credits for future use under a subsequent phase of standards, manufacturers may pull engines from their corporate average for the current phase of standards and certify them early to a future phase of standards. The credits must be generated based on the difference between the FEL for those engines and the phase of standards for which they are intended to be used. The credits may not be carried forward for use to meet a subsequent phase of standards.

For example, manufacturers may bank Phase 2 credits in 2007 by removing engines from their 2007 corporate average for one or both pollutants and certifying the engines to the Phase 2 standards early. These Phase 2 credits may then be saved for Phase 2, but may not be used for Phase 3. Manufacturers may also remove only part of an engine family for purposes of banking credits. Manufacturers may bank credits after the end of the model year when they have completed their demonstration of compliance for that year. The Final Rule includes provisions for banking credits for a single pollutant, with the other pollutant remaining in the averaging program for the current model year. For Phase 3, if a manufacturer chooses to bank credits for only one pollutant, the manufacturer must use an assigned value for the other pollutant in the Phase 3 standards formula. We are specifying a value of 90 g/kW-hr for HC+NO_X and 275 g/kW-hr for CO. These levels ensure no windfall credits using the Phase 3 formula for the credit-generating engines.

Starting with Phase 3, Family Emission Limits may be set up to the current average baseline emission levels of 400 g/kW-hr (300 g/hp-hr) CO and 150 g/kW-hr (110 g/hp-hr) HC. These caps ensure a minimum level of control for each snowmobile certified under the long-term program. We believe this is appropriate due to the potential for personal exposure to very high levels of emissions as well as the potential for high levels of emissions in areas where several snowmobiles are operated in a group. We proposed that these limits would be effective beginning in 2006. We received comments from manufacturers recommending that we drop the FEL limits because they would create a tremendous near term workload burden. They commented that manufacturers would need to modify all product lines for 2006 just to meet the FEL limit. EPA recognizes that this could be a significant issue in the early years of the program and could detract from manufacturers' efforts to develop much cleaner technologies. Thus, we are finalizing the FEL limits only for Phase 3 and later, beginning in 2012. We believe this helps resolve the lead-time and workload issues while maintaining the integrity of the long-term program.

b. Early credits. We believe that allowing manufacturers to generate credits prior to 2006 has some merit in that it encourages them to produce cleaner snowmobiles earlier than they otherwise might and provides early environmental benefits. It would also allow for a smoother transition to new emission standards in a previously unregulated industry. However, in the proposal we expressed concern that an early-credit program could result in the generation of windfall credits, especially if the credits were generated relative to the average baseline emissions rates. A manufacturer could choose those engine families that already emit below the average baseline levels and certify those families for credit generation purposes without doing anything to actually reduce their emissions. Clearly this would undermine any environmental advantages of an early-credit program. However, we believe that it is possible to design an early-credit program which provides incentive for the early introduction of cleaner snowmobiles and also helps ease the transition into the first ever phase of snowmobile standards while preventing the generation of windfall credits. The early-credit program described in the following paragraphs will be available beginning with the 2003 model year. As with the standard snowmobile emissions averaging, banking and trading program, credits generated under the early-credit program will be calculated on a power-weighted basis.

A manufacturer can choose to certify one or more engine families early for purposes of credit generation. An engine family must at least meet the Phase 1 standards for both HC and CO to qualify for early credits, and the credits will be calculated based on the difference between the certification FEL and the Phase 1 standards. Credits generated under this option can be used only in compliance with the Phase 1 standards. Thus, such early credits will expire at the end of the 2009 model year.

The above discussion of early credits primarily addresses those snowmobiles that will meet the Phase 1 standards early. However, we also expect that there will be some engine families introduced prior to the 2006 model year which could meet Phase 2 standards. For such engines, a manufacturer may elect to split credits between Phase 1 and Phase 2. A manufacturer may save credits generated between the certification FELs and the actual Phase 2 standards for use in Phase 2. Credits generated between the Phase 1 and Phase 2 standards could be used for Phase 1 only. Credits generated prior to the start of the program in 2006 may not be used for Phase 3.

EPA did not receive comments on such programs for off-highway motorcycle or ATVs and we are not finalizing any additional provisions. The majority of products currently offered for sale are equipped with four-stroke engines which raises concerns over the potential for windfall credits. Due to this issue and the lack of suggestions or input on the part of commenters, we are not finalizing early credits or other types of flexibilities for these programs.

c. Nonconformance penalties for recreational vehicles. Section 206(g) of the Act, 42 U.S.C. 7525(g), authorizes EPA to establish nonconformance penalties (NCPs) for motorcycles and heavy-duty engines which exceed the applicable emission standard, provided that their emissions do not exceed an appropriate upper limit. NCPs allow manufacturers that are technological laggards to temporarily sell their vehicles by payment of a penalty, rather than being forced out of the marketplace. One manufacturer suggested that we consider establishing NCPs for recreational vehicles. Section 213(d) of the Act makes nonroad standards subject to the provisions of section 206, and directs EPA to enforce nonroad standards in the same manner as highway vehicles. We therefore believe that the Act authorizes us to establish NCPs in appropriate circumstances for nonroad engines and vehicles. Recreational vehicles are

similar technologically to highway motorcycles, and NCPs might be appropriate for recreational vehicles under certain circumstances.

We will consider the need for NCPs two or three years before compliance with these standards is required. Manufacturers that determine in that time frame that they are likely to be unable to comply with the standards should notify us. If we determine that NCPs are appropriate for recreational vehicles, we would establish regulations that would specify how to calculate the penalties. While we have not determined the content of such regulations, it is likely that they would be similar to our existing NCP regulations for heavy-duty engines, which are set forth in 40 CFR part 86, subpart L.

3. Are There Voluntary Low-Emission Standards for These Engines?

In the proposal we included a Voluntary Low-Emission Standards program for recreational vehicles. We did this for two reasons: to encourage new emission-control technology and to aid the consumer in choosing clean technologies. We received numerous comments on this proposed program. The environmental community was supportive of voluntary standards and encouraged us to adopt permanent labels which identify the emission performance of the vehicle in a simplistic manner that would be easily understood by the initial purchaser and any purchases of used recreational vehicles. Manufacturers of recreational vehicles ATVs, off-highway motorcycles, and snowmobiles), on the other hand, did not support voluntary standards. They were supportive of providing initial purchasers with emission performance information via temporary consumer labeling, but were opposed to voluntary standards. Their concern was that voluntary standards or permanent labels could be used by federal, state, local or any other jurisdictions to limit the use of recreational vehicles from public lands by allowing access only to recreational vehicles that meet certain emission criteria. Manufacturers further argued that our proposed mandatory emission standards were stringent enough that they would encourage and result in the use of advanced emission-control technology and that the voluntary standards would provide no additional incentives.

As stated above, the general purpose of the Voluntary Low-Emission Standards program is to provide incentives to manufacturers to produce clean products and thus create market choices for consumers to purchase these products.[60] For all three recreational vehicle categories, but especially for snowmobiles, we are expecting a variety of emission-control technologies to be used to meet the standards. In all three categories we expect consumers to have a choice of which technologies to purchase and that they will base that purchase on an understanding of key attributes such as cost, performance, noise levels, safety, and emissions. Thus, an important factor for informing consumer decision is to provide them information on the relative emissions attributes of a given model. We believe this can be achieved through a temporary consumer labeling program without voluntary standards. Therefore, we are not finalizing a voluntary standard program for recreational vehicles at this time. We will consider this issue again in the future, once experience is gained under this program. In addition, given the manufacturer's opposition, it is not clear that voluntary standards by themselves would be an effective incentive for manufacturers.

Instead, we will be adopting a consumer labeling program. A label must be fixed securely to the product prior to arriving at the dealership but does not have to be permanent and may be removed by the consumer when placed into use. The label can be in the form of a removable sticker or decal, or a hang tag affixed to the handlebars or fuel cap. If a hang tag is used, it must be attached by a cable tie that cannot be easily removed, except by the ultimate retail consumer. The label, at a minimum, must include the following information: U.S. EPA; Clean Air Index (appropriate pollutant, *e.g.*, $HC+NO_X$, etc.); manufacturer name; vehicle model with engine description (*e.g.*, 500 cc two-stroke with direct fuel injection); emission performance rating scale; explanation of scale; and notice stating that label must be on vehicle prior to sale and can be removed only by the ultimate retail consumer. In section 1051.135(g) of the regulations, titled ''How must I label and identify the vehicles I produce?,'' we have developed several equations that determine what the emission performance rating scale will be for each category. The scale is based on a rating system of 1.0 through 10.0. A value of 1.0 would be assigned for the cleanest vehicle, while the dirtiest vehicle would get a rating of 10.0.

4. What Durability Provisions Apply?

We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the vehicle. This section discusses these provisions for recreational vehicles. More general certification and compliance provisions, which apply across different vehicle categories, are discussed in Sections II and VII, respectively.

a. How long do my engines have to comply. Manufacturers must produce off-highway motorcycle and ATV engines that comply over a useful life of 5 years or until the vehicle accumulates 10,000 kilometers, or for ATVs 1,000 hours, whichever occurs first. We consider the 10,000-kilometer and 1,000 hour values to be minimum values for useful life, with the requirement that manufacturers must comply for a longer period if the average life of their vehicles is longer than this minimum value.

The values being finalized will harmonize EPA's useful life intervals with those contained in the California program. We proposed a significantly longer useful life intervals of 30,000 kilometers based on our understanding of usage rates for the vehicles at the time of the proposal. We received comments from manufacturers that we overestimated vehicle usage and commenters recommended that we harmonize the useful life intervals with California's. We have lowered our estimate of usage rates based on available data, including new data provided during the comment period.

Based on our current estimates of usage, we concur with manufacturers that harmonization with California is the best approach for establishing minimum useful life intervals. Generally, this will allow the same emission test data to be used for certification under both programs. However, this remains the minimum useful life and longer useful life intervals could be required in cases where the basic mechanical warranty of the engine or the advertised operating life is longer than the minimum interval. Average service life information will help in making such a determination. The manufacturer can alternatively base the longer useful life on the average service life of the vehicles where necessary data are available.

For snowmobiles, the minimum useful life is 5 years, 8,000 km, or 400 hours of operation, whichever occurs first. We based these values on

[60] The snowmobile industry (see docket item II–G–221) and a group of public health and environmental organizations (see docket item II–G–139) have both expressed their general support for labeling programs that can provide information on the environmental performance of various products to consumers.

discussions with manufacturers regarding typical snowmobile life, and on emission-modeling data regarding typical snowmobile usage rates.[61] As with ATVs and off-highway motorcycles, longer useful life intervals are required where the basic mechanical warranty of the engine or the advertised operating life is longer than the minimum interval and the manufacturer may alternatively base the longer useful life on the average service life of the vehicles where necessary data are available.

b. What are the minimum warranty periods for emission controls. For off-highway motorcycle, ATVs, and snowmobiles, manufacturers must provide an emission-related warranty for at least half of the minimum useful life period. These periods could be longer if the manufacturer offers a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. See § 1051.120 for a description of which components are emission-related.

We have included in our final rule an optional set of standards for off-highway motorcycles that would require the certification of competition motorcycles. However, for those individual vehicles actually used in organized competition events, it may be appropriate to exclude competition motorcycles from warranty coverage. Machines used in competition, even part of the time, may be subject to usage that can cause premature degradation of the engine and related components. Competition riders may place a premium on winning at the expense of engine durability or could otherwise damage the vehicle during the competition events. In fact, most manufacturers do not offer any mechanical warranty on vehicles used in competition. In addition, motorcycles used only for competition may be modified by the user in ways that alter the emissions characteristics of the vehicle.[62] We do not believe it is reasonable to hold manufacturers responsible for the emission warranty for such vehicles.

c. How do I demonstrate emission durability during certification. Durability demonstration for off-highway motorcycles, ATVs, and snowmobiles includes a requirement to run the engines long enough to develop and justify the full life deterioration factor. This allows manufacturers to generate a deterioration factor that helps ensure that the engines will continue to control emissions over a lifetime of operation. Snowmobiles also must run out to the end of the useful life for purposes of durability demonstration and generating deterioration factors.

d. What maintenance is allowed during service accumulation. For vehicles certified to the minimum useful life, emission-related maintenance is generally not allowed during service accumulation. The only maintenance that may be done must be (1) regularly scheduled, (2) unrelated to emissions, and (3) technologically necessary. This typically includes changing engine oil, oil filter, fuel filter, and air filter.

5. Do These Standards Apply to Alternative-Fueled Engines?

These standards apply to all spark-ignited recreational vehicles, without regard to the type of fuel used. However, because we are not aware of any alternative-fueled recreational vehicles sold into the U.S. market, we are not adopting extensive special provisions to address them at this time.

6. Is EPA Controlling Crankcase Emissions?

We are requiring that new off-highway motorcycles and ATVs not emit crankcase vapors directly to the atmosphere. This requirement will phase in beginning in 2006 and be fully phased in by 2007. California's regulations for off-highway motorcycles and ATVs, which has been in effect since 1997, also prohibits the venting of crankcase vapors into the atmosphere. The major ATV manufacturers sell many of their California certified ATV models federally as 50-state applications. Thus, many ATVs sold federally already control crankcase emissions. The only exceptions could be some of the small youth ATV models that are imported from Asia.

The typical control strategy used to control crankcase emissions is to route the crankcase vapors back to the engine intake. This is consistent with our previous regulation of crankcase emissions from such diverse sources as highway motorcycles, outboard and personal water craft marine engines, locomotives, and passenger cars. We have data from California ARB showing that a performance-based four-stroke off-highway motorcycle experienced considerably higher tailpipe emission results when crankcase emissions were routed back into the intake of the engine, illustrating the potentially high levels of crankcase emissions that exist.[63]

New snowmobiles must also have closed crankcases, beginning in 2006. This requirement is relevant only for four-stroke snowmobiles, however, since two-stroke engines, by virtue of their operation, have closed crankcases. Information on the costs and benefits of this action can be found in the Final Regulatory Support Document.

D. Testing Requirements

1. What Duty Cycles Are Used To Measure Emissions?

Testing a vehicle or engine for emissions typically consists of exercising it over a prescribed duty cycle of speeds and loads, typically using a chassis or engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emission performance of engines designed to those standards. Duty cycles must be relatively comparable to the way equipment is actually used because if they are not, then compliance with emission standards would not assure that emissions from the equipment are actually being reduced in use as intended.

a. Off-highway Motorcycles and ATVs. For testing off-highway motorcycles and ATVs, we specify the current highway motorcycle test procedure be used for measuring emissions. The highway motorcycle test procedure is very similar to the test procedure as used for light-duty vehicles (i.e., passenger cars and trucks) and is referred to as the Federal Test Procedure (FTP). The FTP for a particular class of engine or equipment is actually the aggregate of all of the emission tests that the engine or equipment must meet to be certified. However, the term FTP has also been used traditionally to refer to the exhaust emission test based on the Urban Dynamometer Driving Schedule (UDDS), also referred to as the LA–4 (Los Angeles Driving Cycle #4). The UDDS is a chassis dynamometer driving cycle that consists of numerous ''hills''

[61] EPA memorandum, ''Emission Modeling for Recreational Vehicles,'' from Linc Wehrly to Docket A–2000–01, November 13, 2000 (document II–B–19).

[62] While it is possible that the user could make modifications to their competition off-highway motorcycle that alter the emissions characteristics of the vehicle, we do not expect tampering to be a problem for those competition vehicles certifying to our voluntary standard of 4.0 g/km $HC+NO_X$ because the technologies required to meet this standard, four-stroke engines and direct fuel injection two-stroke engines, are inherent to the engine and will be optimized for maximum engine performance as well as emissions performance. Thus, any modifications would actually reduce rather than improve engine performance.

[63] ''Closed Crankcase Exhaust Emissions from Four-Stoke Competition Off-highway Motorcycle,'' EPA memo from L. Wehrly to Docket A–2000–01, September 10, 2001 (document II-B–25).

which represent a driving event. Each hill includes accelerations, steady-state operation, and decelerations. There is an idle between each hill. The FTP consists of a cold start UDDS, a 10-minute soak, and a hot start. The emissions from these three separate events are collected into three unique bags. Each bag represents one of the events. Bag 1 represents cold transient operation, Bag 2 represents cold stabilized operation, and Bag 3 represents hot transient operation.

For highway motorcycles, we have three classes based on engine displacement, with Class I (50 to 169 cc) being the smallest and Class III (280 cc and over) being the largest. The highway motorcycle regulations allow Class I motorcycles to be tested on a less severe UDDS cycle than the Class II and III motorcycles. This is accomplished by reducing the acceleration and deceleration rates on some the more aggressive ''hills.'' We proposed to use this same class/cycle distinction for off-highway motorcycles and ATVs. In other words, we proposed that off-highway motorcycles and ATVs with an engine displacement at or below 169 cc would be tested over the FTP test cycle for Class I highway motorcycles. We proposed that off-highway motorcycles and ATVs with engine displacements greater than 169 cc would be tested over the FTP test cycle for Class II and Class III highway motorcycles. We requested comment on the appropriateness of allowing the use of the Class I test cycle for all ATVs.

Manufacturers have expressed concerns over the appropriateness of testing ATVs using the FTP and the ability of some ATVs to be run on the test cycle. Manufacturers recommended for FTP testing, that all ATVs be tested over the Class I cycle. Manufacturers stated that the Class I cycle top speed of 36 mph would be ''much more representative'' of ATV operation than the 57 mph top speed of the Class III cycle. Manufacturers also noted that California FTP testing is based on the use of the Class I cycle for all ATVs and that the EPA program would need to be changed allow for harmonization. Manufacturers did not raise these same concern for off-highway motorcycles which are tested in accordance with the highway motorcycle classifications for California.

After considering this issue further, we concur with the manufacturer's comments and are finalizing the Class I cycle for all ATVs. One of the objectives of the final program is to allow harmonization with California and this change is fundamental in the manufacturers' ability to use the same FTP test data for both programs. Also, the average speeds of in-use ATVs appear to be significantly lower than we estimated in the analysis for the proposal (8–13 mph compared to 20 mph). The new data on ATV usage alleviates concerns that the lower speeds of the Class I test cycle might miss significant high-speed ATV operation. The change in the test procedure is directionally consistent with this new data. In addition, the change in test procedure will enable ATVs in general to be tested over the FTP with fewer issues concerning the ability of the vehicles to operate over the driving cycle. We are finalizing the test procedure requirements as proposed for off-highway motorcycles. We believe that the manufacturer's concerns regarding the FTP are also addressed by the option to test the smallest ATVs (up to 100 cc) to J–1088 standards permanently. These vehicles are typically governed to top speeds below the 36 mph contained in the Class I FTP cycle. Also, the small displacement ATVs may be most strenuously tested (i.e., more operation at high loads) on the FTP due to their lower horsepower output.

We acknowledge that chassis dynamometers for ATVs could be costly to purchase and difficult to put in place in the near term, especially for smaller manufacturers. As discussed in Section III.C.1.b, we are allowing the use of the J1088 engine test cycle as a transitional option through model year 2008. The J1088 option expires after 2008 and the FTP becomes the required test cycle in 2009. As noted above, EPA is currently in discussions with ATV manufacturers to determine whether a new test cycle is appropriate. The J1088 may be discontinued earlier than 2009 if another test procedure is implemented.

b. Snowmobiles. We are adopting the snowmobile duty cycle developed by Southwest Research Institute (SwRI) in cooperation with the International Snowmobile Manufacturers Association (ISMA) for all snowmobile emission testing.[64] The test procedure consists of two main parts; the duty cycle that the snowmobile engine operates over during testing and other testing protocols surrounding the measurement of emissions (sampling and analytical equipment, specification of test fuel, atmospheric conditions for testing, etc.). While the duty cycle was developed specifically to roughly approximate snowmobile operation, many of the testing protocols are well established in other EPA emission-control programs and have been simply adapted where appropriate for snowmobiles.

The snowmobile duty cycle was developed by instrumenting several snowmobiles and operating them in the field in a variety of typical riding styles, including aggressive (trail), moderate (trail), double (trail with operator and one passenger), freestyle (off-trail), and lake driving. A statistical analysis of the collected data produced the five mode steady-state test cycle is shown in Table III.D–1. This duty cycle is the one that was used to generate the baseline emissions levels for snowmobiles, and we believe it is the most appropriate for demonstrating compliance with the snowmobile emission standards at this time.

TABLE III.D–1.—SNOWMOBILE ENGINE TEST CYCLE

Engine parameter	Mode				
	1	2	3	4	5
Normalized Speed	1.00	0.85	0.75	0.65	Idle
Normalized Torque	1.00	0.51	0.33	0.19	0.00
Relative Weighting (in percent)	12	27	25	31	5

The rest of the testing protocol is largely derived from our regulations for marine outboard and personal water craft engines, as recommended in the SwRI/ISMA test cycle development work (61 FR 52088, October 4, 1996).

[64] ''Development and Validation of a Snowmobile Engine Emission Test Procedure,'' Jeff J. White, Southwest Research Institute and Christopher W. Wright, Arctic Cat, Inc., Society of Automotive Engineers paper 982017, September, 1998. (Docket A–2000–1; document II–D–05).

The testing equipment and procedures from that regulation are generally appropriate for snowmobiles, including the provisions for raw exhaust gas sampling which are being adopted here for snowmobiles.

Unlike marine engines, however, snowmobiles tend to operate in cold ambient temperatures. Thus, some provision needs to be made in the snowmobile test procedure to account for the colder ambient temperatures typical of snowmobile operation. Since snowmobile carburetors are jetted for specific ambient temperatures and pressures, appropriate accounting for typical operating temperatures is important to assure that anticipated emissions reductions actually occur in use. We proposed that snowmobile engine inlet air temperature be between −15° C and −5° C (5° F and 23° F), but that the ambient temperature in the test cell not be required to be refrigerated. We received comments stating that this approach would be expensive due to the need for refrigeration equipment, pointing out that the snowmobile manufacturers do not currently have the capacity for cold testing. Further, we received comments that accurate emissions results can be obtained using appropriate jetting determined by extrapolating from the manufacturer's jet chart (if necessary).

We agree that emissions can be accurately measured at higher ambient temperatures provided that the proper compensation be made in the fueling system. For carbureted engines this means jetting the engine appropriately for the test temperature. For electronically controlled engines this doesn't tend to be an issue because such technology generally includes temperature compensation in its control algorithms. However, one manufacturer stated that for snowmobiles that have electronically controlled engines, it would be preferable and environmentally appropriate to test with colder inlet temperatures. Thus, we are adopting the option to allow snowmobile testing using either cold engine inlet air temperatures between −15° C and −5° C (5° F and 23° F) or warm engine inlet air temperatures between 20° C and 30° C (68° F and 86° F). However, depending on the location of the air box where inlet air enters the engine intake system, the inlet temperature could be considerably warmer than ambient conditions. For a snowmobile that does not have temperature compensating capabilities, it could be possible to get a moderate emission reduction due to the increase in air density that results at colder temperatures from the artificially induced test inlet air. These emission reductions would not occur in real operation since actual inlet air would be warmer. Therefore, to use the colder inlet temperature option, a manufacturer must demonstrate that for the given engine family, the temperature of the inlet air within the air box is consistent with the inlet-air temperature test conditions.

2. What Fuels Will Be Used During Exhaust Emission Testing?

We are adopting fuel specifications as proposed for all recreational vehicles that we have specified for 2004 and later light-duty vehicles.

3. Are There Production-Line Testing Provisions for These Engines?

Recreational vehicle or engine manufacturers must perform emission tests on a small percentage of their production as it leaves the assembly line to ensure that production vehicles operate at certified emission levels. The broad outline of this program is discussed in Section II.C.4 above. Production-line testing must be performed using the same test procedures as for certification testing.

E. Special Compliance Provisions

As described in Section XI.B, the report of the inter-agency Small Business Advocacy Review Panel addresses the concerns of small-volume manufacturers of recreational vehicles. We proposed to adopt the provisions recommended by the panel and received comments on the proposals. We are finalizing the provisions below as proposed, with the modifications as noted.

Off-Highway Motorcycles and ATVs

To identify representatives of small businesses for this process, we used the definitions provided by the Small Business Administration for motorcycles, ATVs, and snowmobiles (fewer than 500 employees). Eleven small businesses agreed to serve as small-entity representatives. These companies represented a cross-section of off-highway motorcycle, ATV, and snowmobile manufacturers, as well as importers of off-highway motorcycles and ATVs.

As discussed above, our emission standards for off-highway motorcycles and ATVs will likely necessitate the widespread use of four-stroke engines. Most small-volume off-highway motorcycle and ATV importers—and to a lesser degree, small-volume manufacturers—currently use two-stroke engines. While four-stroke engines are common in motorcycles and ATVs in general, their adoption by any manufacturer is still a significant business challenge. Small manufacturers of these engines may face additional challenges in certifying engines to emission standards, because the cost of certification would be spread over the relatively few engines they produce. These higher per-unit costs may place small manufacturers at a competitive disadvantage without specific provisions to address this burden.

We are applying the flexibilities described below to engines produced or imported by small entities with combined off-highway motorcycle and ATV annual sales of fewer than 5,000 units. The inter-agency panel recommended these provisions to address the potentially significant adverse effects on small entities of an emission standard that may require conversion to four-stroke engines. The 5,000-unit threshold is intended to focus these flexibilities on those segments of the market where the need is likely to be greatest and to ensure that the flexibilities do not result in significant adverse environmental effects during the period of additional lead-time recommended below.[65] In addition, we are limiting some or all of these flexibilities to companies that are in existence or have product sales at the time we proposed emission standards to avoid creating arbitrary opportunities in the import sector, and to guard against the possibility of corporate reorganization, entry into the market, or other action for the sole purpose of circumventing emission standards.

Snowmobiles

There are only a few small snowmobile manufacturers and they sell only a few hundred sleds a year, which represents less than 0.5 percent of total annual production. Therefore, the per-unit cost of regulation may be significantly higher for these small entities because they produce very low volumes. Additionally, these companies do not have the design and engineering resources to tackle compliance with emission standard requirements at the same time as large manufacturers and tend to have limited ability to invest the capital necessary to conduct emission testing related to research, development, and certification. Finally, the requirements of the snowmobile program may be infeasible or highly impractical because some small-volume

[65] For example, importers may have access to large supplies of vehicles from major overseas manufacturers and potentially could substantially increase their market share by selling less expensive noncomplying products.

manufacturers may have typically produced engines with unique designs or calibrations to serve niche markets (such as mountain riding). The new snowmobile emission standards may impose significant economic hardship on these few manufacturers whose market presence is small. We therefore believe significant flexibility is necessary and appropriate for this category of small entities, as described below.

Flexibilities

1. Additional lead time. We are adopting a delay of two years beyond the date larger businesses must comply to ease the burden for small businesses. This will provide extra time to develop technology and, in the case of importers, extra time to resolve supplier issues that may arise. The two-year delay also applies to the timing of the Phase 2 standards for snowmobiles.

In addition, for small snowmobile manufacturers, the emission standards phase in over an additional two years at a rate of 50 percent, then 100 percent. Phase 1 phases in at 50/50/100 percent in 2008/2009/2010 and Phase 2 phases in at 50/50/100 percent in 2012/2013/2014.

2. Design-based certification. The process of certification is a business cost and lead time issue that may place a disproportionate burden on small entities, particularly importers. Certification is a fixed cost of doing business, which is potentially more burdensome on a unit-cost basis for small entities. It is potentially an even greater challenge, since some small entities will either contract emission testing to other parties or, in the case of importers, perhaps rely on off-shore manufacturers to develop and certify imported engines.

Small-volume manufacturers may use design-based certification, which allows us to issue a certificate to a small business for the emission-performance standard based on a demonstration that engines or vehicles of a similar design criteria meet the standards of the individual engine family. The small vehicle manufacturer must demonstrate that their engine uses a design similar to or superior to one that is being used by other manufacturers that has been shown through prior emission testing to meet the standards. The demonstration must be based in part on emission test data from engines of a similar design. Under a design-based certification program, a manufacturer provides evidence in the application for certification that an engine or vehicle meets the applicable standards for its useful life based on comparing its design (for example, the use a four-stroke engine, advanced fuel injection, or any other particular technology or calibration) to that of a previously tested engine. The design criteria might include specifications for engine type, calibrations (spark timing, air /fuel ratio, etc.), and other emission-critical features, including, if appropriate, catalysts (size, efficiency, precious metal loading). Manufacturers submit adequate engineering and other information about their individual designs showing that they will meet emission standards for the useful life.

3. Broaden engine families. Small businesses may define their engine families more broadly, putting all their models into one engine family (or more) for certification purposes. Manufacturers may then certify their engines using the ''worst-case'' configuration within the family.

A small manufacturer might need to conduct certification emission testing rather than pursuing design-based certification. Such a manufacturer would likely find broadened engine families useful.

4. Production-line testing waiver. As discussed above, manufacturers must test a small sampling of production engines to ensure that production engines meet emission standards. We are waiving production-line testing requirements for small manufacturers. This will eliminate or substantially reduce production-line testing requirements for small businesses.

5. Use of assigned deterioration factors for certification. Small manufacturers may use deterioration factors assigned by EPA. Rather than performing a durability demonstration for each family for certification, manufacturers may elect to use deterioration factors determined by us to demonstrate emission levels at the end of the useful life, thus reducing the development and testing burden. This might be a very useful and cost-beneficial option for a small manufacturer opting to perform certification emission testing instead of design-based certification.

6. Using emission standards and certification from other EPA programs. A wide array of engines certified to other EPA programs may be used in recreational vehicles. For example, there is a large variety of engines certified to EPA lawn and garden standards (Small SI). Manufacturers of recreational vehicles may use engines certified to any other EPA standards for five years. Under this approach, engines certified to the Small SI standards may be used in recreational vehicles. These engines would then meet the Small SI standards and related provisions rather than those adopted in this document for recreational vehicles. Small businesses using these engines will not have to recertify them, as long as they do not alter the engines in a way that might cause it to exceed the emission standards it was originally certified to meet. Also, the recreational vehicle application may not be the primary intended application for the engine.

Additionally, a certified snowmobile engine produced by a large snowmobile manufacturer may be used by a small snowmobile manufacturer, as long as the small manufacturer did not change the engine in a way that might cause it to exceed the snowmobile emission standards. This provides a reasonable degree of emission control. For example, if a manufacturer changed a certified engine only by replacing the stock exhaust pipes with pipes of similar configuration or the stock muffler and air intake box with a muffler and air box of similar air flow, the engine would still be eligible for this flexibility option, subject to our review. The manufacturer may also change the carburetor to have a leaner air-fuel ratio without losing eligibility. The manufacturer in such cases could establish a reasonable basis for knowing that emissions performance is not negatively affected by the changes. However, if the manufacturer changed the bore or stroke of the engine, it would no longer qualify, as emissions might increase beyond the level of the standard.

7. Averaging, banking, and trading. For the overall program, we are adopting corporate-average emission standards with opportunities for banking and trading of emission credits. We expect the averaging provisions to be most helpful to manufacturers with broad product lines. Small manufacturers and small importers with only a few models might not have as much opportunity to take advantage of these flexibilities. However, we received comment from one small manufacturer supporting these types of provisions as a critical component of the program. Therefore, we are adopting corporate-average emission standards with opportunities for banking and trading of emission credits for small manufacturers.

8. Hardship provisions. We are adopting provisions to address hardship circumstances, as described in Section VII.C.

9. Unique snowmobile engines. Even with the broad flexibilities described above, there may be a situation where a small snowmobile manufacturer cannot comply. Therefore, we are adopting an additional provision to allow a small

snowmobile manufacturer to petition us for relaxed standards for one or more engine families. The manufacturer must justify that the engine has unique design, calibration, or operating characteristics that make it atypical and infeasible or highly impractical to meet the emission-reduction requirements, considering technology, cost, and other factors. At our discretion, we may then set an alternative standard at a level between the prescribed standard and the baseline level, which would likely apply until the engine family is retired or modified in a way that might alter emissions. These engines will be excluded from averaging calculations. We proposed that this provision be limited to 300 snowmobiles per year. However, we received comment that this limit is too restrictive to be of much assistance to small businesses. Based on this comment we are adopting a limit for this provision of 600 snowmobiles per year.

F. Technological Feasibility of the Standards

1. Off-highway Motorcycles and ATVs

We believe the new emission standards are technologically feasible given the availability of emission-control technologies, as described below.

a. What are the baseline technologies and emission levels? As discussed earlier, off-highway motorcycles and ATVs are equipped with relatively small (48 to 650 cc) high-performance two-or four-stroke single cylinder engines that are either air-or liquid-cooled.[66] Since these vehicles are unregulated outside of the state of California, the main emphasis of engine design is on performance, durability, and cost and thus they generally have no emission controls. The fuel systems used on these engines are almost exclusively carburetted. Two-stroke engines lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary two-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Four-stroke engines inject oil via a pump throughout the engine as the means of lubrication. With the exception of those vehicles certified in California, most of these engines are unregulated and thus have no emission controls. For ATVs, approximately 80-percent use four-stroke engines while only 55 percent of off-highway motorcycles use four-stroke engines. The average HC emissions for two-stroke engines are about 35 g/km, while the average for four-stroke engines are 1.5 g/km. CO emissions levels are very similar between the types of engines with two-stroke levels of approximately 34 g/km and four-stroke levels of 30 g/km. For performance and durability reasons, off-highway motorcycle and ATV engines all tend to operate with a ''rich'' air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling to promote longer engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of HC emissions.

b. What technology approaches are available to control emissions? Several approaches are available to control emissions from off-highway motorcycles and ATVs. The simplest approach consists of modifications to the base engine, fuel system, cooling system, and recalibration of the air and fuel mixture. These changes may include adjusting valve timing for four-stroke engines, changing from air-to liquid-cooling, and using advanced carburetion techniques or electronic fuel injection instead of traditional carburetion systems. Other approaches may include secondary air injected into the exhaust, an oxidation or three-way catalyst, or a combination of secondary air and a catalyst. The engine technology that may have the most potential for maximizing emission reductions from two-stroke engines is direct fuel injection. Direct fuel injection is able to reduce or even eliminate scavenging losses by pumping only air through the engine and then injecting fuel into the combustion chamber after the intake and exhaust ports have closed. Using oxidation catalysts with direct injection may reduce emissions even further. Finally, converting from two-stroke to four-stroke engine technology will significantly reduce HC emissions. All of these technologies have the capability to reduce HC and CO emissions.

We expect none of these technologies to negatively affect noise, safety, or energy factors. Fuel injection can improve the combustion process which can result in lower engine noise. The vast majority of four-stroke engines used in off-highway motorcycles and ATVs are considerably quieter than their two-stroke counterparts. Fuel injection has no impact on safety and four-stroke engines often have a more ''forgiving'' power band which means the typical operator may find the performance of the machine to be more reasonable and safe. Fuel injection, the enleanment of the air and fuel mixture and four-stroke technology all can result in significant reductions in fuel consumption.

c. What technologies are most likely to be used to meet emission standards?

Four-Stroke Engines

Most manufacturers have experience with four-stroke engine technology and currently have several models powered by four-stroke engines. This is especially true in the ATV market where four-stroke engines account for 80 percent of sales. Because four-stroke engines have been so prevalent over the last 10 years in the off-highway motorcycle and ATV industry, manufacturers have developed a high level of confidence in four-stroke technology and its application.

Manufacturers of off-highway motorcycles and ATVs utilizing four-stroke engines will need to make some minor calibration changes and improvements to the carburetor to meet emission standards for the 2006 model year. Some of these modifications may have already been incorporated in response to California requirements. The calibration changes will most likely consist of reducing the amount of fuel in the air-fuel mixture. This is commonly referred to as leaning out the air-fuel ratio. Although four-stroke engines produce considerably lower levels of HC than two-stroke engines, the four-stroke engines used in off-highway motorcycles and ATVs all tend to be calibrated to operate with a rich air-fuel ratio for performance and durability benefits. This rich operation results in high levels of CO, since CO is formed in the engine when there is a lack of oxygen to complete combustion. We believe that many of these engines are calibrated to operate richer than needed, because they have either never had to consider emissions when optimizing air-fuel ratio or those that are certified to the California standards can operate richer because the California ATV CO standards are fairly lenient. Carburetors with tighter tolerances ensure more precise flow of fuel and air, resulting in better fuel atomization (*i.e.*, smaller fuel droplets), better combustion, and lower emissions.

In addition to converting to four-stroke technology and making some minor calibration and carburetion improvements to meet the 2006

[66] The engines are small relative to automotive engines. For example, automotive engines typically range from one liter to well over five liters in displacement, whereas off-highway motorcycles range from 0.05 liters to 0.65 liters.

emission standards, manufacturers may need to use secondary air injection on some models. Secondary air has been used by passenger cars and highway motorcycles for many years as a means to help control HC and CO. The hot exhaust gases coming from the combustion chamber contain significant levels of unburned HC and CO. If sufficient oxygen is present, these gases will continue to react in the exhaust system, reducing the amount of pollution emitted into the atmosphere. To assure that sufficient oxygen is present in the exhaust, air is injected into the exhaust system. For off-highway motorcycles and ATVs, the additional air can be injected into the exhaust manifold using a series of check valves which use the normal pressure pulsations in the exhaust manifold to draw air from outside, commonly referred to as pulse air injection. We have tested several four-stroke ATVs with secondary air injected into the exhaust manifold and found that the HC and CO emission levels were below the standards (further details of our secondary air testing are described in the Final Regulatory Support Document).

A small number of models in California have been equipped with secondary air technology. It is likely that some manufacturers will opt to use secondary air systems to reduce emissions in addition to enleanment strategies to meet EPA standards. We believe this may be especially true for ATVs meeting the 1.5 g/km HC+NO_X standard. Using these systems would also provide manufacturers with more flexibility within the averaging scheme and would allow them to avoid any negative affects on performance that could accompany excessive enleanment. Also, several models are not certified to California standards, including some four-stroke models. Manufacturers may use secondary air on a more widespread basis to bring all models into compliance.

Since the emission standards address HC + NO_X, as well as CO, manufacturers will have to use an emission-control strategy or technology that doesn't cause NO_X emissions to increase disproportionately. However, since all of these vehicles operate with rich air-fuel ratios, as discussed above, NO_X levels from these engines are generally low and strategies designed to focus on HC reduction allow manufacturers to meet emission standards with no significant increase in NO_X levels.

Two-Stroke Engines

Off-highway motorcycles and ATVs using two-stroke engines will present a greater challenge for compliance with emission standards. Since baseline HC and CO emission levels are so high for two-stroke engines, it would be very difficult for any two-stroke engine to meet our standards with current production technologies. Although catalysts have been used for two-stroke powered mopeds, scooters, and small displacement highway motorcycles in Europe and Asia, the standards and test cycles are significantly different from ours and there is no way to make reasonable comparisons. We have not performed any testing, nor are we aware of any emission test data on the use of catalysts on ATV and off-highway motorcycle two-stroke engines. Therefore, we do not believe that catalysts would be available for two-stroke engines that would meet our standards in the time frame necessary to comply with our program. Direct fuel injection has been successfully applied to two-stroke engines used in marine personal water craft, outboard engines, and small mopeds and scooters and is just now being looked at for off-highway motorcycle applications. However, as discussed below, even this advanced technology cannot meet our standards alone.

As described in Section III.C.1.a, we are including an optional standard for off-highway motorcycles of 4.0 g/km HC + NO_X, for manufacturers willing to certify competition motorcycles that would otherwise be exempt from emission standards. We received comment from REV! Motorcycles in support of this level. Rev! plans to manufacture two-stroke off-highway motorcycles equipped with direct injection. Based on an early analysis of the technology, REV! requested that EPA consider establishing a 4.0 g/km standard to allow them to pursue the technology and have a realistic opportunity to meet emission standards. According to their comments, they believe that their engines will be capable of meeting the 4.0 g/km standard without the use of a catalyst. Perhaps most importantly, REV! believes that this is a viable technology approach for competition models, which have very high baseline emissions.

REV! shared their plans and emissions projections for a single prototype model of competition motorcycle. Production units, additional models, or motorcycles produced by other manufacturers using similar technologies may not be able to achieve the 4.0 g/km level. The 4.0 g/km level represents an HC reduction of 90 percent or more from baseline levels for some competition motorcycles, which is likely to be very challenging. This is one reason EPA is also allowing averaging, banking, and trading for this option. Averaging will provide flexibility to manufacturers who have some models that, while very clean relative to baseline levels, are above the 4.0 g/km standard. Manufacturers will be able to use credits, for example, from the sale of four-stroke machines with emissions below 4.0 g/km to achieve the 4.0 g/km standard on average.

2. Snowmobiles

a. What are the baseline technologies and emission levels? As discussed earlier, snowmobiles are equipped with relatively small high-performance two-stroke two and three cylinder engines that are either air-or liquid-cooled. Since these vehicles are currently unregulated, the main emphasis of engine design is on performance, durability, and cost and thus they have no emission controls. The fuel system used on these engines are almost exclusively carburetors, although some have electronic fuel injection. Two-stroke engines lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary two-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Snowmobiles currently operate with a ''rich'' air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling which promotes longer lasting engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of raw HC. Current average snowmobile emission rates are 400 g/kW-hr (296 g/hp-hr) CO and 150 g/kW-hr (111 g/hp-hr) HC. There are however, at least two snowmobile models that use four-stroke engines. Two companies currently have a moderate-powered four-stroke touring model that has very low emissions. One sled uses a small advanced automotive engine, while the other uses a modified ATV engine. Both engines are very sophisticated, using electronic fuel injection and computer-based closed-loop control. The other snowmobile manufacturers are planning to release four-stroke models for the 2003 model year, but are focusing on higher performing models that, according to

the manufacturers, may not have as good of emissions control as the production four-stroke touring models.

b. What technology approaches are available to control emissions? We believe the new emission standards are technologically feasible. A variety of technologies are currently available or in stages of development to be available for use on two-stroke snowmobiles. These include improvements to carburetion (improved fuel control and atomization, as well as improved production tolerances), enleanment strategies for both carbureted and fuel injected engines, and semi-direct and direct fuel injection. In addition to these two-stroke technologies, converting to four-stroke engines is also feasible. Each of these is discussed in the following paragraphs.

There are several ways to improve carburetion in snowmobile engines. First, strategies to improve fuel atomization promote more complete combustion of the fuel/air mixture. Additionally, improved production tolerances enable more consistent fuel metering. Both of these changes allow more accurate control of air-fuel ratios. Snowmobile engines are currently calibrated with rich air-fuel ratios for durability reasons. Leaner calibrations to CO and HC emissions pose a challenge for maintaining engine durability, but many engine improvements are available to prevent problems. These include changes to the cylinder head, pistons, ports and pipes to reduce knock. In addition critical engine components can be made more robust to improve durability.

The same calibration changes to the air-fuel ratio just discussed for carbureted engines can also be employed, possibly with more accuracy, by using fuel injection. At least one major snowmobile manufacturer currently employs electronic fuel injection on several of its snowmobile models.

In addition to rich air-fuel ratios, one of the main reasons that two-stroke engines have such high HC emission levels is that they release a substantial amount of unburned fuel into the atmosphere as a result from scavenging losses, as described above. One way to reduce or eliminate such losses is to inject the fuel into the cylinder after the exhaust port has closed. This can be done by injecting the fuel into the cylinder through the transfer port (semi-direct injection) or directly into the cylinder (direct injection). Both of these approaches are currently being used successfully in two-stroke personal water craft engines. We believe these technologies hold promise for application to snowmobiles. In fact, one company is offering a snowmobile with a semi-direct injection two-stroke engine for the 2003 model year. Manufacturers must address a variety of technical design issues for adapting the technology to snowmobile operation, such as operating in colder ambient temperatures and at variable altitude. The averaging approach and the several years of lead time give manufacturers time to incorporate these development efforts into their overall research plan as they apply these technologies to snowmobiles.

In addition to the two-stroke technologies just discussed, using four-stroke engines in snowmobiles is another feasible approach to reduce emissions. Since they do not scavenge the exhaust gases with the incoming air-fuel mixture, four-stroke engines have inherently lower HC emissions compared to two-stroke engines. Four-stroke engines have a lower power-to-displacement ratio than two-stroke engines and are heavier. Thus, initially they may be more appropriate for snowmobile models where extreme power and acceleration are not the primary selling points. Such models include touring and sport trail sleds. However, one company has developed a four-stroke engine based off one of their sport highway motorcycle engines that produces 150 horsepower and will be used in their high-performance snowmobiles in the 2003 model year.

c. What technologies are most likely to be used to meet emission standards?

2006 Standards

We expect that, in the context of an emissions averaging program, manufacturers might choose to take different paths to meet the 2006 emission standards. We expect manufacturers to use a mix of technologies that will include improved carburetion and enleanment strategies, combined with engine modifications, the use of direct injection, and the use of four-stroke engine technology. For example, depending on their emission rates, one scenario for meeting our standards could be a mixture of 60 percent using improved carburetion, enleanment strategies, and engine modifications, 15 percent using direct injection, and another 15 percent using four-stroke engines. Manufacturers can expect moderate emission reductions from engine modifications and enleanment strategies. Most two-stroke snowmobile engines are designed to operate with a rich air and fuel mixture, which result in high levels of HC, CO, and PM. By reducing the amount of fuel in the air and fuel mixture (*i.e.*, enleanment), these emissions can be reduced. Because manufacturers use the extra fuel in the air and fuel mixture to help cool the engine, some modifications such as the use of more robust materials, may be necessary. Manufacturers have indicated to us that direct injection strategies can result in emission reductions of 70 to 75 percent for HC and 50 to 70 percent for CO. Certification results from 2000 model year outboard engines and personal water craft (PWC) support such reductions. We believe that as manufacturers learn to apply direct injection strategies they may choose to implement those technologies on some of their more expensive sleds and use less aggressive technologies, such as improved carburetion and enleanment on their lower performance models.

It appears that the use of four-stroke engines in snowmobiles will be more prevalent than we initially anticipated. For the 2003 model year, all four of the major snowmobile manufacturers will offer a four-stroke engine. Two manufacturers have already sold limited quantities of their four-stroke snowmobiles in 2002. All of these engines will be appearing in at least two different models and in some cases up to three or four models. The size and design of these engines is quite varied. All of the engines range in size from 650 cc to 1000 cc. There are two cylinder and four cylinder engines, fuel injected and carbureted, moderate horsepower and high horsepower. Manufacturers have indicated that depending on their success, four-stroke engines will play a large role in meeting our standards.

2010 Standards

As with the 2006 standards, we expect that manufacturers will use a mix of technologies to meet our 2010 standards. To meet the 2010 standards, manufacturers will need to employ the use of advanced technologies such as direct fuel-injection and four-stroke engines on a larger portion of their production. As noted above, manufacturers are beginning to introduce these technologies and will be gaining experience with them over the next several years. Because we are offering manufacturers the option to choose between two sets of standards in 2010, the mixture of technologies will be very manufacturer and engine family specific. For example, direct injection typically reduces CO significantly but does not reduce HC to the same extent as four-stroke engines. Engine families that manufacturers believe will be most compatible with direct injection technology would likely meet the 75 g/kW-hr HC and 200 g/kW-hr CO

standards. A potential scenario for meeting these standards could be a mixture of 50 percent direct injection, 20 percent four-stroke engines, and 30 percent with engine modifications. Engine families that manufacturers believe will be more compatible with four-stroke technology, which typically has superior HC emissions levels but do not necessarily have exceptionally good CO performance, will likely meet the 45 g/kW-hr HC and 275 g/kw-hr CO standards. Under either option, it is possible that manufacturers will continue to sell two-stroke models with lesser levels of technology. Manufacturers are likely to reduce emissions where possible from at least a portion of the remaining two-stroke engines through the use of engine modifications, calibration optimization, and secondary air systems. In some cases this will be necessary just to meet the FEL cap. A potential scenario for meeting these standards could be a mixture of 70 percent four-stroke engines, 10 percent direct fuel injection, and 20 percent with engine modifications.

IV. Permeation Emission Control

A. Overview

In the proposal we specified only exhaust emission controls for recreational vehicles. However, several commenters raised the issue of control of evaporative emissions related to permeation from fuel tanks and fuel hoses. The commenters stated that work done by California ARB on permeation emissions from plastic fuel tanks and rubber fuel line hoses for various types of nonroad equipment as well as portable plastic fuel containers raised a new emissions concern. Our own investigation into the hydrocarbon emissions related to permeation of fuel tanks and fuel hoses from recreational land-based and marine applications supports the concerns raised by the commenters. Therefore, on May 1, 2002, we reopened the comment period and requested comment on possible approaches to regulating permeation emissions from recreational vehicles. As a result of our investigations and the comments received, we have determined that it is appropriate to promulgate standards regulating permeation emissions from these vehicles.

This section describes the provisions for 40 CFR part 1051, which would apply only to recreational vehicle manufacturers. This section also discusses test equipment and procedures (for anyone who tests fuel tanks and hoses to show they meet emission standards) and general compliance provisions.

We are adopting performance standards intended to reduce permeation emissions from recreational vehicles. The standards, which apply to new vehicles starting in 2008, are nominally based on manufacturers reducing these permeation emissions from new vehicles by about 90 percent overall.[67] We also recognize that there are many small businesses that manufacture recreational vehicles. We are therefore adopting several special compliance provisions to reduce the burden of permeation emission regulations on small businesses. These special provisions are the same as for the exhaust emission standards, as applicable, and are discussed in Section III.E.

B. Vehicles Covered by This Provision

We are adopting new permeation emission standards for new off-highway motorcycles, all-terrain vehicles, and snowmobiles. These provisions apply even if the recreational vehicle manufacturer exercises the option to use an engine certified under another program such as the small spark ignition requirements in 40 CFR part 90. These standards would require these vehicle manufacturers to use low permeability fuel tanks and hoses. We include vehicles and fuel systems that are used in the United States, whether they are made domestically or imported.

Even though snowmobiles do not usually experience year around use, as is the case with ATVs and off-highway motorcycles, we are including snowmobiles in this standard because it is common practice among snowmobile owners to store their snowmobiles in the off-season with fuel in the tank (typically half full to full tank). A fuel stabilizer is typically added to the fuel to prevent gum, varnish, and rust from occurring in the engine as a result of the fuel sitting in the fuel tank and fuel system for an extended period of time; however, this does not reduce permeation. Thus, snowmobiles experience fuel permeation losses just like off-highway motorcycles and ATVs.

We are extending our basic nonroad exemptions to the engines and vehicles covered by this rule. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the national security exemption. These exemptions are described in more detail under Section VII.C. In addition, vehicles used solely for competition are not considered to be nonroad vehicles, so they are exempt from meeting the emission standards (but see discussion in Section III.C.1.a regarding the voluntary program for certification of all off-highway motorcycles).

C. Permeation Emission Standards

1. What Are the Emission Standards and Compliance Dates?

We are finalizing new standards that will require an 85-percent reduction in plastic fuel tank permeation and a 95-percent reduction in fuel system hose permeation from new recreational vehicles beginning in 2008. These standards and their implementation dates are presented in Table IV.C–1. Section IV.D presents the test procedures associated with these standards. Test temperatures are presented in Table IV.C–1 because they represent an important parameter in defining the emission levels.

We will base the permeation standards on the inside surface areas of the hoses and fuel tanks. We sought comment on whether the potential permeation standards for fuel tanks should be expressed as grams per gallon of fuel tank capacity per day or as grams per square meter of inside surface area per day. Although volume is generally used to characterize fuel tank emission rates, we base the standard on inside surface area because permeation is a function of surface area. In addition, the surface to volume ratio of a fuel tank changes with capacity and geometry of the tank. Two similar shaped tanks of different volumes or two different shaped tanks of the same volume could have different g/gallon/day permeation rates even if they were made of the same material and used the same emission-control technology. Therefore, we believe that using a $g/m^2/day$ form of the standard more accurately represents the emissions characteristics of a fuel tank and minimizes complexity. This approach was supported by the commenters.

[67] Estimated reductions in permeation are 95 percent when not considering competition vehicles, which are exempt from the standard.

TABLE IV.C–1.—PERMEATION STANDARDS FOR RECREATIONAL VEHICLES

Emission component	Implementation date	Standard	Test temperature
Fuel Tank Permeation	2008	1.5 g/m²/day	28 °C (82 °F)
Hose Permeation	2008	15 g/m²/day	23 °C (73 °F)

These standards are revised compared to the values we sought comment on in the notice. In the reopening of the comment period, we identified the need to accommodate variability and deterioration in setting the fuel tank permeation standard. Since the notice, we have received test information that suggests that a tank permeation standard representing an 85 rather than a 95-percent reduction would fully accommodate these factors. Nonetheless, we continue to believe that manufacturers will target control technologies and strategies focused on achieving reductions of 95 percent in production tanks. With regard to the permeation standard for hoses, we have adjusted the standard slightly to give the manufacturers more freedom in selecting their hose material and to accommodate the fact that we selected a certification test fuel based on a 10-percent ethanol blend, which would be prone to greater permeation than straight gasoline.

Cost-effective technologies exist to significantly reduce permeation emissions. Because essentially all of these vehicles use high density polyethylene (HDPE) fuel tanks, manufacturers would be able to choose from several technologies for providing a permeation barrier in HDPE tanks. The use of metal fuel tanks would also meet the standards, because metal tanks do not experience any permeation losses. The hose permeation standard can be met using barrier hose technology or through using low permeation automotive-type tubing. These technologies are discussed in Section IV.F. The implementation dates give manufacturers three to four years to comply. This will allow manufacturers time to implement controls in their tanks and hoses in an orderly business manner.

2. Will I Be Able to Average, Bank, or Trade Emissions Credits?

Averaging, banking, and trading (ABT) refers to the generation and use of emission credits based on certified emission levels relative to the standard. The general ABT concept is discussed in detail in Section II.C.3. In many cases, an ABT program can improve technological feasibility, provide manufacturers with additional product planning flexibility, and reduce costs which allows us to consider emission standards with the most appropriate level of stringency and lead time, as well as providing an incentive for the early introduction of new technology.

We are finalizing ABT for fuel tanks to facilitate the implementation of the standard across a variety of tank designs which include differences in wall thickness, tank geometry, material quality, and pigment in plastic fuel tanks. To meet the standard on average, manufacturers would be able to divide their fuel tanks into different emission families and certify each of their emission families to a different Family Emissions Level (FEL). The emission families would include fuel tanks with similar characteristics, including wall thickness, material used (including additives such as pigments, plasticizers, and UV inhibitors), and the emission-control strategy applied. The FELs would then be weighted by sales volume and fuel tank inside surface area to determine the average level across a manufacturer's total production. An additional benefit of a corporate-average approach is that it provides an incentive for developing new technology that can be used to achieve even larger emission reductions or perhaps to achieve the same reduction at lower costs or to achieve some reductions early.

Any manufacturer could choose to certify each of its evaporative emission control families at levels which would meet the standard. Some manufacturers may choose this approach as the could see it as less complicated to implement.

We are also finalizing a voluntary program intended to give an opportunity for manufacturers to prove out technologies earlier than 2008. Manufacturers will be able to use permeation control strategies early, and even if they do not meet the standard, they can earn credit through partial emission reduction that will give them more lead time to meet the standard. This program will allow a manufacturer to certify fuel tanks early to a less stringent standard and thereby delay the fuel tank permeation standard. Therefore, a manufacturer can earn more time to meet the 1.5 g/m²/day standard if they have an alternative approach that will reduce permeation by a lesser amount earlier than 2008. Specifically, if a manufacturer certifies fuel tanks early to a standard of 3.0 g/m²/day, they can delay the 1.5 g/m²/day standard for these fuel tanks by 1 tank-year for every tank-year of early certification. As an alternative, this delay could be applied to other fuel tanks provided that these tanks have an equal or smaller inside surface area and meet a level of 3.0 g/m²/day. As an example, suppose a manufacturer were to sell 50 vehicles in 2006 and 75 vehicles in 2007 with fuel tanks that meet a level of 3.0 g/m²/day. This manufacturer would then be able to sell 125 vehicles with fuel tanks that meet a level of 3.0 g/m²/day in 2008 and later years. No uncontrolled tanks could be sold after 2007. In addition to providing implementation flexibility to manufacturers, this option, if used, would result in additional and earlier emission reductions.

For hoses, we do not believe that ABT provisions would result in a significant technological benefit to manufacturers. We believe that all fuel hoses can meet the permeation standards using straight forward technology as discussed in Section IV.F. From EPA's perspective, including an ABT program in the rule creates a long-term administrative burden that is not worth taking on since it does not provide the industry with useful flexibility.

3. How Do I Certify My Products?

We are finalizing a certification process similar to our existing program for other mobile sources. Manufacturers test representative prototype designs and submit the emission data along with other information to EPA in an application for a Certificate of Conformity. As discussed in Section IV.D.3, we will allow manufacturers to certify based on either design (for which there is already data) or by conducting its own emissions testing. If we approve the application, then the manufacturer's Certificate of Conformity allows the manufacturer to produce and sell the vehicles described in the application in the U.S.

Manufacturers certify their fuel systems by grouping them into emission families that have similar emission characteristics. The emission family definition is fundamental to the certification process and to a large

degree determines the amount of testing required for certification. The regulations include specific characteristics for grouping emission families for each category of tanks and hoses. For fuel tanks, key parameters include wall thickness, material used (including additives such as pigments, plasticizers, and UV inhibitors), and the emission-control strategy applied. For hoses, key parameters include material, wall thickness, and emission-control strategy applied. To address a manufacturer's unique product mix, we may approve using broader or narrower engine families. The certification process for vehicle permeation is similar as for the process for certifying engines (see Section II.C.1).

4. What Durability Provisions Apply?

We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the vehicle. This section discusses these provisions for permeation from recreational vehicles. More general certification and compliance provisions, which apply across different vehicle categories, are discussed in Sections II and VII, respectively.

a. How long do my vehicles have to comply? Manufacturers would be required to build fuel systems that meet the emission standards over each vehicle's useful life. For the permeation standards, we use the same useful life as discussed in Section III.C.4.a for exhaust emissions from recreational vehicle engines based on the belief that fuel system components and engines are intended to have the same design life. Further, we are applying the same warranty period for permeation emission related components of the fuel system as for exhaust emission-related components of the vehicle (See Section III.C.4.b).

b. How do I demonstrate emission durability? We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the vehicle. Vehicle manufacturers must demonstrate that the permeation emission-control strategies will last for the useful life of the vehicle. Any deterioration in performance would have to be included in the family emissions limit. This section discusses durability provisions for fuel tanks and hoses.

For plastic fuel tanks, we are specifying a preconditioning and four durability steps that must be performed in conjunction with the permeation testing for certification to the standard. These steps, which include fuel soaking, slosh, pressure-vacuum cycling, temperature cycling, and ultra-violet light exposure, are described in more detail in Section IV.D.1. The purpose of these preconditioning steps is to help demonstrate the durability of the fuel tank permeation control under conditions that may occur in use. For fuel hoses, the only preconditioning step that we are requiring is a fuel soak to ensure that the permeation rate is stabilized prior to testing. Data from before and after the durability tests would be used to determine deterioration factors for the certified fuel tanks. The durability factors would be applied to permeation test results to determine the certification emission level of the fuel tank at full useful life. The manufacturer would still be responsible for ensuring that the fuel tank and hose meet the permeation standards throughout the useful life of the vehicle.

We recognize that vehicle manufacturers will likely depend on suppliers/vendors for treated tanks and fuel hoses. We believe that, in addition to normal business practices, our testing requirements will help assure that suppliers/vendors consistently meet the performance specifications laid out in the certificate.

D. Testing Requirements

To obtain a certificate allowing sale of products meeting EPA emission standards, manufacturers generally must show compliance with such standards through emission testing. The test procedures for determining permeation emissions from fuel tanks and hoses on recreational vehicles are described below. This section also discusses design-based certification as an alternative to performing specific testing.

1. What Are the Test Procedures for Measuring Permeation Emissions From Fuel Tanks?

Prior to testing the fuel tanks for permeation emissions, the fuel tank must be preconditioned by allowing the tank to sit with fuel in it until the hydrocarbon permeation rate has stabilized. Under this step, the fuel tank must be filled with a 10-percent ethanol blend in gasoline (E10), sealed, and soaked for 20 weeks at a temperature of 28 ± 5°C. Once the soak period has ended, the fuel tank is drained, refilled with fresh fuel, and sealed. The permeation rate from fuel tanks is measured at a temperature of 28 ± 2°C over a period of at least 2 weeks. Consistent with good engineering judgment, a longer period may be necessary for an accurate measurement for fuel tanks with low permeation rates. Permeation loss is determined by measuring the weight of the fuel tank before and after testing and taking the difference. Once the mass change is determined it is divided by the manufacturer provided tank surface area and the number of days of soak to get the emission rate. As an option, permeation may be measured using alternative methods that will provide equivalent or better accuracy. Such methods include enclosure testing as described in 40 CFR part 86. The fuel used for this testing will be a blend of 90-percent gasoline and 10-percent ethanol. This fuel is consistent with the test fuel used for highway evaporative emission testing.

To determine permeation emission deterioration factor, we are specifying three durability tests: slosh testing, pressure-vacuum cycling, and ultra-violet exposure. The purpose of these deterioration tests is to help ensure that the technology is durable and the measured emissions are representative of in-use permeation rates. For slosh testing, the fuel tank is filled to 40-percent capacity with E10 fuel and rocked for 1 million cycles. The pressure-vacuum testing contains 10,000 cycles from −0.5 to 2.0 psi. These two durability tests are based on draft recommended SAE practice.[68] The third durability test is intended to assess potential impacts of UV sunlight (0.2 μm—0.4 μm) on the durability of the surface treatment. In this test, the tank must be exposed to a UV light of at least 0.40 W-hr/m2 /min on the tank surface for 15 hours per day for 30 days. Alternatively, it can be exposed to direct natural sunlight for an equivalent period of time.

We originally sought comment on applying the procedures in 49 CFR part 173, appendix B, but upon further evaluation and receipt of additional information found these inadequate for our purposes. The 49 CFR part 173 test procedure is designed for testing plastic receptacles for transporting hazardous chemicals. This test focus on temperatures and durability procedures that do not represent recreational vehicle use.

2. What Are the Test Procedures for Measuring Permeation Emissions From Fuel System Hoses?

The permeation rate of fuel from hoses would be measured at a temperature of 23 ± 2°C using SAE

[68] Draft SAE Information Report J1769, ''Test Protocol for Evaluation of Long Term Permeation Barrier Durability on Non-Metallic Fuel Tanks,'' (Docket A–2000–01, document IV–A–24).

method J30[69] with E10. The hose must be preconditioned with a fuel soak to ensure that the permeation rate has stabilized. The fuel to be used for this testing would be a blend of 90-percent gasoline and 10-percent ethanol. This fuel is consistent with the test fuel used for highway evaporative emission testing. Alternatively, for purposes of submission of data at certification, permeation could be measured using alternative equipment and procedures that provide equivalent results. To use these alternative methods, manufacturers would have to apply to us and demonstrate equivalence. Examples of alternative approaches that we anticipate manufacturers may use are the recirculation technique described in SAE J1737,[70] enclosure-type testing such as in 40 CFR part 86, or weight loss testing such as described in SAE J1527.[71]

3. Can I Certify Based on Engineering Design Rather Than Through Testing?

In general, test data would be required to certify fuel tanks and hoses to the permeation standards. Test data could be carried over from year to year for a given emission-control design. We do not believe the cost of testing tanks and hose designs for permeation would be burdensome especially given that the data could be carried over from year to year, and that there is a good possibility that the broad emission family concepts would lead to minimum testing. However, there are some specific cases where we would allow certification based on design. These special cases are discussed below.

We would consider a metal fuel tank to meet the design criteria for a low permeation fuel tank because fuel does not permeate through metal. However, we would not consider this design to be any more effective than any other low permeation fuel tank for the purposes of any sort of credit program. Although metal is impermeable, seals and gaskets used on the fuel tank may not be. The design criteria for the seals and gaskets would be that either they would not have a total exposed surface area exceeding 1000 mm^2, or the seals and gaskets would have to be made of a material with a permeation rate of 10 g/m^2/day or less at 23°C as measured under ASTM D814.[72] A metal fuel tank with seals that meet this design criteria would readily pass the standard.

Fuel hoses can be certified by design as being manufactured in compliance with certain accepted SAE specifications. Specifically, a fuel hose meeting the SAE J30 R11–A or R12 requirements could be design-certified to the standard. In addition, fuel line meeting the SAE J2260[73] Category 1 requirements could be design-certified to the standard. These fuel hoses and fuel line specifications are based on 15-percent methanol fuel and higher temperatures. We believe that fuel hoses and lines that are tested and meet these requirements would also meet our hose permeation standards because both are generally acknowledged as representing more stringent test parameters. In the future, if new SAE specifications are developed which are consistent with our hose permeation standards, we would consider including hoses meeting the new SAE requirements as being able to certify by design.

At certification, manufacturers will have to submit an engineering analysis showing that the tank or hose designs will meet the standards throughout their full useful life. The tanks and hoses will remain subject to the emission standards throughout their useful lives. The design criteria relate only to the issuance of a certificate.

E. Special Compliance Provisions

We believe that the permeation control requirements will be relatively easy for small businesses to meet, given the relatively low cost of the requirements and the availability of materials and treatment support by outside vendors. Low permeation fuel hoses are available from vendors today, and we would expect that surface treatment would be applied through an outside company. However, to minimize any additional burden these requirements may impose on small manufacturers, we are implementing, where they are applicable to permeation, the same options we proposed for the exhaust emission standards. These options for small recreational vehicle manufacturers are described in detail in Section III.E.

F. Technological Feasibility

We believe there are several strategies that manufacturers can use to meet our permeation emission standards. This section gives an overview of this technology. See Chapters 3 and 4 of the Final Regulatory Support Document for more detail on the technology discussed here.

1. Implementation Schedule

The permeation emission standards for fuel tanks become effective in the 2008 model year. Several technologies are available that could be used to meet this standard. Surface treatments to reduce tank permeation are widely used today in other container applications, and the technology and production facilities needed to conduct this process exist. Selar is used by at least one portable fuel tank manufacturer and has also been used in automotive applications. Plastic tanks with coextruded barriers have been used in automotive applications for years. However, fuel tanks used in recreational vehicles are primarily (but not exclusively) high-density polyethylene tanks with no permeation control. We received comments from manufacturers that they would not be able to comply with permeation standards until 2008 or 2009. They stated that, especially for fuel tanks, they would need this extra lead time to ensure that the useful life requirement can be met on their products. At the same time, others commented that the technology is already available and that the permeation standards should apply in 2004. We believe it is appropriate to give manufacturers until the 2008 model year for the fuel tank permeation standards. Manufacturers will need lead time to allow for durability testing and other development work associated with applying this technology to recreational vehicles. This is especially true for manufacturers or vendors who choose to set up their own sulfonation or fluorination facilities in-house.

We believe that the low permeation hose technology can also be applied in the 2008 time frame. A lower permeation fuel hose exists today known as the SAE R9 hose that is as flexible as the SAE R7 hose used in most recreational applications today. These SAE hose specifications are contained in SAE J30 cited above. This hose would meet our permeation standard on gasoline, but probably not on a 10-percent ethanol blend. As noted in Chapter 4 of the Final Regulatory Support Document, barrier materials typically used in R9 hose today may have permeation rates 3 to 5 times

[69] SAE Recommended Practice J30, ''Fuel and Oil Hoses,'' June 1998, (Docket A–2000–01, document IV–A–92).

[70] SAE Recommended Practice J1737, ''Test Procedure to Determine the Hydrocarbon Losses from Fuel Tubes, Hoses, Fittings, and Fuel Line Assemblies by Recirculation,''1997, (Docket A–2000–01, document, IV–A–34).

[71] SAE Recommended Practice J1527, ''Marine Fuel Hoses,''1993, (Docket A–2000–01, document IV–A–19).

[72] ASTM Standard Test Method D 814–95 (Reapproved 2000), ''Rubber Property—Vapor Transmission of Volatile Liquids,'' (Docket A–2000–01, document IV–A–95).

[73] SAE Recommended Practice J2260, ''Nonmetallic Fuel System Tubing with One or More Layers,''1996, (Docket A–2000–01, document IV–A–18).

higher on a 10-percent ethanol blend than on straight gasoline. However, there are several lower permeability barrier materials that can be used in rubber hose that will comply with the hose permeation requirement on a 10-percent ethanol blend and still be flexible enough for use in recreational vehicles. This hose is available for automotive applications at this time, but some lead time may be required to apply these hoses to recreational vehicles if hose connection fitting changes were required. For these reasons, we are implementing the hose permeation standard on the same schedule as the tank permeation standards.

2. Standard Levels

We have identified several strategies for reducing permeation emissions from fuel tanks and hoses. We recognize that some of these technologies may be more desirable than others for some manufacturers, and we recognize that different strategies for equal emission reductions may be better for different applications. A specific example of technology that could be used to meet the fuel tank permeations would be surface barrier treatments such as sulfonation or fluorination. With these surface treatments, more than a 95-percent reduction in permeation emissions from new fuel tanks is feasible. However, variation in material tolerances and in-use deterioration can reduce this effectiveness. Given the lead time for the standards, manufacturers will be able to provide fuel tanks with consistent material quality, and the surface treatment processes can be optimized for a wide range of material qualities and additives such as pigments, plasticizers, and UV inhibitors. We do not expect a large deterioration in use; however, data on slosh testing suggest that some deterioration may occur. To accommodate variability and deterioration, we are finalizing a standard that represents about an 85-percent reduction in permeation emissions from plastic fuel tanks. It is our expectation that manufacturers will aim for a surface treatment effectiveness rate as near to 100 percent a practical for new tanks. Therefore, even with variability and deterioration in use, control rates are likely to exceed 85 percent. Several materials are available today that could be used as a low permeation barrier in rubber hoses. We present more detail on these and other technological approaches below.

3. Technological Approaches

a. Fuel tanks. Blow molding is widely used for the manufacture of small fuel tanks of recreational vehicles. Typically, blow molding is performed by creating a hollow tube, known as a parison, by pushing high-density polyethylene (HDPE) through an extruder with a screw. The parison is then pinched in a mold and inflated with an inert gas. In highway applications, non-permeable plastic fuel tanks are produced by blow molding a layer of ethylene vinyl alcohol (EVOH) or nylon between two layers of polyethylene. This process is called coextrusion and requires at least five layers: the barrier layer, adhesive layers on either side of the barrier layer, and HDPE as the outside layers which make up most of the thickness of the fuel tank walls. However, multi-layer construction requires two additional extruder screws which significantly increases the cost of the blow molding process. Multi-layer fuel tanks can also be formed using injection molding. In this method, a low viscosity polymer is forced into a thin mold to create each side of the fuel tank. The two sides are then welded together. To add a barrier layer, a thin sheet of the barrier material is placed inside the mold prior to injection of the poleythylene. The polyethylene, which generally has a much lower melting point than the barrier material, bonds with the barrier material to create a shell with an inner liner.

A less expensive alternative to coextrusion is to blend a low permeable resin in with the HDPE and extrude it with a single screw. The trade name typically used for this permeation control strategy is Selar. The low permeability resin, typically EVOH or nylon, creates non-continuous platelets in the HDPE fuel tank which reduce permeation by creating long, tortuous pathways that the hydrocarbon molecules must navigate to pass through the fuel tank walls. Although the barrier is not continuous, this strategy can still achieve greater than a 90-percent reduction in permeation of gasoline. EVOH has much higher permeation resistance to alcohol than nylon; therefore, it would be the preferred material to use for meeting our standard which is based on testing with a 10-percent ethanol fuel.

Another type of low permeation technology for fuel tanks would be to treat the surfaces of a plastic fuel tanks with a barrier layer. Two ways of achieving this are known as fluorination and sulfonation. The fluorination process causes a chemical reaction where exposed hydrogen atoms are replaced by larger fluorine atoms which creates a barrier on the surface of the fuel tank. In this process, a batch of fuel tanks are generally processed post production by stacking them in a steel container. The container is then voided of air and flooded with fluorine gas. By pulling a vacuum in the container, the fluorine gas is forced into every crevice in the fuel tanks. As a result of this process, both the inside and outside surfaces of the fuel tank would be treated. As an alternative, fuel tanks can be fluorinated on-line by exposing the inside surface of the fuel tank to fluorine during the blow molding process. However, this method may not prove as effective as off-line fluorination which treats the inside and outside surfaces.

Sulfonation is another surface treatment technology where sulfur trioxide is used to create the barrier by reacting with the exposed polyethylene to form sulfonic acid groups on the surface. Current practices for sulfonation are to place fuel tanks on a small assembly line and expose the inner surfaces to sulfur trioxide, then rinse with a neutralizing agent. However, sulfonation can also be performed using a batch method. Either of these processes can be used to reduce gasoline permeation by more than 95 percent.

Over the first month or so of use, polyethylene fuel tanks can expand by as much as three percent due to saturation of the plastic with fuel. Manufacturers have raised the concern that this hydrocarbon expansion could affect the effectiveness of surface treatments like fluorination or sulfonation. We believe this will not have a significant effect on the effectiveness of these surface treatments. California ARB has performed extensive permeation testing on portable fuel containers with and without these surface treatments. Prior to the permeation testing, the tanks were prepared by first performing a durability procedure where the fuel container is cycled a minimum of 1000 times between −1 psi and 5 psi. In addition, the fuel containers are soaked with fuel for a minimum of four weeks prior to testing. Their test data, presented in Chapter 4 of the Final Regulatory Support Document show that fluorination and sulfonation are still effective after this durability testing.

Manufacturers have also commented that fuel sloshing in the fuel tank, under normal in-use operation, could wear off the surface treatments. However, we do not believe that this is likely. These surface treatments actually result in an atomic change in the structure of the

outside surface of the fuel tank. To wear off the treatment, the plastic would need to be worn away on the outside surface. In addition, testing by California ARB shows that the fuel tank permeation standard can be met by fuel tanks that have been sloshed for 1.2 million cycles. Test data on an sulfonated automotive HDPE fuel tank after five years of use showed no deterioration in the permeation barrier. This data are presented in Chapter 4 of the Final Regulatory Support Document.

Permeation can also be reduced from fuel tanks by constructing them out of a lower permeation material than HDPE. For instance, metal fuel tanks would not permeate. In addition, there are grades of plastics other than HDPE that could be molded into fuel tanks. One commenter suggested nylon; however, although nylon has excellent permeation resistance on gasoline, it has poor chemical resistance to alcohol-blended fuels. Other materials, which have excellent permeation even with alcohol-blended fuels are acetal copolymers and thermoplastic polyesters. At this time, these materials are generally much more expensive than HDPE.

b. Hoses. Fuel hoses produced for use in recreational vehicles are generally extruded nitrile rubber with a cover for abrasion resistance. Lower permeability fuel hoses produced today for other applications are generally constructed in one of two ways: either with a low permeability layer or by using a low permeability rubber blend. By using hose with a low permeation thermoplastic layer, permeation emissions can be reduced by more than 95 percent. Because the thermoplastic layer is very thin, on the order of 0.1 to 0.2 mm, the rubber hose retains its flexibility. Two thermoplastics which have excellent permeation resistance, even with an alcohol-blend fuel, are ETFE and THV.[74]

In automotive applications, multilayer plastic tubing, made of fluoropolymers is generally used. An added benefit of these low permeability lines is that some fluoropolymers can be made to conduct electricity and therefore can prevent the buildup of static charges. Although this technology can achieve more than an order of magnitude lower permeation than barrier hoses, it is relatively inflexible and may need to be molded in specific shapes for each recreational vehicle design. Manufacturers have commented that they would need flexible hose to fit their many designs, resist vibration, and to simplify the hose connections and fittings.

An alternative approach to reducing the permeability of fuel hoses would be to apply a surface treatment such as fluorination or sulfonation. This process would be performed in a manner similar to discussed above for fuel tanks.

4. Conclusions

The standards for permeation emissions from recreational vehicles reasonably reflect what manufacturers can achieve through the application of available technology. Manufacturers will have several years of lead time to select, design, and produce permeation emission-control strategies that will work best for their product lines. We expect that meeting these requirements will pose a challenge, but one that is feasible taking into consideration the availability and cost of technology, lead time, noise, energy, and safety. The role of these factors is presented in detail in Chapters 3 and 4 of the Final Regulatory Support Document.

The permeation standards are based on the effective application of low permeable materials or surface treatments. This is a step change in technology; therefore, we believe that even if we set a less stringent permeation standard, these technology options would likely still be used. In addition, this technology is relatively inexpensive and can achieve meaningful emission reductions. The standards are expected to achieve more than an 85-percent reduction in permeation emissions from fuel tanks and more than 95 percent from hoses. We believe that more stringent standards could result in significantly more expensive materials without corresponding additional emission reduction. In addition, the control technology would generally pay for itself over time by conserving fuel that would otherwise evaporate. The projected costs and fuel savings are discussed in Chapter 5 of the Final Regulatory Support Document.

V. Large Spark-Ignition (SI) Engines

A. Overview

This section applies to most nonroad spark-ignition engines rated over 19 kW (''Large SI engines''). The emission standards will lead to emission reductions of about 90 percent for CO, NO_X, and HC. Since the emission standards are based on engine testing with broadly representative duty cycles, these estimated reductions apply to all types of equipment using these engines. Reducing Large SI engine emissions will help reduce ozone and CO concentrations and will also be valuable to individuals operating these engines in areas with limited fresh air circulation. The cost of applying the anticipated emission-control technology to these engines is offset by much greater cost savings from reduced fuel consumption over the engines' operating lifetime, as described in the Final Regulatory Support Document.

This section describes the requirements that apply to engine manufacturers. See Section II for a description of our general approach to regulating nonroad engines and how manufacturers show that they meet emission standards. See Section VII for additional requirements for engine manufacturers, equipment manufacturers, and others. See Section VIII for general provisions related to testing equipment and procedures.

B. Large SI Engines Covered by This Rule

Large SI engines covered in this section power nonroad equipment such as forklifts, sweepers, pumps, and generators. This includes marine auxiliary engines, but does not include marine propulsion engines or engines used in recreational vehicles (snowmobiles, off-highway motorcycles, and all-terrain vehicles). These other nonroad applications are addressed elsewhere in this document.

This final rule applies only to spark-ignition engines. Our most recent rulemaking for nonroad diesel engines adopted a definition of ''compression-ignition'' that addressed the status of alternative-fuel engines (63 FR 56968, October 23, 1998). We are adopting updated definitions consistent with those already established in previous rulemakings to clarify that all reciprocating internal combustion engines are either spark-ignition or compression-ignition.[75] These new definitions apply to 40 CFR parts 89 and 1048. Spark-ignitions include gasoline-fueled engines and any others that control power with a throttle and follow the theoretical Otto cycle. Compression-ignition engines are any reciprocating internal-combustion engines that are not spark-ignition engines. Under these definitions, it is possible for a diesel-derived engine to fall under the spark-ignition program. We believe the requirements adopted in this rule are feasible and appropriate for these engines. However, we will allow such engines over 250 kW to instead meet the requirements that apply to nonroad

[74] ethylene-tetrafluoro-ethylene (ETFE), tetra-fluoro-ethylene, hexa-fluoro-propylene, and vinyledene fluoride (THV).

[75] Gas turbines are non-reciprocating internal combustion engines.

diesel engines. We believe this is appropriate for several reasons. First, the technology requirements are comparable between programs. The nonroad diesel emission standards, which apply over the longer useful life characteristic of diesel engines, are slightly more stringent for CO and slightly less stringent for $HC+NO_X$. The calibration changes needed to adjust these emission levels are not fundamental to the overall design of the emission-control system. Second, the diesel engine manufacturers producing these engines are already set up to do testing based on test procedures that apply to diesel engines. To the extent that they would incur costs to be able to run test procedures specified for Large SI engines, these costs would likely not correspond with improving emission-controls. Third, these engines share important technical characteristics with diesel engines and are likely to experience in-use operation that is more like that of nonroad diesel engines. In addition, they are installed in applications that also use diesel engines, not Large SI engines.

Several types of engines are excluded or exempted from these new regulations. The following sections describe the types of special provisions that apply uniquely to nonrecreational spark-ignition engines rated over 19 kW. Section VII.C covers several additional exemptions that apply generally across programs.

1. Stationary Engine Exclusion

Consistent with the Clean Air Act, stationary-source engines are not nonroad engines, so the emission standards don't apply to engines used in stationary applications. In general, an engine that would otherwise be considered a Large SI engine is not considered a nonroad engine if it will be either installed in a fixed position or if it will be a portable (or transportable) engine operating for at least one-year periods without moving throughout its lifetime. We are adopting the same definitions for these engines that have already been established for other programs. These stationary engines (that would otherwise qualify as Large SI engines) must have an engine label identifying their excluded status. This is especially valuable for importing excluded engines without complication from U.S. Customs officials. It also helps us ensure that such engines are legitimately excluded from emission standards.

2. Exclusion for Engines Used Solely for Competition

For Large SI engines we proposed the existing regulatory definition for nonroad engines, with excludes engines used solely for competition. As described in the proposed rule, we are not aware of any manufacturers producing new engines that are intended only for competition. As a result, we are not adopting any specific provisions addressing a competition exclusion for manufacturers. Part 1068 of the regulations includes provisions addressing the practice of modifying certified engines for competition (see Section VII.C).

3. Motor Vehicle Engine Exemption

In some cases an engine manufacturer may want to modify a certified automotive engine for nonroad use to sell the engine without recertifying it as a Large SI engine. We are therefore adopting an exemption from the Large SI standards in 40 CFR part 1048 for engines that are already certified to the emission standards in 40 CFR part 86 for highway applications. To qualify for this exemption from separately certifying to nonroad standards, the manufacturer must makes no changes to the engine that might affect its exhaust or evaporative emissions. Companies using this exemption must report annually to us, including a list of its exempted engine models. For engines included under this provision, manufacturers of the vehicle or engine must generally meet all the requirements from 40 CFR part 86 that would apply if the engine were used in a motor vehicle. Section 1048.605 of the regulations describes the qualifying criteria and responsibilities in greater detail.

We generally prohibit equipment or vehicle manufacturers from producing new nonroad equipment that does not have engines certified to nonroad emission standards. However, in some cases a manufacturer may want to produce vehicles certified to highway emission standards for nonroad use. We are providing an exemption for these manufacturers, as long as there is no change in the vehicle's exhaust or evaporative emission-control systems. For example, a mining company may want to use a pickup truck for dedicated work at a mine site, but special-order the trucks from the manufacturer with modifications that cause the truck to no longer qualify as a motor vehicle. Manufacturers may produce such a modified version of a truck that has been certified to the motor-vehicle standards, as long as the modifications don't affect its emissions.

4. Lawn and Garden Engine Exemption

Most Large SI engines, rated over 19 kW, have a total displacement greater than one liter. The design and application of the few Large SI engines currently being produced with displacement less than one liter are very similar to those of engines rated below 19 kW, which are typically used for lawn and garden applications. As described in the most recent rulemaking for these smaller engines, manufacturers may certify engines between 19 and 30 kW with total displacement of one liter or less to the requirements we have already adopted in 40 CFR part 90 for engines below 19 kW (see 65 FR 24268, April 25, 2000). We are not changing this provision, and engines so certified would not be subject to the requirements that apply to Large SI engines. This approach allows manufacturers of small air-cooled engines to certify their engines rated between 19 and 30 kW with the program adopted for the comparable engines with slightly lower power ratings. This is also consistent with the provisions adopted by California ARB, except for the addition of the 30-kW cap to prevent treating high-power engines under the program that applies to lawn and garden engines.

Technological, economic, and environmental issues associated with the few engine models with rated power over 19 kW, but with displacement at or below 1 liter, were previously analyzed in the rulemaking for nonroad spark-ignition engines below 19 kW. This rule therefore does not specifically address the provisions applying to them or repeat the estimated impacts of adopting emission standards.

Conversely, we are aware that some engines rated below 19 kW may be part of a larger family of engine models that includes engines rated above 19 kW. This may include, for example, three- and four-cylinder engine models that are otherwise identical. To avoid the need to separate these engines into separate engine families (certified under completely different control programs), manufacturers may certify any engine rated under 19 kW to the more stringent Large SI emission standards. Such an engine is then exempt from the requirements of 40 CFR part 90.

C. Emission Standards

In October 1998, California ARB adopted emission standards for Large SI engines. We are extending these requirements to the rest of the U.S. in the near term. We are also revising the

emission standards and adding various provisions in the long term, as described below. The near-term and the long-term emission standards are based on three-way catalytic converters with electronic fueling systems to control emissions, and differ primarily in terms of how well the controls are optimized. In addition to the anticipated emission reductions, we project that these technologies will provide large savings to operators as a result of reduced fuel consumption and other performance improvements.

An important element of the control program is the attempted harmonization with the requirements adopted by California ARB. We are aware that inconsistent or conflicting requirements may lead to additional costs. Cooperation between agencies has allowed a great degree of harmonization. In addition to the common structure of the programs, the specific provisions that make up the certification requirements and compliance programs are consistent with very few exceptions. In most of the cases where individual provisions differ, the EPA language is more general than that adopted by California, rather than being incompatible. The following sections describe the requirements in greater detail.

1. What Are the Emission Standards and Compliance Dates?

a. Exhaust emissions. We are adopting standards starting in the 2004 model year consistent with those adopted by California ARB. These standards, which apply to testing only with the applicable steady-state duty cycles, are 4.0 g/kW-hr (3.0 g/hp-hr) for HC+NO_X emissions and 50 g/kW-hr (37 g/hp-hr) for CO emissions. See Section V.D for further discussion of the steady-state duty cycles. We expect manufacturers to meet these standards using three-way catalytic converters and electronically controlled fuel systems. These systems are similar to those used for many years in highway applications, but not necessarily with the same degree of sophistication.

Adopting emission standards for these engines starting in 2004 allows a relatively short lead time. However, manufacturers will be able to achieve this by expanding their production of the same engines they will be selling in California at that time. We have designed our 2004 standards to require no additional development, design, or testing beyond what California ARB already requires. Adopting these near-term emission standards allows us to set early requirements to introduce the low-emission technologies for substantial emission reductions with minimal lead time. The final requirements includes two principal adjustments to align with the California ARB standards. First, we specify that manufacturers' deterioration factors for 2004 through 2006 model years should be based on emission measurements over 3500 hours of engine operation, rather than the full useful life of 5000 hours. Second, for those same model years, we are applying an emission standard of 5.4 g/kW-hr (4.0 g/hp-hr) HC+NO_X for any in-use testing to account for the potential for additional deterioration beyond 3500 hours. This allowance for higher in-use emissions is a temporary provision to ensure the feasibility of compliance in the early years of the program. Testing has shown that with additional design time, manufacturers can incorporate emission-control technologies with sufficient durability that the long-term standards do not require a separate in-use standard. This is separate from the field-testing standards described below.

Testing has shown that additional time to optimize designs to better control emissions will allow manufacturers to meet significantly more stringent emission standards that are based on more robust measurement procedures. We are therefore adopting a second tier of standards to require additional emission reductions. These later standards require manufacturers to control emissions under both steady-state and transient engine operation, as described in Section V.D below). Setting the emission standards to require additional control involves separate consideration of the achievable level of control for HC+NO_X and CO emissions. While HC+NO_X emissions contribute to nonattainment of ozone air quality standards, CO emissions contribute to nonattainment of CO air quality standards and potentially harmful exposures of individuals where engines are operating in areas where fresh airflow may be restricted. Emission-control technology is able to simultaneously control these three pollutants, but a tradeoff between NO_X and CO emissions persists for any given system. This relationship is determined by an engine's precise control of air-fuel ratios—shifting to air-fuel ratios slightly lean of stoichiometric increases NO_X emissions but decreases CO emissions and vice versa. Engines using different fuels face this same situation, though gasoline engines operating under heavy load generally need to shift to richer air-fuel ratios to prevent accelerated engines wear from very high combustion temperatures.

Our primary focus in setting the level of the emission standards is reductions in emissions that contribute to ambient air-pollution problems. At the same time, we recognize that these engines are used in many applications where there are concerns about personal exposure to the engine exhaust, including workplace exposure, focusing primarily on CO exposure. It is appropriate to take such concerns into consideration in setting the level of the standards. In this case, where the equipment using these engines can vary substantially and where the emission-control technology means there is a trade-off between HC+NO_X control and CO control, it is difficult to set a single, optimal standard for all three pollutants. In such a situation it is reasonable to have more than one set of standards to allow an engine to use technologies focused on controlling the pollutants of most concern for a specific application.

We are not in a position, however, to readily identity the specific levels of alternative standards that are appropriate for each application or to pick specific applications that should go with different standards. We also want to ensure that engines significantly reduce emissions of all three pollutants.

To address this, we are setting a combination of standards requiring more effective emission controls starting with the 2007 model year. First, we are setting benchmark emission standards of 2.7 g/kW-hr (2.0 g/hp-hr) for HC+NO_X emissions and 4.4 g/kW-hr (3.3 g/hp-hr) for CO emissions. The emission standards apply to measurements during duty-cycle testing under both steady-state and transient operation, including certification, production-line testing, and in-use testing.[76] These emission levels provide for substantial control of HC+NO_X emissions (in fact, these standards are more stringent than those proposed), but also contain substantial control of CO emissions to protect against individual exposure as well as CO nonattainment.

We are also including an option for manufacturers to certify their engines to different emission levels to allow manufacturers to build engines whose emission controls are more weighted toward controlling NO_X emissions to reflect the inherent tradeoff of NO_X and CO emissions. Generally this involves meeting a less stringent CO standard if a manufacturer certifies an engine with lower HC+NO_X emissions. Table V.C–1 shows several examples of possible combinations of HC+NO_X and CO emission standards. The highest allowable CO standard is 20.6 g/kW-hr (15.4 g/hp-hr), which corresponds with HC+NO_X emissions below 0.8 g/kW-hr

[76] See Section V.D for a discussion of duty cycles.

(0.6 g/hp-hr). Manufacturers certify to any $HC+NO_X$ level between and including 0.8 and 2.7 g/kW-hr, rounding to the nearest 0.1 g/kW-hr. They will certify also to the corresponding CO level, as calculated using the formula below, again rounding to the nearest 0.1 g/kW-hr.

TABLE V.C–1.—SAMPLES OF POSSIBLE ALTERNATIVE DUTY-CYCLE EMISSION STANDARDS FOR LARGE SI ENGINES(G/KW-HR)*

$HC+NO_X$	CO
2.7	4.4
2.2	5.6
1.7	7.9
1.3	11.1
1.0	15.5
0.8	20.6

* As described in the Final Regulatory Support Document and the regulations, the values in the table are related by the following formula: $(HC+NO_X) \times CO^{0.784} = 8.57$. These values follow directly from the logarithmic relationship presented with the proposal in the Draft Regulatory Support Document.

We believe this flexible approach to setting standards is the most appropriate and efficient way to allocate the different design strategies to achieve effective reductions of $HC+NO_X$ emissions while providing for the best control of CO emissions where it is most needed. Testing has shown that emission controls are more likely to experience degradation with respect to controlling CO emissions than HC or NO_X emissions. Manufacturers therefore have a natural incentive to certify engine families with an $HC+NO_X$ emission level as low as possible to increase the compliance margin for meeting the CO standard. In addition, many of these engines will be used in applications where ozone is of more concern. As a result, we expect manufacturers to design most of their engines to operate substantially below the 2.7 g/kW-hr standard for $HC+NO_X$ emissions. This approach also encourages manufacturers to continually improve their control of $HC+NO_X$ emissions over time. At the same time, to the extent that purchasers want engines with low CO emission levels, particularly for exposure-related concerns, manufacturers will be able to produce compliant engines that will provide appropriate protection. Note that engines operating at the highest allowable CO emission levels under the 2007 standards will still be substantially reducing CO emissions compared with baseline levels. The emission standards in this final rule will achieve substantial reductions, but are not designed to guarantee workplace safety or to set a safety standard. Rather, we intend to facilitate the use of engine-based control technologies so that owners and operators can purchase equipment to help them address these concerns.

We are not adopting any controls or limits to restrict the sale of engines meeting certain requirements into certain applications. We believe that the manufacturers and customers for these products will together make educated choices regarding the appropriate mix of emission controls for each application and that market forces will properly balance emission controls for the different pollutants in specific applications. We believe that customers for these applications, some of whom are subject to occupational air-quality standards for related pollutant concentrations, will be well placed to make informed choices regarding air-pollution control, especially given their ability to make choices based on the specific environmental circumstances of each particular customer.[77]

We are adopting field-testing standards of 3.8 g/kW-hr (2.8 g/hp-hr) for $HC+NO_X$ and 6.5 g/kW-hr (4.9 g/hp-hr) for CO. As described above for duty-cycle testing, field-testing allows for the same pattern of optional emission standards to reflect the tradeoff of CO and NO_X emissions. See Section V.D.5 for more information about field testing.

As described in Chapter 4 of the Final Regulatory Support Document, we believe manufacturers can achieve these emission standards by optimizing currently available three-way catalysts and electronically controlled fuel systems.

Two additional provisions apply to specific situations. First, some engines need to operate with rich air-fuel ratios at high loads to protect the engine from overheating. This is especially true for gasoline-fueled engines, which typically experience higher combustion temperatures. When operating at such air-fuel ratios, the engines may be unable to meet the CO emission standard during steady-state testing because the steady-state duty cycle involves sustained operation under high-load conditions, unlike the transient duty cycle. If a manufacturer shows us that this type of engine operation keeps it from meeting the CO emission standard shown above for specific models, we will approve a separate CO emission standard of 31.0 g/kW-hr that would apply only to steady-state testing. This standard reflects the adjustment needed at high-load operation and would apply to any steady-state tests for certification, production-line testing, or in-use testing. To prevent high in-use emission levels, we are adopting several additional provisions related to this separate CO standard. Manufacturers must show that enrichment is necessary to protect the engine from damage and that enrichment will be limited to operating modes that require additional cooling to protect the engine from damage. In addition, manufacturers must show in their application for certification that enrichment will rarely occur in the equipment in which your engines are installed (for example, an engine that is expected to operate 5 percent of the time in use with enrichment would clearly not qualify). Finally, manufacturers must include in the emission-related installation instructions any steps necessary for someone installing the engines to prevent enrichment during normal operation. This option does not apply to transient or field testing, so these engines would need to meet the same formula for $HC+NO_X$ and CO standards that apply to other engines for transient testing and for field testing. By tying the CO standard for these engines to the highest allowable CO emission level for field testing, we are effectively requiring that manufacturers ensure that in-use engines employ engine-protection strategies no more frequently than is reflected in the steady-state duty cycles for certification.

Second, equipment manufacturers have made it clear that some nonroad applications involve operation in severe environments that require the use of air-cooled engines. These engines rely on air movement instead of an automotive-style water-cooled radiator to maintain acceptable engine temperatures. Since air cooling is less effective, these engines rely substantially on enrichment to provide additional cooling relative to water-cooled engines. At these richer air-fuel ratios, catalysts are able to reduce NO_X emissions but oxidation of CO emissions is much less effective. As a result, we are adopting emission standards for these ''severe-duty'' engines of 2.7 g/kW-hr for $HC+NO_X$ and 130 g/kW-hr for CO. These standards apply to duty-cycle

[77] While the emission standards in this final rule require substantial emission reductions of CO and other harmful pollutants from nonroad engines, this does not replace the need for ongoing regulation of air quality to protect occupational safety and health. More specifically, in accordance with the limitations provided in Section 310(a) of the Clean Air Act (42 U.S.C. section 7610(a)), nothing in this rule affects the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. sections 651 *et seq.*).

emission testing for both steady-state and transient measurements (for certification, production-line, and in-use testing). The corresponding field-testing standards are 3.8 g/kW-hr for $HC+NO_X$ and 200 g/kW-hr for CO. Severe-duty applications include concrete saws and concrete pumps. These types of equipment are exposed to high levels of concrete dust, which tends to form a thick insulating coat around any heat-exchanger surfaces and exposes engines to highly abrasive dust particles. Manufacturers may request approval in identifying additional severe-duty applications subject to these less stringent standards if they can provide clear evidence that the majority of installations need air-cooled engines as a result of operation in a severe-duty environment. This arrangement generally prevents these higher-emitting engines from gaining a competitive advantage in markets that don't already use air-cooled engines.

We believe three years between phases of emission standards allows manufacturers enough lead time to meet the more stringent emission standards. The projected emission-control technologies for the 2004 emission standards should be capable of meeting the 2007 emission levels with additional optimization and testing. In fact, manufacturers may be able to apply their optimization efforts before 2004, leaving only the additional testing demonstration for complying with the 2007 standards. The biggest part of the optimization effort may be related to gaining assurance that engines will meet field-testing emission standards described in Section V.D.5, since engines will not be following a prescribed duty cycle.

For engines fueled by gasoline and liquefied petroleum gas (LPG), we specify emission standards based on total hydrocarbon measurements, while California ARB standards are based on nonmethane hydrocarbons. We believe that switching to measurement based on total hydrocarbons simplifies testing, especially for field testing of in-use engines with portable devices (See Section V.D.5). To maintain consistency with California ARB standards in the near term, we will allow manufacturers to base their certification through 2006 on either nonmethane or total hydrocarbons (see 40 CFR 1048.145). Methane emissions from controlled engines operating on gasoline or LPG are about 0.1 g/kW-hr.

Operation of natural gas engines is very similar to that of LPG engines, with one noteworthy exception. Since natural gas consists primarily of methane, these engines have a much higher level of methane in the exhaust. Methane generally does not contribute to ozone formation, so it is often excluded from emission measurements. We have therefore specified nonmethane hydrocarbon emissions for comparison with the standard for natural gas engines. However, the emission standards based on measuring emissions in the field depend on total hydrocarbons. We are therefore adopting a NO_X-only field-testing standard for natural gas engines instead of a $HC+NO_X$ standard. Since control of NO_X emissions for natural gas engines poses a significantly greater challenge than controlling nonmethane hydrocarbons, duty-cycle testing provides adequate assurance that these engines have sufficiently low hydrocarbon emission levels. Manufacturers must show that they meet these duty-cycle standards for certification and the engines remain subject to the nonmethane hydrocarbon standard in-use when tested over the same duty-cycles.

b. Evaporative emissions. We are adopting requirements related to evaporative and permeation emissions from gasoline-fueled Large SI engines. For controlling diurnal emissions, we are adopting an emission standard of 0.2 grams of hydrocarbon per gallon of fuel tank capacity during a 24-hour period. In addition, we specify that manufacturers use fuel lines meeting an industry standard for permeation-resistance. Finally, we require that manufacturers take steps to prevent fuel from boiling. We expect certification of manufacturers' equipment to be design-based, as compared with conducting a full emission-measurement program during certification. As such, meeting these evaporative requirements is much more like meeting the requirements related to controlling crankcase emissions and is therefore discussed in detail in Section V.C.4 below.

2. May I Average, Bank, or Trade Emission Credits?

We are not including an averaging, banking, and trading program for certifying engines. As described in Chapter 4 of the Final Regulatory Support Document, we believe that manufacturers will generally be able to rely on a relatively uniform application of emission-control technology to meet emission standards. The standards were selected based on the capabilities of all manufacturers to comply with all their models without an emission-credit program. Moreover, overlaying an emission-credit program on the flexible standards described above would be highly impractical. If such a program could be devised it would need to be very complex and would achieve little, if any, advantage to manufacturers beyond the advantages already embodied in the flexible approach we are adopting.

However, as an alternative to a program of calculating emission credits for averaging, banking, and trading, we are adopting a simpler approach of ''family banking'' to help manufacturers transition to new emission standards (see 40 CFR 1048.145 of the regulations). Manufacturers may certify an engine family early, which would allow them to delay certification of smaller engine families. This would be based on the actual sales of each engine family; this requires no calculation or accounting of emission credits. The manufacturer would have actual sales figures for the early family at the end of the production year, which would yield a total number of allowable sales for the engine family with delayed compliance. Manufacturers may certify engines to the 2004 standards early, but this would provide benefits only for complying with the 2004 standards. These ''credits'' would not apply to engines for meeting the 2007 standards.

3. Is EPA Adopting Voluntary Blue Sky Standards for These Engines?

We are adopting voluntary Blue Sky standards for Large SI engines. We are setting a target of 0.8 g/kW-hr (0.6 g/hp-hr) $HC+NO_X$ and 4.4 g/kW-hr (3.3 g/hp-hr) CO as a qualifying level for Blue Sky Series engines. The corresponding field-testing standards for Blue Sky Series engines are 1.1 g/kW-hr (0.8 g/hp-hr) $HC+NO_X$ and 6.6 g/kW-hr (4.9 g/hp-hr) CO. These voluntary standards are based on achieving the maximum control of both $HC+NO_X$ and CO emissions, as described in Section V.C.1. To achieve these emission levels, manufacturers will need to apply significantly additional technology beyond that required for the mandatory standards.

Manufacturers may start producing engines to these voluntary standards immediately after this final rule becomes effective. In addition, we are adopting interim voluntary standards corresponding with the introduction of new emission standards. Since manufacturers will not be complying early to bank emission credits, voluntary emission standards are an appropriate way to encourage manufacturers to meet emission standards before the regulatory deadline. If manufacturers certify engines to these voluntary standards, they are not eligible for participation in the family-banking program described

above. In the 2003 model year, manufacturers may certify their engines to the requirements that apply starting in 2004 to qualify for the Blue Sky designation. Since manufacturers are producing engines with emission-control technologies starting in 2001, these engines are available to customers outside of California desiring emission reductions or fuel-economy improvements. Similarly, for 2003 through 2006 model years, manufacturers may certify their engines to the requirements that start to apply in 2007.

4. Are There Other Requirements for Large SI Engines?

a. Crankcase emissions. Due to blowby of combustion gases and the reciprocating action of the piston, exhaust emissions (mostly hydrocarbons) can accumulate in the crankcase. These crankcase emissions are significant, representing about 33 percent of total exhaust hydrocarbon. Uncontrolled engines route these vapors directly to the atmosphere. We have long required that automotive engines prevent crankcase emissions. Manufacturers typically do this by routing crankcase vapors through a valve into the engine's air intake system where they are burned in the combustion process.

Manufacturers may choose one of two methods for controlling crankcase emissions. First, adding positive-crankcase ventilation prevents crankcase emissions. Since automotive engine blocks are already tooled for closed crankcases, the cost of adding a valve for positive-crankcase ventilation for most engines is very small. An alternative method addresses specific concerns related to turbocharged engines or engines operating in severe-duty environments. Where closed crankcases are impractical, manufacturers may therefore measure crankcase emissions during any emission testing to add crankcase emissions to measured exhaust emissions for comparing with the standards.

b. Diagnosing malfunctions. Manufacturers must design their Large SI engines to diagnose malfunctioning emission-control systems starting with the 2007 model year (see § 1048.110). Three-way catalyst systems with closed-loop fueling control work well only when the air-fuel ratios are controlled to stay within a narrow range around stoichiometry.[78] Worn or broken components or drifting calibrations over time can prevent an engine from operating within the specified range. This increases emissions and can significantly increase fuel consumption and engine wear. The operator may or may not notice the change in the way the engine operates. We are not requiring similar diagnostic controls for recreational vehicles or recreational marine diesel engines, because the anticipated emission-control technologies for these other applications are generally less susceptible to drift and gradual deterioration.

This diagnostic requirement focuses solely on maintaining stoichiometric control of air-fuel ratios. This kind of design detects problems such as broken oxygen sensors, leaking exhaust pipes, fuel deposits, and other things that require maintenance to keep the engine at the proper air-fuel ratio.

Some companies are already producing engines with diagnostic systems that check for consistent air-fuel ratios. Their initiative supports the idea that diagnostic monitoring provides a mechanism to help keep engines tuned to operate properly, with benefits for both controlling emissions and maintaining optimal performance. There are currently no inspection and maintenance programs for nonroad engines, so the most important variable in making the emission control and diagnostic systems effective is in getting operators to repair the engine when the diagnostic light comes on. This calls for a relatively simple design to avoid the signaling of false failures as much as possible. The diagnostic requirements in this rule therefore focus on detecting inappropriate air-fuel ratios, which is the most likely failure mode for three-way catalyst systems. The malfunction-indicator light must go on when an engine runs for a full minute under closed-loop operation without reaching a stoichiometric air-fuel ratio.

Some natural gas engines may meet standards with lean-burn designs that never approach stoichiometric combustion. While manufacturers may design these engines to operate at specific air-fuel ratios, catalyst conversion (with two-way catalysts) would not be as sensitive to air-fuel ratio as with stoichiometric designs. For these or other engines that rely on emission-control technologies incompatible with the diagnostic system described above, manufacturers must devise an alternate system that alerts the operator to engine malfunctions that would prevent the emission-control system from functioning properly.

The automotive industry has developed a standardized protocol for diagnostic systems, including hardware specifications, and uniform trouble codes. In the regulations we reference standards adopted by the International Organization for Standardization (ISO) for automotive systems. If manufacturers find that these standards are not applicable to the simpler diagnostic design specified for Large SI engines, we encourage engine manufacturers to cooperate with each other and with other interested companies to develop new standards specific to nonroad engines. Manufacturers may request approval to use systems that don't meet the automotive specifications if those specifications are not practical or appropriate for their engines.

c. Evaporative emissions. Evaporative emissions occur when fuel evaporates and is vented into the atmosphere. They can occur while an engine or vehicle is operating and even while it is not being operated. Among the factors that affect evaporative emissions are:

- Fuel metering (fuel injectors or carburetor)
- The degree to which fuel permeates fuel lines and fuel tanks
- Proximity of the fuel tank to the exhaust system or other heat sources
- Whether the fuel system is sealed and the pressure at which fuel vapors are ventilated.

In addition, some gasoline fuel tanks may be exposed to heat from the engine compartment and high-temperature surfaces such as the exhaust pipe. In extreme cases, fuel can start boiling, producing very large amounts of gasoline vapors vented directly to the atmosphere.

Evaporative emissions from Large SI engines and the associated equipment represent a significant part of their overall hydrocarbon emissions. The magnitude of evaporative emissions varies widely depending on the engine design and application. LPG-fueled equipment generally has very low evaporative emissions because of the tightly sealed fuel system. At the other extreme, carbureted gasoline-fueled equipment can have high rates of evaporation. In 1998, Southwest Research Institute measured emissions from several gasoline-fueled Large SI engines and found them to vary from about 12 g/day up to almost 100 g/day.[79]

[78] Stoichiometry is the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

[79] ''Measurement of Evaporative Emissions from Off-Road Equipment,'' by James N. Carroll and Jeff J. White, Southwest Research Institute (SwRI 08–

Continued

This study did not take into account the possibility of unusually high fuel temperatures during engine operation, as described further below.

We are adopting basic measures to reduce evaporative emissions from gasoline-fueled Large SI engines. First, we are adopting an evaporative emission standard of 0.2 grams per gallon of fuel tank capacity for 24-hour day when temperatures cycle between 72° and 96° F. For purposes of certification, manufacturers may choose, however, to rely on a specific design for certification instead of measuring emissions. We have identified a technology that adequately prevents evaporative emissions such that the design itself would be enough to show compliance with the evaporative emission standard for purposes of certification. Specifically, pressurized fuel tanks control evaporative emissions by suppressing vapor generation. In its standards for industrial trucks operating in certain environments, Underwriters Laboratories requires that trucks use self-closing fuel caps with tanks that stay sealed to prevent evaporative losses; venting is allowed for positive pressures above 3.5 psi or for vacuum pressures of at least 1.5 psi.[80] We know that any Large SI engines or vehicles operating with these pressures would meet the standard because test data confirm the basic chemistry principles related to phase-change pressure relationships showing that fuel tanks will remain sealed at all times during the prescribed test procedure. Also, similar to the Underwriters Laboratories' requirement, we specify that manufacturers must use self-closing or tethered fuel caps to ensure that fuel tanks designed to hold pressure are not inadvertently left exposed to the atmosphere.

In some applications, manufacturers may want to avoid high fuel-tank pressures. Manufacturers may be able to meet the standard using an air bladder inside the fuel tank that changes in volume to keep the system in equilibrium at atmospheric pressure.[81] We have data showing that these systems also would remain sealed at all times during the prescribed test procedure. However, the permeation levels related to the air bladder and the long-term durability of this type of system are still unknown. Once these parameters are established with test data, perhaps with some additional product development, this technology may then qualify as an option for design-based certification. Similarly, collapsible bladder tanks, which change in volume to prevent generation of a vapor space or vapor emissions, may eventually be available as a technology for design-based certification once permeation data are available to confirm that systems with these tanks would meet the standard. Finally, an automotive-type system that stores fuel tank vapors for burning in the engine would be another alternative technology, though it is unlikely that such a system can be simply characterized and included as an option for design-based certification.

In addition, engine manufacturers must use (or specify that equipment manufacturers installing their engines use) fuel lines meeting the industry performance standard for permeation-resistant fuel lines developed for motor vehicles.[82] While metal fuel lines do not have problems with permeation, manufacturers should use discretion in selecting materials for grommets and valves connecting metal components to avoid high-permeation materials. Evaporative emission standards for motor vehicles have led to the development of a wide variety of permeation-resistant polymer components. These permeation requirements are based on manufacturers using a more effective emission controls than that specified for recreational vehicles. This is appropriate because Large SI manufacturers are able to use automotive-grade materials across their product line, while recreational vehicle manufacturers have pointed out various limitations in incorporating automotive-grade materials. Conversely, Large SI manufacturers are not subject to permeation requirements related to fuel tanks, since almost all of these tanks are made of metal.

Finally, based on available technologies, manufacturers must take steps to prevent fuel boiling. The Underwriters Laboratories specification for forklifts attempts to address this concern through a specified maximum fuel temperature, but the current limit does not prevent fuel boiling.[83] We are adopting a standard that prohibits fuel boiling during continuous operation at 30° C (86° F). Engine manufacturers must incorporate designs that reduce the heat load to the fuel tank to prevent boiling. For companies that sell loose engines, this may involve instructions to equipment manufacturers to help ensure, for example, that fuel tank surfaces are exposed to ambient air rather than to exhaust pipes or direct engine heat. Engine manufacturers may specify a maximum fuel temperature for the final installation. Such a temperature limit should be well below 53° C (128° F), the temperature at which summer-grade gasoline (9 RVP) typically starts boiling.

An additional source of evaporative emissions is from carburetors. Carburetors often have high hot soak emissions (immediately after engine shutdown). We expect manufacturers to convert carbureted designs to fuel injection as a result of the exhaust emission standards. While we do not mandate this technology, we believe the need to reduce exhaust emissions will cause engine manufacturers to use fuel injection on all gasoline engines. This change alone will eliminate most hot soak emissions.

Engine manufacturers using design-based certification need to describe in the application for certification the selected design measures and specifications to address evaporative losses from gasoline-fueled engines. For loose-engine sales, this includes emission-related installation instructions that the engine manufacturer gives to equipment manufacturers. While equipment manufacturers must follow these installation instruction, the engine manufacturer has the responsibility to certify a system that meets the evaporative-related requirements described in this section. This should work in practice, because engine manufacturers already provide equipment manufacturers a variety of specifications and other instructions to ensure that engines operate properly in-use after installation in the equipment. The alternative approach of requiring equipment manufacturers to certify is impractical because of the very large number of companies involved.

5. What Durability Provisions Apply?

a. Useful life. We are adopting a useful life period of seven years or until the engine accumulates at least 5,000 operating hours, whichever comes first. This figure represents a minimum value and may increase as a result of data showing that an engine model is designed to last longer. This figure,

1076), November 1998, Docket A–2000–01, document II–A–10.

[80] ''Industrial Trucks, Internal Combustion Engine-Powered,'' UL558, ninth edition, June 28, 1996, paragraphs 26.1 through 26.4, Docket A–2000–01, document II–A–28. See Section XI.I for our consideration of incorporating the UL requirements into our regulations by reference.

[81] ''New Evaporative Control System for Gasoline Tanks,'' EPA Memorandum from Charles Moulis to Glenn Passavant, March 1, 2001, Docket A-2000–01, document II–B–16.

[82] SAE J2260 ''Nonmetallic Fuel System Tubing with One or More Layers,'' November 1996 (Docket A–2000–01, document II–A–03).

[83] UL558, paragraph 19.1.1, Docket A–2000–01, document II–A–28.

which California ARB has already adopted, represents an operating period that is common for Large SI engines before they undergo rebuild. This also reflects a comparable degree of operation relative to the useful life values of 100,000 to 150,000 miles that apply to automotive engines (assuming an average driving speed of 20 to 30 miles per hour).

Some engines are designed for operation in severe-duty applications with a shorter expected lifetime. Concrete saws in particular undergo accelerated wear as a result of operating in an environment with high concentrations of highly abrasive, airborne concrete dust particles. We are allowing manufacturers to request a shorter useful life for an engine family based on information showing that engines in the family rarely operate beyond the alternative useful-life period. For example, if engines powering concrete saws are typically scrapped after 2000 hours of operation, this would form the basis for establishing a shorter useful-life period for those engines.

Manufacturers relying on design-based certification to meet the evaporative requirements must use good engineering judgment to show that emission controls will work for at least seven years. This may, for example, be based on warranty or product-performance history from component suppliers. This also applies for systems designed to address crankcase emissions.

b. Warranty. Manufacturers must provide an emission-related warranty for at least the first half of an engine's useful life (in operating hours) or three years, whichever comes first. These periods must be longer if the manufacturer offers a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. The emission-related warranty includes components related to controlling evaporative and crankcase emissions. In addition, we are adopting the warranty provisions adopted by California ARB for high-cost parts. For emission-related components whose replacement cost is more than about $400, we specify a minimum warranty period of at least 70 percent of the engine's useful life (in operating hours) or 5 years, whichever comes first. See § 1048.120 for a description of which components are emission-related.

c. Maintenance instructions. We are specifying minimum maintenance intervals much like those established by California ARB for Large SI engines. The minimum intervals define how much maintenance a manufacturer may specify to ensure that engines are properly maintained for staying within emission standards. Manufacturers may schedule maintenance on catalysts, fuel injectors, electronic control units and turbochargers after 5,000 hours. For oxygen sensors and cleaning of fuel-system components, the minimum maintenance interval is 2,500 hours. This fuel-system cleaning must be limited to steps that can be taken without disassembling components. We have relaxed this from the proposed interval of 4,500 hours to take into account comments emphasizing that these maintenance steps will be necessary more frequently than the proposed interval; this shorter interval also reflects the comparable provisions that apply to automotive systems.

We are also proposing a diagnostic requirement to ensure that prematurely failing oxygen sensors or other components are detected and replaced on an as-needed basis. If operators fail to address faulty components after a fault signal, we would not consider that engine to be properly maintained. This could the engine ineligible for manufacturer in-use testing.

d. Deterioration factors. We are adopting an approach that gives manufacturers wide discretion in how to establish deterioration factors for Large SI engines. The general expectation is that manufacturers will rely on emission measurements from engines that have operated for an extended period, either in field service or in the laboratory. The manufacturer should do testing as needed to be confident that their engines will meet emission standards under the in-use testing program. In deciding to certify an engine family, we can review deterioration factors to ensure that the projected deterioration accurately predicts in-use deterioration. We will use results under the in-use testing program to verify the appropriateness of deterioration factors.

In the first two or three years of certification, manufacturers will not yet have data from the in-use testing program. Moreover, manufacturers may choose to rely on technologies and calibrations for meeting the long-term standards well before 2007 to simplify their product-development efforts. We are therefore allowing manufacturers to rely on an assigned deterioration factor to meet the 2004 standards, while continuing to require manufacturers to meet the applicable emission standards throughout the useful life for these engines. The assigned deterioration factor may be derived from any available data that would help predict the way these systems would perform in the field, using good engineering judgment.

Manufacturers may develop deterioration factors for crankcase and evaporative controls. However, we do not expect these control technologies to experience degradation that would cause a deterioration factor to be appropriate.

e. In-use fuel quality. Gasoline used in industrial applications is generally the same as that used for automotive applications. Improvements that have been made to highway-grade gasoline therefore carry over directly to nonroad markets. This helps manufacturers be sure that fuel quality will not degrade an engine's emission-control performance after several years of sustained operation.

In contrast, there are no enforceable industry or government standards for LPG fuel quality. Testing data indicate that varying fuel quality has a small direct effect on emissions from a closed-loop engine with a catalyst. The greater concern is that fuel impurities and heavy-end hydrocarbons may cause an accumulation of deposits that can prevent an emission-control system from functioning properly. While an engine's feedback controls can compensate for some restriction in air- and fuel-flow, deposits may eventually prevent the engine from accurately controlling air-fuel ratios at stoichiometry. As described in the Final Regulatory Support Document, test data show that emission-control systems can tolerate substantial fuel-related deposits before there is any measurable effect on emissions. Moreover, the engine diagnostic systems described in the next section will notify the operator when fuel-related deposits prevent an engine from operating at stoichiometry. In any case, a routine cleaning step should remove deposits and restore the engine to proper functioning.

Data from in-use testing will provide additional information related to the effects of varying fuel quality on emission levels. This information will be helpful in making sure that the deterioration factors for certifying engines accurately reflect the whole range of in-use operating variables, including varying fuel quality. Our testing shows that fuel properties of conventional commercial LPG fuel allow for durable, long-term control of emissions. However, to the extent that engines operating in specific areas have inferior fuel quality that prevents them from meeting emission standards, we will be pursuing nationwide requirements to set minimum quality standards for in-use LPG fuel.

D. Testing Requirements and Supplemental Emission Standards

1. What Duty Cycles Are Used To Measure Emissions?

For 2004 through 2006 model years, we specify the same steady-state duty cycles adopted by California ARB. For variable-speed engines, this involves the testing based on the ISO C2 duty cycle, which has five modes at various intermediate speed points, plus one mode at rated speed and one idle mode. The combined intermediate-speed points at 10, 25, and 50 percent account for over 70 percent of the total modal weighting. A separate duty cycle for the large number of Large SI engine providing power for constant-speed applications, such as generators, welders, compressors, pumps, sweepers, and aerial lifts. Constant-speed testing is based on the ISO D2 duty cycle, which specifies engine operation at rated speed with five different load points. This same steady-state duty cycle applies to constant-speed, nonroad diesel engines. Emission values measured on the D2 duty cycle are treated the same as values from the C2 duty cycle; the same numerical standards apply to both cycles.

Manufacturers must generally test engines on both the C2 and D2 duty cycles. Since the C2 cycle includes very little operation at rated speed, it is not effective in ensuring control of emissions for constant-speed engines. The D2 cycle is even less capable of predicting emission performance from variable-speed engines. Manufacturers may, however, choose to certify their engines on only one of these two steady-state duty cycles. In this case, they would need to take steps to make sure C2-certified engines are installed only in variable-speed applications and D2-certified engines are installed only in constant-speed applications. Engine manufacturers would do this by labeling their engines appropriately and providing installation instructions to make sure equipment manufacturers and others are aware of the restricted certification. Equipment manufacturers are required under the regulations to follow the engine manufacturer's emission-related installation instructions.

Starting in 2007, we specify an expanded set of duty cycles, again with separate treatment for variable-speed and constant-speed applications. The test procedure is comprised of three segments: (1) A warm-up segment, (2) a transient segment, and (3) a steady-state segment. Each of these segments, described briefly in this section, include specifications for the speed and load of the engine as a function of time. Measured emissions during the transient and steady-state segments must meet the same emission standards that apply to all duty cycles. In general, the duty cycles are intended to represent operation from the wide variety of in-use applications. This includes highly transient low-speed forklift operation, constant-speed operation of portable equipment, and intermediate-speed vehicle operation.

Ambient temperatures in the laboratory must be between 20° and 30° C (68° and 86° F) during duty-cycle testing. This improves the repeatability of emission measurements when the engine runs through its prescribed operation. We nevertheless expect manufacturers to design for controlling emissions under broader ambient conditions, as described in Section V.D.5.

The warm-up segment begins with a cold-start. This means that the engine should be near room temperature before the test cycle begins. (Starting with an engine that is still warm from previous testing is allowed if good engineering judgment indicates that this will not affect emissions.) Once the engine is started, it operates over the first 3 minutes of the specified transient duty cycle without emission measurement. The engine then idles for 30 seconds before starting the prescribed transient cycle. The purpose of the warm-up segment is to bring the engine up to normal operating temperature in a standardized way. For severe-duty engines, the warm-up period is extended up to 15 minutes to account for the additional time needed to stabilize operating temperatures from air-cooled engines. The warm-up period allows enough time for engine-out emissions to stabilize, for the catalyst to warm up enough to become active, and for the engine to start closed-loop operation. This serves as a defined and achievable target for the design engineer to limit cold-start emissions to a relatively short period. In addition, we require manufacturers to activate emission-control systems as soon as possible after engine starting to make clear that it is not acceptable to design the emission-control system to start working only after the defined warm-up period is complete. In addition, we may measure emissions during the warm-up period to evaluate whether manufacturers are employing defeat devices. In contrast, transient testing of heavy-duty highway engines requires separate cold-start and hot-start measurements, with an 86-percent weighting assigned to the hot-start portion in calculating an engine's composite emission level. We believe this approach for nonroad engines serves to limit cold-start emissions without forcing manufacturers to focus design and testing resources on this portion of operation.

The transient segment of the general duty cycle is a composite of forklift and welder operation. This duty cycle was developed by selecting segments of measured engine operation from two forklifts and a welder as they performed their normal functions. This transient segment captures the wide variety of operation from a large majority of Large SI engines as fork-lifts and constant-speed engines represent about 90 percent of the Large SI market. Emissions measured during this segment are averaged over the entire transient segment to give a single value in g/kW.

Steady-state testing consists of engine operation for an extended period at several discrete speed-load combinations. Associated with these test points are weighting factors that allow a single weighted-average steady-state emission level in g/kW. While any steady-state duty cycle is limited in how much it can represent operation of engines that undergo transient operation, the distribution of the C2 modes and their weighting values aligns significantly with expected and measured engine operation from Large SI engines. In particular, these engines are generally not designed to operate for extended periods at high-load, rated speed conditions. Field measurement of engine operation shows, however, that forklifts operate extensively at lower speeds than those included in the C2 duty cycle. While we believe the test points of the C2 duty cycle are representative of engine operation from many applications of Large SI engines, supplementing the steady-state testing with a transient duty cycle is necessary to adequately include engine operation characteristic of what occurs in the field.

A separate transient duty cycle applies to engines that are certified for constant-speed applications only. These engines maintain a constant speed, but can experience widely varying loads. The transient duty cycle for these engines includes 20 minutes of engine operation based on the way engines work in a welder. Note that manufacturers selling engines for both constant-speed and variable-speed applications may omit the constant-speed transient test, since that type of operation is included in the general transient test.

A subset of constant-speed engines are designed to operate only at high

load. To address the operating limitations of these engines, we are adopting a modified steady-state duty cycle if the manufacturer provides clear evidence showing that engines rarely operate below 75 percent of full load at rated speed. Since most Large SI engines are clearly capable of operating for extended periods at light loads, we expect these provisions to apply to very few engines. This modified duty cycle consists of two equally weighted points, 75 percent and 100 percent of full load, at rated speed. Since the transient cycle described above involves extensive light-load operation, engines qualifying for this high-load duty cycle would not need to measure emissions over the transient cycle. Note that the field-testing emission standards still apply to engines that don't certify to transient duty-cycle standards.

Some diesel-derived engines operating on natural gas with power ratings up to 1,500 or 2,000 kW may be covered by these emission standards. Engine dynamometers with transient-control capabilities are generally limited to testing engines up to 500 or 600 kW. At this time emission standards and testing requirements related to transient duty cycles will not apply for engines rated above 560 kW. We will likely review this provision for Large SI engines once we have reached a conclusion on the same issue for nonroad diesel engines. For example, if we propose provisions for nonroad diesel engines that address testing issues for these very large engines, we would likely propose those same provisions for Large SI engines.

Test procedures related to evaporative emissions are described in Section V.C.4 above. In general, this involves measuring evaporative losses during a three-day period of cycling ambient temperatures between 72° and 96° F.

2. What Fuels Are Used During Emission Testing?

For gasoline-fueled Large SI engines, we are adopting the same specifications we have established for testing gasoline-fueled highway vehicles and engines. This includes the revised specification to cap sulfur levels at 80 ppm (65 FR 6698, February 10, 2000). These fuel specifications apply for both exhaust and evaporative emissions.

For LPG, we are adopting the same specifications established by California ARB. We understand that in-use fuel quality for LPG varies significantly in different parts of the country and at different times of the year. Not all in-use fuels outside California meet California ARB specifications for certification fuel, but fuels meeting the California specifications are nevertheless widely available. Test data show that LPG fuels with a much lower propane content have only slightly higher NO_X and CO emissions (see Chapter 4 of the Final Regulatory Support Document for additional information). These data support our belief that engines certified using the specified fuel will achieve the desired emission reduction for a wide range of in-use fuels. At certification manufacturers provide deterioration factors that take into account any effects related to the varying quality of commercially available fuels.

For natural gas, we are adopting specifications similar to those adopted by California ARB. As described in the Summary and Analysis of Comments, we have adjusted some of the detailed specifications from the proposal to reflect new data submitted after the proposal regarding ranges of fuel properties reflecting current commercial fuels.

Unlike California ARB, we apply the fuel specifications to testing only for emission measurements, not to service accumulation. Service accumulation between emission tests may involve certification fuel or any commercially available fuel of the appropriate type. We similarly allow manufacturers to choose between certification fuel and any commercial fuel for in-use measurements to show compliance with field-testing emission standards.

Since publishing the proposal, we learned about issues related to Large SI engines that operate around landfills or oil wells, where engines may burn naturally occurring gases that are otherwise emitted to the atmosphere. These gases generally consist of methane, but a wide range of other constituents may also be mixed in. As a result, engines may require adjustment over a wide range of settings for spark timing and air-fuel ratio to maintain consistent combustion. We generally believe that engine manufacturers should design their engines to operate with automatic feedback controls as much as possible to avoid the need for operators to manually adjust engines. However, in cases involving these noncommercial fuels, there is no way to improve the quality of the fuel to conform to any standardized specifications. Also, it is clearly preferred to capture and burn these gases than to emit them directly to the atmosphere, both to prevent greenhouse-gas emissions and to avoid wasting this source of fuel. To address this concern, we are adopting special provisions for engines burning noncommercial fuels if they are unable to meet emission standards over the full range of adjustability needed to accommodate the varying fuel properties. Manufacturers would show that these engines can meet emission standards using normal certification fuels, but the normal provisions related to adjustable parameters would not apply. To properly constrain this provision, we are including four requirements. First, manufacturers would need to add information on an engine label instructing operators how to make adjustments that would allow for maintained emission control and overall engine performance. Second, manufacturers would include additional label language to warn operators that the engine may be used only in applications involving noncommercial fuels. Third, manufacturers must separate these engines into a distinct engine family. Fourth, manufacturers must keep a record of individual sales of such engines.

3. Are There Production-Line Testing Provisions for Large SI Engines?

The provisions described in Section II.C.4 apply to Large SI engines. These requirements are consistent with those adopted by California ARB. One new issue specific to Large SI engines relates to the duty cycles for measuring emissions from production-line engines.

For routine production-line testing, we require emission measurements only with the steady-state duty cycles used for certification. Due to the cost of sampling equipment for transient engine operation, we do not require routine transient testing of production-line engines. Transient testing of production-line engines would add a substantial burden, since many manufacturers have limited emission-sampling capability at production facilities; also, these production facilities might be located at multiple sites. We believe that steady-state emission measurements will give a good indication of the manufacturers' ability to build engines consistent with the prototypes on which their certification data are based. We reserve the right, however, to direct a manufacturer to measure emissions with a transient duty cycle if we believe it is appropriate. One indication of the need for this transient testing would be if steady-state emission levels from production-line engines are significantly higher than the emission levels reported in the application for certification for that engine family. For manufacturers with the capability of measuring transient emission levels at the production line, we recommend doing transient tests to better ensure that in-use tests will not reveal problems in controlling emissions during transient

operation. Manufacturers need not make any measurements to show that production-line engines meet field-testing emission standards.

We expect manufacturers generally to certify their engines to the evaporative requirements using a design-based approach. Accordingly, the technologies we expect manufacturers to use for controlling evaporative emissions are not subject to variation as a result of production procedures, so we are not requiring production-line testing related to the evaporative requirements.

4. Are There In-Use Testing Provisions for Large SI Engines?

While the certification and production-line compliance requirements are important to ensure that engines are designed and produced in compliance with established emission limits, there is also a need to confirm that manufacturers build engines with sufficient durability to meet emission limits as they age in service. Consistent with the California ARB program, we are requiring engine manufacturers to conduct emission tests on a small number of field-aged engines to show they meet emission standards.

We may generally select up to 25 percent of a manufacturer's engine families in a given year to be subject to in-use testing. Most companies will need to test at most one engine family per year. Manufacturers may conduct in-use testing on any number of additional engine families at their discretion.

Manufacturers in unusual circumstances may develop an alternate plan to fulfill any in-use testing obligations, consistent with a similar program we have adopted for outboard and personal watercraft marine engines. These circumstances include total sales for an engine family below 200 per year, installation only in applications where testing is not possible without irreparable damage to the vehicle or engine, or any other unique feature that prevents full emission measurements.

While the regulations allow us to select an engine family every year from an engine manufacturer, there are several reasons why small-volume manufacturers may expect a less demanding approach. These manufacturers may have only one or two engine families. If a manufacturer shows that an engine family meets emission standards in an in-use testing exercise, that may provide adequate data to show compliance for that engine family for a number of years, provided that the manufacturer continues to produce those engines without significantly redesigning them in a way that might affect their in-use emissions performance and that we do not have other reason to suspect noncompliance. Also, where we have evidence that a manufacturer's engines are likely in good in-use compliance, we generally take the approach of selecting engine families based on some degree of proportionality. To the extent that manufacturers produce a smaller than average proportion of engines, they may expect us to select their engine families less frequently, especially if other available data pointed toward in-use compliance. In addition, our experience in implementing a comparable testing program for recreational marine engines provides a history of how we implement in-use testing requirements.

Engines can be tested one of two ways. First, manufacturers can remove engines from vehicles or equipment and test the engines on a laboratory dynamometer using certification procedures. For 2004 through 2006 model year engines, this is the same steady-state duty cycle used for certification; manufacturers may optionally test engines on the dynamometer under transient operating conditions. For 2007 and later model year engines, manufacturers must test engines using both steady-state and transient duty cycles, as in certification.

As an alternative, manufacturers may use the specified equipment and procedures for testing engines without removing them from the equipment (referred to in this document as field testing). See Section V.D.5 for a more detailed description of how to measure emissions from engines during normal operation in the field. Since engines operating in the field cannot be controlled to operate on a specific duty cycle, compliance is demonstrated by comparing the measured emission levels to the field-testing emission standards, which have higher numerical value to account for the possible effects of different engine operation. Because the engine operation can be so variable, however, engines tested to show compliance only with the field-testing emission standards are not eligible to participate in the in-use averaging, banking, and trading program (described below).

Clean Air Act section 213 requires engines to comply with emission standards throughout their regulatory useful lives, and section 207 requires a manufacturer to remedy in-use nonconformity when we determine that a substantial number of properly maintained and used engines fail to conform with the applicable emission standards (42 U.S.C. 7541). Along with the in-use testing program, we would allow manufacturers to demonstrate that they have designed their engines to control emissions substantially below the emission standards that apply. If manufacturers are able to show that they have already been reducing emissions more than required by the standards, including appropriate consideration for deterioration and compliance margins, this may allow us to conclude that these accumulated additional emission reductions are sufficient to offset the high emissions from a failing engine family. In concept, this approach serves much like a banking program to recognize manufacturers' efforts to go beyond the minimum required emission reductions.

This approach differs from the specific in-use emission-credit program that we proposed. This more general approach is preferred for two primary reasons. First, while we proposed to limit the in-use emission-credit program to transient testing in the laboratory, manufacturers will now be able to use emission data generated from field testing to characterize an engine family's average emission level. This becomes necessarily more subjective, but allows us to consider a wider range of information in evaluating the degree to which manufacturers are complying with emission standards across their product line. Second, this approach makes clearer the role of the emission credits in our consideration to recall failing engines. As we described in the proposal, we plan to consider average emission levels from multiple engine families in deciding whether to recall engines from a failing engine family. We therefore believe it is not appropriate to have a detailed emission-credit program defining precisely how and when to calculate, generate, and use credits that do not necessarily have value elsewhere.

The regulations do not specify how manufacturers would generate emission credits to offset a nonconforming engine family. This gives us the ability to consider any appropriate test data in deciding what action to take. In generating this kind of information, some general guidelines would apply. For example, we would expect manufacturers to share test data from all engines and all engine families tested under the in-use testing program, including nonstandard tests that might be used to screen engines for later measurement. This allows us to understand the manufacturers' overall level of performance in controlling emissions to meet emission standards. Average emission levels should be calculated over a running three-year period to include a broad range of

testing without skewing the results based on old designs. Emission values from engines certified to different tiers of emission standards or tested using different measurement procedures should not be combined to calculate a single average emission level. Average emission levels should be calculated according to the following equation, rounding the results to 0.1 g/kW-hr:

$$\text{Average EL} = \left[\sum_i (\text{STD} - \text{CL})_i \times (\text{UL})_i \times (\text{Sales})_i \times \text{Power}_i \times \text{LF}_i\right] \div \left[\sum_i (\text{UL})_i \times (\text{Sales})_i \times \text{Power}_i \times \text{LF}_i\right]$$

Where:

Average EL=Average emission level in g/kW-hr.

Sales_i=The number of eligible sales, tracked to the point of first retail sale in the U.S., for the given engine family during the model year.

$_i$(STD-CL)=The difference between the emission standard and the average emission level for an in-use testing family in g/kW-hr.

UL_i=Useful life in hours.

Power_i=The sales-weighted average rated brake power for an engine family in kW.

LF_i=Load factor or fraction of rated engine power utilized in use; use 0.50 for engine families used only in constant-speed applications and 0.32 for all other engine families.

The anticipated crankcase and evaporative emission-control technologies generally are best evaluated simply by checking whether or not they continue to function as designed, rather than implementing a program to measure these emissions from in-use engines. As a result, we may inspect in-use engines to verify that these systems continue to function properly throughout the useful life, but are not requiring manufacturers to include crankcase or evaporative measurements as part of the in-use testing program described in this section.

5. What Are the Field-Testing Emission Standards and Test Procedures?

To address concerns for controlling emissions outside of the certification duty cycles and to enable field-testing of Large SI engines, we are adopting procedures and standards that apply to a wider range of normal engine operation.

a. What is the field-testing concept? Measuring emissions from engines in the field as they undergo normal operation while installed in nonroad equipment addresses two broad concerns. First, testing of in-use engines has shown that emissions can vary dramatically under certain modes of operation.

Second, this provides a low-cost method of testing in-use engines, which facilitates in-use compliance programs. Field-testing addresses this by including emission measurements over the broad range of normal engine operation. This may include varying engine speeds and loads according to real operation and may include a reasonable range of ambient conditions, as described below.

No engine operating in the field can follow a prescribed duty cycle for a consistent measure of emission levels. Similarly, no single test procedure can cover all real-world applications, operations, or conditions. Specifying parameters for testing engines in the field and adopting an associated emission standard provides a framework for requiring that engines control emissions under the whole range of normal operation in the relevant nonroad equipment.

To ensure that emissions are controlled from Large SI engines over the full range of speed and load combinations seen in the field, we are adopting supplemental emission standards that apply more broadly than the duty-cycle standard, as detailed below. These standards apply to all regulated pollutants (NO_X, HC, and CO) under all normal operation (steady-state or transient). We exclude abnormal operation (such as very low average power and extended idling time), but do not restrict operation to any specific combination of speeds and loads. In addition, the field-testing standards apply under a broad range of in-use ambient conditions, both to ensure robust emission controls and to avoid overly restricting the times available for testing. These provisions are described in detail below.

b. How do the field-testing standards apply? Manufacturers have expressed an interest in using field-testing procedures before the 2007 model year to show that they can meet emission standards as part of the in-use testing program. While we are not adopting specific field-testing standards for 2004 through 2006 model year engines, we will allow this as an option. In this case, manufacturers would conduct the field testing as described here to show that their engines meet the 5.4 g/kW-hr HC+NO_X standard and the 50 g/kW-hr CO standard. This may give manufacturers the opportunity to do testing at significantly lower cost compared with laboratory testing. Preliminary certification data from California ARB show that manufacturers are reaching steady-state emission levels well below emission standards, so we expect any additional variability in field-testing measurements not to affect manufacturers' ability to meet the same emission standards.

The 2007 field-testing standards are based on emission data measured on engines with the same emission-control technology used to establish the duty-cycle standards. As described above for the duty-cycle standards, we are adopting a flexible approach to address the tradeoff between HC+NO_X and CO emissions. Table V.D–1 shows the range of values that define the standard for showing compliance for field-testing measurements. The higher numerical values of the Tier 2 standards for field testing (compared with duty-cycle testing) reflect the observed variation in emissions for varying engine operation, and the projected effects of ambient conditions on the projected technology. Conceptually, we believe that field-testing standards should primarily require manufacturers to adjust engine calibrations to effectively manage air-fuel ratios under varying conditions. The estimated cost of complying with emission standards includes an allowance for the time and resources needed for this recalibration effort (see Section IX.B. for total estimated costs per engine).

TABLE V.D–1.—SAMPLES OF POSSIBLE ALTERNATIVE FIELD-TESTING EMISSION STANDARDS FOR LARGE SI ENGINES(G/KW-HR) *

HC+NO_X	CO
3.8	6.5
3.1	8.5
2.4	11.7
1.8	16.8
1.4	23.1

TABLE V.D–1.—SAMPLES OF POSSIBLE ALTERNATIVE FIELD-TESTING EMISSION STANDARDS FOR LARGE SI ENGINES(G/KW-HR) *—Continued

$HC+NO_X$	CO
1.1	31

*As described in the Final Regulatory Support Document and the regulations, the values in the table are related by the following formula: $(HC+NO_X) \times CO0.791 = 16.78$. These values follow directly from the logarithmic relationship presented with the proposal in the Draft Regulatory Impact Analysis.

We generally require manufacturers to show at certification that they are capable of meeting all standards that apply for the useful life. This adds a measure of assurance to both EPA and manufacturers that the engine design is sufficient for any in-use engines to pass any later testing. For Large SI engines, manufacturers must show in their application for certification that they are able to meet the field-testing standards. Manufacturers must submit a statement that their engines will comply with field-testing emission standards under all conditions that may reasonably be expected to occur in normal vehicle operation and use. Manufacturer will provide a detailed description of any testing, engineering analysis, and other information that forms the basis for the statement. This will likely include a variety of steady-state emission measurements not included in the prescribed duty cycle. It may also include a continuous trace showing how emissions vary during the transient test or it may include emission measurements during other segments of operation manufacturers believe are representative of the way their engines normally operate in the field.

Two additional provisions are necessary to allow emission testing without removing engines from equipment in the field. Manufacturers must design their engines to broadcast instantaneous speed and torque values to the onboard computer and ensure that emission sampling is possible after engine installation.

The test equipment and procedures for showing compliance with field-testing standards also hold promise to reduce the cost of production-line testing. Companies with production facilities that have a dynamometer but no emission measurement capability may use the field-testing equipment and procedures to get a low-cost, valid emission measurement at the production line. Manufacturers may also choose to use the cost advantage of the simpler measurement to sample a greater number of production-line engines. This would provide greater assurance of consistent emissions performance, but would also provide valuable quality-control data for overall engine performance. See the discussion of alternate approaches to production-line testing in Section II.C.4 for more information.

c. What limits are placed on field testing? The field-testing standards apply to all normal operation. This may include steady-state or transient engine operation. Given a set of field-testing standards, the goal for the design engineer is to ensure that engines are properly calibrated for controlling emissions under any reasonably expected mode of engine operation. Engines may not be able to meet the emissions limit under all conditions, however, so we are adopting several parameters to narrow the range of engine operation that is subject to the field-testing standards. For example, emission sampling for field testing does not include engine starting.

Engines can often operate at extreme environmental and geographic conditions (temperature, altitude, etc.). To narrow the range of conditions for the design engineer, we are limiting emission measurements during field testing to ambient temperatures from 13° to 35° C (55° to 95° F), and to ambient pressures from 600 to 775 millimeters of mercury (which should cover almost all normal pressures from sea level to 7,000 feet above sea level). This allows testing under a wider range of conditions in addition to helping ensure that engines are able to control emissions under the whole range of conditions under which they operate.

Some additional limits to define ''normal'' operation apply to field testing. These restrictions are intended to provide manufacturers with some certainty about what their design targets are and to ensure that compliance with the field-testing standards is feasible. These restrictions apply to both variable-speed and constant-speed engine applications.

First, measurements with more than 2 minutes of continuous idle are excluded. This means that an emission measurement from a forklift while it idled for 5 minutes will not be considered valid. On the other hand, an emission measurement from a forklift that idled for multiple 1-minute periods and otherwise operated at 40-percent power for several minutes would be considered a valid measurement. Measurements with in-use equipment in their normal service show that idle periods for Large SI engines are short, but relatively frequent. We therefore do not automatically exclude an emission sample if it includes an idling portion. At the same time, controlling emissions during extended idling poses a difficult design challenge, especially at low ambient temperatures. Exhaust and catalyst temperatures under these conditions can decrease enough that catalyst conversion is significantly less effective. Since extended idling is not an appropriate focus of extensive development efforts at this stage, we believe the 2-minute threshold for continuous idle appropriately balances the need to include measurement during short idling periods with the technical challenges of controlling emissions under difficult conditions.

Second, measured power during the sampling period must be above 5 percent of maximum power for an emission measurement to be considered valid. Brake-specific emissions (g/kW-hr) can be very high at low power because they are calculated by dividing the g/hr emission rate by a very small power level (kW). By ensuring that brake-specific emissions are not calculated by dividing by power levels less than 5 percent of the maximum, we can avoid this problem. The data presented in Chapter 4 of the Final Regulator Support Document show that engines can meet the emission standards when operating above 5 percent of rated power.

Third, some engines need to run rich of stoichiometric combustion during extended high-load operation to protect against engine failure. This increases HC and CO emissions. We are adopting provisions allowing manufacturers to meet separate standards for these engines for steady-state operation. For engines qualifying for these different steady-state standards, we specify that a valid sample for field testing must include less than 10 percent of operation at 90 percent or more of maximum power. We expect it to be uncommon for engine installations to call for such high power demand due to the shortened engine lifetime at very high-load operation. A larger engine can generally produce the desired power at a lower relative load, without compromising engine lifetime. Alternatively, applications that call for full-load operation typically use diesel engines. Manufacturers may request a different threshold to allow more open-loop operation. Before we approve such a request, the engine manufacturer would need to have a plan for ensuring that the engines in their final installation do not routinely operate at loads above the specified threshold.

An additional parameter to consider is the minimum sampling time for field testing. A longer period allows for

greater accuracy, due mainly to the smoothing effect of measuring over several transient events. On the other hand, an overly long sampling period can mask areas of engine operation with poor emission-control characteristics. To balance these concerns, we are applying a minimum sampling period of 2 minutes. In other rules for diesel engines, we have allowed sampling periods as short as 30 seconds. Spark-ignition engines generally don't have turbochargers and they control emissions by maintaining air-fuel ratio with closed-loop controls through changing engine operation. Spark-ignition engines are therefore much less prone to consistent emission spikes from off-cycle or unusual engine operation. We believe the 2-minute sampling time requirement will ensure sufficient measurement accuracy and will allow for more meaningful measurements from engines that may be operated with very frequent but brief times at idle.

We do not specify a maximum sampling time. We expect manufacturers testing in-use engines to select an approximate sampling time before measuring emissions; however, the standards apply for any sampling time that meets the minimum. When selecting an engine family for the in-use testing program, we will develop a plan with direction related to the way manufacturers conduct the emission-sampling effort, such as sampling time or specific types of engine operation, to ensure that testing provides relevant data.

d. How do I test engines in the field? To test engines without removing them from equipment, analyzers are connected to the engine's exhaust to detect emission concentrations during normal operation. Exhaust volumetric flow rate and continuous power output are also needed to convert the analyzer responses to units of g/kW-hr for comparing to emission standards. These values can be calculated from measurements of the engine intake flow rate, the exhaust air-fuel ratio and the engine speed, and from torque information.

Available small analyzers and other equipment may be adapted for measuring emissions from field equipment. A portable flame ionization detector can measure total hydrocarbon concentrations. Methane measurement currently requires more expensive laboratory equipment that is impractical for field measurements. Field-testing standards are therefore be based on total hydrocarbon emissions. A portable analyzer based on zirconia technology measures NO_X emissions. A nondispersive infrared (NDIR) unit can measure CO. Emission samples can best be drawn from the exhaust flow directly downstream of the catalyst material to avoid diluting effects from the end of the tailpipe. Installing a sufficiently long tailpipe extension is also an acceptable way to avoid dilution. Mass flow rates also factor into the torque calculation; this may either be measured in the intake manifold or downstream of the catalyst.

Calculating brake-specific emissions depends on determining instantaneous engine speed and torque levels. Manufacturers must therefore design their engines to continuously monitor engine speed and torque. The tolerance for speed measurements, which is relatively straightforward, is ±5 percent. For torque, the onboard computer needs to convert measured engine parameters into useful units. Manufacturers generally will need to monitor a surrogate value such as intake manifold pressure or throttle position (or both), then rely on a look-up table programmed into the onboard computer to convert these torque indicators into newton-meters. Manufacturers may also want to program the look-up tables for torque conversion into a remote scan tool. Because of the greater uncertainty in these measurements and calculations, manufacturers must produce their systems to report torque values that are within 85 and 105 percent of the true value. This broader range allows appropriately for the uncertainty in the measurement, while providing an incentive for manufacturers to make the torque reading as accurate as possible. Under-reporting torque values would over-predict emissions. These tolerances are taken into account in the selection of the field-testing standards, as described in Chapter 4 of the Final Regulatory Support Document.

E. Special Compliance Provisions

We are adopting hardship provisions to address the particular concerns of small-volume manufacturers, which generally have limited capital and engineering resources. These hardship provisions are generally described in Section VII.C. For Large SI engines, we are adopting a longer available extension of the deadline, up to four years, for meeting emission standards for companies that qualify for special treatment under the hardship provisions. We will, however, not extend the deadline for compliance beyond the four-year period. This approach considers the fact that, unlike most other engine categories, qualifying small businesses are more likely to be manufacturers designing their own products. Other types of engines more often involve importers, which are limited more by available engine suppliers than design or development schedules.

We are not finalizing the proposed interim emission standards proposed for small-volume manufacturers. We believe we can accomplish the same objectives with more flexibility, and potentially with greater net emission reductions, by relying on the hardship provisions.

In addition, we are waiving the requirement for small-volume manufacturers to broadcast engine speed and torque values. These companies may choose to do this to enable field-testing of their products, but may be constrained in developing this capability to the extent that they rely on component suppliers to provide systems that meet EPA requirements.

F. Technological Feasibility of the Standards

We are adopting emission standards that depend on the industrial versions of established automotive technologies. The most recent advances in automotive technology have made possible even more dramatic emission reductions. However, we believe that transferring some of these most advanced technologies is not appropriate for nonroad engines at this time, especially considering the much smaller sales volumes for amortizing fixed costs and the additional costs associated with the first-time regulation of these engines.

To comply with the 2004 model year standards, manufacturers should not need to do any development, testing, or certification work that is not already necessary to meet California ARB standards in 2004. As shown in Chapter 4 of the Final Regulatory Support Document, manufacturers can meet these standards with three-way catalysts and closed-loop fuel systems. These technologies have been available for industrial engine applications for several years. Moreover, several manufacturers have already completed the testing effort to certify with California ARB that their engines meet these standards. Complying with emission standards nationwide in 2004 will therefore generally require manufacturers only to produce greater numbers of the engines complying with the California standards.

Chapter 4 of the Final Regulatory Support Document further describes data and rationale showing why we believe that the 2007 model year emission standards under the steady-state and transient duty-cycles and field-testing procedures are feasible. In

summary, testing from Southwest Research Institute and other data show that the same catalyst and fuel-system technologies needed to meet the 2004 standards can be optimized to meet more stringent emission standards. Applying further development allows the design engineer to fine-tune control of air-fuel ratios and address any high-emission modes of operation to produce engines that consistently control emissions to very low levels, even considering the wide range of operation experienced by these engines. The numerical emission standards are based on measured emission levels from engines that have operated for at least 5,000 hours with a functioning emission-control system. These engines demonstrate the achievable level of control from catalyst-based systems and provide a significant degree of basic development that should help manufacturers in optimizing their own engines.

We believe it is appropriate to initiate the second stage of standards in 2007, because we believe that applying these emission standards earlier does not allow manufacturers enough stability between introduction of different phases of emission standards to prepare for complying with the full set of requirements in this final rule and to amortize their fixed costs. Three years of stable emission standards, plus the remaining lead time before 2004, allows manufacturers enough time to go through the development and certification effort to comply with the new standards including new test cycle requirements. The provisions to allow ''family banking'' for early compliance provide an additional tool for companies that choose to spread out their design and certification efforts.

The new emission standards will either have no impact or a positive impact with respect to noise, energy, and safety, as described in Chapter 4 of the Final Regulatory Support Document. In particular, the anticipated fuel savings associated with the expected emission-control technologies will provide a very big energy benefit related to new emission standards. The projected technologies are currently available and are consistent with those anticipated for complying with the emission standards adopted by California ARB. The lead time for the near-term and long-term emission standards allows manufacturers enough time to optimize these designs to most effectively reduce emissions from the wide range of Large SI equipment applications.

VI. Recreational Marine Diesel Engines

This section describes the new provisions for 40 CFR part 94, which apply to engine manufacturers and importers. We are applying the same general compliance provisions from 40 CFR part 94 for engine manufacturers, equipment manufacturers, operators, rebuilders, and others. See Section II for a description of our general approach to regulating nonroad engines and how manufacturers show that they meet emission standards.

A. Overview

We are adopting exhaust and crankcase emission standards for recreational marine diesel engines with power ratings greater than or equal to 37 kW. We are adopting emission standards for HC, NO_X, CO, and PM beginning in 2006. We believe manufacturers will be able to use technology developed for land-based nonroad and commercial marine diesel engines. To encourage the introduction of low-emission technology, we are also adopting voluntary ''Blue Sky'' standards which are 40 percent lower than the mandatory standards. We also recognize that there are many small businesses that manufacture recreational marine diesel engines. We are therefore including several regulatory options for small businesses that will help minimize any unique burdens caused by emission regulations.

Diesel engines are primarily available in inboard marine configurations, but may also be available in sterndrive and outboard marine configurations. Inboard diesel engines are the primary choice for many larger recreational boats.

B. Engines Covered by This Rule

The standards in this section apply to recreational marine diesel engines. We excluded these engines from the requirements applying to commercial marine diesel engines because at the time we thought their operation in planing mode might impose design requirements on recreational boat builders and to allow us more time for further evaluation prior to setting standards (64 FR 73300, December 29, 1999). Commercial marine vessels tend to be displacement-hull vessels, designed and built for a unique commercial application (such as towing, fishing, or general cargo). Power ratings for engines used on these vessels are analogous to land-based applications, and these engines generally have warranties for 2,000 to 5,000 hours of use. Recreational vessels, on the other hand, tend to be planing vessels. Engines used on these vessels are designed to achieve higher power output with less engine weight. This increase in power reduces the lifetime of the engine, so recreational marine engines have shorter warranties than their commercial counterparts. In our previous rulemaking, recreational engine industry representatives raised concerns about the ability of these engines to meet the commercial standards without substantial changes in the size and weight of the engine. Such changes may have an impact on vessel builders, who might have to redesign vessel hulls to accommodate the new engines. Because most recreational vessel hulls are made with fiberglass molds, this may be a significant burden for recreational vessel builders.

Our further evaluation of these issues leads us to conclude that recreational marine diesel engines can achieve those same emission standards without significant impacts on engine size and weight, and therefore without significant impacts on vessel design. Section VI.G of this document, Chapters 3 and 4 of the Final Regulatory Support Document, and Section II.A of the Summary and Analysis of Comments describe the several technological changes we anticipate manufacturers will use to comply with the new emission standards. None of these technologies has an inherent negative effect on the performance or power density of an engine. As with engines in land-based applications, we expect that manufacturers will be able to use the range of technologies available to maintain or even improve the performance capabilities of their engines. We are establishing a separate regulatory program for recreational marine diesel engines in this rule, with most aspects the same as for commercial marine diesel engines but with certain aspects of the program tailored to these applications, notably the not-to-exceed emissions requirements.

To distinguish between commercial and recreational marine diesel engines for the purpose of emission controls, it is necessary to define ''recreational marine diesel engine.'' The commercial marine diesel engine rule defined recreational marine engine as a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel. The engine must be labeled to distinguish it from a commercial marine diesel engine. The label must read: ''THIS ENGINE IS CATEGORIZED AS A RECREATIONAL ENGINE UNDER 40 CFR PART 94. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A

VIOLATION OF FEDERAL LAW SUBJECT TO PENALTY.''

We are revising this definition to include a requirement that a recreational marine engine must be a Category 1 marine engine (have a displacement of less than 5 liters per cylinder). Category 2 marine engines are generally designed with characteristics similar to commercial marine engines. Vessels using engines of this size generally require engines that can operate longer at higher power than typical recreational boats; therefore, these engines generally have a lower power density and are not offered in a ''recreational'' rating.

For the purpose of the recreational marine diesel engine definition included in the proposal, recreational vessel was defined as ''a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented, or chartered to another for the latter's pleasure.'' Because certain vessels that are used for pleasure may have operating characteristics that are more similar to commercial marine vessels (such as excursion vessels and charter craft), we drew on the Coast Guard's definition of a ''small passenger vessel'' (46 U.S.C. 2101 (35)) to further delineate what would be considered to be a recreational vessel. Specifically, the term ''operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure'' does not include the following vessels: (1) Vessels of less than 100 gross tons that carry more than 6 passengers; (2) vessels of 100 gross tons or more that carry one or more passengers; or (3) vessels used solely for competition. For the purposes of this definition, a passenger is defined by 46 U.S.C 2101 (21, 21a) which generally means an individual who pays to be on the vessel.

We received several comments in this rulemaking on these definitions. Engine manufacturers were concerned that the definitions may be unworkable for engine manufacturers, because they cannot know whether a particular recreational vessel might carry more than six passengers at a time. All they can know is whether the engine they manufacture is intended by them for installation on a vessel designed for pleasure and having the corresponding characteristics for planing, power density, and performance requirements.

We are not revising our existing definition of recreational marine vessel. As discussed in the Summary and Analysis of Comments, a vessel will be considered recreational if the boat builder intends that the customer will operate it consistent with the recreational-vessel definition. Relying on the boat builder's intent is necessary because manufacturers need to establish a vessel's classification before it is sold, whereas the Coast Guard definitions apply at the time of use. The definition therefore relies on the intent of the boat builder to establish that the vessel will be used consistent with the above criteria. If a boat builder manufactures a vessel for a customer who intends to use the vessel for recreational purposes, we would always consider that a recreational vessel, regardless of how the owner (or a subsequent owner) actually uses it. The engine manufacturer will not be expected to ensure that their engines are used only in recreational craft; however, they would be required to label their recreational engines as described above. The vessel builders will then be required to install properly certified recreational (or commercial) marine engines in recreational vessels and certified commercial marine engines in commercial vessels.

C. Emission Standards for Recreational Marine Diesel Engines

This section describes the new emission standards and implementation dates, with an outline of the technology that can be used to achieve these levels. The technological feasibility discussion below (Section VI.G) describes our technical rationale in more detail.

1. What Are the Emission Standards and Compliance Dates?

The emission standards for recreational marine diesel engines are the same as the Tier 2 standards for commercial marine diesel engines with two years additional lead time. We are setting the standards at the same level because recreational marine diesel engines can use all the technologies projected for Tier 2 and these technologies are expected to lead to compliance. As with commercial marine engines this technology will be available in the lead time provided to allow compliance with the emission standards. Many of these engines already use this technology. This includes electronic fuel management, turbocharging, and separate-circuit aftercooling. In fact, because recreational engines have much shorter design lives than commercial engines, it is easier to apply raw-water aftercooling to these engines, which allows manufacturers to enhance performance while reducing NO_X emissions.

Engine manufacturers will generally increase the fueling rate in recreational engines, compared to commercial engines, to gain power from a given engine size. This helps bring a planing vessel onto the water surface and increases the maximum vessel speed without increasing the weight of the vessel. This difference in how recreational engines are designed and used affects emissions. However, the technology listed above can be used to meet the emission standards while still meeting the performance requirements of a recreational engine.

We are adopting the commercial marine engine standards for recreational marine diesel engines, allowing two years beyond the dates that standards apply for the commercial engines. This gives engine manufacturers additional lead time in adapting technology to their recreational marine diesel engines. For manufacturers producing only recreational marine engines the implementation dates provide three to six years of lead time beyond this notice. Based on our evaluation of the industry, we believe that manufacturers who produce only recreational marine engines would likely be small businesses and would have the option of additional lead time, and other flexibility, as discussed in Section VI.E. The emission standards and implementation dates for recreational marine diesel engines are presented in Table VI.C–1. The subcategories refer to engine displacement in liters per cylinder.

TABLE VI.C–1.—RECREATIONAL MARINE DIESEL EMISSION STANDARDS AND IMPLEMENTATION DATES

Subcategory	$HC+NO_X$ g/kW-hr	PM g/kW-hr	CO g/kW-hr	Implementation date
power ≥ 37 kW disp < 0.9	7.5	0.40	5.0	2007
0.9 ≤ disp < 1.2	7.2	0.30	5.0	2006
1.2 ≤ disp < 2.5	7.2	0.20	5.0	2006
disp ≥ 2.5	7.2	0.20	5.0	2009

Manufacturers commented that engines with less than 2.5 liters per cylinder, but more than 560 kW would have no lead time beyond the land-based nonroad diesel engine standards and that some commercial marine engines in this category would actually have to certify two years before nonroad engines. In this case this is caused by the way we define subclasses, but has technology and cost implications for the engines involved. To address this, we are providing an optional implementation date of 2008 for certain commercial and recreational marine engines (see the Summary and Analysis of Comments for more detail). To be eligible for this option, the engine must be derived from a land-based nonroad engine with a rated power greater than 560 kW and have a displacement of 2.0 to 2.5 liters per cylinder. To use this option, we are requiring that engines certified under this option meet an $HC+NO_X$ standard of 6.4 g/kW-hr through model year 2012. We believe this emission level, which matches the Tier 2 level for land-based nonroad engines, should be achievable given the extra lead time for development. Testing would still be performed on the appropriate marine duty cycles. Based on our analysis in the Final Regulatory Impact Analysis for commercial marine engines, $HC+NO_X$ emissions measured over the marine duty cycles should be similar to those measured over the land-based nonroad duty cycle.

We are also adopting not-to-exceed emission standards and related requirements similar to those finalized for commercial marine diesel engines. This is discussed below in Section VI.C.8.

2. Will I Be Able To Average, Bank, or Trade Emissions Credits?

Manufacturers may use emission credits from recreational marine diesel engines to show that they meet emission standards. Section II.C.3 gives an overview of the emission-credit program, which is consistent with what we have adopted for Category 1 commercial marine diesel engines. The emission-credit program covers $HC+NO_X$ and PM emissions, but not CO emissions.

Consistent with our land-based nonroad and commercial marine diesel engine regulations, manufacturers may not simultaneously generate $HC+NO_X$ credits while using PM credits on the same engine family, and vice versa. This is necessary because of the inherent trade-off between NO_X and PM emissions in diesel engines.

We are adopting the same maximum value of the Family Emission Limit (FEL) as for commercial marine diesel engines. For engines with a displacement of less than 1.2 liters/cylinder, the maximum values are 11.5 g/kW-hr $HC+NO_X$ and 1.2 g/kW-hr PM; for larger engines, the maximum values are 10.5 g/kW-hr $HC+NO_X$ and 0.54 g/kW-hr PM. These maximum FEL values were based on the comparable land-based emission-credit program and will ensure that the emissions from any given family certified under this program not be significantly higher than the applicable emission standards. We believe these maximum values will prevent backsliding of emissions above the baseline levels for any given engine model. Also, we are concerned that the higher emitting engines may cause increased emissions in areas such as ports that may have a need for PM or NO_X emission reductions. Nonetheless, it is acknowledged that recreational marine diesel engines constitute a small fraction of PM and HC + NO_X emissions in nonattainment areas.

Emission credits generated under this program have no expiration, with no discounting applied. This is consistent with the commercial marine credit program and gives manufacturers more options in implementing their engine designs. However, if we revisit these standards later, we will have to reevaluate this issue in the context of whether future advances in technology would result in a large amount of accumulated credits that would adversely impact the timely implementation of any new requirements.

Consistent with the land-based nonroad diesel rule, we will also not allow manufacturers to use credits generated on land-based engines for demonstrating compliance with marine diesel engines. In addition, credits may not be exchanged between recreational and commercial marine engines. The emission standards for recreational engines are based on the baseline levels of current recreational marine engines and the capability of technology to reduce emissions from recreational marine engines. The standard is, therefore, premised on the capability and use of recreational marine technology and not on the capability and use of technology on other engines. Emissions from land-based, commercial, and recreational marine engines are measured over different duty cycles and have different useful lives. Correction factors would be difficult to generate and they would add complexity and uncertainty to the value of the credits. Furthermore, we are concerned that allowing cross program trading could create an inequity between manufacturers with diverse product lines and those with more limited offerings, thereby potentially creating a competitive advantage for diverse companies over small companies selling only recreational marine engines. If a manufacturer were to do this, we do not believe it is likely that they would sell emission credits at a price that would be economical for small manufacturers.

We will allow early banking of emission credits relative to the standard. Early banking of emission credits may allow for a smoother implementation of the recreational marine standards. These credits are generated relative to the new emission standards and are undiscounted.

We will also allow manufacturers to generate early credits relative to their pre-control emission levels. If manufacturers choose this option they will have to develop baseline emission levels specific to each participating engine family. Credits will then be calculated relative to the manufacturer-generated baseline emission rates, rather than the standards. To generate the baseline emission rates, a manufacturer must test three engines from the family for which the baseline is being generated. The baseline will be the average emissions of the three engines. Under this option, engines must still certify to the standards to generate credits, but the credits will be calculated relative to the generated baseline rather than the standards. Any credits generated between the level of the standards and the generated baseline will be discounted 10 percent. This is to account for the variability of testing in-use engines to establish the family-specific baseline levels, which may result from differences in hours of use and maintenance practices as well as other sources of potential uncertainty about the representativeness if the baseline. Manufacturers commented that credits should not be generated under the early banking program for the portion of NO_X reductions above the MARPOL Annex VI standard. We believe this approach is reasonable since this should be a common upper limit for all engines. Therefore, if manufacturers use this option, any baseline NO_X levels determined to be above the MARPOL Annex VI standard must be adjusted to that level for determining early credits.

3. Is EPA Proposing Voluntary Standards for These Engines?

a. Blue Sky. We are adopting voluntary emission standards based on a 45-percent reduction beyond the mandatory standards. An engine family meeting the voluntary standards

qualifies for designation as Blue Sky Series engines. These voluntary standards are the same as those adopted for commercial marine diesel engines (see Table VI.C–2). While the Blue Sky Series emission standards are voluntary, a manufacturer choosing to certify an engine under this program must comply with all the requirements that apply to this category of engines, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions. This program is effective immediately when we publish this rule. To maximize the potential for other groups to create incentive programs, without double-counting, we do not allow manufacturers to earn marketable credits for their Blue Sky Engines.

TABLE VI.C–2.—BLUE SKY VOLUNTARY EMISSION STANDARDS FOR RECREATIONAL MARINE DIESEL ENGINES

[g/kW-hr]

Rated brake power (kW)	$HC+NO_X$	PM
power ≥ 37 kW		
displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.	5.0	0.12

b. MARPOL Annex VI. The MARPOL Annex VI standards are for NO_X emissions from marine diesel engines rated above 130 kW. We encourage engine manufacturers to make Annex VI-compliant engines available and boat builders to purchase and install them before we apply the EPA Tier 2 standards. If the treaty enters into force, the standards would go into effect retroactively to all boats built January 1, 2000 or later. One advantage of using MARPOL-compliant engines is that if this happens, users will be in compliance with the standard without having to make any changes to their engines.

4. What Durability Provisions Apply?

Several provisions help ensure that engines control emissions throughout a lifetime of operation. Section II.C gives a general overview of durability provisions associated with emissions certification. This section discusses these provisions specifically for recreational marine diesel engines.

a. How long do my engines have to comply? Manufacturers must produce engines that comply over a useful life of ten years or until the engine accumulates 1,000 operating hours, whichever occurs first. The hours requirement is a minimum value for useful life, and manufacturers must comply for a longer period in those cases where they design their engines to be operated longer than 1,000 hours. In making the determination that engines are designed to last longer than the 1,000 hour value, we will consider evidence such as whether the engines continue to reliably deliver the necessary power output without an increase in fuel consumption that the user would find unacceptable and thus might trigger a maintenance or rebuild action by the user.

b. How do I demonstrate emission durability? We are extending the durability demonstration requirements for commercial marine diesel engines to also cover recreational marine diesel engines. This means that recreational marine engine manufacturers, using good engineering judgment, will generally need to test one or more engines for emissions before and after accumulating the number of hours consistent with the engine useful life (usually performed by continuous engine operation in a laboratory). The results of these tests are referred to as ''durability data,'' and are used to determine the rates at which emissions are expected to increase over the useful life of the engine for each engine family The rates are known as deterioration factors. However, in many cases, manufacturers may use durability data from a different engine family, or for the same engine family in a different model year. Because of this allowance to use the same data for multiple engine families, we expect durability testing to be very limited.

We also specify that manufacturers must collect durability data and generate deterioration factors using the same methods established for commercial marine diesel engines. These requirements are in 40 CFR 94.211, 94.218, 94.219, and 94.220. These sections describe when durability data from one engine family can be used for another family, how to select to the engine configuration that is to be tested, how to conduct the service accumulation, and what maintenance can be performed on the engine during this service accumulation. Under 40 CFR 94.220, manufacturers may project deterioration rates from engines with an accumulation of less than 1,000 hours, as long as the amount of service accumulation completed and projection procedures are determined using good engineering judgment.

c. What maintenance may be done during service accumulation? For engines certified to a 1,000-hour useful life, the only maintenance that may be done must be: (1) Regularly scheduled, (2) unrelated to emissions, and (3) technologically necessary. This typically includes changing engine oil, oil filter, fuel filter, and air filter. For recreational marine diesel engines certified to longer lives, these engines will be subject to the same minimum allowable maintenance intervals as commercial marine engines. These intervals and the allowable maintenance are specified in 40 CFR 94.211.

d. Are there production-line testing provisions? We are adopting the production-line testing requirements from commercial marine engines for recreational marine diesel engines, with the additional provisions described in II.C.4. A manufacturer must test one percent of its total projected annual sales of Category 1 engines each year to meet production-line testing requirements. We are not adopting a minimum number of tests, so a manufacturer who produces no more than 100 marine diesel engines is not required to do any production-line testing. Similar to the commercial marine requirements, manufacturers have the option of using alternative production-line testing programs with EPA approval.

Manufacturers commented that we should limit the number of engines tested for a given engine family to five, arguing that five engines would be sufficient to demonstrate compliance with the standards. Although there isn't necessarily an engineering rationale for capping the number of tests for each engine family to five, we believe that statistical certainty can be determined using the Cumulative Sum method described for recreational vehicles in 40 CFR part 1051, subpart D. Therefore, we are providing the option of using the Cumulative Sum method for determining sample sizes under the production-line testing program. For marine engines, PM would need to be included in this methodology. Under the Cumulative Sum method, a statistical analysis is applied to test results to establish the number of tests needed. This may limit the number of engines tested to less than 1 percent of the production volume in cases where there is low variability in the test data.

5. Do These Standards Apply to Alternative-Fueled Engines?

These new standards apply to all recreational marine diesel engines, without regard to the type of fuel used. While we are not aware of any alternative-fueled recreational marine diesel engines currently being sold into the U.S. market, alternate forms of the hydrocarbon standards address the potential for natural gas-fueled and

alcohol-fueled engines. In our regulation of highway vehicles and engines, we determined that nonmethane standards should be used in place of total hydrocarbon standards for engines fueled with natural gas (which is comprised primarily of methane) (59 FR 48472, September 21, 1994). These alternate forms follow the precedent set in previous rulemakings to make the standards similar in stringency and environmental impact.

Similarly, we are applying HC-equivalent (HCE) standards instead of total hydrocarbon standards to alcohol-fueled highway engines and vehicles (54 FR 14426, April 11, 1989). HC-equivalent emissions are calculated from the oxygenated organic components and non-oxygenated organic components of the exhaust, summed together based on the amount of organic carbon present in the exhaust. Alcohol-fueled recreational marine engines must therefore comply with total hydrocarbon equivalent (THCE) plus NO_X standards instead of THC plus NO_X standards.

6. Is EPA Controlling Crankcase Emissions?

Manufacturers must prevent crankcase emissions from recreational marine diesel engines, with one exception. Turbocharged recreational marine diesel engines may be built with open crankcases, as long as the crankcase ventilation system allows for measurement of crankcase emissions. For these engines with open crankcases, we will require crankcase emissions to be either routed into the exhaust stream to be included in the exhaust measurement, or to be measured separately and added to the measured exhaust mass. These measurement requirements do not add significantly to the cost of testing, especially where the crankcase vent is simply routed into the exhaust stream prior to the point of exhaust sampling. These provisions are consistent with our previous regulation of crankcase emissions from such diverse sources as commercial marine engines, locomotives, and passenger cars.

7. What Are the Smoke Requirements?

We are not adopting smoke requirements for recreational marine diesel engines. Marine diesel engine manufacturers have stated that many of their engines, though currently unregulated, are manufactured with smoke limiting controls at the request of customers. Users seek low smoke emissions both because they dislike the exhaust residue on decks and because they can be subject to penalties in ports with smoke emission requirements. In many cases, marine engine exhaust gases are mixed with water prior to being released. This practice reduces smoke visibility. Moreover, we believe that applying PM standards will have the effect of limiting smoke emissions as well.

8. What Are the Not-To-Exceed Standards and Related Requirements?

a. Concept. Our goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur on a recreational marine diesel engine so that real-world emission control is achieved, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective emission standard and an easily implemented test procedure. Prior to this concept, our approach has been to set a numerical standard on a specified test procedure and rely on the additional prohibition of defeat devices to ensure in-use control over a broad range of operation not included in the test procedure.

We are applying the defeat device provisions established for commercial marine engines to recreational marine diesel engines in addition to the NTE requirements (see 40 CFR 94.2). A design in which an engine met the standard at the steady-state test points but was intentionally designed to approach the NTE limit everywhere else would be considered to be defeating the standard. Electronic controls that recognize and modulate the emission-control system when the engine is not being tested for emissions and increases the emissions from the engine would be an example of a defeat device, regardless of the emissions performance of the engine with regard to the standards.

No single test procedure can cover all real-world applications, operations, or conditions. Yet to ensure that emission standards are providing the intended benefits in use, we must have a reasonable expectation that emissions under real-world conditions reflect those measured on the test procedure. The defeat-device prohibition is designed to ensure that emission controls are employed during real-world operation, not just under laboratory or test-procedure conditions. However, the defeat-device prohibition is not a quantified standard and does not have an associated test rocedure, so it does not have the clear objectivity and ready enforceability of a numerical standard and test procedure. As a result, relying on just a using a standardized test procedure and the defeat device prohibition makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell.

Because the ISO E5 duty cycle uses only five modes on an average propeller curve intended to characterize typical marine engine operation for this industry, we are concerned that an engine designed to the duty cycle may not necessarily perform the same way over the range of speed and load combinations normally seen on a boat nor will it always follow the average curve. These duty cycles are based on an average propeller curve, but a propulsion marine engine may never be fitted with an ''average propeller.'' In addition, even if fitted with an ''average propeller,'' an engine fit to a specific boat may operate differently based on how heavily the boat is loaded.

To ensure that emissions are controlled from recreational marine engines over the full range of speed and load combinations normally seen on boats, we are establishing a zone under the engine's power curve where the engine may not exceed a specified emission limit. This limit applies to all of the regulated pollutants under steady-state operation. Testing in this ''not-to-exceed'' (NTE) zone may include the whole range of real ambient conditions. The NTE zone, limit, and ambient conditions are described below.

We believe there are significant advantages to taking this approach. The test procedure is flexible enough to represent the majority of in-use engine operation and ambient conditions. Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, a standard that requires laboratory testing makes it harder to perform in-use testing because either the engines must be removed from the vessel or laboratory-type conditions must be achieved on the vessel. With the NTE approach, in-use testing becomes much easier to implement since emissions may be sampled during normal vessel use. Because this approach is objective, it makes enforcement easier and provides more certainty to the industry in terms of what control is expected in-use versus over a fixed laboratory test procedure.

Even with the NTE requirements, we believe it is important to retain standards based on the steady-state duty cycles. This is the standard that we expect the certified marine engines to meet on average in use. The NTE testing is more focused on maximum emissions for segments of operation. We believe

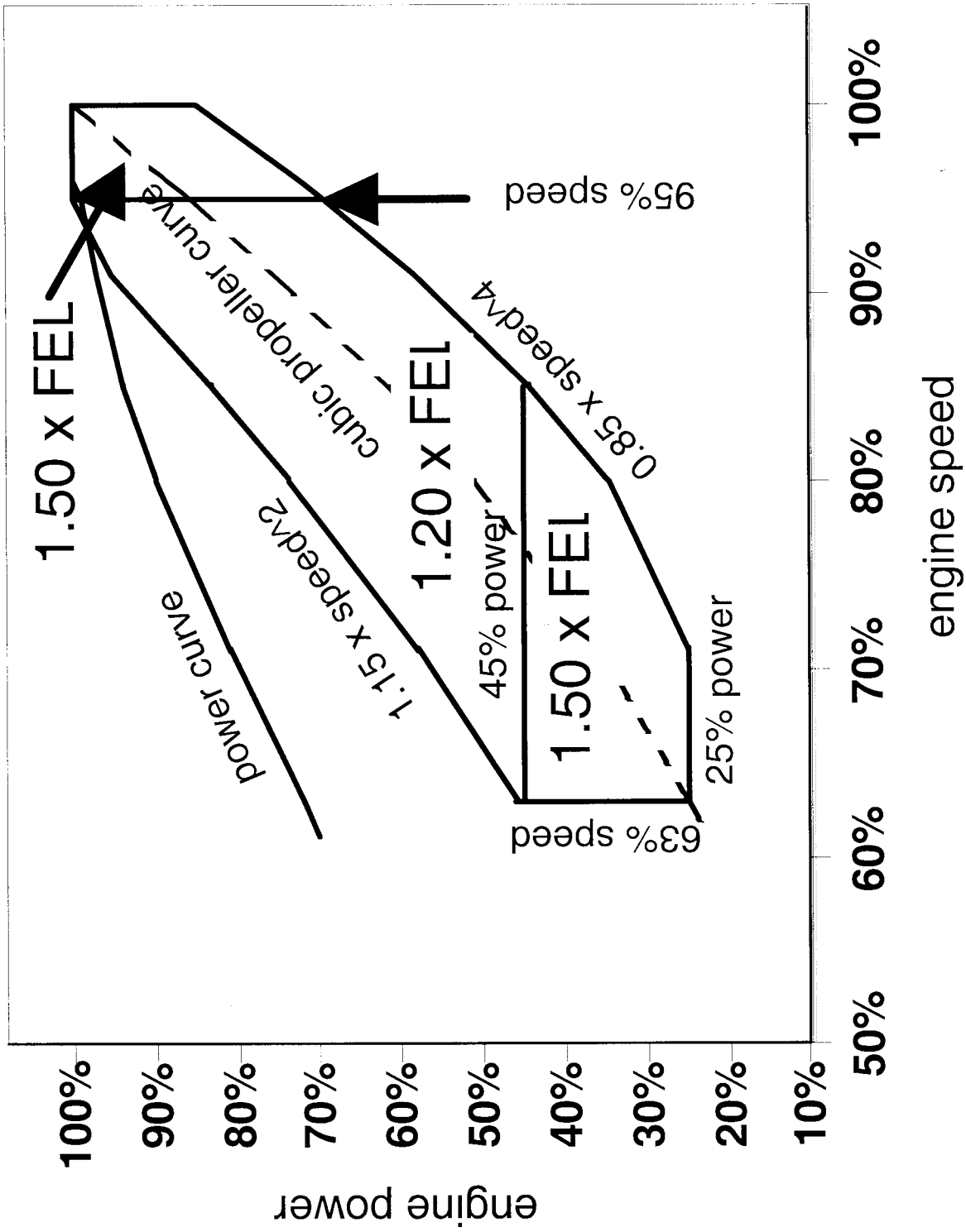
basing the emission standards on a distinct cycle and using the NTE zone to better ensure in-use control creates a comprehensive program. In addition, the steady-state duty cycles give a basis for calculating credits for averaging, banking, and trading.

As described in the Summary and Analysis of Comments, the same technology that can be used to meet the standards over the E5 duty cycle can be used to meet the NTE caps in the NTE zone. We therefore do not expect these standards to cause recreational marine diesel engines to need more advanced technology that is used by the nonroad and commercial marine engines from which they are derived. We do not believe the NTE concept results in a large amount of additional testing, because these engines should be designed to perform as well in use as they do over the steady-state five-mode certification test. However, our cost analysis in Chapter 5 of the Final Regulatory Support Document accounts for some additional testing, especially in the early years, to provide manufacturers with assurance that their engines will meet the NTE requirements.

b. Shape of the NTE zone. Figure VI.C–1 illustrates the NTE zone for recreational marine diesel engines. We based this zone on the range of conditions that these engines might typically see in use. Also, we divide the zone into subzones of operation which have different limits as described below. Chapter 4 of the Final Regulatory Support Document describes the development of the boundaries and conditions associated with the NTE zone. The NTE zone for recreational marine diesel engines is the same for commercial marine diesel engines operating on a propeller curve, except that an additional subzone is added at speeds over 95 percent of rated to address the typical recreational design for higher rated power.

BILLING CODE 6560–50–P

Figure VI.C-1: NTE Zone for Recreational Marine Diesel Engines



BILLING CODE 6560–50–C

EPA may approve adjustments to the size and shape of the NTE zone for certain engines if the manufacturer demonstrates that the engine will not see operation outside of the revised NTE zone in use. This way, manufacturers can avoid having to test their engines under operation that they will not see in use. However, manufacturers are responsible for ensuring that their specified operation represents real-world operation. In addition, if a manufacturer designs an engine for operation at speeds and loads outside of the NTE zone (*i.e.*, variable-speed engines used with variable-pitch propellers), the manufacturer is responsible for notifying us, so the NTE zone for that engine family can be modified to include this operation.

c. Transient operation. NTE testing includes only steady-state operation with a minimum sampling time of 30 seconds. We specify the ISO E5 steady-state duty cycle for showing compliance with average emission standards. The goal of adopting NTE standards and

procedures is to cover the operation away from the five modes that are on the assumed propeller curve. Our understanding is that the majority of marine engine operation is steady-state; however, we recognize that recreational marine use is likely more transient than commercial marine use. At this time we do not have enough data on marine engine operation to accurately determine the amount of transient operation that occurs or to set an NTE standard for transient operation. We are aware that the high-load transient operation seen when a boat comes to plane is not included in the NTE zone as defined, even if we were to require compliance with NTE standards during transient operation. We are also aware that these speed and load points cannot be achieved under steady-state operation for a properly loaded boat in use. If we find that excluding transient operation from the compliance requirements results in a significant increase in emissions, we will revisit this provision in the future. Also, an engine designed, with multiple injection timing maps based on operation, to operate at higher emissions during transient operation than during steady-state testing would be in noncompliance with our defeat device prohibition.

d. Emission standards. We are requiring emissions caps for the NTE zones that represent a multiplier times the weighted test result used for certification for all of the regulated pollutants ($HC+NO_X$, CO, and PM). This is consistent with the concept of a weighted modal emission test such as the steady-state tests included in this rule. The standard itself is intended to represent the average emissions under steady-state conditions. Because it is an average, some points can be higher, some lower, and the manufacturer will design to maximize performance and still meet the engine standard. The NTE limit is on top of this. It is designed to make sure that no part of the engine operation and that no application goes too far from the average level of control.

Consistent with the requirements for commercial marine engines, recreational marine diesel engines must meet a cap of 1.50 times the certified level for $HC+NO_X$, PM, and CO for the speed and power subzone below 45 percent of rated power and a cap of 1.20 times the certified levels at or above 45 percent of rated power. However, we are applying an additional subzone at speeds greater than 95 percent of rated, with a corresponding standard of 1.50 times the certified levels for this subzone. This additional subzone addresses the typical recreational design for higher rated power. We understand that this power is needed to ensure that the engine can bring the boat to plane. Chapter 4 of the Final Regulatory Support Document provides more detail on how we determined the standards.

We are aware that marine diesel engines may not be able to meet the emissions limit under all conditions. Specifically, there are times when emission control must be compromised for startability or safety. Engine starting is not included in NTE testing. In addition, manufacturers have the option of petitioning the Administrator to allow emissions to increase under engine protection strategies, such as when an engine overheats. This is also consistent with the requirements for commercial marine engines.

e. Ambient conditions. Variations in ambient conditions can affect emissions. Such conditions include air temperature, humidity, and (especially for aftercooled engines) water temperature. We are applying the commercial marine engine ranges for these variables. Chapter 4 of the Final Regulatory Support Document provides more detail on how we determined these ranges. Within the ranges, there is no calculation to correct measured emissions to standard conditions. Outside of the ranges, emissions can be corrected back to the nearest end of the range. The ambient variable ranges are 13 to 35°C (55 to 95°F) for intake air temperature, 7.1 to 10.7 g water/kg dry air (50 to 75 grains/pound dry air) for intake air humidity, and 5 to 27°C (41 to 80°F) for ambient water temperature.[84]

f. Certification. At the time of certification, manufacturers must submit a statement that its engines will comply with these requirements under all conditions that may reasonably be expected to occur in normal vessel operation and use. The manufacturer also provides a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This statement may be based on testing other research that validly supports such a statement, consistent with good engineering judgment. EPA may review the basis of this statement during the certification process.

D. Testing Equipment and Procedures

The regulations detail specifications for test equipment and procedures that apply generally to commercial marine engines (including NTE testing) in 40 CFR part 94. We have based the recreational marine diesel engine test procedures on this part. Section VIII gives a general discussion of testing requirements; this section describes procedures that are specific to recreational marine such as the duty cycle for operating engines for emission measurements. Chapter 4 of the Draft Regulatory Support Document describes these duty cycles in greater detail. In addition to the information provided above, the following section discusses issues concerning test equipment and procedures.

1. Which Duty Cycles Are Used To Measure Emissions?

For recreational marine diesel engines, we specify the ISO E5 duty cycle. This is a 5-mode steady state cycle, including an idle mode and four modes lying on a cubic propeller curve. ISO intends for this cycle to be used for all engines in boats less than 24 meters in length. We apply it to all recreational marine diesel engines to avoid the complexity of tying emission standards to boat characteristics. A given engine may be used in boats longer and shorter than 24 meters; engine manufacturers generally will not know the size of the boat into which an engine will be installed. Also, we expect that most recreational boats will be under 24 meters in length. Chapter 4 of the Final Regulatory Support Document provides further detail on the ISO E5 duty cycle.

2. What Fuels Will Be Used During Emission Testing?

We are applying the same specifications for recreational marine diesel engines that we established for commercial marine diesel engines. That means that the recreational engines will use the same test fuel that is required for testing Category 1 commercial marine diesel engines, which is a regular nonroad test fuel with moderate sulfur content. We are not aware of any difference in fuel specifications for recreational and commercial marine engines of comparable size.

3. How Does In-Use Testing Work?

In-use testing on marine engines may be used to ensure compliance in use. This testing may include taking in-use marine engines out of the vessel and testing them in a laboratory, as well as field testing of in-use engines on the boat, in a marine environment.

We plan to use field-testing data in two ways. First, we may use it as a screening tool, with follow-up laboratory testing over the ISO E5 duty cycle or NTE zone where appropriate. Second, we may use the data directly as a basis for compliance determinations,

[84] The range of intake air temperature is 13 to 30°C for engines that draw air from outside the engine room.

as long as field-testing equipment and procedures are capable of providing reliable information from which conclusions can be drawn regarding what emission levels would be with laboratory-based measurements. Because it would likely be difficult to match the E5 test points exactly on an engine in use on a vessel, NTE zone testing will reduce the difficulty of in-use compliance determinations.

For marine engines that expel exhaust gases underwater or mix their exhaust with water, manufacturers must equip engines with an exhaust sample port where a probe can be inserted for in-use exhaust emission testing. It is important that the location of this port allow a well-mixed and representative sample of the exhaust. This provision is intended to simplify in-use testing. In cases where the engine manufacturer does not supply enough of the exhaust system to add a sample port, the engine manufacturer would be required to provide installation instructions for a sample port. Vessel manufacturers would be required to follow this and any other emission-related installation instructions.

One of the advantages of the not-to-exceed requirements will be to facilitate in-use testing. This will allow us to perform compliance testing in the field. As long as the engine is operating under steady-state conditions in the NTE zone, we will be able to measure emissions and compare them to the NTE limits. To assist in this testing, engines with electronic controls will be required to broadcast engine torque (as percent of maximum) and engine speed on their controller area networks.

4. How Is the Maximum Test Speed Determined?

To ensure that a manufacturer's declared maximum speed is representative of actual engine operating characteristics and is not improperly used to influence the parameters under which their engines are certified, we are applying the definition of maximum test speed used for commercial marine engines. This definition of maximum test speed is the single point on an engine's normalized maximum power versus speed curve that lies farthest away from the zero-power, zero-speed point.

In establishing this definition of maximum test speed, it was our intent to specify the highest speed at which the engine is likely to be operated in use. Under normal circumstances this maximum test speed should be close to the speed at which peak power is achieved. However, as some manufacturers indicated in their comments, it is possible under this definition for the maximum test speed to be very different than the speed at which peak power is achieved. This could result in the certification test cycle and the NTE zone (which are both defined in part by the maximum test speed) being unrepresentative of in-use operation. Since we were aware of this potential during the development of the commercial marine regulations, we included two provisions to address issues such as these. First, § 94.102 allows EPA to modify test procedures in situations where the specified test procedures would otherwise be unrepresentative of in-use operation. Thus, in cases in which the definition of maximum test speed resulted in an engine speed that was not expected to occur with in-use engines, we would work with the manufacturers to determine the maximum speed that would be expected to occur in-use.

Second, § 94.106(c)(2) allows EPA to specify during certification a broader NTE zone to include actual in-use operation. In those cases where we could not specify a single maximum test speed under § 94.102 that would sufficiently cover the range of in-use engine speeds, we would specify a broader NTE zone. For example, we would generally expect that the NTE zone would include the peak power point. If the maximum test speed derived under §§ 94.102 and 94.107 resulted in an NTE zone that did not include the peak power point, we would likely specify that the NTE zone be broadened to include that point. Similarly, we would expect that a manufacturer's advertised rated power/speed point should be within the NTE zone, and could broaden the NTE zone to include that point as well.

E. Special Compliance Provisions

The provisions discussed here are designed to minimize regulatory burdens on manufacturers needing added flexibility to comply with emission standards. These manufacturers include engine dressers, small-volume engine marinizers, and small-volume boat builders. Commenters generally supported these provisions as proposed.

1. What Are the Burden Reduction Approaches for Engine Dressers?

Many recreational marine diesel engine manufacturers take a new, land-based engine and modify it for installation on a marine vessel. Some of the companies that modify an engine for installation on a boat make no changes that might affect emissions. Instead, the modifications may consist of adding mounting hardware and a generator or reduction gears for propulsion. It can also involve installing a new marine cooling system that meets original manufacturer specifications and duplicates the cooling characteristics of the land-based engine, but with a different cooling medium (such as sea water). In many ways, these manufacturers are similar to nonroad equipment manufacturers that purchase certified land-based nonroad engines to make auxiliary engines. This simplified approach of producing an engine can more accurately be described as dressing an engine for a particular application. Because the modified land-based engines are subsequently used on a marine vessel, however, these modified engines will be considered marine diesel engines, which then fall under these requirements.

To clarify the responsibilities of engine dressers under this rule, we will not treat them as a manufacturer of a recreational marine diesel engine and therefore they would not be required to obtain a certificate of conformity, as long as they meet the following seven conditions.

(1) The engine being dressed (the ''base'' engine) must be a highway, land-based nonroad, or locomotive engine, certified pursuant to 40 CFR part 86, 40 CFR part 89, or 40 CFR part 92, respectively, or a marine diesel engine certified pursuant to this part.

(2) The base engine's emissions, for all pollutants, must meet the otherwise applicable recreational marine emission limits. In other words, starting in 2005, a dressed nonroad Tier 1 engine will not qualify for this exemption, because the more stringent standards for recreational marine diesel engines go into effect at that time.

(3) The dressing process must not involve any modifications that can change engine emissions. We do not consider changes to the fuel system to be engine dressing because this equipment is integral to the combustion characteristics of an engine.

(4) All components added to the engine, including cooling systems, must comply with the specifications provided by the engine manufacturer.

(5) The original emissions-related label must remain clearly visible on the engine.

(6) The engine dresser must notify purchasers that the marine engine is a dressed highway, nonroad, or locomotive engine and is exempt from the requirements of 40 CFR part 94.

(7) The engine dresser must report annually to us the models that are exempt pursuant to this provision and such other information as we deem

necessary to ensure appropriate use of the exemption.

Any engine dresser not meeting all these conditions will be considered an engine manufacturer and will accordingly need to obtain a certificate of conformity for these new engines, consistent with this rule's provisions, and label the engine showing that it is available for use as a marine engine.

An engine dresser violating the above criteria might be liable under anti-tampering provisions for any change made to the land-based engine that affects emissions. The dresser might also be subject to a compliance action for selling new marine engines that are not certified to the required emission standards. For an engine dresser complying with the above provisions, the original certificate would remain in effect and the certifier of the engine would remain liable for the emissions performance of the engine.

2. What Special Provisions Is EPA Adopting for Small Entities?

In addition to provisions for engine dressers, we are also finalizing special provisions designed to provide flexibility to small entities. Prior to the proposal, we conducted an inter-agency Small Business Advocacy Review Panel as described in Section XI.C. With input from small-entity representatives, the panel drafted a report with findings and recommendations on how to reduce the potential small-business burden resulting from this rule. The inter-agency panel's recommendations were proposed by EPA and are now being finalized as proposed. The following sections describe these provisions.

3. What Are the Burden Reduction Approaches for Small-Volume Engine Marinizers?

We are providing additional options for small-volume engine marinizers. The purpose of these options is to reduce the burden on companies for which fixed costs cannot be distributed over a large number of engines. For this reason, we are defining a small-volume engine manufacturer based on annual U.S. sales of engines and are providing the additional options on this basis rather than on business size in terms of number of employees, revenue, or other such measures. The production count we are using includes all engines (automotive, other nonroad, etc.) and not just recreational marine engines. We consider recreational marine diesel engine manufacturers to be small volume for purposes of this provision if they produce fewer than 1,000 internal combustion engines per year. Based on our characterization of the industry, there is a natural break in production volumes above 500 engine sales where the next smallest manufacturers make tens of thousands of engines. We chose 1,000 engines as a limit because it groups together all the marinizers most needing relief, while still allowing for reasonable sales growth.

The options for small-volume marinizers are discussed below.

a. Broaden engine families. We have established engine criteria for distinguishing between engine families, which is intended to divide a manufacturer's product line into multiple engine families. We are allowing small-volume marinizers to put all of their models into one engine family (or more as necessary) for certification purposes. Marinizers would then certify using the ''worst-case'' configuration. This approach is consistent with the option offered to post-manufacture marinizers under the commercial marine regulations. The advantage of this approach is that it minimizes certification testing because the marinizer can use a single engine in the first year to certify their whole product line. As for large companies, the small-volume manufacturers could then carry-over data from year to year until changing engine designs in a way that might significantly affect emissions.

We understand that this option alone still requires a certification test and the associated burden for small-volume manufactures. We consider this to be the foremost cost concern for some small-volume manufacturers, because the test costs are spread over low sales volumes. Also, we recognize that it may be difficult to determine the worst-case emitter without additional testing. We are requiring testing because we need a reliable, test-based technical basis to issue a certificate for these engines. Manufacturers will be able to use carry-over to spread costs over multiple years of production.

b. Minimize compliance requirements. Production-line and deterioration testing requirements do not apply to small-volume marinizers. We will assign a deterioration factor for use in calculating end-of-life emission factors for certification. The advantages of this approach would be to minimize compliance testing. Production-line and deterioration testing would be more extensive than a single certification test.

c. Expand engine dresser flexibility. We are expanding the engine dresser definition for small-volume marinizers to include water-cooled turbochargers where the goal is to match the performance of the non water-cooled turbocharger on the original certified configuration. We believe this would provide more opportunities for diesel marinizers to be excluded from certification testing if they operate as dressers.

d. Streamlined certification. We will allow small-volume marinizers to certify to the not-to-exceed (NTE) requirements with a streamlined approach. We believe small-volume marinizers can make a satisfactory showing that they meet NTE standards with limited test data. Similar to the standard NTE program, once these manufacturers test engines over the five-mode certification duty cycle (E5), they can use those or other test points to extrapolate the results to the rest of the NTE zone. For example, an engineering analysis may consider engine timing and fueling rate to determine how much the engine's emissions may change at points not included in the E5 cycle. For this streamlined NTE approach, keeping all four test modes of the E5 cycle within the NTE standards will be enough for small-volume marinizers to certify compliance with NTE requirements, as long as there are no significant changes in timing or fueling rate between modes.

e. Delay standards for five years. Applying a five-year delay, the standards take effect from 2011 to 2014 for small-volume marinizers, depending on engine size. Marinizers may apply this five-year delay to all or just a portion of their production. They may therefore still sell engines that meet the standards when possible on some product lines while delaying introduction of emission-control technology on other product lines. This option provides more time for small marinizers to redesign their products, allowing time to learn from the technology development of the rest of the industry. Boat builders may use these uncertified engines in their vessels.

While we are concerned about the loss of emission control from part of the fleet during this time, we recognize the special needs of small-volume marinizers and believe the added time may be necessary for these companies to comply with emission standards. This additional time will allow small-volume marinizers to obtain and implement proven, cost-effective emission-control technology.

f. Hardship provisions. We are adopting two hardship provisions for small-volume marinizers. Marinizers may apply for this relief on an annual basis. First, small marinizers may petition us for additional time to comply with the standards. The marinizer must show that it has taken all possible steps to comply but the burden of compliance costs will have a

major impact on the company's solvency. Also, if a certified base engine is available, the marinizer must generally use this engine. We believe this provision will protect small-volume marinizers from undue hardship due to certification burden. Also, some emission reduction can be gained if a certified base engine becomes available.

Second, small-volume marinizers may also apply for hardship relief if circumstances outside their control caused the failure to comply (such as a supply contract broken by parts supplier) and if failure to sell the subject engines will have a major impact on the company's solvency. We consider this relief mechanism to be an option of last resort. We believe this provision will protect small-volume marinizers from circumstances outside their control. We, however, intend to not grant hardship relief if contract problems with a specific company prevent compliance for a second time.

Although the inter-agency panel did not specify a time limit for these hardship provisions, and we are not finalizing any such time limits, we envision these hardship provisions as transitional in nature. We would expect their use to be limited to the early years of the program, in a similar time frame as we are establishing for the recreational vehicle hardship provisions, as discussed in Section VII.C.

4. What Are the Burden Reduction Approaches for Small-Volume Boat Builders Using Recreational Marine Diesel Engines?

The inter-agency panel also recommended burden reduction approaches for small-volume boat builders. The recommendations were based on the concerns that, although boat builders are not subject to the engine-based emission standards, they are required to use certified engines and may need to redesign engine compartments on some boats if engine designs were to change significantly. EPA proposed the flexibilities recommended by the panel and are finalizing them as proposed.

We are adopting four options for small-volume vessel manufacturers using recreational marine diesel engines. These options are intended to reduce the burden on companies for which fixed costs cannot be distributed over a large number of vessels. As proposed, we are therefore defining a small-volume boat builder as one that produces fewer than 100 boats for sale in the U.S. in one year and has fewer than 500 employees. The production count includes all engine-powered recreational boats. These options may be used at the manufacturer's discretion. The options for small-volume boat builders are discussed below.

a. Percent-of-production delay. Manufacturers with a written request from a small-volume boat builder and prior approval from us may produce a limited number of uncertified recreational marine diesel engines. From 2006 through 2010, small-volume boat builders may purchase uncertified engines to sell in boats for an amount equal to 80 percent of engine sales for one year. For example, if the small boat builder sells 100 engines per year, a total of 80 uncertified engines may be sold over the five-year period. This will give small boat builders an option to delay using new engine designs for a portion of business. Engines produced under this flexibility must be labeled accordingly so that customs inspectors know which uncertified engines can be imported. We continue to believe this approach is appropriate and are finalizing it as proposed.

b. Small-volume allowance. This allowance is similar to the percent-of-production allowance, but is designed for boat builders with very small production volumes. The only difference with the above allowance is that the 80-percent allowance described above may be exceeded, as long as sales do not exceed either 10 engines per year or 20 engines over five years (2006 to 2010). This applies only to engines less than or equal to 2.5 liters per cylinder.

c. Existing inventory and replacement engine allowance. Small-volume boat builders may sell their existing inventory after the implementation date of the new standards. However, no purposeful stockpiling of uncertified engines is permitted. This provision is intended to allow small boat builders the ability to turn over engine designs.

d. Hardship relief provision. Small boat builders may apply for hardship relief if circumstances outside their control caused the problem (for example, if a supply contract were broken by the engine supplier) and if failure to sell the subject vessels will have a major impact on the company's solvency. This relief allows the boat builder to use an uncertified engine and is considered a mechanism of last resort. These hardship provisions are consistent with those currently in place for post-manufacture marinizers of commercial marine diesel engines.

F. Technical Amendments

The regulations include a variety of amendments to the programs already adopted for marine spark-ignition and diesel engines, as described in the following paragraphs.

1. 40 CFR Part 91: Outboards and Personal Watercraft

We have identified four principal amendments to the requirements for outboard and personal watercraft engines. First, we are adding a definition of United States which is ''the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.'' This definition is consistent with that included in 40 CFR part 94 for marine diesel engines. This is especially helpful in clearing up questions related to U.S. territories in the Carribean Sea and the Pacific Ocean. Second, we have found two typographical errors in the equations needed for calculating emission levels in 40 CFR 91.419. Third, we are adjusting the regulation language to clarify testing rates for the in-use testing program. The regulations currently specify a maximum rate of 25 percent of a manufacturer's engine families subject to in-use testing. The revised language states that for manufacturers with fewer than four engine families subject to in-use testing, the maximum testing rate is one family per year in place of the percentage calculation. Finally, we are revising the regulatory provision prohibiting emission controls that lead to increases of noxious or toxic compounds that would pose an unreasonable risk to the public, as described in Section II.B.2.

2. 40 CFR Part 94: Commercial Marine Diesel Engines

We are adopting several regulatory amendments to the program for commercial marine diesel engines. Many of these are straightforward edits for correct grammar and cross references. We are also changing the definition of United States, as described in the previous section.

We are adding a definition for spark-ignition, consistent with the existing definition for compression-ignition, which will allow us to define compression-ignition as any engine that is not spark-ignition. This will help ensure that marine emission standards for the different types of engines fit together appropriately.

The discussion of production-line testing in Section II.C.4 specifies reduced testing rates after two years of consistent good performance. We are extending this provision to commercial marine diesel engines as well.

The test procedures for Category 2 marine engines give a cross-reference to 40 CFR part 92, which defines the procedures for testing locomotives and locomotive engines. Part 92 specifies a wide range of ambient temperatures for testing, to allow for outdoor measurements. We expect all testing of Category 2 marine engines to occur indoors and are therefore adopting a range of 13° to 30° C (55° to 86° F) for emission testing.

Finally, we are revising the regulatory provision prohibiting emission controls that lead to increases of noxious or toxic compounds that would pose an unreasonable risk to the public, as described in Section II.B.2.

G. Technological Feasibility

We have concluded that the emission-reduction strategies expected for land-based nonroad diesel engines and commercial marine diesel engines can also be applied to recreational marine diesel engines, such that these emission reductions strategies will provide compliance with recreational marine diesel emission standards. Marine diesel engines are generally derivatives of land-based nonroad and highway diesel engines. Marine engine manufacturers and marinizers make modifications to the engine to make it ready for use in a vessel. These modifications can range from basic engine mounting and cooling changes to a restructuring of the power assembly and fuel management system. Chapters 3 and 4 of the Final Regulatory Support Document discuss this process in more detail. Also, we have collected emission data demonstrating the feasibility of the steady state average standard and not-to-exceed requirements. These data are presented in Chapter 4 of the Final Regulatory Support Document.

1. Implementation Schedule

For recreational marine diesel engines, the implementation schedule allows an additional two years of delay beyond the commercial marine diesel standards. This represents up to a five-year lead time relative to the implementation dates of the land-based nonroad standards. This allows time for the carryover of technology from land-based nonroad and commercial marine diesel engines. In addition, these implementation dates represent three to six years of lead time beyond publication of this final rule.

2. Standard Levels

Marine diesel engines are typically derived from or use the same technology as land-based nonroad and commercial marine diesel engines and should therefore be able to effectively use the same emission-control strategies. In fact, recreational marine engines can better use the water they operate in as a cooling medium compared with commercial marine, because they are able to use raw-water aftercooling. This can help them reduce charge-air intake temperatures more easily than the commercial models and much more easily than land-based nonroad diesel engines. Cooling the intake charge reduces the formation of NO_X emissions and thus indirectly enables other HC and PM control strategies. As a result, baseline recreational engines generally have lower NO_X emissions than uncontrolled commercial marine engines. Therefore, we believe that recreational marine engines can meet the same standard levels as are in place for commercial marine engines without sacrificing power or increasing weight of the engine.

3. Technological Approaches

We anticipate that manufacturers will meet the new emission standards for recreational marine diesel engines primarily with technology that will be applied to land-based nonroad and commercial marine diesel engines. Much of this technology has already been established in highway applications and is being used in limited land-based nonroad and marine applications. Our analysis of this technology is described in detail in Chapters 3 and 4 of the Final Regulatory Support Document and is summarized here.

By adopting standards that don't go into place until 2006, we are providing engine manufacturers with substantial lead time for developing, testing, and implementing emission-control technologies. This lead time and the coordination of standards with those for land-based nonroad engines allows time for a comprehensive program to integrate the most effective emission-control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption.

Engine manufacturers have already produced limited numbers of low-NO_X marine diesel engines. More than 80 of these engines have been placed into service in California through demonstration programs. Through the demonstration programs, we were able to gain some insight into what technologies can be used to meet the new emission standards. Chapter 4 presents data on 25 of these engines tested over the E5 duty cycle. Although only one of these engines has been shown to meet the HC+NO_X and PM standards, many of these engines are well below either the HC+NO_X or PM standards or are close to meeting both. With further optimization, we believe these engine designs can be used to meet the exhaust emission standards for recreational marine diesel engines.

Highway engines have been the leaders in developing new emission-control technology for diesel engines. Because of the similar engine designs in land-based nonroad and marine diesel engines, it is clear that much of the technological development that has led to lower-emitting highway engines can be transferred or adapted for use on land-based nonroad and marine engines. Much of the improvement in emissions from these engines comes from ''internal'' engine changes such as variation in fuel-injection variables (injection timing, injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Turbocharging is widely used now in marine applications, especially in larger engines, because it improves power and efficiency by compressing the intake air. Turbocharging may also be used to decrease particulate emissions in the exhaust. Today, marine engine manufacturers generally have to rematch the turbocharger to the engine characteristics of the marine version of a nonroad engine and often will add water jacketing around the turbocharger housing to keep surface temperatures low. Once the nonroad Tier 2 engines are available to the marine industry, matching the turbochargers for the engines will be an important step in achieving low emissions.

Aftercooling is a well established technology for reducing NO_X by decreasing the temperature of the charge air after it has been heated during compression. Decreasing the charge-air temperature directly reduces the peak cylinder temperature during combustion, which is the primary cause of NO_X formation. Air-to-water and water-to-water aftercoolers are well established for land-based applications. For engines in marine vessels, there are two different types of aftercooling: jacket-water and raw-water aftercooling. With jacket-water aftercooling, the fluid that extracts heat from the aftercooler is itself cooled by ambient water. This cooling circuit may either be the same circuit used to cool the engine or it may be a separate circuit. By incorporating a separate circuit, marine engine

manufacturers can further reduce charge-air temperatures. This separate circuit can result in even lower temperatures with raw water as the coolant. This means that ambient water is pumped directly to the aftercooler. Raw-water aftercooling is currently widely used in recreational applications. Because of the access that marine engines have to a large ambient water cooling medium, we anticipate that marine diesel engine manufacturers will largely reduce NO_X emissions with aftercooling.

Electronic controls also offer great potential for improved control of engine parameters for better performance and lower emissions. Unit pumps or injectors allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Marine engine manufacturers can take advantage of modifications to the routing of the intake air and the shape of the combustion chamber of nonroad engines for improved mixing of the fuel-air charge. Separate-circuit aftercooling (both jacket-water and raw-water) will likely gain widespread use in turbocharged engines to increase performance and lower NO_X.

Fuel injection changes and other NO_X control strategies typically reduce engine noise, sometimes dramatically. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of fuel and air ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO_X formation.

The impact of the new emission standards on energy is measured by the effect on fuel consumption from complying engines. Many of the marine engine manufacturers are expected to retard engine timing which increases fuel consumption somewhat. Most of the technology changes anticipated in response to the new standards, however, have the potential to reduce fuel consumption as well as emissions. Redesigning combustion chambers, incorporating improved fuel injection systems, and introducing electronic controls provide the engine designer with powerful tools for improving fuel efficiency while simultaneously controlling emission formation. To the extent that manufacturers add aftercooling to non aftercooled engines and shift from jacket-water aftercooling to raw-water aftercooling, there will be a marked improvement in fuel-efficiency. Manufacturers of highway diesel engines have been able to steadily improve fuel efficiency even as new emission standards required significantly reduced emissions.

There are no apparent safety issues associated with the new emission standards. Marine engine manufacturers will likely use only proven technology that is currently used in other engines such as nonroad land-based diesel applications, locomotives, and diesel trucks. The main technological approach will likely be optimization and calibration of their fuel injection and air management systems.

4. Our Conclusions

The new emission standards for recreational marine diesel engines reasonably reflect what manufacturers can achieve through the application of available technology to current recreational marine diesel engines. Recreational marine engine manufacturers will need to use the available lead time to develop the necessary emission-control strategies, including transfer of technology from land-based nonroad and commercial marine diesel engines. This development effort will require not only achieving the targeted emission levels, but also ensuring that each engine will meet all performance and emission requirements over its useful life. As discussed in Section IX, the new standards represent significant reductions compared with baseline emission levels.

Based on information currently available, we conclude it is feasible for recreational marine diesel engine manufacturers to meet the new emission standards using combinations of technological approaches discussed above and in Chapters 3 and 4 of the Final Regulatory Support Document. While the technologies described above are expected to yield the full degree of emission reduction anticipated, it is possible that manufacturers may also rely on a modest degree of fuel-injection timing retard as a strategy for complying with emission standards. This is due to variations in engine designs and baseline injection timing. For instance, an engine with very advanced injection timing in its baseline configuration would likely need to employ some timing retard to meet the standards.

The transfer of technology from land-based nonroad and commercial marine engines is an important factor in our determination that the recreational marine diesel engine standards are feasible. Most marine diesel engine models also serve in land-based applications. Sales of land-based versions of these engines are usually much greater than those of the marine counterpart versions, so manufacturers typically focus their primary technology development efforts on their land-based products. Manufacturers then modify these engines for use in marine applications. These changes can be extensive, but they rarely involve basic R&D for new technologies. We do not anticipate the use of advanced technology such as particulate filters and NO_X adsorbers on trucks until the 2007 time frame. Therefore, we do not believe that it would be appropriate to implement standards, at this time, that would require the use of advanced technology that has yet to be developed for the higher volume land-based diesel engine market. We would, however, consider this technology in the future for setting further tiers of marine engine emission standards.

In addition, we have incorporated various options that will permit marinizers and boat builders to respond to engine changes in an orderly way. We expect that meeting these requirements will pose a challenge, but one that is feasible taking into consideration the availability and cost of technology, time, noise, energy, and safety.

VII. General Nonroad Compliance Provisions

This section describes a wide range of compliance provisions that apply generally to all the spark-ignition engines and vehicles subject to the new emission standards. Several of these provisions apply not only to manufacturers and importers, but also to equipment manufacturers installing certified engines, remanufacturing facilities, operators, and others.

The regulatory text for the compliance requirements for Large SI engines and recreational vehicles are in a new Part 1068 of Title 40, entitled ''General Compliance Programs for Nonroad Engines.'' The compliance provisions for recreational marine diesel engines are generally the same as those already adopted for commercial marine diesel engines (40 CFR part 94).

The following discussion of the general nonroad provisions follows the regulatory text. For ease of reference, the subpart designations for 40 CFR part 1068 are provided. Where different provisions apply to the marine engines, we note those differences in this section.

A. Miscellaneous Provisions (Part 1068, Subpart A)

This subpart contains general provisions to define terms and the scope of application for all of 40 CFR part

1068. Other provisions concern how we handle confidential information, how the EPA Administrator delegates decision-making authority, and when we may inspect a manufacturer's facilities, engines, or records.

The process of testing engines and preparing an application for certification requires the manufacturer to make a variety of judgments. This includes, for example, selecting test engines, operating engines between tests, and developing deterioration factors. The regulations describe the methodology we use to evaluate concerns related to how manufacturers use good engineering judgment in cases where the manufacturer has such discretion (see 40 CFR 1068.5 and 40 CFR 94.221). If we find a problem in these areas, we will take into account the degree to which any error in judgment was deliberate or in bad faith. This subpart is consistent with provisions already adopted for light-duty highway vehicles and commercial marine diesel engines.

B. Prohibited Acts and Related Requirements (Part 1068, Subpart B)

The provisions in this subpart establish a set of prohibitions for engine manufacturers (including importers), equipment manufacturers, operators, engine rebuilders, and owners/operators to ensure that engines meet the emission standards. These provisions are intended to help ensure that each new engine sold or otherwise entered into commerce in the United States is certified to the relevant standards, that it remains in its certified configuration throughout its lifetime, and that only certified engines are used in the appropriate nonroad equipment.

1. General Prohibitions (§ 1068.101)

This regulation contains several prohibitions consistent with the Clean Air Act. No one may sell a new engine subject to the emission standards (or equipment containing such an engine) in the United States without a valid certificate of conformity issued by EPA, deny us access to relevant records, or keep us from entering a facility to test or inspect engines. In addition, no one may remove or disable a device or design element that may affect an engine's emission levels, or manufacture any device that will make emission controls ineffective, which we consider tampering. Other prohibitions reinforce manufacturers' obligations to meet various certification requirements. We also prohibit selling engine parts that prevent emission-control systems from working properly. Finally, for engines that are excluded because they are used in applications not covered by these regulations (for example, stationary or solely for competition), we generally prohibit using these engines in regulated applications.

These prohibitions are the same as those that apply to other engines we have regulated in previous rulemakings. Each prohibited act has a corresponding maximum penalty as specified in Clean Air Act section 205. As provided for in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 10–410, these maximum penalties are periodically adjusted by regulation to account for inflation. The current penalty amount for each violation is $31,500.[85]

2. Equipment Manufacturer Provisions (§ 1068.105)

Equipment manufacturers may not sell new equipment with uncertified engines once the emission standards begin to apply. We allow a grace period for equipment manufacturers to use up their supply of uncertified engines, as long as they follow their normal inventory practices for buying engines.

We require equipment manufacturers to observe the engine manufacturers' emission-related installation specifications to ensure that the engine remains in its certified configuration. This may include such things as radiator specifications, placement of catalytic converters, diagnostic signals and interfaces, and steps to minimize evaporative emissions.

If equipment manufacturers install a certified engine in a way that obscures the engine label, they must add a duplicate label on the equipment.

If equipment manufacturers don't fulfill the responsibilities we describe in this section, we consider them to be violating one or more of the prohibited acts described above.

3. In-Service Engines (§ 1068.110)

The regulations prevent manufacturers from requiring owners to use any certain brand of aftermarket parts and give the manufacturer responsibility for engine servicing related to emissions warranty, leaving the responsibility for all other maintenance with the owner. This regulation also reserves our right to do testing (or require testing) to determine compliance with emission standards and investigate potential defeat devices, as authorized by the Act.

[85] EPA acted to adjust the maximum penalty amount in 1996 (61 FR 69364, December 31, 1996) and 2002 (67 FR 41343, June 18, 2002). See also 40 CFR part 19.

4. Engine Rebuilding (§ 1068.120)

We are establishing rebuild provisions for all the nonroad engines subject to the emission standards in this final rule. This approach is similar to what applies to heavy-duty highway engines, nonroad diesel engines, and commercial marine diesel engines. This is necessary to prevent an engine rebuilder from rebuilding engines in a way that disables the engine's emission controls or compromises the effectiveness of the emission-control system. For businesses involved in commercial engine rebuilding, we are adopting minimal recordkeeping requirements so rebuilders can show that they comply with regulations.

In general, we require anyone rebuilding a certified engine to restore it to its original (or a lower-emitting) configuration. We are adding unique requirements for rebuilders to replace some critical emission-control components such as fuel injectors and oxygen sensors in all rebuilds for engines that use those technologies, unless there is reason to believe that those components are still working properly. We also require that rebuilders replace an existing catalyst if there is evidence that it is not functional; for example, if a catalyst has lost its physical integrity with loose pieces rattling inside, it would need to be replaced.

The rebuilding provisions define good rebuilding practices to avoid violating the prohibition on ''removing or disabling'' emission-control systems. We are therefore extending these provisions to individuals who rebuild their own engines, but without any recordkeeping requirements.

C. Exemptions (Part 1068, Subpart C)

We are including several exemptions for certain specific situations. Most of these are consistent with previous rulemakings. We highlight the new or different provisions in the following paragraphs. In general, exempted engines must comply with the requirements only in the sections related to the exemption. Note that additional restrictions may apply to importing exempted engines (see Section VII.D). Also, we may require manufacturers (or importers) to add a permanent label describing that the engine is exempt from emission standards for a specific purpose. In addition to helping us enforce emission standards, this helps ensure that imported engines clear Customs without difficulty.

1. Testing

Anyone may request an exemption for engines used only for research or other investigative purposes.

2. Manufacturer-Owned Engines

Engines that are used by engine manufacturers for development or marketing purposes may be exempted from regulation if they are maintained in the manufacturers' possession and are not used for any revenue-generating service.

3. Display Engines

Anyone may request an exemption for engines intended for only for display.

4. National Security

In general, engines installed in combat-related equipment are exempt from emission standards. In addition, engine manufacturers may request and receive an exemption for other engines if they are needed by an agency of the federal government responsible for national defense. The request for exemptions in these cases must include the endorsement of the procuring government agency.

5. Exported Engines

Engines that will be exported to countries that don't have the same emission standards as those that apply in the United States are exempted without a request. This exemption is not available if the destination country has the same emission standards as those in the United States.

6. Competition Engines

New engines used solely for competition are generally excluded or exempted from regulations that apply to nonroad engines. For purposes of our certification requirements, manufacturers receive an exemption if they can show that they produce an engine model specifically for use solely in competition. In addition, engines that have been modified for use in competition are exempt from the prohibition against tampering described above (without need for request). The literal meaning of the term ''used solely for competition'' would apply for these modifications. We therefore do not allow anyone to use the engine for anything other than competition once it has been modified. This also applies to someone who later buys the engine, so we require the person modifying the engine to remove or deface the original engine label and inform a subsequent buyer in writing of the conditions of the exemption.

7. Replacement Engines

An exemption is available to engine manufacturers without request if that is the only way to replace an engine from the field that was produced before the current emission standards took effect. If less stringent standards applied to the old engine when it was new, the replacement engine must at a minimum meet those standards.

8. Hardship Related to Economic Burden

There are two types of hardship provisions. The first type of hardship program allows small businesses to petition EPA for up to three years of additional lead time to comply with the standards. A small manufacturer must demonstrate that it has taken all possible business, technical, and economic steps to comply but the burden of compliance costs will have a significant impact on the company's solvency. A manufacturer must provide a compliance plan detailing when and how it will achieve compliance with the standards. Hardship relief may include requirements for reducing emission on an interim basis and/or purchasing and using emission credits. The length of the hardship relief decided during review of the hardship application may be up to one year, with the potential to extend the relief as needed. The second hardship program allows companies to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by parts supplier) and if the failure to sell the subject engines will have a major impact on the company's solvency. We would, however, not grant hardship relief if contract problems with a specific company prevent compliance for a second time.

9. Hardship for Equipment Manufacturers

Equipment manufacturers in many cases depend on engine manufacturers to supply certified engines in time to produce complying equipment by the date emission standards begin to apply. This is especially true for industrial and marine applications. In other programs, equipment manufacturers have raised concerns of certified engines being available too late for equipment manufacturers to adequately accommodate changing engine size or performance characteristics. To address this concern, in unusual circumstances, equipment manufacturers may request up to one extra year before using certified engines if they are not at fault and will face serious economic hardship without an extension.

In addition, we are aware that some manufacturers of nonroad engines are dependent on another engine manufacturer to supply base engines that are then modified for the final application. Much like equipment manufacturers, these ''secondary engine manufacturers'' may face difficulty in producing certified engines if the manufacturer selling the base engine makes an engine model unavailable with short notice. These secondary manufacturers generally each buy a relatively small number of engines and would therefore not necessarily be able to influence the marketing or sales practices of the engine selling the base engines. In this rulemaking, this is of particular concern for Large SI engine manufacturers subject to new standards in 2004. As a result, we are allowing secondary engine manufacturers to sell uncertified engines or engines certified at emission levels above the standard for a short period after emission standards begin to apply. However, these companies control the final design of the engines, so we would not approve any exemption unless the manufacturer committed to a plan to make up for any calculated loss in environmental benefit. For example, based on an alternate compliance level for 2004 model year engines, we could calculate the number of 2006 model year engines that would need to be certified early to the 2007 emission standards. Provisions similar to these were adopted for commercial marine diesel engines and will apply equally to recreational marine diesel engines. See the regulatory text in 40 CFR 1068.255 and 40 CFR 94.209 for additional information.

D. Imports (Part 1068, Subpart D)

In general, the same certification requirements apply to engines and equipment whether they are produced in the U.S. or are imported. This regulation also includes some additional provisions that apply if someone wants to import an exempted or excluded engine. For example, the importer needs appropriate documentation before importing nonconforming engines; this is true even if an exemption for the same reason doesn't require approval for engines produced in the U.S. These declaration forms are available on the Internet at *http://www.epa.gov/OMS/imports/* or by phone at 202–564–9660.

All the exemptions described above for new engines also apply to importation, though some of these apply only on a temporary basis. If we approve a temporary exemption, it is available

only for a defined period and could require the importer to post bond while the engine is in the U.S. There are several additional exemptions that apply only to imported engines.

—*Identical configuration:* This is a permanent exemption to allow individuals to import engines that were designed and produced to meet applicable emission standards. These engines may not have the emission label only because they were not intended for sale in the United States. This exemption applies to all the engines covered by 40 CFR part 1068.

—*''Antique''* engines: We generally treat used engines as new if they are imported without a certificate of conformity. However, this permanent exemption allows for importation of uncertified engines if they are more than 20 years old and still in their original configuration.

—*Repairs or alterations:* This is a temporary exemption to allow companies to repair or modify engines. This exemption does not allow for operating the engine, except as needed to do the intended work.

—*Diplomatic or military:* This is a temporary exemption to allow diplomatic or military personnel to use uncertified engines during their term of service in the U.S.

—*Engines subject to other programs:* This is a temporary exemption that allows someone to import an uncertified engine that will be converted for use in a different application. For example, someone may want to import a land-based nonroad engine to modify it and eventually sell it as a marine engine. This exemption expires when the engine modifications are complete, since one of the following scenarios will apply (1) the company modifying the engine will modify the engine to meet emission standards that apply to the modified engine, (2) the company will have a valid exemption under the program that applies to the modified engine, or (3) the modified engine will not be subject to emission standards, in which case an exemption is no longer necessary.

E. Selective Enforcement Audit (Part 1068, Subpart E)

Clean Air Act section 206(b) gives us the discretion in any program with vehicle or engine emission standards to do selective enforcement auditing of production engines. In selective enforcement auditing, we choose an engine family and give the manufacturer a test order detailing a testing program to show that production-line engines meet emission standards. The regulation text describes the audit procedures in greater detail.

We intend generally to rely on manufacturers' testing of production-line engines to show that their production process is producing engines in compliance they comply with emission standards. However, we reserve our right to do selective enforcement auditing if, for example, we have reason to question the emission testing conducted and reported by the manufacturer.

F. Defect Reporting and Recall (Part 1068, Subpart F)

In Part 1068, Subpart F, we are adopting defect reporting requirements that obligate manufacturers to tell us when they learn that emission control systems are defective and to conduct investigations under certain circumstances to determine if an emission-related defect is present. We are also requiring that manufacturers use warranty information, parts shipments, and any other information which may be available to trigger these investigations. For the purpose of this subpart, we are considering defective any part or system that does not function as originally designed for the regulatory useful life of the engine or the scheduled replacement interval specified in the manufacturer's maintenance instructions. For recreational vehicles and nonroad spark-ignition engines over 19 kW, this approach to defect reporting takes into account the varying sales volumes of the different products.

We believe the investigation requirement in this rule will allow both EPA and the engine manufacturers to fully understand the significance of any unusually high rates of warranty claims and parts replacement for systems or parts that may have an impact on emissions. We believe that any prudent and responsible engine manufacturer would, and should, conduct a thorough investigation as part of its normal product quality practices when in possession of data indicating an usually high number of recurring parts failures.

In the past, defect reports were submitted based on a very low threshold with the same threshold applicable to all size engine families and with little information about the full extent of the problem. The new approach should result in fewer overall defect reports being submitted by manufacturers than would otherwise be required under the old defect reporting requirements because the number of defects triggering the submission requirement rises with the engine family size.

The defect reporting requirements under other vehicle and engine regulations do not explicitly require investigations or reporting based on information available to the manufacturer about warranty claims or parts shipments. Such information is valuable and readily available to most manufacturers and should be considered when determining whether or not there is a defect of an emission-related part.

We are aware that counting warranty claims and part shipments will likely include many claims that are not emission-related or that do not represent defects, so we are establishing a relatively high threshold for triggering the manufacturer's responsibility to investigate whether there is in fact a real occurrence of an emission-related defect. Manufacturers are not required to count towards the investigation threshold any replacement parts they require to be replaced during the useful life, as specified in the application for certification and maintenance instructions to the owner, because such part shipments clearly do not represent defects.

Subpart F is intended to require manufacturers to use information we would expect them to keep in the normal course of business. We believe in most cases manufacturers will not be required to institute new programs or activities to monitor product quality or performance. A manufacturer that does not keep warranty or replacement part information may ask for our approval to use an alternate defect-reporting methodology that is at least as effective in identifying and tracking potential emissions related defects as the requirements of subpart F. However, until we approve such a request, the thresholds and procedures of subpart F continue to apply.

For engines with rated power below 560 kW, the investigation thresholds in 40 CFR 1068.501 are 4 percent of total production, or 4,000 engines, whichever is less, for any single engine family in one model year. The thresholds are reduced by 50 percent for defects related to aftertreatment devices, because these components typically play such a significant role in controlling engine emissions. For example, for an engine family with a sales volume of 20,000 units in a given model year, the manufacturer must investigate for emission-related defects if there were warranty claims for replacing electronic control units in 800 or more engines or catalytic converters on 400 or more engines. For a family with sales volume of 200,000 units in a given model year, the manufacturer

must investigate for emission-related defects if there were warranty claims for replacing electronic control units in 4,000 or more engines or catalytic converters on 2,000 or more engines.

For engines rated above 560 kW, each engine emits much greater levels of emissions, both because of the higher power rating and the fact that these engines generally operate at high load and for long periods. In addition, the engine family for such engines are typically of smaller volume compared to the lower power engines. We are therefore adopting a requirement that manufacturers investigate defects for these engines if they learn of 5 or more defects that may be emission-related, or 1 percent of total production, whichever is greater.

The second threshold in 40 CFR 1068.501 specifies when a manufacturer must report that there is an emission-related defect. This threshold involves a smaller number of engines because each possible occurrence has been screened to confirm that it is an emission-related defect. In counting engines to compare with the defect-reporting threshold, the manufacturer must consider a single engine family and model year. However, when a defect report is required, the manufacturer must report all occurrences of the same defect in all engine families and all model years. For engines with rated power below 560 kW, the threshold for reporting a defect is 0.25 percent of total production for any single engine family, or 250 defects, whichever is less. The thresholds are reduced 50 percent for reporting defects related to aftertreatment devices. For engines with rated power greater than 560kW, the threshold for reporting defects is 0.5 percent of total production, or 2 engines, whichever is greater.

If the number of engines with a specific defect is found to be less than the threshold for submitting a defect report, but information, such as warranty or parts shipment data, later indicates that there may be additional defective engines, all the information must be considered in determining whether the threshold for submitting a defect report has been met. If a manufacturer has actual knowledge from any source that the threshold for submitting a defect report has been met, a defect report must be submitted even if the trigger for investigating has not yet been met. For example, if manufacturers receive from their dealers, technical staff or other field personnel information showing conclusively that there is a recurring emission-related defect, they must submit a defect report.

At specified times the manufacturer must also report the open investigations as well as recently closed investigations that did not require a defect report. One manufacturer indicated that investigations of potential defects can sometimes take a long time. We agree and, therefore, are not specifying a time limit for manufacturers to complete their investigations. The periodic reports required by the regulations, however, will allow us to monitor these investigations and determine if it is necessary or appropriate for us to take further action.

In general, we believe this updated approach to defect reporting will decrease the number of defect reports submitted by manufacturers overall while significantly improving their quality and their value to both EPA and the manufacturer.

We are adopting the defect-reporting requirements for recreational marine diesel engines that already apply to Category 1 commercial marine diesel engines (40 CFR 94.403). In general, this requires the manufacturer to report to us if they learn that 25 or more models have a specific defect, without considering what percentage of the total engines that represents. This applies to the occurrence of the same defect and is not constrained by engine family or model year. We believe it would not be appropriate to have different defect-reporting requirements for different types of marine diesel engines, so we are not adopting the defect-reporting provisions described above for recreational marine diesel engines at this time. In the future we may consider whether the defect-reporting methodology described above should apply to recreational and commercial marine diesel engines.

Under Clean Air Act section 207, if we determine that a substantial number of engines within an engine family, though properly used and maintained, do not conform to the appropriate emission standards, the manufacturer will be required to conduct a recall of the noncomplying engine family to remedy the problem. However, we also recognize the practical difficulty in implementing an effective recall program for nonroad engines. It may be difficult to properly identify all the affected owners absent a nationwide registration requirement similar to that for cars and trucks. The response rate for affected owners or operators to an emission-related recall notice is also a critical issue to consider. We recognize that in some cases, recalling noncomplying nonroad engines may not achieve sufficient environmental protection, so our intent in such situations is generally to allow manufacturers to nominate alternative remedial measures to address most potential noncompliance situations. We expect that successful implementation of appropriate alternative remediation would obviate the need for us to make a determination of substantial nonconformity under section 207 of the Act. Alternatives nominated by a manufacturer will be evaluated based on the following criteria. The alternatives should—

(1) Represent a new initiative that the manufacturer was not otherwise planning to perform at that time, with a clear connection to the emission problem demonstrated by the engine family in question;

(2) Cost more than foregone compliance costs and consider the time value of the foregone compliance costs and the foregone environmental benefit of the engine family;

(3) Offset at least 100 percent of the emission exceedance relative to that required to meet emission standards (or Family Emission Limits); and

(4) Be possible to implement effectively and expeditiously and to complete in a reasonable time.

These criteria, and any other appropriate factors, will guide us in evaluating projects to determine whether their nature and burden is appropriate to remedy the environmental impact of the nonconformity.

G. Hearings (Part 1068, subpart G)

Manufacturers have the opportunity to challenge our decisions related to implementing this final rule. We are adopting hearing procedures consistent with those currently in place for highway engines and vehicles.

VIII. General Test Procedures

This rule establishes new engine testing regulations in 40 CFR part 1065. These regulations will apply to anyone who tests *engines* to show that they meet the emission standards for snowmobiles, ATV, motorcycles, or Large SI engines. This includes certification testing, as well as all production-line and in-use testing. See the program descriptions above for testing provisions that are unique to different engine categories. The regulatory text in 40 CFR part 1065 is written recognizing that we may someday apply these procedures more broadly to other EPA engine testing programs. If we decide to apply these provisions to other engines in future rulemaking, we would incorporate necessary additions or changes at that time. Recreational marine diesel engines

must be tested using the procedures already adopted in 40 CFR part 94.

A. General Provisions

As we have done in previous programs, we are adopting specific test procedures to define how to measure emissions, but allow alternate procedures if they are shown to be equivalent to our specified procedures. The test procedures in 40 CFR part 1065 are derived from our test procedures in 40 CFR part 86 for highway heavy-duty gasoline engines and light-duty vehicles. The procedures have been simplified (and to some extent generalized) to better fit nonroad engines.

B. Laboratory Testing Equipment

The regulations do not specify the type of engine or chassis dynamometer to use during testing. Rather, they include performance criteria that must be met during each test. These criteria are intended to ensure that deviations from the specified speed and load duty cycle are small.

Measuring emissions during transient operation calls for a greater degree of sophistication than steady-state testing. For chassis testing of recreational vehicles, we are adopting the specifications established in 40 CFR part 86 for highway engines. For Large SI engines, we based the dynamometer specifications around the capabilities of current dynamometers with enhanced control capabilities. While EPA confirmatory testing with transient duty cycles must meet the prescribed specifications, manufacturers may ask for approval to run tests with relaxed requirements for following the trace of the transient duty cycle. Manufacturers would have an incentive to accurately reproduce the test cycle to ensure compliance with emission standards, but would be able to use otherwise invalidated tests if the degree of variance from the test cycle does not call into question the engine's reported emission levels.

In addition, for transient testing with recreational vehicles and any testing with Large SI engines, the regulations specify that emissions must be measured using a full-dilution constant-volume sampler (CVS) like those used to measure emissions from highway engines. This means that during a test, an engine's exhaust is routed into a dilution tunnel where it is mixed with air and then sampled using a bag sampler system. After the test, the concentrations of HC, CO, and NO_X in the bag is measured using conventional laboratory analyzers.

For Large SI engines and snowmobiles, the steady-state test procedures specify measuring emissions with dilute-sampling equipment. Some manufacturers have expressed a preference to continue with their established practice of using raw-sampling equipment and procedures. While we believe dilute-sampling is most appropriate for these engines, the provisions for alternate testing procedures may allow for raw-sampling measurements for steady-state testing. As specified in 40 CFR 1065.10(c)(3) of the regulations, we allow manufacturers to use alternate procedures shown to be equivalent to the specified procedures. We are also including an interim provision for snowmobiles to allow manufacturers to use the raw-sampling procedures in 40 CFR part 91 for a few years before they are required to show equivalence with the dilute-sampling procedures. This option will allow manufacturers to focus their engineering efforts on reducing emissions during the start of the program.

C. Laboratory Testing Procedures

The specific procedures for running emission tests are outlined briefly here, with a more detailed description of the most significant aspects. Before testing the engine, it is necessary to operate it enough to stabilize emission levels or to make it more representative of in-use engines. This is called service accumulation and may take one of two forms. In the first method, a new engine is operated for up to 50 hours as a break-in period. This is done for most or all emission-data engines. The second method is much longer, up to the full useful life, and is done to determine deterioration factors.

Once an engine is ready for testing, it is connected to the dynamometer with its exhaust flowing into the dilution tunnel. The dynamometer is controlled to make the engine follow the specified duty cycle. A continuous sample is collected from the dilution tunnel for each test segment or test mode using sample bags. These bags are then analyzed to determine the concentrations of HC, CO, and NO_X.

1. Test Speeds

The definition of maximum test speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm), is an important aspect of most duty cycles. Until recently, we relied on engine manufacturers to declare reasonable rated speeds for their engines and then used the rated speed as the maximum test speed. However, to have a more objective measure of an engine's maximum test speed, we have established a specific procedure for measuring this engine parameter.[86]

We define the maximum test speed for any engine to be the single point on an engine's maximum-power versus speed curve that lies farthest away from the zero-power, zero-speed point on a normalized maximum-power versus speed plot. In other words, consider straight lines drawn between the origin (speed = 0, load = 0) and each point on an engine's normalized maximum-power versus speed curve. Maximum test speed is defined at that point where the length of this line reaches its maximum value. For constant-speed engines, maximum test speed is the engine's rated speed.

Intermediate speed for steady-state duty cycles is defined as the speed at which the engine generates its maximum torque value. However, in cases where the maximum torque occurs at a speed that is less than 60 percent or greater than 75 percent of the rated speed, the intermediate speed is often specified as either 60 or 75 percent of rated speed, whichever is closer to the speed of maximum torque. The maximum test speed described above is used to calculate these percentage values relative to rated speed.

2. Maintenance

As described in Section II.C.1, we are limiting the amount of scheduled maintenance manufacturers may prescribe for their customers to ensure that engines continue to meet emission standards. If manufacturers specify unreasonably frequent maintenance, there would be little assurance that in-use engines would continue to operate at certified emission levels. We also apply these minimum maintenance intervals to engines the manufacturer operates for service accumulation before testing for emissions. For example, manufacturers may not install a new catalyst on a Large SI engine after 2,000 hours of operation, then select that engine for the in-use testing program. Similarly, manufacturers may not replace fuel-system components on a recreational vehicle during the course of service accumulation for establishing deterioration factors. We do not restrict scheduling of routine maintenance items, such as changing engine oil and replacing oil, fuel, or air filters. We may also allow changing spark plugs, even though we are aware that spark plugs may affect emissions.

[86] See the final rule for commercial marine diesel engines for a broader discussion of maximum test speed (64 FR 73300, December 29, 1999).

D. Other Testing Procedures

As noted in earlier sections, we are establishing some special test procedures for field testing situations. These special procedures are designed to apply to specific types of engines, and thus do not apply generally to all engines covered by this rulemaking. You should read the specific applicable section to determine if such special test procedures apply to any specific category of engines or vehicles.

IX. Projected Impacts

This section summarizes the projected impacts of the emission standards. The anticipated reduction in emissions is compared with the projected cost of the program for an assessment of the cost per ton of reducing emissions for this rule. The section includes the results of the analysis for the Final Program. We have also analyzed the impacts of different alternatives for each of the program areas. This analysis of alternatives, for the most part, focused on more or less stringent alternative standards. For recreational marine diesels, the alternatives analyzed were applying draft European standards or implementing our primary program two years earlier. For the Large SI category, the alternative focused on adopting a steady-state only 2007 requirement. For off-highway motorcycles, we analyzed a more-stringent 1.0 g/km standard and a less-stringent 4.0 g/km standard for HC + NO_X control. With ATVs, the alternatives presented were a 2.0 g/km and a 1.0 g/km HC + NO_X standard. For snowmobiles, we analyzed four alternatives, ranging from only adopting one phase of standards in 2006 to a standard that would require, on average, reductions of 85% HC and 50% CO from baseline emissions. Additional detailed discussion on these alternatives and the results of the alternatives analysis are presented in Chapter 11 of the RSD.

A. Environmental Impact

To estimate nonroad engine and vehicle emission contributions, we used the latest version of our NONROAD emissions model. This model computes emission levels for a wide variety of nonroad engines, and uses information on emission rates, operating data, and population to determine annual emission levels of various pollutants. A more detailed description of the methodology used for projecting inventories and projections for additional years can be found in the Chapter 6 of the Final Regulatory Support Document.

Tables IX.A–1 and IX.A–2 contain the projected emission inventories for calendar year 2010 from the engines and vehicles subject to this rulemaking under the base case (*i.e.*, without the standards taking effect) and assuming the standards take effect. Tables IX.A–3 and IX.A–4 contain the projected emission inventories for calendar year 2020. The percent reductions based on a comparison of estimated emission inventories with and without the emission standards are also presented in each of the tables.

TABLE IX.A–1.—2010 PROJECTED HC AND NO_X EMISSIONS INVENTORIES

[Thousand short tons]

Category	HC*			NO_X		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Large SI	268	88	67	389	118	70
Snowmobiles	297	250	16	3	4	(16)
ATVs	308	211	31	7	6	11
Off-highway motorcycles	193	155	20	1.1	1.2	(8)
Recreational marine diesel	1.6	1.5	10	49	46	7
Total	1,066	705	34	450	174	61

*The estimate for Large SI includes both exhaust HC and evaporative HC emissions. The estimates for snowmobiles, ATVs and Off-highway motorcycles includes both exhaust HC and permeation HC emissions. The estimate for recreation marine diesel includes exhaust HC emissions.

TABLE IX.A–2.—2010 PROJECTED CO AND PM EMISSIONS INVENTORIES

[Thousand short tons]

Category	CO			PM		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Large SI	2,022	945	53	1.9	1.9	0
Snowmobiles	775	670	14	7.0	6.7	4
ATVs	1,042	989	5	10.8	7.4	32
Recreational marine diesel	8	8	0	1.3	1.2	6
Off-highway motorcycles	266	239	10	7.3	5.8	20
Total	4,113	2,851	31	28.3	23.0	19

TABLE IX.A–3.—2020 HC AND NO_X PROJECTED EMISSIONS INVENTORIES

[Thousand short tons]

Category	HC*			NO_X		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Large SI	318	34	89	472	43	91

TABLE IX.A–3.—2020 HC AND NO_X PROJECTED EMISSIONS INVENTORIES—Continued

[Thousand short tons]

Category	HC*			NO_X		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Snowmobiles	358	149	58	5	10	(101)
ATVs	374	53	86	8	6	25
Off-highway motorcycles	232	117	50	1.3	1.5	(19)
Recreational marine diesel	2.0	1.5	28	61	48	21
Total	1,284	355	72	547	109	80

*The estimate for Large SI includes both exhaust HC and evaporative HC emissions. The estimates for snowmobiles, ATVs and Off-highway motorcycles includes both exhaust HC and permeation HC emissions. The estimate for recreation marine diesel includes exhaust HC emissions.

TABLE IX.A–4.—2020 PROJECTED CO AND PM EMISSIONS INVENTORIES

[Thousand short tons]

Category	CO			PM		Percent reduction
	Base case	With standards	Percent reduction	Base case	With standards	
Large SI	2,336	277	88	2.3	2.3	0
Snowmobiles	950	508	46	8.4	4.9	42
ATVs	1,250	1,085	13	13.1	1.9	86
Off-highway motorcycles	321	236	26	8.7	4.4	50
Recreational Marine diesel	9	9	0	1.6	1.3	18
Total	4,866	2,115	56	34.2	14.8	57

As described in Section I, we project there will also be environmental benefits associated with reduced haze in many sensitive areas.

Finally, anticipated reductions in hydrocarbon emissions correspond with reduced emissions of the toxic air emissions referenced in Section I.

B. Cost Estimates

In assessing the economic impact of setting emission standards, we have made a best estimate of the necessary technologies and their associated costs. In making our estimates we have relied on our own technology assessment, which includes information supplied by individual manufacturers and our own in-house testing. Estimated costs include variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). The analysis also considers total operating costs, including maintenance and fuel consumption. Cost estimates based on the projected technologies represent an expected change in the cost of engines as they begin to comply with new emission standards. All costs are presented in 2001 dollars. Full details of our cost analysis can be found in Chapter 5 of the Final Regulatory Support Document.

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near term. For the longer term, we have identified factors that will cause cost impacts to decrease over time. First, we project that manufacturers will generally recover their fixed costs over a five-year period, so these costs disappear from the analysis after the fifth year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing unrelated to emissions control technologies has consistently shown that as manufacturers gain experience in production and use, 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 (see the Final Regulatory Support Document for additional information).[87] The cost analysis assumes this learning effect applies equally well to the adoption of the technologies associated with this rule by decreasing estimated variable costs by 20 percent starting in the third year of production and an additional 20 percent starting in the sixth year of production.

Table IX.B–1 summarizes the projected near-term per unit average costs to meet the new emission standards. These estimates are based on the manufacturing cost rather than predicting price increase; the costs nevertheless take into account anticipated mark-ups to present retail-price equivalent figures. Long-term impacts on engine costs are expected to decrease as manufacturers fully amortize their fixed costs and learn to optimize their designs and production processes to meet the standards more efficiently. The tables also show our projections of reduced operating costs for some engines (calculated on a net present value basis), which generally results from substantial reductions in fuel consumption.

[87] For further information on learning curves, see Chapter 5 of the Economic Impact, from Regulatory Impact Analysis-Control if Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements, EPA420-R–99–023, December 1999. A copy of this document is included in Air Docket A–2000–01, at Document No. II-A–83. The interested reader should also refer to previous final rules for Tier 2 highway vehicles (65 FR 6698, February 10, 2000), marine diesel engines (64 FR 73300, December 29, 1999), nonroad diesel engines (63 FR 56968, October 23, 1998), and highway diesel engines (62 FR 54694, October 21, 1997).

TABLE IX.B–1.—ESTIMATED AVERAGE COST IMPACTS OF EMISSION STANDARDS

Standards	Dates	Increased production cost per vehicle*	Lifetime operating costs per vehicle (NPV)
Large SI exhaust	2004	$611	$−3,981
Large SI exhaust	2007	55	0
Large SI evaporative	2007	13	−56
Snowmobile exhaust (Phase 1)	2006	73	−57
Snowmobile exhaust (Phase 2)	2010	131	−286
Snowmobile exhaust (Phase 3)	2012	89	−191
Snowmobile permeation	2008	7	−11
ATV exhaust	2006	84	−24
ATV permeation	2008	3	−6
Off-highway motorcycle exhaust	2006	155	−48
Off-highway motorcycle peermeation	2008	3	−5
Recreational	2006	346	0

*These estimates are for near-term costs. The estimated long-term costs decrease by about 35 percent. Costs presented for the Large SI and snowmobile second-phase standards are incremental to the first-phase standards. Costs for Phase 3 are incremental to Phase 2. These costs numbers may not necessarily reflect actual price increases as manufacturer production costs, perceived product enhancements, and other market impacts will affect actual prices to consumers.

We estimate that the anticipated increase in the near-term cost of producing new Large SI engines for the 2004 standards is estimated to range from $550 to $800, depending on fuel type, with a composite estimated cost of $605. This cost is attributed to upgrading engines to operate with closed-loop fuel systems and three-way catalysts. These technologies also improve the overall performance of these engines, including improvements to fuel economy that result in reduced operating costs that fully offset the additional hardware cost. We further estimate additional costs of $50 for the 2007 standards, which primarily involve additional development time to optimize engines using the same closed-loop systems with three-way catalysts. While these costs are a small percentage of the cost of industrial equipment, we are aware that this may not be insignificant in this very competitive market. Given the compelling advantages of improved performance and reduced operating expenses, however, we believe manufacturers will generally be able to recover their costs over time.[88]

Projected average near-term costs for ATVs and off-highway motorcycles are $84 and $155 per unit, respectively. Standards are based on the emission-control capability of engines four-stroke engines.[89] Those models that convert from two-stroke to four-stroke technology will see substantial fuel savings in addition to greatly reduced emissions. With an averaging program that allows manufacturers to apply varying degrees of technology to different models, we believe they will be able to tailor emission controls in a way that reflects the performance needs for their products. Fuel savings associated with replacing two-stroke engines with four-stroke engines partially offsets the additional cost of producing these vehicles.

We expect that the near-term cost of the 2006 snowmobile standards will average $73 per snowmobile. These costs are based on a mix of technologies including a small increase in the use of four-stroke and direct injection technology. For other engines we expect manufacturers to lean out the air-fuel mixture, improve carburetion for better fuel control and less production variation, and modify the engine to withstand higher temperatures and potential misfire episodes attributed to enleanment. We expect that the 2010 and 2012 standards will be met through inceasing the application of direct injection two-stroke technology and four-stroke engines on a significant portion of the fleet. We project that the near-term incremental cost of the Phase 2 standards will average $131 per snowmobile and Phase 3 will be $89, although we believe these costs will be fully offset by fuel savings.

Recreational marine diesel engines are expected to see increased costs averaging under $400 per engine in the near-term. We expect manufacturers to meet emission standards by improving fuel injection systems and making general design changes to the geometries, configurations, and calibrations of their engines. These figures are somewhat lower than we have projected for the comparable commercial marine engines, since the recreational models generally already have some of the emission-control technologies needed to meet the emission standards.

The above analysis presents unit cost estimates for each type of engine or vehicle. These costs represent the total set of costs the engine or vehicle manufacturers will bear to comply with emission standards. For those categories with engine-based standards, we do not anticipate significant new costs for equipment manufacturers installing certified engines. Operating costs are also taken into account, but where there is an effect, we project these impacts to involve only cost savings for operators. With current and projected estimates of engine and equipment sales, we translate these costs into projected direct costs to the nation for the new emission standards in any year. A summary of the annualized costs to manufacturers by equipment type is presented in Table IX.B–2. (The annualized costs are determined over the first twenty years that the standards will be in effect. Because the standards take effect in different years for the various categories of equipment covered by this rule, the aggregate annualized cost is calculated over a slightly longer period of time encompassing the first twenty years of each of the standards. For this reason, the aggregate annualized cost is not the sum of the individual annualized costs.) The annual cost savings due to reduced operating expenses start slowly, then increase as greater numbers of

[88] Chapter 5 of the Final Regulatory Support Document describes why we believe market forces haven't already led manufacturers to add fuel-saving technologies to their products.

[89] The program contains an optional set of standards for off-highway motorcycles which could result in the use of direct injection two-stroke technology in some high-performance applications. Chapter 11.3 provides a cost analysis for this option. The costs are projected to be somewhat higher for this option due to the application of technology to high-performance competition models.

compliant engines enter the fleet. Table IX.B–2 also presents a summary of the annualized reduction in operating costs. Overall, based on currently available information, we project an annualized net savings to the economy of approximately $200 million per year.

TABLE IX.B–2—ESTIMATED ANNUAL COST TO MANUFACTURERS AND ANNUAL SAVINGS FROM REDUCED OPERATING COSTS OF EMISSION STANDARDS

Engine type	Annualized cost to manufacturers (millions/year)	Annualized savings from reduced operating costs (millions/year)
Large SI	$84	$324
Snowmobiles	36	47
ATVs	61	31
Off-highway motorcycles	25	14
Marine Diesel	7	0
Aggregate*	192	410

*Because the standards take effect in different years for the various categories of equipment, the aggregate annualized cost is calculated over a slightly longer period of time. For this reason, the aggregate annualized cost is not the sum of the individual annualized costs.

C. Cost Per Ton of Emissions Reduced

We calculated the cost per ton of emission reductions for the emission standards. For snowmobiles, this calculation is on the basis of HC and CO emissions. For all other engines, we attributed the entire cost of the program to the control of ozone precursor emissions (HC or NO_X or both).

Table IX.C–1 presents the near-term discounted cost-per-ton estimates for the various engines covered by the rule. (The aggregate cost-per-ton estimates are over the first 20 years of emission standards.) Reduced operating costs more than offset the increased cost of producing the cleaner engines for Phase 1 Large SI, and Phase 2 and Phase 3 snowmobile engines. The cost to society and the associated cost-per-ton figures for these engines, and the aggregate values for all engines covered by this rule, therefore show a net savings resulting from the emission standards. The table presents these as $0 per ton, rather than calculating a negative value that has no clear meaning.

TABLE IX.C–1.—ESTIMATED COST-PER-TON OF EMISSION STANDARDS

Standards	Dates	Discounted reductions per vehicle (short tons)*	Discounted cost per ton of HC+NO_X		Discounted cost per ton of CO	
			Without fuel savings	With fuel savings	Without fuel savings	With fuel savings
Large SI exhaust (Composite of all fuels)	2004	3.07	$240	$0	—	—
Large SI exhaust (Composite of all fuels)	2007	0.80	80	80	—	
Large SI evaporative	2007	0.13	80	0	—	
Snowmobile exhaust	2006	HC: 0.40 CO: 1.02	90	20	$40	$10
Snowmobile exhaust	2010	HC: 0.10	1,370	0	—	—
Snowmobile exhaust	2012	CO: 0.25	—	—	360	0
Snowmobile permeation	2008	0.03	210	0	—	—
ATV exhaust	2006	0.21	400	290	—	—
ATV permeation	2008	0.02	180	0	—	—
Off-highway motorcycle exhaust	2006	0.38	410	280	—	—
Off-highway motorcycle permeation	2008	0.01	230	0	—	—
Recreational marine diesel	2006	0.44	670	670	—	—
Aggregate	—	—	240	0	80	0

*HC reductions for evaporative and permeation, and HC+NO_X reductions for exhaust (except snowmobiles where CO reductions are also presented).

D. Economic Impact Analysis

We performed an analysis to estimate the economic impacts of this final rule on producers and consumers of recreational marine diesel vessels (specifically, diesel inboard cruisers), forklifts, snowmobiles, ATVs, off-highway motorcycles, and society as a whole. This economic impact analysis focuses on market-level changes in price, quantity, and economic welfare (social gains or costs) associated with the regulation. A description of the methodology used can be found in Chapter 9 of the Final Regulatory Support Document prepared for this rulemaking.

We did not perform an economic impact analysis for categories of Large SI nonroad engines other than forklifts, even though those other Large SI engines are also subject to the standards contained in this final rule. As explained in more detail in Chapter 9 of the Final Regulatory Support Document, this was due to the large number of different types of equipment that use Large SI engines and data availability constraints for those market segments. For the sake of completeness, the following analysis reports separate estimates for Large SI engines other than forklifts. Engineering costs are assumed

to be equal to economic costs for those engines. This approach slightly overestimates the social costs associated with the relevant standards.

Based on the estimated regulatory costs associated with this rule and the predicted changes in prices and quantity produced in the affected industries, the total estimated annual social gains of the rule in the year 2030 is projected to be $553.5 million (in 2000 and 2001 dollars). The net present value of the social gains for the 2002 to 2030 time frame is equal to $4.9 billion, using a 3% discount rate. This value would be $2.4 billion with a 7% discount rate. The social gains are equal to the fuel savings minus the combined loss in consumer and producer surplus (see Table IX.D–1), taking into account producers' and consumers' changes in behavior resulting from the costs associated with the rule.[90] Social gains do not account for the social benefits (the monetized health and environmental effects of the rule).

TABLE IX.D–1.—SURPLUS LOSSES, FUEL EFFICIENCY GAINS, AND SOCIAL GAINS/COSTS IN 2030 [a]

Vehicle category	Surplus losses in 2030 ($ millions)	Fuel efficiency gains in 2030 ($ millions)	Social gains/ costs in 2030 [b] ($ millions)
Recreational marine diesel vessels	$6.6	$0	($6.6)
Forklifts	47.8	420.1	372.3
Other Large SI	[c] 48.1	138.4	90.3
Snowmobiles	41.9	135.0	93.1
ATVs	47.2	51.4	4.2
Off-highway motorcycles	25.0	25.2	0.2
All vehicles total	216.6	770.1	553.5
NPV of all vehicles total [d]	3,231.4	8,130.3	4,898.9
NPV of all vehicles total [e]	1,889.5	4,282.3	2,392.8

[a] Figures are in 2000 and 2001 dollars.
[b] Figures in this column exclude estimated social benefits. Numbers in parentheses denote social costs.
[c] Figure is engineering costs; see text for explanation.
[d] Net Present Value is calculated over the 2002 to 2030 time frame using a 3 percent discount rate.
[e] Net Present Value is calculated over the 2002 to 2030 time frame using a 7 percent discount rate.

For most of the engine categories contained in this rule, we expect there will be a fuel savings as manufacturers redesign their engines to comply with emission standards. For ATVs and off-highway motorcycles, the fuel savings will be realized as manufacturers switch from two-stroke to four-stroke technologies. For snowmobiles, the fuel savings will be realized as manufacturers switch some of their engines to more fuel efficient two-stroke technologies and some of their engines to four-stroke technologies. For Large SI engines, the fuel savings will be realized as manufacturers adopt more sophisticated and more efficient fuel systems; this is true for all fuels used by Large SI engines. Overall, we project the fuel savings associated with the anticipated changes in technology to be about 800 million gallons per year once the program is fully phased in. These savings are factored into the calculated costs and costs per ton of reduced emissions, as described above.

E. Do the Benefits Outweigh the Costs of the Standards?

While EPA uses relative cost-effectiveness as the primary manner to take costs into consideration, further insight regarding the standards can be provided by benefit-cost analysis. The purpose of this section is to summarize the methods we used and results we obtained in conducting an analysis of the economic benefits of the changes in emissions from engines covered by this rule, and to compare these economic benefits with the estimated economic costs of the rule. In summary, the results of our analysis indicate that the economic benefits of the final standards will exceed the costs of meeting the standards. The annual estimated benefits we were able to quantify were approximately $10 billion in 2030.

1. What Was Our Overall Approach to the Benefit-Cost Analysis?

The basic question we sought to answer in the benefit-cost analysis was, ''What are the net yearly economic benefits to society of the reduction in mobile source emissions likely to be achieved by this final rulemaking?'' In designing an analysis to address this question, we selected a future year for analysis (2030) that is representative of full-implementation of the program (*i.e.*, when the Large SI and recreational vehicle fleet is composed of virtually only compliant vehicles).

To quantify benefits, we evaluated PM-related health effects (including directly emitted PM and NO_X contribution to particulate nitrate) using a benefits transfer technique. Although we expect economic benefits to exist, we were unable to quantify or to value specific changes in visibility, ozone, CO or air toxics because we did not perform additional air quality modeling.

To evaluate the PM-related health effects, we adopted a benefits transfer technique that relies on the extensive particulate matter air quality and benefits modeling conducted for the highway Heavy Duty Engine/Diesel Fuel final rule.[91] That RIA used an analytical structure and sequence similar to that used in the ''section 812 studies'' to estimate the total benefits and costs of the full Clean Air Act.[92] In the HD

[90] Consumer and producer surplus losses are measures of the economic welfare loss consumers and producers, respectively are likely to experience as a result of the regulations. Combined these losses represent an estimate of the economic or social costs of the rule. Note that for the Large SI and recreational vehicle rules, fuel efficiency gains must be netted from surplus losses to estimate the social costs or social gains (in cases where fuel efficiency gains exceed surplus losses) attributable to the rules.

[91] Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420–R–00–026, December 2000. Docket No. A–2000–01, Document No. II–A–13. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents.* The transfer technique is described in a memorandum, Dr. Bryan Hubbell, Senior Economist, Estimated Nox, Sox, and PM Emissions Health Damages for Heavy Duty Vehicle Emissions, April 22, 2002. A copy of this letter can be found in Docket A–2000–01, Document IV–A–146.

[92] The section 812 studies include: (1) U.S. EPA, Report to Congress: The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997 (also known as the ''Section 812 Retrospective Report'');

Engine/Diesel Fuel analysis, we used many of the same models and assumptions used in the section 812 studies as well as other Regulatory Impact Analyses (RIAs) prepared by the Office of Air and Radiation. By adopting the major design elements, models, and assumptions developed for the section 812 studies and other RIAs, we have largely relied on methods which have already received extensive review by the independent Science Advisory Board (SAB), by the public, and by other federal agencies. Although the underlying method has experienced significant review, the transfer of values from an existing primary benefits analysis to estimate the benefits of a new program has not had this type of review and the transfer technique introduces additional uncertainties.

2. What Are the Significant Limitations of the Benefit-Cost Analysis?

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate quantitative changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. While these general uncertainties in the underlying scientific and economics literatures, which can cause the valuations to be higher or lower, are discussed in detail in the Final Regulatory Support Document and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of this final rule include the following:

- The exclusion of potentially significant benefit categories (such as health and ecological benefits of reduction in hazardous air pollutants emissions and ozone; improvements in visibility);
- Errors in measurement and projection for variables such as population growth;
- Uncertainties in the estimation of future year emissions inventories and air quality;
- Uncertainties associated with the transfer of the results of the HD Engine/Diesel Fuel analysis to this program, especially regarding the assumption of similarity in geographic distribution between emissions and human populations and years of analysis;[93]
- Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations;
- Uncertainties in exposure estimation;
- Uncertainties in applying willingness to pay estimates from National Park and Forest visitors to U.S. recreational participants and uncertainties in average number of activity days per year; and
- Uncertainties associated with the effect of potential future actions to limit emissions.

Despite these uncertainties, we believe the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the final rulemaking in future years under a set of assumptions.

One key area of uncertainty is the value of a statistical life (VSL) for reductions in mortality risk. The adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community. In accordance with the independent Science Advisory Board advice,[94] we use the value of a statistical life (VSL) for risk reductions in mortality in our primary estimate. Alternative calculations of adjustment for age and other factors are presented in the RIA for the HD Engine/Diesel Fuel rule and in the RSD for this rule. The presentation of the other alternative calculations for certain endpoints seeks to demonstrate how much the overall benefit estimate might vary based on the value EPA has given to a parameter (which has uncertainty associated with it) underlying the estimates for human health and environmental effect incidence and the economic valuation of those effects. These alternative calculations represent conditions that might occur; however, EPA has selected the best values supported by current scientific literature for use in the primary estimate. The primary estimate is the source for our benefits transfer technique.

Even with our efforts to fully disclose the uncertainty in our estimate, our uncertainty presentation method does not provide a definitive or complete picture of the true range of monetized benefits estimates. The set of alternative calculations is only representative of those benefits that we were able to quantify and monetize.

3. What Are the benefits In the Years Leading Up to 2030?

The final rule has various cost and emission related components, as described earlier in this section. These components would begin at various times and in some cases would phase in over time. This means that during the early years of the program there would not be a consistent match between cost and benefits, especially where the full vehicle cost would be incurred at the time of vehicle purchase, while the fuel savings along with the emission reductions and benefits resulting from all these costs would occur throughout the lifetime of the vehicle. Because of this inconsistency and our desire to more appropriately match the costs and emission reductions of our program, our analysis uses a future year (2030) when the fleet is nearly fully turned over.

In the years before 2030, the benefits from the final rule will be less than those estimated here, because the compliant vehicle fleet will not be fully phased in, and the overall U.S. population would be smaller. Annualized costs, on the other hand, reach nearly their full value within a few years of program initiation (once all phase-ins are completed). Thus, a benefit-cost ratio computed for the earlier years of the program would be expected to be lower than a ratio based on our 2030 analysis when the fleet has fully turned over. The stream of costs and the limited set of quantified benefits over time are presented in the Final

and (2) the first in the ongoing series of prospective studies estimating the total costs and benefits of the Clean Air Act (see EPA report number: EPA–410–R–99–001, November 1999). See Docket A–99–06, Document II–A–21.

[93] In the original HD Engine/Diesel Fuel analysis, we modeled air quality and benefits in 2030. There are sufficient non-linearities and interactions among pollutants in the atmospheric chemistry that introduce additional uncertainties in the quantitative estimate of the benefits in years that were not fully modeled in the original analysis.

[94] SAB advised that the EPA ''continue to use a wage-risk-based VSL as its primary estimate, including appropriate sensitivity analyses to reflect the uncertainty of these estimates,'' and that ''the only risk characteristic for which adjustments to the VSL can be made is the timing of the risk'' (EPA-SAB-EEAC–00–013; a copy of this document can be found in Docket A–99–06, Document No. IV–A–19). In developing our primary estimate of the benefits of premature mortality reductions, we have appropriately discounted over the lag period between exposure and premature mortality. However, an empirical basis that meets the SAB's standards of reliability for adjusting the current $6 million VSL for many of these factors does not yet exist. A discussion of these factors is contained in the RIA and supporting documents. EPA recognizes the need for additional research by the scientific community to develop additional empirical support for adjustments to VSL for the factors mentioned above.

Regulatory Support Document. On the other hand, since the estimated benefits are more than 40 times the costs (excluding fuel savings) in 2030, the emission reduction and cost trends suggest that it is likely that annual benefits would exceed costs from a time early in the life of the program.

4. What Were the Results of the Benefit-Cost Analysis?

The benefit-cost analysis for the final rule reflects a single year picture of the yearly benefits and costs expected to be realized once the standards have been fully implemented and non-compliant vehicles have all been retired.

Table IX.E–1 presents EPA's primary estimate of the benefits of the rule, both the estimated reductions in incidences and the estimated economic value of those incidence reductions. In interpreting the results, it is important to keep in mind the limited set of effects we are able to monetize. Specifically, the table lists the avoided PM-related incidences of health effects and the estimated economic value of those avoided incidences.[95] We present estimates for the reductions for the Large SI category only. As the table indicates, we estimate that the final rule will reduce premature mortality associated with fine PM by around 1,000 incidences per year, produce about 600 fewer cases of chronic bronchitis, and result in significant reductions in minor restricted activity days (with an estimated 1 million fewer cases).[96]

TABLE IX.E–1.—EPA PRIMARY ESTIMATE OF THE ANNUAL QUANTIFIED AND MONETIZED BENEFITS ASSOCIATED WITH IMPROVED PM AIR QUALITY RESULTING FROM THE LARGE SI/RECREATIONAL VEHICLE RULE IN 2030 [a]

PM-related endpoint	Avoided incidence [a,c] (cases/year)	Monetary benefits [a,d] (millions 2002 $)
Premature mortality [a,b] (adults, ages 30 and over)	1,000	$7,510
Chronic bronchitis	640	$280
Hospital Admissions from Respiratory Causes [g]	300	<$10
Hospital Admissions from Cardiovascular Causes [g]	300	<$10
Emergency Room Visits for Asthma	300	<$1
Acute bronchitis (children, ages 8–12)	2,200	<$1
Upper respiratory symptoms (asthmatic children, ages 9–11)	20,600	<$1
Lower respiratory symptoms (children, ages 7–14)	23,700	<$1
Asthma attacks (asthmatics, all ages) [a]	20,600	<$1
Work loss days (adults, ages 18–65)	181,300	$20
Minor restricted activity days (adults, ages 18–65) (adjusted to exclude asthma attacks) [a]	944,400	$50
Other health effects [e]	$U_1+U_2+U_3+U_4$	$B_1+B_2+B_3+B_4$
Monetized Total [f]		$7,880 + B

[a] Ozone-related benefits are not included, thus underestimating national benefits. Relative to PM related benefits, ozone benefits have typically accounted for only a small portion of total benefits. However, ozone reductions can have a significant impact on asthma attacks in asthma sufferers, as well as contributing to reductions in the overall number of minor restricted activity days.

[b] The value we are transferring assumes that some of the incidences of premature mortality related to PM exposures occur in a distributed fashion over the five years following exposure, and it embeds an annual three percent discount rate to the value of premature mortality occurring in years after our analysis year.

[c] Incidences are rounded to the nearest 100.

[d] Dollar values are rounded to the nearest 10 million. Monetary benefits account for growth in real GDP per capita through 2030.

[e] The Ui are the incidences and the Bi are the values for the unquantified category i. A detailed listing of unquantified PM, ozone, CO, and HC related health and welfare effects is provided in Table IX–E.2. Many of the HC emitted from these vehicles are also hazardous air pollutants listed in the Clean Air Act.

[f] B is equal to the sum of all unmonetized categories, *i.e.*, Ba+B1+B2+ * * * +Bn.

[g] Based upon recent preliminary findings by the Health Effects Institute, the concentration-response functions used to estimate reductions in hospital admissions may over- or under-estimate the true concentration-response relationship.

Total monetized benefits are driven primarily by the reduction in premature fatalities each year, which account for over 80 percent of total benefits.

This table also indicates with a ''B'' those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in Table IX.E–2. The final rule may also provide some visibility improvements in Class I areas and near where people live, work, and recreate. A full appreciation of the overall economic consequences of the final standards requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and costs which could be expressed here in dollar terms.

TABLE IX.E–2.—ADDITIONAL, NON-MONETIZED BENEFITS OF THE LARGE SI/RECREATIONAL VEHICLE STANDARDS

Pollutant	Unquantified effects
Ozone Health	Premature mortality.[a] Increased airway responsiveness to stimuli. Inflammation in the lung. Chronic respiratory damage. Premature aging of the lungs.

[95] Based upon recent preliminary findings by the Health Effects Institute, the concentration-response functions used to estimate reductions in hospital admissions may over- or underestimate the true concentration-response relationship. See Letter from Dan Greenberg, President, Health Effects Institute, May 30, 2002, attached to letter from Dr. Hopke, dated August 8, 2002. Docket A–2000–01, Document IV–A–145.

[96] Our estimate also incorporates significant reductions in 27,000 fewer cases of lower respiratory symptoms, and 26,600 fewer cases of upper respiratory symptoms in asthmatic children each year. In addition, we estimate that this final rule will reduce 23,400 incidents of asthma attacks each year in asthmatics of all ages from reduced exposure to particles. Additional incidents would be avoided from reduced ozone exposures. Asthma is the most prevalent chronic disease among children and currently affects over seven percent of children under 18 years of age.

TABLE IX.E–2.—ADDITIONAL, NON-MONETIZED BENEFITS OF THE LARGE SI/RECREATIONAL VEHICLE STANDARDS—Continued

Pollutant	Unquantified effects
	Acute inflammation and respiratory cell damage.
	Increased susceptibility to respiratory infection.
	Non-asthma respiratory emergency room visits.
	Increased school absence rates
Ozone Welfare	Decreased yields for commercial forests (for example, Western US).
	Decreased yields for fruits and vegetables.
	Decreased yields for non-commercial crops.
	Damage to urban ornamental plants.
	Impacts on recreational demand from damaged forest aesthetics.
	Damage to ecosystem functions
PM Health	Infant mortality.
	Low birth weight.
	Changes in pulmonary function.
	Chronic respiratory diseases other than chronic bronchitis.
	Cardiac endpoints.
	Morphological changes.
	Altered host defense mechanisms.
	Cancer.
	Non-asthma respiratory emergency room visits
PM Welfare	Visibility in Class I areas.
	Residential and recreational visibility in non-Class I areas.
	Soiling and materials damage.
	Damage to ecosystem functions
Nitrogen and Sulfate Deposition Welfare.	Impacts of acidic sulfate and nitrate deposition on commercial forests
	Impacts of acidic deposition to commercial freshwater fishing.
	Impacts of acidic deposition to recreation in terrestrial ecosystems.
	Reduced existence values for currently healthy ecosystems.
	Impacts of nitrogen deposition on commercial fishing, agriculture, and forests.
	Impacts of nitrogen deposition on recreation in estuarine ecosystems.
	Damage to ecosystem functions
CO Health	Premature mortalitya.
	Behavioral effects.
	Hospital admissions—respiratory, cardiovascular, and other.
	Other cardiovascular effects
	Developmental effects.
	Decreased time to onset of angina.
	Non-asthma respiratory ER visits
HC Health[b]	Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde).
	Anemia (benzene).
	Disruption of production of blood components (benzene).
	Reduction in the number of blood platelets (benzene).
	Excessive bone marrow formation (benzene).
	Depression of lymphocyte counts (benzene)
	Reproductive and developmental effects (1,3-butadiene).
	Irritation of eyes and mucus membranes (formaldehyde).
	Respiratory irritation (formaldehyde).
	Asthma attacks in asthmatics (formaldehyde).
	Asthma-like symptoms in non-asthmatics (formaldehyde).
	Irritation of the eyes, skin, and respiratory tract (acetaldehyde).
	Upper respiratory tract irritation and congestion (acrolein)
HC Welfare	Direct toxic effects to animals.
	Bioaccumulation in the food chain.
	Damage to ecosystem function

[a] Premature mortality associated with ozone and carbon monoxide is not separately included in this analysis. In this analysis, we assume that the ACS/Krewski, *et al.* C–R function for premature mortality captures both PM mortality benefits and any mortality benefits associated with other air pollutants. A copy of Krewski, *et al.*, can be found in Docket A–99–06, Document No. IV–G–75.

[b] Many of the key hydrocarbons related to this rule are also hazardous air pollutants listed in the Clean Air Act.

In summary, EPA's primary estimate of the benefits of the final rule is approximately $7.8 billion in 2030. This estimate accounts for growth in real gross domestic product (GDP) per capita between the present and 2030.

The estimated social cost (measured as changes in consumer and producer surplus) in 2030 to implement the final rule from Table IX.D–1 above is $217 million (2001$). The net social gain, considering fuel efficiency, is $554 million. The monetized benefits are approximately $7.8 billion, and EPA believes there is considerable value to the public of the benefits it could not monetize. The net benefit that can be monetized is $8.4 billion. Therefore, implementation of the final rule is expected to provide society with a net gain in social welfare based on economic efficiency criteria. Table IX.E–3 summarizes the costs, benefits, and net benefits.

The net present value of the future benefits have been calculated using a 3% discount rate over the 2002 to 2030 time frame. The net present value of the social gains is $4,899 million and the net present value of the total annual benefits is $77,177 million + B. Consequently, the net present value of the monetized net benefits of this program is $82,076 million. If a discount rate of 7% is used, the values above change to $2,393 million for social gains and $40,070 million + B for total benefits, giving a total of $42,463 million.

TABLE IX.E–3.—2030 ANNUAL MONETIZED COSTS, BENEFITS, AND NET BENEFITS FOR THE FINAL RULE

	Millions of 2001 $[a]
Social Gains[f]	$550

TABLE IX.E–3.—2030 ANNUAL MONETIZED COSTS, BENEFITS, AND NET BENEFITS FOR THE FINAL RULE—Continued

	Millions of 2001 $ [a]
Monetized PM-related benefits [b,c]	$7,880 + B_{PM}
Monetized Ozone-related benefits [b,d]	Not monetized (B_{Ozone})
HC-related benefits	Not monetized (B_{HC})
CO-related benefits	Not monetized (B_{CO})
Total annual benefits	$7,880 +$B_{PM}$ + B_{Ozone} + B_{HC} + B_{CO}
Monetized net benefits [e]	$8,430 + B

[a] For this section, all costs and benefits are rounded to the nearest 10 million. Thus, figures presented in this chapter may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.
[b] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table IX–E.2. Unmonetized PM- and ozone-related benefits are indicated by B_{PM}. and B_{Ozone}, respectively.
[c] Based upon recent preliminary findings by the Health Effects Institute, the concentration-response functions used to estimate reductions in hospital admissions may over- or under-estimate the true concentration-response relationship.
[d] There are substantial uncertainties associated with the benefit estimates presented here, as compared to other EPA analyses that are supported by specific modeling. This analysis used a benefits transfer technique described in the RSD.
[e] B is equal to the sum of all unmonetized benefits, including those associated with PM, ozone, CO, and HC.
[f] The social gains are equal to the fuel savings minus the combined loss in consumer and producer surplus.

X. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided several opportunities for public comment over a period of more than two years. An Advance Notice of Proposed Rulemaking (65 FR 76797, December 7, 2000) announced our intent to address emissions from these engines. Comments received during this period were considered in the development of the proposal and are discussed in that document. These comments included information received from small businesses as a part of the inter-agency Small Business Advocacy Review Panel process which was completed before we published the proposal and is described below under the discussion of the Regulatory Flexibility Act. The formal comment period and public hearing associated with the proposal provided another opportunity for public input. We have also met with a variety of stakeholders at various points in the process, including state and environmental organizations, engine manufacturers, and equipment manufacturers.

We have prepared a detailed Summary and Analysis of Comments document, which describes the comments we received on the proposal and our response to each of these comments. The Summary and Analysis of Comments is available in the docket for this rule and on the Office of Transportation and Air Quality internet home page at *http://www.epa.gov/otaq/*.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

A Final Regulatory Support Document 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 for review under Executive Order 12866. Annual initial costs of this rulemaking are estimated to be over $100 million per year but this is offset by operating cost savings of over $400 million dollars per year. Even so, this rule is considered economically significant. Written comments from OMB and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements (ICR) in this rule 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 Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information, unless the information collection request 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.

The reporting requirements in this final rule do not apply until the Office of Management has approved them. We will publish a document in the **Federal Register** announcing that the information-collection requirements are approved.

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meet the definition for 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. This rulemaking will affect only the small businesses.

In accordance with section 609 of the RFA, EPA conducted an outreach to small entities and convened a Small

Business Advocacy Review (SBAR) Panel prior to proposing this rule, to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. Through the Panel process, we gathered advice and recommendations from small-entity representatives who would be affected by the provisions in the rule relating to large SI engines and land-based recreational vehicles, and published the results in a Final Panel Report, dated July 17, 2001. EPA had previously convened a separate Panel for marine engines and vessels. This panel also produced a report, dated August 25, 1999. We also prepared an Initial Regulatory Flexibility Analysis (IRFA) in accordance with section 603 of the Regulatory Flexibility Act. The IRFA is found in chapter 8 of the Draft Regulatory Support Document. Both Panel reports and the IRFA have been placed in the docket for this rulemaking (Public Docket A–2000–01, items II–A–85, II–F–22, and III–B–01).

EPA proposed the majority of the Panel recommendations, and took comments on these and other recommendations. The information we received during this rulemaking process indicated that fewer small entities would be significantly impacted by the rule than we had originally estimated. During the SBAR Panel process, a concern was raised that importers would have limited access to certified models for import. We received no comments regarding this concern and believe that the supply of four-stroke engines for ATVs and off-highway motorcycles will continue to increase. As a result, we believe all these companies should be able to find manufacturers that are able to supply them with compliant engines. These importers incur no development costs, and they are not involved in adding emission-control hardware or other variable costs to provide a finished product to market. We also expect that the vehicles they import would have fuel tanks and hoses that comply with the permeation standards. However, even if this were not the case, the additional two or three dollars that it would cost to make them compliant with the permeation standards is trifling in comparison with the normal selling price for these vehicles. They should therefore expect to buy and sell their products with the normal markup to cover their costs and profit. As noted below, we expect all 21 known small-business importers to face compliance costs of less than one percent of their revenues. Thus, EPA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. We also made some changes as a result of comments received on the proposal that we believe will further reduce the level of impact to small entities directly regulated by the rule. These can be found below in Section 5, ''Steps Taken to Minimize the Impact on Small Entities.''

Although this final rule will not have a significant impact on a substantial number of small entities, EPA has prepared a Small Business Flexibility Analysis that examines the impact of the rule on small entities, along with regulatory alternatives that could reduce that impact. This analysis would meet the requirements for a Final Regulatory Flexibility Analysis (FRFA), had that analysis been required. The Small Business Flexibility Analysis can be found in Chapter 8 of the Final Regulatory Support Document, which is available for review in the docket and is summarized below. The key elements of our Small Business Flexibility Analysis include:

—The need for, and objectives of, the rule.
—The significant issues raised by public comments, a summary of the Agency's assessment of those issues, and a statement of any changes made to the proposed rule as a result of those comments.
—The types and number of small entities to which the rule will apply.
—The reporting, record keeping and other compliance requirement of the rule.
—The steps taken to minimize the impact of the rule on small entities, consistent with the stated objectives of the applicable statute.

A fuller discussion of each of these elements can be found in the Small Business Flexibility Analysis (Chapter 8 of the Final Regulatory Support Document).

1. The Need for and Objectives of This Rule

EPA began a study of emissions from new and existing nonroad engines, equipment, and vehicles in 1991. In 1994, EPA finalized its finding that nonroad engines as a whole ''are significant contributors to ozone or carbon monoxide concentrations'' in more than one ozone or carbon monoxide nonattainment area.[97] Clean Air Act section 213 (a)(3) then requires EPA to establish standards for all classes and categories of new nonroad engines that cause or contribute to ozone or CO concentrations in more than one ozone or CO nonattainment area that achieve the greatest degree of emissions reductions achievable taking cost and other factors into account.

Since the finding in 1994, EPA has been engaged in the process of establishing programs to control emissions from nonroad engines used in many different applications. Nonroad categories already regulated include:

- Land-based compression-ignition (CI) engines (such as farm and construction equipment),
- Small land-based spark-ignition (SI) engines (such as lawn and garden equipment and string trimmers),
- Marine engines (outboards, personal watercraft, commercial marine diesel, marine diesel engines under 37 kW),
- Locomotive engines.

EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) on December 7, 2000, and a Notice of Proposed Rulemaking (NPRM) on September 14, 2001, which continued the process of establishing standards for nonroad engines and vehicles, with proposed new emission standards for recreational marine diesel engines, recreational vehicles, and other nonroad spark-ignition engines over 19 kW. This final rule includes emission standards and related requirements for these vehicles and engines that are consistent with the requirements of the Act.

2. Summary of Significant Issues Raised by Public Comments

We received comments from engine and equipment manufacturers and consumers, both during the SBAR Panel process and during the comment period after we issued the proposal. Small-volume engine and equipment manufacturers commented on the financial hardships they would face in complying with the proposed regulations. Most requested that we consider hardship provisions, primarily an exemption from or a delay in the implementation of the proposed standards, or certain flexibilities in the certification process. Due to the wide variety of engines, vehicles, and equipment covered by this rulemaking, we decided that a variety of provisions were needed to address the concerns of the small entities involved. Changes to the proposal as a result of comments from small-entity representatives or others are noted below in Section 5 for each of the sectors affected by this rule.

The NPRM proposed only exhaust emission controls for recreational vehicles. However, several commenters raised the issue of control of evaporative

[97] 59 FR 31306 (July 17, 1994).

emissions related to permeation from fuel tanks and fuel hoses. They maintained that our obligations under section 213 of the Clean Air Act included control of permeation emissions, and pointed to work done by the California ARB on emissions from plastic fuel tanks and rubber fuel line hoses, as well as from portable plastic fuel containers. Our own investigation into hydrocarbon emissions related to permeation of fuel tanks and fuel hoses from recreational land-based and marine applications also supported the concerns raised by the commenters. Therefore, on May 1, 2002, we published a notice in the **Federal Register** reopening the comment period and requesting comment on possible approaches to regulating permeation emissions from recreational vehicles. The notice also included the expected costs and emission reductions resulting from these approaches. Commenters were given thirty days from May 1, 2002 to provide comments on the notice. We received comments from several affected businesses, including at least one small entity. These comments have been addressed in this final rulemaking, including several changes made to the provisions as a result of the comments.

c. Numbers and Types of Small Entities Affected

The following table provides an overview of the primary SBA small business categories potentially affected by this regulation.

TABLE XI.C–1: PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION

Industry	NAICS[a] Codes	Defined by SBA as a small business if:[b]
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Snowmobile and ATV manufacturers	336999	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.
Nonroad SI engines	333618	<1,000 employees.
Internal Combustion Engines	333618	<1,000 employees.
Boat Building and Repairing	336612	< 500 employees.
Fuel Tank Manufacturers	336211	<1,000 employees.

a North American Industry Classification System
b According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered ''small entities'' for purposes of a regulatory flexibility analysis.

The small entities directly regulated by this rule are the following:

a. Recreational Vehicles (ATVs, snowmobiles, and off-highway motorcycles). The ATV sector has the broadest assortment of manufacturers. There are seven large companies representing over 95 percent of total domestic ATV sales. The remaining 5 percent come from small manufacturers or importers, who tend to import inexpensive, youth-oriented ATVs from China and other Asian nations. We have identified 21 small companies that offer off-highway motorcycles, ATVs, or both products. Annual unit sales for these companies can range from a few hundred to several thousand units per year.

There are three small businesses manufacturing off-highway motorcycles in the U.S. Two of these make only competition models, so do not need to certify their products under this regulation. The remaining off-highway motorcycle manufacturer already offers engines that should be meeting the new emission standards, especially under our provisions allowing design-based certification. There is one small business manufacturing two separate youth ATV models. This company already uses four-stroke engines. Also, the standards are based on emissions per watt hour, which are less costly to meet for models with small-displacement engines. As a result, we expect both of these manufacturers to face compliance costs less than one percent of their revenues.

We expect all 21 small-business importers to face compliance costs less than one percent of their revenues. These companies incur no development costs and they are not involved in adding emission-control hardware or other variable costs to provide a finished product to market. As a result, they should expect to buy and sell their products with the normal mark-up to cover their costs and profit. During the SBAR Panel process, the concern was raised that importers might have limited access to certified models for import. We received no comments confirming this concern and believe that the supply of four-stroke engines for ATVs and off-highway motorcycles will continue to increase; as a result all these companies should be able to find manufacturers that are able to supply compliant engines into the U.S. market.

We further believe that compliance with the permeation standards will not place a significant burden on either the small manufacturers or on the importers. We have estimated the incremental cost of compliance for ATVs and off-highway motorcycles at roughly three dollars per vehicle. This estimate includes shipping, and is based on buying the necessary low-permeability hoses and surface treatment for the fuel tanks from outside suppliers. Thus, no capital outlays are required, and the increase in vehicle cost is insignificant, so that it can easily be passed along to the ultimate consumer. However, to ensure that these requirements do not adversely affect small manufacturers, we are implementing, where they are applicable to permeation, the same flexibility options we proposed for the exhaust emission standards.

Based on available industry information, four major manufacturers account for over 99 percent of all domestic snowmobile sales. The remaining one percent comes from very small manufacturers who tend to specialize in unique and high-performance designs. One potential manufacturer is not a small business, but hopes to produce snowmobiles within the next year. Most of these manufacturers build less than 50 units per year. We have identified three small manufacturers of snowmobiles who are still in business (of five originally identified). Two of these companies specialize in high-performance versions of standard recreational snowmobile types (*i.e.*, travel and mountain sleds). The other manufacturer produces a unique design, which is a small scooter-like snowmobile designed to be ridden standing up. This manufacturer provided no response to repeated outreach efforts to determine potential economic effects of the final rule, but could be expected to use production engines certified to the Small SI standards.

There are thus three small businesses currently producing snowmobiles for

the U.S. market. One of these currently makes a mix of two-stroke and four-stroke models and will likely rely on the provision allowing separate standards for certain manufacturers to produce low-emitting engines with a streamlined development effort. Estimated compliance costs for this company are less than one percent of revenues. Costs for the company producing the standup snowmobile should also be less than one percent. The third manufacturer sells a single snowmobile model in addition to a sizable business of supplying aftermarket parts for snowmobiles from other manufacturers. We don't have revenue information for the whole company, but with such low sales volumes, we estimate that this company's compliance costs could reach 4–10 percent of annual snowmobile revenues.

Control of permeation emissions was not part of the SBAR Panel process. We received comments from one small snowmobile manufacturer who stated that it would experience additional hardship due to the permeation standards, because they do not have the sales volume to install the barrier treatment for fuel tanks in-house. They also commented that if shipping and processing of fuel tanks took 3–4 months, it would be difficult for a small business to tie up funds for so long. However, we believe that the permeation control requirements should be relatively easy for small businesses to meet, given the relatively low costs involved ($5 to $7 per sled, based on outside vendor costs). This is insignificant in comparison to the cost of the high-end sleds that this company produces and should not materially affect the company's cash flow. We also believe it is not necessary, or cost-effective, for a small entity to make the capital investments for in-house treatment facilities. Low permeation fuel hoses are available from vendors today, and we would expect that surface treatment would be applied through an outside company, rather than installing a treatment facility in house. In any event, to make sure that these requirements do not adversely affect small manufacturers, we are implementing, where they are applicable to permeation, the same flexibility options we proposed for the exhaust emission standards.

b. Marine Vessels. Marine vessels include the boat, engine, and fuel system. Exhaust emission controls including NTE requirements, as addressed in the August 29, 1999 and July 17, 2001 SBAR Panel Reports, may affect the engine manufacturers and may affect boat builders.

We have determined that at least 16 companies manufacture marine diesel engines for recreational vessels. Nearly 75 percent of diesel engines sales for recreational vessels in 2000 can be attributed to three large companies. Six of the 16 identified companies are considered small businesses as defined by SBA. Based on sales estimates for 2000, these six companies represent approximately 4 percent of recreational marine diesel engine sales. The remaining companies each comprise between two and seven percent of sales for 2000.

We are thus aware of six small businesses producing marine diesel engines that may be considered recreational. Three of these companies produce both commercial and recreational models without significant differences, so we expect them to meet the standards in this final rule with little more than the administrative expenses associated with including recreational models in their commercial engine families. High-performance recreational marine diesel engines already include technologies that help control NO_X emissions, so our cost estimates include relatively modest development costs to add new technologies. Moreover, the small-business provisions allowing substantial additional lead time provide an opportunity for these companies to spread development and certification costs over several years. As a result, we expect one small business to have compliance costs approaching one percent and one to have compliance costs between 1 and 3 percent. One very small business could have compliance costs of about four percent of annual revenues.

c. Large Spark-ignition Engines. We are aware of two manufacturers of Large SI engines qualifying as small businesses. One of these companies plans to produce engines that meet the standards adopted by California ARB in 2004, with the possible exception of one engine family. The other company is attempting to restart the production of engines from another failed company. This company did not exist during the SBAR Panel process associated with this rule.

The established company will face relatively small compliance costs as a result of this rule, since California-compliant engines will need only a small amount of additional development effort to meet long-term standards. These costs should be less than one percent of revenues.

The start-up company faces significant development costs, though much of this effort is required to improve the engine enough to sustain a market presence as other manufacturers continue to make improvements to competitive engines. Under the hardship provisions, we expect the start-up company to spread compliance costs over several years to reduce the impact of emission standards. We nevertheless estimate that the compliance costs associated with meeting EPA emission standards are about 5 percent of revenues. Since this manufacturer is operating in a niche market, with customers providing public comments citing the need for these engines, we expect that most of the increased cost of production will be recovered by increased revenues.

d. Result for all Small Entities. For this regulation as a whole, we expect 32 small businesses to have total compliance costs less than 1 percent of their annual revenues. We estimate that one company will have compliance costs between 1 and 3 percent of revenues. Three companies will likely have compliance costs exceeding 3 percent of revenues, but at least one will likely be able to benefit from the relief provisions outlined below. These estimates include the costs for compliance with the permeation standards.

4. Reporting, Record Keeping, and Compliance Requirements

For any emission-control program, we need assurance that the regulated engines will meet the standards. Historically, EPA programs have assigned manufacturers the responsibility to provide these assurances. This final rule includes testing, reporting, and record keeping requirements. Testing requirements for some manufacturers include certification (including deterioration testing) and production-line testing. Reporting and record keeping requirements include test data and technical data on the engines, including defect reporting.

5. Steps Taken To Minimize the Impact on Small Entities

The two SBAR Panels considered a variety of provisions to reduce the burden of complying with new emission standards and related requirements. Some of these provisions (such as emission-credit programs) would apply to all companies, while others would be targeted at the unique circumstances faced by small businesses. A complete discussion of the regulatory alternatives recommended by the Panels can be found in the Final Panel Reports. Summaries of the Panels' recommended alternatives for each of the sectors

subject to this action can also be found in their respective sections of the preamble.

The following Panel recommendations are being finalized by the Agency, except for a few items as noted below:

(A) Related Federal Rules

The Panel recommended that EPA continue to consult with the CPSC in developing the rule to better understand the scope of the Commission's regulations as they may relate to the competition exemption.

(B) Regulatory Flexibility Alternatives

The Panel recommended that EPA consider and seek comments on a wide range of alternatives, including the flexibility options described below. As noted above, we issued a subsequent **Federal Register** notice dated May 1, 2002 (67 FR 21613), seeking comment on applying permeation control standards for fuel tanks and fuel hoses used on recreational vehicles. The flexibilities listed below for recreational vehicles would generally also apply to those controls, which would effectively extend the panel recommendations to the permeation controls as well.

(1) Large SI Engines

The Panel recommended that EPA propose several possible provisions to address concerns that the new EPA standards could potentially place small businesses at a competitive disadvantage to larger entities in the industry. These provisions are described below.

(a) Using Certification and Emission Standards From Other EPA Programs. The Panel made several recommendations for this provision. First, the Panel recommended that EPA temporarily expand this arrangement to allow small numbers of constant-speed engines up to 2.5 liters (up to 30kW) to be certified to the Small SI standards. Second, the Panel further recommended that EPA seek comment on the appropriateness of limiting the sales level of 300. Third, the Panel recommended that EPA request comment on the anticipated cap of 30 kW on the special treatment provisions outlined above, or whether a higher cap on power rating is appropriate. Finally, the Panel recommended that EPA propose to allow small-volume manufacturers producing engines up to 30kW to certify to the Small SI standards during the first 3 model years of the program. Thereafter, the standards and test procedures which could apply to other companies at the start of the program would apply to small businesses. We are not adopting this provision and are instead relying on the hardship provisions in the final rule, which will allow us to accomplish the objective of the proposed provision with more flexibility.

(b) Delay of Emission Standards. The Panel recommended that EPA propose to delay the applicability of the long-term standards to small-volume manufacturers for three years beyond the date at which they would generally apply to accommodate the possibility that small companies need to undertake further design work to adequately optimize their designs and to allow them to recover the costs associated with the near-term emission standards. We are also folding this provision into the scope of the hardship provision, but have decided to increase the delay to up to four years, depending on the nature of the hardship involved.

(c) Production-Line Testing. The Panel made several recommendations for this provision. First, the Panel recommended that EPA adopt provisions allowing more flexibility than is available under the California Large SI program or other EPA programs in general to address the concern that production-line testing is another area where small-volume manufacturers typically face a difficult testing burden. Second, the Panel recommended that EPA allow small-volume manufacturers to have a reduced testing rate if they have consistently good test results from testing production-line engines. Finally, the Panel recommended that EPA allow small-volume manufacturers to use alternative low-cost testing options to show that production-line engines meet emission standards.

(d) Deterioration Factors. The Panel recommended that EPA allow small-volume manufacturers to develop deterioration factors based on available emission measurements and good engineering judgment.

(e) Hardship Provision. The Panel recommended that EPA propose two types of hardship provisions for Large SI engines. First the Panel recommended that EPA allow small businesses to petition EPA for up to three years of additional lead time to comply with the standards. Second, the Panel recommended that EPA allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if the failure to sell the subject engines would have a major impact on the company's solvency.

(2) Off-Highway Motorcycles and ATVs

The NPRM for this rule discussed several flexibility options for small businesses manufacturing recreational vehicles, based on the SBAR Panel process. When we reopened the comment period on May 1, 2002 to request comment on possible approaches to regulating permeation emissions from recreational vehicles, we did not specifically discuss small business issues. However, it is our intent that these provisions carry over to permeation controls as well.

The Panel made the following recommendations for this subcategory:

(a) General Recommendations. (1) The Panel recommended that EPA propose to apply the flexibilities described below to engines produced or imported by small entities with combined off-highway motorcycle and ATV annual sales of less than 5,000 units per model year.

(2) The Panel recommended that EPA request comment on the appropriateness of the 5,000 unit per model year threshold.

(3) The Panel recommended that EPA request comment on allowing small entities with sales in excess of 5,000 units to certify using the flexible approaches described below for a number of engines equal to their 2000 or 2001 sales level.

(4) The Panel recommended that EPA describe and seek comment on the effect of the standards on these entities, including a request for any data and/or related studies to estimate the extent to which sales of their products are likely to be reduced as a result of changes in product price that are attributable to the emission standards.

(5) The Panel recommended that, in the final rule, EPA assess any information received in response to this request for purposes of informing the final rule decision making process on whether additional flexibility (beyond that considered in this report) is warranted.

(b) Additional Lead-Time To Meet Emission Standards. First, the Panel recommended that EPA propose at least a two-year delay, but seek comment on whether a larger time period is appropriate given the costs of compliance for small businesses and the relationship between importers and their suppliers. Second, the Panel recommended that EPA provide additional time for small-volume manufacturers to revise their manufacturing process, and would allow importers to change their supply chain to acquire complying products. Third, the Panel recommended that EPA

request comment on the appropriate length for a delay (lead-time).

(c) Design Certification. The Panel recommended that EPA propose to permit small entities to use design-based certification. The Panel also recommended that EPA work with the small-entity representatives and other members of the industry to develop appropriate criteria for such design-based certification.

(d) Broaden Engine Families. The Panel recommended that EPA request comment on engine family flexibility and conducting design-based certification emissions testing.

(e) Production-Line Testing Waiver. The Panel recommended that EPA propose to provide small manufacturers and small importers a waiver from manufacturer production-line testing. The Panel also recommended that EPA request comment on whether limits or the scope of this waiver are appropriate.

(f) Use of Assigned Deterioration Factors During Certification. The Panel recommended that EPA propose to provide small business with the option to use assigned deterioration factors.

(g) Using Certification and Emission Standards from Other EPA Programs. The Panel recommended that EPA propose to provide small business with this flexibility through the fifth year of the program and request comment on which of the already established standards and programs are believed to be a useful certification option for the small businesses.

(h) Averaging, Banking, and Trading. The Panel recommended that EPA propose to provide small business with the same averaging, banking, and trading program flexibilities that would apply for large manufacturers and request comment on how the provisions could be enhanced for small business to make them more useful.

(i) Hardship Provisions. The Panel recommended that EPA propose two types of hardship program for off-highway motorcycles and ATVs: First, EPA should allow small manufacturers and small importers to petition EPA for limited additional lead-time to comply with the standards. Second, EPA should allow small manufacturers and small importers to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency.

The Panel also recommended that EPA propose both aspects of the hardship provisions for small off-highway motorcycle and ATV manufacturers and importers and seek comment on the implementation provisions.

(3) Marine Vessels

(a) Delay Standards for Five Years. The Panel recommended that EPA delay the standards for five years for small businesses.

(b) Design-Based Certification. The Panel recommended that EPA allow manufacturers to certify by design and to be able use this to generate credits under this approach. The Panel also recommended that EPA provide adequately detailed design specifications and associated emission levels for several technology options that could be used to certify. Although we proposed this approach, we were unable to specify any technology options for diesel engines that could be used for design-based certification. We requested comment on such designs and received no comment. Therefore, we are not finalizing a design-based certification option. However, we are finalizing the engine dresser provisions and expanding these provisions to include water-cooled turbocharging. This will allow some engines to be exempt from the standards based on design.

(c) Broadly Defined Product Certification Families. The Panel recommended that EPA take comment on the need for broadly defined emission families and how these families should be defined.

(d) Hardship Provisions. The Panel recommended that EPA propose two types of hardship programs for marine engine manufacturers, boat builders and fuel tank manufacturers: First, that we should allow small businesses to petition us for additional lead time to comply with the standards. Second, EPA should allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if the failure to sell the subject fuel tanks or boats would have a major impact on the company's solvency. The Panel also recommended that EPA work with small manufacturers to develop these criteria and how they would be used.

(e) Burden Reduction Approaches Designed for Small Marinizers of Marine Engines With Respect to NTE Provisions. The Panel recommended that EPA specifically include NTE in a design-based approach.

(4) Snowmobiles

As noted above, permeation standards were not part of the original NPRM for this rule, which incorporated recommendations from the SBAR Panel process. When we reopened the comment period on May 1, 2002 to request comment on possible approaches to regulating permeation emissions from recreational vehicles, which would apply to snowmobiles as well as to off-highway motorcycles and ATVs, we did not specifically discuss small business issues. However, it is our intent that the proposed flexibilities for exhaust emissions carry over to permeation controls for all three vehicle categories, to the extent that they are applicable.

(a) Delay of Emission Standards. The Panel recommended that EPA propose to delay the standards for small snowmobile manufacturers by two years from the date at which other manufacturers would be required to comply. The Panel also recommended that EPA propose that the emission standards for small snowmobile manufacturers be phased in over an additional two year (four years to fully implement the standard). Thus, the 2006 Phase 1 standards would be phased in at 50/100 percent in 2008/2009, the Phase 2 standards would be phased in at 50/100 percent in 2012/2013, and the Phase 3 standards would be phased in at 50/100 percent in 2014/2015.

(b) Design-Based Certification. The Panel recommended that EPA take comment on how design-based certification could be applied to small snowmobile manufacturers, and that EPA work with the small entities in the design and implementation of this concept.

(c) Broader Engine Families. The Panel recommended that EPA propose a provision for small snowmobile manufactures that would use relaxed criteria for what constitutes an engine or vehicle family.

(d) Elimination of Production-Line Testing Requirements. The Panel recommended that EPA propose that small snowmobile manufacturers not be subject to production-line testing requirements.

(e) Use of Assigned DF During Certification. The Panel recommended that EPA propose to allow small snowmobile manufacturers to elect to use deterioration factors determined by EPA to demonstrate end of useful life emission levels, thus reducing development/testing burdens, rather than performing a durability demonstration for each engine family as part of the certification testing requirement.

(f) Using Certification and Emission Standards From Other EPA Programs. The Panel recommended that EPA

propose to provide small business with the flexibility to use an engine certified to another EPA program without recertifying it in its new application provided that the manufacturer does not alter the engine in such a way as to cause it to exceed the emission standards it was originally certified to meet.

(g) Averaging, Banking and Trading. The Panel recommended that EPA propose an averaging, banking and trading program for snowmobiles, and seek comment on additional flexibilities related to emission credits that should be considered for small snowmobile manufacturers.

(h) Hardship Provisions. The Panel recommended that EPA propose two types of hardship programs for small snowmobile manufacturers. First, EPA should allow small snowmobile manufacturers to petition EPA for additional lead time to comply with the standards. Second, EPA should allow small snowmobile manufacturers to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency.

(i) Unique Snowmobile Engines. The Panel recommended that EPA seek comment on an additional provision, which would allow a small snowmobile manufacturer to petition EPA for relaxed standards for one or more engine families. The Panel also recommended that EPA allow a provision for EPA to set an alternative standard at a level between the prescribed standard and the baseline level until the engine family is retired or modified in such a way as to increase emission and for the provision to be extended for up to 300 engines per year per manufacturer would assure it is sufficiently available for those manufacturers for whom the need is greatest. However, we received comment that the limit of 300 is too restrictive to be of much assistance to small businesses. Based on this comment we are adopting a limit for this provision of 600 snowmobiles per year. Finally, the Panel recommended that EPA seek comment on initial and deadline dates for the submission of such petitions. We received no comments in this area, but for clarity have decided to require at least nine months lead time by the petitioner.

(5) Conclusion

In summary, considering both exhaust emission and permeation regulations, we have found that only three small entities are likely to be impacted by more than 3 percent of their sales, and the degree of impact is likely to be further reduced by the flexibilities that are being finalized in this rulemaking. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

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 this rule represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The costs and benefits associated with the rule are discussed in Section IX and in the Small Business Support Document, as required by the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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 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 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 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 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.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The emission standards and other related requirements for private businesses in this rule have national applicability and therefore do 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 this rule. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health 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, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies in this rulemaking will further reduce air toxics and the related adverse impacts on children's health.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The aim to reduce emissions from certain nonroad engines and have no effect on fuel formulation, distribution, or use. Generally, the final rule leads to reduced fuel usage due to the improvements in engine-based emission-control technologies.

I. National Technology Transfer and Advancement Act

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

This rule involves technical standards. The following paragraphs describe how we specify testing procedures for engines subject to this rule.

The International Organization for Standardization (ISO) has a voluntary consensus standard that can be used to test Large SI engines. However, the current version of that standard (ISO 8178) is applicable only for steady-state testing, not for transient testing. As described in the Final Regulatory Support Document, transient testing is an important part of the emission-control program for these engines. We are therefore not adopting the ISO procedures in this rulemaking.

Underwriters Laboratories (UL) has adopted voluntary consensus standards for forklifts that are relevant to the new requirements for Large SI engines. UL sets a maximum temperature specification for gasoline and, for forklifts used in certain applications, defines requirements to avoid venting from gasoline fuel tanks. We are adopting a different temperature limit, because the maximum temperature specified by UL does not prevent fuel boiling. We are adopting separate measures to address venting of gasoline vapors, because of UL's provisions to allow venting with an orifice up to 1.78 mm (0.070 inches). We believe forklifts with such a vent would have unnecessarily high evaporative emissions. If the UL standard is revised to address these technical concerns, it would be appropriate to reference the UL standard in our regulations. An additional concern relates to the fact that the UL requirements apply only to forklifts (and not all forklifts in the case of the restriction on vapor venting). EPA regulations would therefore need to, at a minimum, extend any published UL standards to other engines and equipment to which the UL standards would otherwise not apply.

The Gas Processors Association has adopted standards with fuel specifications for liquefied petroleum gas. However, there is no existing regulations requiring suppliers to meet these specifications. Comments received on the rule indicate a high level of concern that in-use fuel quality does not meet the published voluntary standards, so we are not relying on these fuel specifications to define fuels for certification testing.

We are adopting requirements to test off-highway motorcycles and all-terrain vehicles with the Federal Test Procedure, a chassis-based transient test. There is no voluntary consensus

standard that would adequately address engine or vehicle operation for suitable emission measurement. Furthermore, we are interested in pursuing an engine-based test procedure for all-terrain vehicles. We intend to develop a new duty cycle for this, because there is no acceptable engine duty cycle today that would adequately represent the way these engines operate. For snowmobiles, we are adopting test procedures based on work that has been published, but not yet adopted as a voluntary consensus standard.

For recreational marine diesel engines, we are adopting the same test procedures that we have established for commercial marine diesel engines (with a new duty cycle appropriate for recreational applications). We are again adopting these procedures in place of the ISO 8178 standard that would apply to these engines. We believe that ISO 8178 relies too heavily on reference testing conditions. Because our test procedures need to represent in-use operation typical of operation in the field, they must be based on a range of ambient conditions. We determined that the ISO procedures are not broadly usable in their current form, and therefore should not be adopted by reference. We remain hopeful that future ISO test procedures will be developed that are usable and accurate for the broad range of testing needed, and that such procedures could then be adopted. We expect that any such development of revised test procedures will be done in accordance with ISO procedures and in a balanced and transparent manner that includes the involvement of all interested parties, including industry, U.S. EPA, foreign government organizations, state governments, and environmental groups. In so doing, we believe that the resulting procedures would be ''global'' test procedures that can facilitate the free flow of international commerce for these products.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

K. Plain Language

This document follows the guidelines of the June 1, 1998 Executive Memorandum on Plain Language in Government Writing. To read the text of the regulations, it is also important to understand the organization of the Code of Federal Regulations (CFR). The CFR uses the following organizational names and conventions.

Title 40—Protection of the Environment

Chapter I—Environmental Protection Agency

Subchapter C—Air Programs. This contains parts 50 to 99, where the Office of Air and Radiation has usually placed emission standards for motor vehicle and nonroad engines.

Subchapter U—Air Programs Supplement. This contains parts 1000 to 1299, where we intend to place regulations for air programs in future rulemakings.

Part 1048—Control of Emissions from New, Large, Nonrecreational, Nonroad Spark-ignition Engines. Most of the provisions in this part apply only to engine manufacturers.

Part 1051—Control of Emissions from Recreational Engines and Vehicles. Most of the provisions in this part apply only to vehicle manufacturers.

Part 1065—General Test Procedures for Engine Testing. Provisions of this part apply to anyone who tests engines to show that they meet emission standards.

Part 1068—General Compliance Provisions for Engine Programs. Provisions of this part apply to everyone.

Each part in the CFR has several subparts, sections, and paragraphs. The following illustration shows how these fit together.

Part 1048

Subpart A

Section 1048.1

(a)

(b)

(1)

(2)

(i)

(ii)

A cross reference to § 1048.1(b) in this illustration would refer to the parent paragraph (b) and all its subordinate paragraphs. A reference to § 1048.1(b) introductory text'' would refer only to the single, parent paragraph (b).

List of Subjects

40 CFR Part 89

Environmental protection, Administrative practice and procedure,

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 91

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

40 CFR Part 1048

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 1051

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1065

Environmental protection, Administrative practice and procedure, Incorporation by reference, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 13, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

1. The authority for part 89 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 89.2 is amended by adding definitions for ''Aircraft'', ''Spark-ignition'', and ''United States'' in alphabetic order and revising the definition of ''Compression-ignition'' to read as follows:

§ 89.2 Definitions.

* * * * *

Aircraft means any vehicle capable of sustained air travel above treetop heights.

* * * * *

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

* * * * *

Spark-ignition means relating to a gasoline-fueled engine or other engines with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart B—[Amended]

3. Section 89.106 is amended by revising paragraph (b) read as follows:

§ 89.106 Prohibited controls.

* * * * *

(b) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

4. The heading to part 90 is revised to read as set forth above.

5. The authority for part 90 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

6. Section 90.1 is revised to read as follows:

§ 90.1 Applicability.

(a) This part applies to new nonroad spark-ignition engines and vehicles with gross power output at or below 19 kilowatts (kW) used for any purpose, unless we exclude them under paragraph (d) of this section.

(b) This part also applies to engines with a gross power output above 19 kW if the manufacturer uses the provisions of 40 CFR 1048.615 or 1051.145(a)(3) to exempt them from the requirements of 40 CFR part 1048 or 1051, respectively. Compliance with the provisions of this part is a required condition of those exemptions.

(c) [Reserved]

(d) The following nonroad engines and vehicles are not subject to the provisions of this part:

(1) Engines certified to meet the requirements of 40 CFR part 1051 (*e.g.,* engines used in snowmobiles). This part nevertheless applies to engines used in recreational vehicles if the manufacturer uses the provisions of 40 CFR 1051.145(a)(3) to exempt them from the requirements of 40 CFR part 1051. Compliance with the provisions of this part is a required condition of that exemption.

(2) Engines used in highway motorcycles. See 40 CFR part 86, subpart E.

(3) Propulsion marine engines. See 40 CFR part 91. This part applies with respect to auxiliary marine engines.

(4) Engines used in aircraft. See 40 CFR part 87.

(5) Engines certified to meet the requirements of 40 CFR part 1048.

(6) Hobby engines.

(7) Engines that are used exclusively in emergency and rescue equipment where no certified engines are available to power the equipment safely and practically, but not including generators, alternators, compressors or pumps used to provide remote power to a rescue tool. The equipment manufacturer bears the responsibility to ascertain on an annual basis and maintain documentation available to the Administrator that no appropriate certified engine is available from any source.

(e) Engines subject to the provisions of this subpart are also subject to the provisions found in subparts B through N of this part, except that Subparts C, H, M and N of this part apply only to Phase 2 engines as defined in this subpart.

(f) Certain text in this part is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

7. Section 90.2 is amended by adding a new paragraph (c) to read as follows:

§ 90.2 Effective dates.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, engines used in recreational vehicles with engine rated speed greater than or equal to 5,000 rpm and with no installed speed governor are not subject to the provisions of this part through the 2005 model year. Starting with the 2006 model year, all the requirements of this part apply to engines used in these vehicles if they are not included in the scope of 40 CFR part 1051.

8. Section 90.3 is amended by adding definitions for ''Aircraft'', ''Hobby engines'', ''Marine engine'', ''Marine vessel'', ''Recreational'', and ''United States'' in alphabetical order, to read as follows:

§ 90.3 Definitions.

* * * * *

Aircraft means any vehicle capable of sustained air travel above treetop heights.

* * * * *

Hobby engines means engines used in reduced-scale models of vehicles that are not capable of transporting a person (for example, model airplanes).

Marine engine means an engine that someone installs or intends to install on a marine vessel. There are two kinds of marine engines:

(1) *Propulsion marine engine* means a marine engine that moves a vessel through the water or directs the vessel's movement.

(2) *Auxiliary marine engine* means a marine engine not used for propulsion.

Marine vessel means a vehicle that is capable of operation in water but is not capable of operation out of water. Amphibious vehicles are not marine vessels.

* * * * *

Recreational means, for purposes of this part, relating to a vehicle intended by the vehicle manufacturer to be operated primarily for pleasure.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart B—[Amended]

9. Section 90.103 is amended by redesignating paragraph (a)(2)(v) as paragraph (a)(2)(vi) and adding a new paragraph (a)(2)(v) to read as follows:

§ 90.103 Exhaust emission standards.

(a)* * *

(2)* * *

(v) The engine must be used in a recreational application, with a combined total vehicle dry weight under 20 kilograms;

* * * * *

10. Section 90.110 is amended by revising paragraph (b) to read as follows:

§ 90.110 Requirement of certification—prohibited controls.

* * * * *

(b) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK–IGNITION ENGINES

11. The authority for part 91 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

12. Section 91.3 is amended by adding the definition for ''United States'' in alphabetical order to read as follows:

§ 91.3 Definitions.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart B—[Amended]

13. Section 91.110 is amended by revising paragraph (b) to read as follows:

§ 91.110 Requirement of certification—prohibited controls.

* * * * *

(b) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

Subpart E—[Amended]

14. Section 91.419 is amended in paragraph (b) by revising the equations for M_{HCexh} and M_{exh} to read as follows:

§ 91.419 Raw emission sampling calculations.

* * * * *

(b) * * *

$M_{HCexh} = 12.01 + 1.008 \times \alpha$

* * * * *

$$M_{exh} = \frac{M_{HC_{exh}} \times WHC}{10^6} + \frac{28.01 \times WCO}{10^2} + \frac{44.1 \times WCO_2}{10^2} + \frac{46.01 \times WNO_x}{10^6} + \frac{2.016 \times WH_2}{10^2} + 18.01 \times (1 - K) + 28.01 \times \frac{\left[100 - \frac{WHC}{10^4} - WCO - WCO_2 - \frac{WNO_x}{10^4} - WH_2 - 100 \times (1 - K)\right]}{10^2}$$

* * * * *

Subpart G—[Amended]

15. Appendix A to Subpart G of part 91 is amended by revising Table 1 to read as follows:

Appendix A to Subpart G of Part 91—Sampling Plans for Selective Enforcement Auditing of Marine Engines

TABLE 1.—SAMPLING PLAN CODE LETTER

Annual engine family sales	Code letter
20–50	AA [1]

TABLE 1.—SAMPLING PLAN CODE LETTER—Continued

Annual engine family sales	Code letter
20–99	A [1]
100–299	B
300–499	C
500 or greater	D

[1] A manufacturer may optionally use either the sampling plan for code letter ''AA'' or sampling plan for code letter ''A'' for Selective Enforcement Audits of engine families with annual sales between 20 and 50 engines. Additional, the manufacturers may switch between these plans during the audit.

* * * * *

Subpart I—[Amended]

16. Section 91.803 is amended by revising paragraph (a) to read as follows:

§ 91.803 Manufacturer in-use testing program.

(a) EPA shall annually identify engine families and those configurations within families which the manufacturers must then subject to in-use testing. For each model year, EPA may identify the following number of engine families for testing, based on the number of the manufacturer's engine families to which this subpart is applicable produced in that model year:

(1) For manufactures with three or fewer engine families, EPA may identify a single engine family.

(2) For manufacturers with four or more engine families, EPA may identify a number of engine families that is no greater than twenty-five percent of the number of engine families to which this subpart is applicable that are produced by the manufacturer in that model year.

* * * * *

PART 94—CONTROL OF EMISSIONS FROM MARINE COMPRESSION-IGNITION ENGINES

17. The heading to part 94 is revised to read as set forth above.

18. The authority citation for part 94 continues to read as follows:

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—[Amended]

19. Section 94.1 is revised to read as follows:

§ 94.1 Applicability.

(a) Except as noted in paragraphs (b) and (c) of this section, the provisions of this part apply to manufacturers (including post-manufacture marinizers and dressers), rebuilders, owners and operators of:

(1) Marine engines that are compression-ignition engines manufactured (or that otherwise become new) on or after January 1, 2004;

(2) Marine vessels manufactured (or that otherwise become new) on or after January 1, 2004 and which include a compression-ignition marine engine.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply to three types of marine engines:

(1) Category 3 marine engines;

(2) Marine engines with rated power below 37 kW; or

(3) Marine engines on foreign vessels.

(c) The provisions of Subpart L of this part apply to everyone with respect to the engines identified in paragraph (a) of this section.

20. Section 94.2 is amended by revising paragraph (b) introductory text, removing the definition for ''Commercial marine engine'', revising definitions for ''Compression-ignition'', ''Designated officer'', ''Passenger'', ''Recreational marine engine'', ''Recreational vessel'', and ''United States'', and adding new definitions for ''Commercial'', ''Small-volume boat builder'', ''Small-volume manufacturer'', and ''Spark-ignition'' in alphabetical order to read as follows:

§ 94.2 Definitions.

* * * * *

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

* * * * *

Commercial means relating to an engine or vessel that is not a recreational marine engine or a recreational vessel.

* * * * *

Compression-ignition means relating to an engine that is not a spark-ignition engine.

* * * * *

Designated Officer means the Manager, Engine Programs Group (6403–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

* * * * *

Passenger has the meaning given by 46 U.S.C. 2101 (21) and (21a). In the context of commercial vessels, this generally means that a passenger is a person that pays to be on the vessel.

* * * * *

Recreational marine engine means a Category 1 propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel, and which is permanently labeled as follows: ''THIS ENGINE IS CATEGORIZED AS A RECREATIONAL MARINE ENGINE UNDER 40 CFR PART 94. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''.

Recreational vessel has the meaning given in 46 U.S.C. 2101 (25), but excludes ''passenger vessels'' and ''small passenger vessels'' as defined by 46 U.S.C. 2101 (22) and (35) and excludes vessels used solely for competition. In general, for this part, ''recreational vessel'' means a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure, excluding the following vessels:

(1) Vessels of less than 100 gross tons that carry more than 6 passengers (as defined in this section).

(2) Vessels of 100 gross tons or more that carry one or more passengers (as defined in this section).

(3) Vessels used solely for competition.

* * * * *

Small-volume boat builder means a boat manufacturer with fewer than 500 employees and with annual U.S.-directed production of fewer than 100 boats. For manufacturers owned by a parent company, these limits apply to the combined production and number of employees of the parent company and all its subsidiaries.

Small-volume manufacturer means a manufacturer with annual U.S.-directed production of fewer than 1,000 internal combustion engines (marine and nonmarine). For manufacturers owned by a parent company, the limit applies to the production of the parent company and all its subsidiaries.

Spark-ignition means relating to a gasoline-fueled engine or other engines with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

21. Section 94.7 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 94.7 General standards and requirements.

* * * * *

(c) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

(d) All engines subject to the emission standards of this part shall be equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use. Equivalent connections are allowed. Engine manufacturers may comply with this requirement by providing vessel manufacturers with clear instructions explaining how to meet this requirement, and noting in the instructions that failure to comply may

invalidate a certificate and subject the vessel manufacturer to federal penalties.

(e) Electronically controlled engines subject to the emission standards of this part shall broadcast on engine's controller area networks engine torque (as percent of maximum torque at that speed) and engine speed.

22. Section 94.8 is amended by revising paragraphs (a), (e), (f) introductory text, and (f)(1) to read as follows:

§ 94.8 Exhaust emission standards.

(a) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)

Engine size liters/cylinder, rated power	Category	Model year[a]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
Disp. < 0.9 and power ≥ 37 kW	Category 1, Commercial	2005	7.5	5.0	0.40
	Category 1, Recreational	2007	7.5	5.0	0.40
0.9 ≤ disp. < 1.2 All power levels	Category 1, Commercial	2004	7.2	5.0	0.30
	Category 1, Recreational	2006	7.2	5.0	0.30
1.2 ≤ disp. < 2.5 All power levels	Category 1, Commercial	2004	7.2	5.0	0.20
	Category 1, Recreational	2006	7.2	5.0	0.20
2.5 ≤ disp. < 5.0 All power levels	Category 1, Commercial	2007	7.2	5.0	0.20
	Category 1, Recreational	2009	7.2	5.0	0.20
5.0 ≤ disp. < 15.0 All power levels	Category 2	2007	7.8	5.0	0.27
15.0 ≤ disp. < 20.0 Power < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤ disp. < 20.0 Power < 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤ disp. < 25.0 All power levels	Category 2	2009	9.8	5.0	0.50
25.0 ≤ disp. < 30.0 All power levels	Category 2	2007	11.0	5.0	0.50

[a] The dates listed indicate the model years for which the specified standards start.

* * * * *

(e) Exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(1) *Commercial marine engines.* (i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed.

(ii) As an option, the manufacturer may choose to comply with limits of 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106, instead of the limits in paragraph (e)(1)(i) of this section.

(2) *Recreational marine engines.* (i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed and speeds less than 95 percent of maximum test speed, or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed, or 1.50 times the applicable standards (or FELs) at any loads for speeds greater than or equal to 95 percent of the maximum test speed.

(ii) As an option, the manufacturer may choose to comply with limits of 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106, instead of the limits in paragraph (e)(2)(i) of this section.

(f) The following defines the requirements for low-emitting Blue Sky Series engines:

(1) *Voluntary standards.* Engines may be designated ''Blue Sky Series'' engines through the 2012 model year by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing, as follows:

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated brake power (kW)	THC+NO_X	PM
Power ≥37 kW, and displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5	5.0	0.12
5≤displ.<15	5.0	0.16
15 ≤disp.< 20, and power < 3300 kW	5.2	0.30
15 ≤disp.< 20, and power ≥ 3300 kW	5.9	0.30
20 ≤disp.< 25	5.9	0.30
25 ≤disp.< 30	6.6	0.30

* * * * *

23. Section 94.9 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 94.9 Compliance with emission standards.

(a) The general standards and requirements in § 94.7 and the emission standards in § 94.8 apply to each new engine throughout its useful life period. The useful life is specified both in years and in hours of operation, and ends when either of the values (hours of operation or years) is exceeded.

(1) The minimum useful life is:

(i) 10 years or 1,000 hours of operation for recreational Category 1 engines;

(i) 10 years or 10,000 hours of operation for commercial Category 1 engines;

(iii) 10 years or 20,000 hours of operation for Category 2 engines.

* * * * *

24. Section 94.12 is amended by revising the introductory text and paragraphs (a), (b)(1), and (e) and adding new paragraphs (f) and (g) to read as follows:

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions apply instead of the other provisions of this part.

(a) *Compliance date of standards.* Certain companies may delay compliance with emission standards. Companies wishing to take advantage of this provision must inform the Designated Officer of their intent to do so in writing before the date that compliance with the standards would otherwise be mandatory.

(1) Post-manufacture marinizers may elect to delay the model year of the Tier 2 standards for commercial engines as specified in § 94.8 by one year for each engine family.

(2) Small-volume manufacturers may elect to delay the model year of the Tier 2 standards for recreational engines as specified in § 94.8 by five years for each engine family.

(b) *Early banking of emission credits.* (1) A manufacturer may optionally certify engines manufactured before the date the Tier 2 standards take effect to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part. Manufacturers may begin earning credits for recreational engines on December 9, 2002.

* * * * *

(e) *Compliance date of NTE requirements* (1) Notwithstanding the other provisions of this part, the requirements of § 94.8(e) for commercial marine engines start with 2010 model year engines for postmanufacture marinizers and 2007 model year engines for all other engine manufacturers.

(2) Notwithstanding the other provisions of this part, the requirements of § 94.8(e) for recreational marine engines start with 2012 model year engines for post-manufacture marinizers and 2009 model year engines for all other engine manufacturers.

(f) *Flexibility for small-volume boat builders.* Notwithstanding the other provisions of this part, manufacturers may sell uncertified recreational engines to small-volume boat builders during the first five years for which the emission standards in § 94.8 apply, subject to the following provisions:

(1) The U.S.-directed production volume of boats from any small-volume boat builder using uncertified engines during the total five-year period may not exceed 80 percent of the manufacturer's average annual production for the three years prior to the general applicability of the recreational engine standards in § 94.8, except as allowed in paragraph (f)(2) of this section.

(2) Small-volume boat builders may exceed the production limits in paragraph (f)(1) of this section, provided they do not exceed 20 boats during the five-year period or 10 boats in any single calendar year. This does not apply to boats powered by engines with displacement greater than 2.5 liters per cylinder.

(3) Small-volume boat builders must keep records of all the boats and engines produced under this paragraph (f), including boat and engine model numbers, serial numbers, and dates of manufacture. Records must also include information verifying compliance with the limits in paragraph (f)(1) or (f)(2) of this section. Keep these records until at least two full years after you no longer use the provisions in this paragraph (f).

(4) Manufacturers must add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this paragraph (f). This label must include at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(iv) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 94.12(f) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

(g) *Flexibility for engines over 560kW.* Notwithstanding the other provisions of this part, manufacturers may choose to delay certification of marine engines with less than 2.5 liters per cylinder and rated power above 560 kW, that are derived from a land-based nonroad engine with a rated power greater than 560 kW, if they do all of the following:

(1) Certify all of their applicable marine engines with less than 2.5 liters per cylinder and rated power above 560 kW to a NO_X standard of 6.4 g/kW-hr for model years 2008 through 2012.

(2) Notify EPA in writing before 2004 of their intent to use this provision. This notification must include a signed statement certifying that the manufacturer will comply with all the provisions of this paragraph (g).

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this paragraph (f). This label must include at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(iv) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 94.12(g) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

Subpart B—[Amended]

25. Section 94.104 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 94.104 Test procedures for Category 2 marine engines.

* * * * *

(c) Conduct testing at ambient temperatures from 13° C to 30° C.

* * * * *

26. Section 94.105 is amended by revising paragraph (b) text preceding Table B–1, revising ''#'' to read ''±'' in footnotes 1 and 2 in the tables in paragraphs (b), (c)(1), (c)(2), and (d)(1), and adding a new paragraph (e) to read as follows:

§ 94.105 Duty cycles.

* * * * *

(b) *General cycle.* Propulsion engines that are used with (or intended to be

used with) fixed-pitch propellers, and any other engines for which the other duty cycles of this section do not apply, shall be tested using the duty cycle described in the following Table B–1:

* * * * *

(e) *Recreational.* For the purpose of determining compliance with the emission standards of § 94.8, recreational engines shall be tested using the duty cycle described in Table B–5, which follows:

TABLE B–5.—RECREATIONAL MARINE DUTY CYCLE

Mode No.	Engine speed[1] (percent of maximum test speed)	Percent of maximum test power[2]	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.08
2	91	75	5.0	0.13
3	80	50	5.0	0.17
4	63	25	5.0	0.32
5	idle	0	5.0	0.30

[1] Engine speed: ±2 percent of point.
[2] Power: ±2 percent of engine maximum value.

27. Section 94.106 is amended by revising paragraphs (b) introductory text, (b)(1) introductory text, (b)(2) introductory text, (b)(3) introductory text, and (b)(4) and adding a new paragraph (b)(5) to read as follows:

§ 94.106 Supplemental test procedures.

* * * * *

(b) The specified Not to Exceed Zones for marine engines are defined as follows. These Not to Exceed Zones apply, unless a modified zone is established under paragraph (c) of this section.

(1) For commercial Category 1 engines certified using the duty cycle specified in § 94.105(b), the Not to Exceed zones are defined as follows:

* * * * *

(2) For Category 2 engines certified using the duty cycle specified in § 94.105(b), the Not to Exceed zones are defined as follows:

* * * * *

(3) For engines certified using the duty cycle specified in § 94.105(c)(2), the Not to Exceed zones are defined as follows:

* * * * *

(4) For engines certified using the duty cycle specified in § 94.105(c)(1), the Not to Exceed zone is defined as any load greater than or equal to 25 percent of maximum power at rated speed, and any speed at which the engine operates in use.

(5) For recreational marine engines certified using the duty cycle specified in § 94.105(e), the Not to Exceed zones are defined as follows:

(i) The Not to Exceed zone is the region between the curves power = 1.15 × SPD^2 and power = 0.85 × SPD^4, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

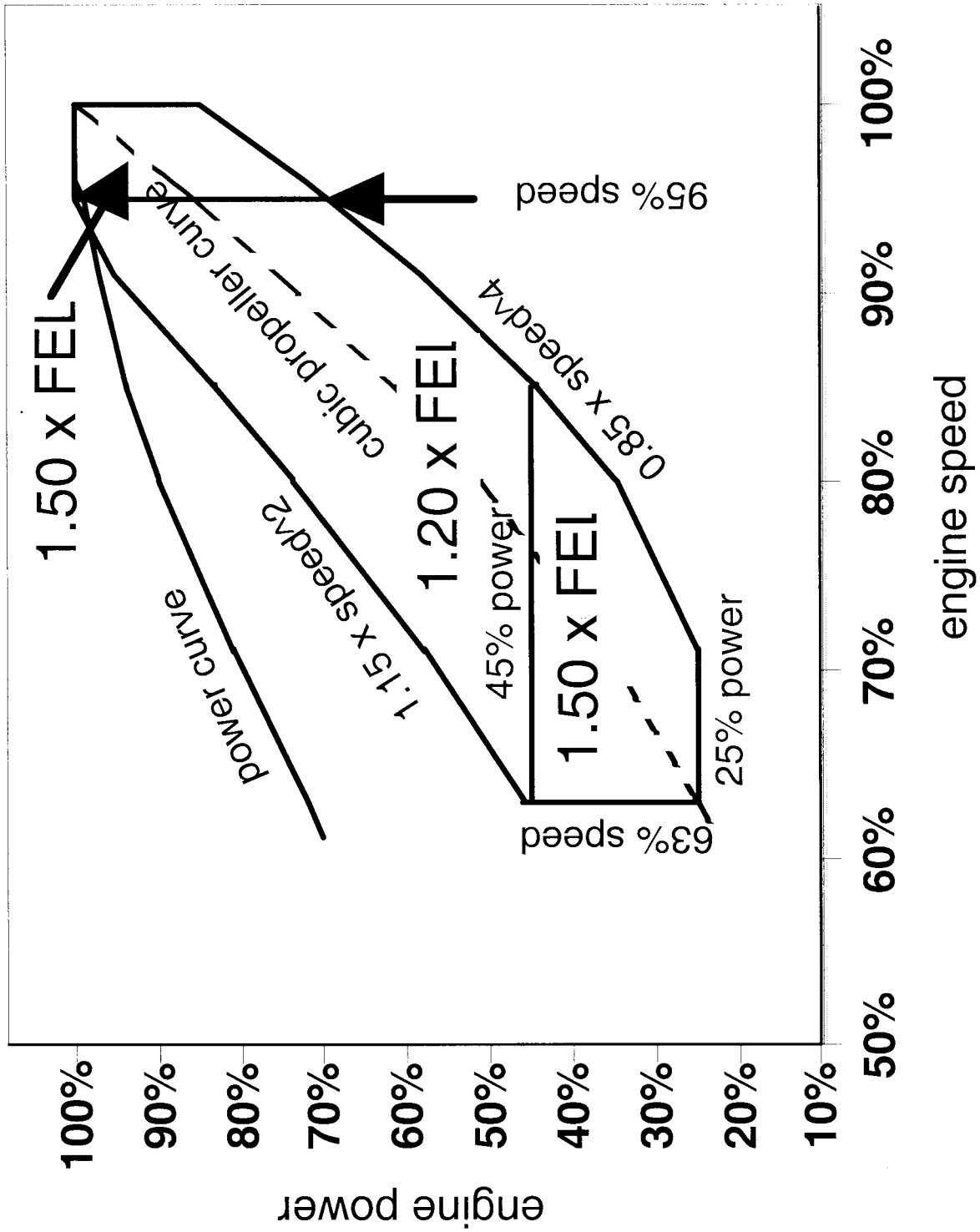
(ii) This zone is divided into three subzones, one below 45% of maximum power at maximum test speed; one above 95% of maximum test speed; and a third area including all of the remaining area of the NTE zone.

(iii) SPD in paragraph (b)(5)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B–4 for an illustration of this Not to Exceed zone as follows:

BILLING CODE 6560–50–P

Figure B-4



BILLING CODE 6560–50–C

28. Section 94.108 is amended in paragraph (a)(1) by revising footnote 1 in Table B–5 to read as follows:

§ 94.108 Test fuels.

(a) * * * (1) * * *

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS

* * * * * * *

[1] All ASTM procedures in this table have been incorporated by reference. See § 94.5.

* * * * * * *

* * * * *

Subpart C—[Amended]

29. Section 94.203 is amended by revising paragraphs (d)(14) and (d)(16) to read as follows:

§ 94.203 Application for certification.

* * * * *

(d) * * *

(14) A statement that all the engines included in the engine family comply with the Not To Exceed standards specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

* * * * *

(16) A statement indicating duty-cycle and application of the engine (e.g., used to propel planing vessels, use to propel vessels with variable-pitch propellers, constant-speed auxiliary, recreational, etc.).

* * * * *

30. Section 94.204 is amended by removing ''and'' at the end of paragraph (b)(9), adding ''; and'' at the end of paragraph (b)(10), adding a new paragraph (b)(11), and revising paragraph (e) to read as follows:

§ 94.204 Designation of engine families.

* * * * *

(b) * * *

(11) Class (commercial or recreational).

* * * * *

(e) Upon request by the manufacturer, the Administrator may allow engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer demonstrates that the engines will have similar emission characteristics; however, recreational and commercial engines may not be grouped in the same engine family. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

31. Section 94.209 is revised to read as follows:

§ 94.209 Special provisions for post-manufacture marinizers and small-volume manufacturers.

(a) *Broader engine families.* Instead of the requirements of § 94.204, an engine family may consist of any engines subject to the same emission standards. This does not change any of the requirements of this part for showing that an engine family meets emission standards. To be eligible to use the provisions of this paragraph (a), the manufacturer must demonstrate one of the following:

(1) It is a post-manufacture marinizer and that the base engines used for modification have a valid certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86.

(2) It is a small-volume manufacturer.

(b) *Hardship relief.* Post-manufacture marinizers, small-volume manufacturers, and small-volume boat builders may take any of the otherwise prohibited actions identified in § 94.1103(a)(1) if approved in advance by the Administrator, subject to the following requirements:

(1) Application for relief must be submitted to the Designated Officer in writing prior to the earliest date in which the applying manufacturer would be in violation of § 94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(3) The conditions causing the impending violation must jeopardize the solvency of the applying manufacturer if relief is not granted.

(4) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.

(5) Any relief may not exceed one year beyond the date relief is granted.

(6) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(7) The manufacturer must add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this paragraph (b).

This label must include at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(iv) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 94.209(b) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

(c) *Extension of deadlines.* Small-volume manufacturers may use the provisions of 40 CFR 1068.250 to ask for an extension of a deadline to meet emission standards. We may require that you use available base engines that have been certified to emission standards for land-based engines until you are able to produce engines certified to the requirements of this part.

32. Section 94.212 is amended by revising paragraph (b)(10) to read as follows:

§ 94.212 Labeling.

* * * * *

(b) *Engine labels.* * * *

(10) The application for which the engine family is certified. (For example: constant-speed auxiliary, variable-speed propulsion engines used with fixed-pitch propellers, recreational, etc.)

* * * * *

33. Section 94.218 is amended by adding a new paragraph (d)(2)(iv) to read as follows:

§ 94.218 Deterioration factor determination.

* * * * *

(d) * * *

(2) * * *

(iv) *Assigned deterioration factors.* Small-volume manufacturers may use deterioration factors established by EPA.

Subpart D—[Amended]

34. Section 94.304 is amended by revising paragraph (k) to read as follows:

§ 94.304 Compliance requirements.

* * * * *

(k) The following provisions limit credit exchanges between different types of engines:

(1) Credits generated by Category 1 engine families may be used for compliance by Category 1 or Category 2 engine families. Credits generated from Category 1 engine families for use by Category 2 engine families must be discounted by 25 percent.

(2) Credits generated by Category 2 engine families may be used for compliance only by Category 2 engine families.

(3) Credits may not be exchanged between recreational and commercial engines.

* * * * *

Subpart F—[Amended]

35. Section 94.501 is amended by revising paragraph (a) to read as follows:

§ 94.501 Applicability.

(a) The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of

Subpart A of this part, excluding small-volume manufacturers.

* * * * *

36. Section 94.503 is amended by adding a new paragraph (d) to read as follows:

§ 94.503 General requirements.

* * * * *

(d) If you certify an engine family with carryover emission data, as described in § 94.206(c), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to any number of model years. In determining whether to approve your request, we may consider the number of engines that have failed the emission tests.

Subpart J—[Amended]

37. Section 94.907 is amended by revising paragraphs (d) and (g) to read as follows:

§ 94.907 Engine dressing exemption.

* * * * *

(d) New marine engines that meet all the following criteria are exempt under this section:

(1) You must produce it by marinizing an engine covered by a valid certificate of conformity from one of the following programs:

(i) Heavy-duty highway engines (40 CFR part 86).

(ii) Land-based nonroad diesel engines (40 CFR part 89).

(iii) Locomotive engines (40 CFR part 92).

(2) The engine must have the label required under 40 CFR part 86, 89, or 92.

(3) You must not make any changes to the certified engine that could reasonably be expected to increase its emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for the engine dressing exemption:

(i) Changing any fuel system parameters from the certified configuration.

(ii) Replacing an original turbocharger, except that small-volume manufacturers of recreational engines may replace an original turbocharger with one that matches the performance of the original turbocharger.

(iii) Modify or design the marine engine cooling or aftercooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(4) You must make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in marine applications.

* * * * *

(g) If your engines do not meet the criteria listed in paragraphs (d)(2) through (d)(4) of this section, they will be subject to the standards and prohibitions of this part. Marinization without a valid exemption or certificate of conformity would be a violation of § 94.1103(a)(1) and/or the tampering prohibitions of the applicable land-based regulations (40 CFR part 86, 89, or 92).

* * * * *

Subpart L—[Amended]

38. Section 94.1103 is amended by revising paragraph (a)(5) to read as follows:

§ 94.1103 Prohibited acts.

(a) * * *

(5) For a manufacturer of marine vessels to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity applicable for an engine model year the same as or later than the calendar year in which the manufacture of the new vessel is initiated. This prohibition covers improper installation in a manner such that the installed engine would not be covered by the engine manufacturer's certificate. Improper installation would include, but is not limited to, failure to follow the engine manufacturer's instructions related to engine cooling, exhaust aftertreatment, emission sampling ports, or any other emission-related component, parameter, or setting. In general, you may use up your normal inventory of engines not certified to new emission standards if they were built before the date of the new standards. However, we consider stockpiling of these engines to be a violation of paragraph (a)(1)(i)(A) of this section. (Note: For the purpose of this paragraph (a)(5), the manufacture of a vessel is initiated when the keel is laid, or the vessel is at a similar stage of construction.)

* * * * *

39. A new subchapter U is added to chapter I, consisting of parts 1048, 1051, 1065, and 1068, to read as follows:

SUBCHAPTER U—AIR POLLUTION CONTROLS

PART 1048—CONTROL OF EMISSIONS FROM NEW, LARGE NONROAD SPARK-IGNITION ENGINES

Subpart A—Determining How to Follow This Part

Sec.
1048.1 Does this part apply to me?
1048.5 Which engines are excluded or exempted from this part's requirements?
1048.10 What main steps must I take to comply with this part?
1048.15 Do any other regulation parts affect me?
1048.20 What requirements from this part apply to my excluded engines?

Subpart B—Emission Standards and Related Requirements

1048.101 What exhaust emission standards must my engines meet?
1048.105 What evaporative emissions standards and requirements apply?
1048.110 How must my engines diagnose malfunctions?
1048.115 What other requirements must my engines meet?
1048.120 What warranty requirements apply to me?
1048.125 What maintenance instructions must I give to buyers?
1048.130 What installation instructions must I give to equipment manufacturers?
1048.135 How must I label and identify the engines I produce?
1048.140 What are the provisions for certifying Blue Sky Series engines?
1048.145 What provisions apply only for a limited time?

Subpart C—Certifying Engine Families

1048.201 What are the general requirements for submitting a certification application?
1048.205 What must I include in my application?
1048.210 May I get preliminary approval before I complete my application?
1048.215 What happens after I complete my application?
1048.220 How do I amend the maintenance instructions in my application?
1048.225 How do I amend my application to include new or modified engines?
1048.230 How do I select engine families?
1048.235 What emission testing must I perform for my application for a certificate of conformity?
1048.240 How do I demonstrate that my engine family complies with exhaust emission standards?
1048.245 How do I demonstrate that my engine family complies with evaporative emission standards?
1048.250 What records must I keep and make available to EPA?
1048.255 When may EPA deny, revoke, or void my certificate of conformity?

Subpart D—Testing Production-line Engines

1048.301 When must I test my production-line engines?

1048.305 How must I prepare and test my production-line engines?
1048.310 How must I select engines for production-line testing?
1048.315 How do I know when my engine family fails the production-line testing requirements?
1048.320 What happens if one of my production-line engines fails to meet emission standards?
1048.325 What happens if an engine family fails the production-line requirements?
1048.330 May I sell engines from an engine family with a suspended certificate of conformity?
1048.335 How do I ask EPA to reinstate my suspended certificate?
1048.340 When may EPA revoke my certificate under this subpart and how may I sell these engines again?
1048.345 What production-line testing records must I send to EPA?
1048.350 What records must I keep?

Subpart E—Testing In-use Engines

1048.401 What testing requirements apply to my engines that have gone into service?
1048.405 How does this program work?
1048.410 How must I select, prepare, and test my in-use engines?
1048.415 What happens if in-use engines do not meet requirements?
1048.420 What in-use testing information must I report to EPA?
1048.425 What records must I keep?

Subpart F—Test Procedures

1048.501 What procedures must I use to test my engines?
1048.505 What steady-state duty cycles apply for laboratory testing?
1048.510 What transient duty cycles apply for laboratory testing?
1048.515 Field-testing procedures.

Subpart G—Compliance Provisions

1048.601 What compliance provisions apply to these engines?
1048.605 What are the provisions for exempting engines from the requirements of this part if they are already certified under the motor-vehicle program?
1048.610 What are the provisions for producing nonroad equipment with engines already certified under the motor-vehicle program?
1048.615 What are the provisions for exempting engines designed for lawn and garden applications?
1048.620 What are the provisions for exempting large engines fueled by natural gas?
1048.625 What special provisions apply to engines using noncommercial fuels?

Subpart H—[Reserved]

Subpart I—Definitions and Other Reference Information

1048.801 What definitions apply to this part?
1048.805 What symbols, acronyms, and abbreviations does this part use?
1048.810 What materials does this part reference?
1048.815 How should I request EPA to keep my information confidential?
1048.820 How do I request a hearing?
Appendix I to Part 1048—Large Spark-ignition (SI) Transient Cycle for Constant-Speed Engines
Appendix II to Part 1048—Large Spark-ignition (SI) Composite Transient Cycle

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Determining How to Follow This Part

§ 1048.1 Does this part apply to me?

(a) This part applies to you if you manufacture or import new, spark-ignition, nonroad engines (defined in § 1048.801) with maximum brake power above 19 kW, unless we exclude them under § 1048.5. See § 1048.20 for the requirements that apply to excluded engines.

(b) If you manufacture or import engines with maximum brake power at or below 19 kW that would otherwise be covered by 40 CFR part 90, you may choose to meet the requirements of this part instead. In this case, all the provisions of this part apply for those engines.

(c) As noted in subpart G of this part, 40 CFR part 1068 applies to everyone, including anyone who manufactures, installs, owns, operates, or rebuilds any of the engines this part covers or equipment containing these engines.

(d) You need not follow this part for engines you produce before January 1, 2004, unless you certify voluntarily. See §§ 1048.101 through 1048.115 and § 1048.145 and the definition of model year in § 1048.801 for more information about the timing of new requirements.

(e) See §§ 1048.801 and 1048.805 for definitions and acronyms that apply to this part. The definition section contains significant regulatory provisions and it is very important that you read them.

§ 1048.5 Which engines are excluded or exempted from this part's requirements?

(a) This part does not apply to the following nonroad engines:

(1) Engines certified to meet the requirements of 40 CFR part 1051 (for example, engines used in snowmobiles and all-terrain vehicles).

(2) Propulsion marine engines. See 40 CFR part 91. This part applies with respect to auxiliary marine engines.

(b) See subpart G of this part and 40 CFR part 1068, subpart C, for exemptions of specific engines.

(c) Send the Designated Officer a written request if you want us to determine whether this part covers or excludes certain engines. Excluding engines from this part's requirements does not affect other requirements that may apply to them.

Note: See 40 CFR part 87 for engines used in aircraft.)

(d) As defined in § 1048.801, stationary engines are not required to comply with this part (because they are not nonroad engines), except that you must meet the requirements in § 1048.20. In addition, the prohibitions in 40 CFR 1068.101 restrict the use of stationary engines for non-stationary purposes.

§ 1048.10 What main steps must I take to comply with this part?

(a) You must have a certificate of conformity from us for each engine family before you do any of the following with a new nonroad engine covered by this part: sell, offer for sale, introduce into commerce, distribute or deliver for introduction into commerce, or import it into the United States. ''New'' engines may include some already placed in service (see the definition of ''new nonroad engine'' and ''new nonroad equipment'' in § 1048.801). You must get a new certificate of conformity for each new model year.

(b) To get a certificate of conformity and comply with its terms, you must do six things:

(1) Meet the emission standards and other requirements in subpart B of this part.

(2) Perform preproduction emission tests.

(3) Apply for certification (see subpart C of this part).

(4) Do routine emission testing on production engines as required by subpart D of this part.

(5) Do emission testing on in-use engines, as we direct under subpart E of this part.

(6) Follow our instructions throughout this part.

(c) Subpart F of this part describes how to test your engines (including references to other parts).

(d) Subpart G of this part and 40 CFR part 1068 describe requirements and prohibitions that apply to engine manufacturers, equipment manufacturers, owners, operators, rebuilders, and all others.

§ 1048.15 Do any other regulation parts affect me?

(a) Part 1065 of this chapter describes procedures and equipment specifications for testing engines. Subpart F of this part describes how to apply the provisions of part 1065 of this chapter to show you meet the emission standards in this part.

(b) Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited acts and penalties for engine manufacturers, equipment manufacturers, and others.

(2) Rebuilding and other aftermarket changes.

(3) Exclusions and exemption for certain engines.

(4) Importing engines.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for hearings.

(c) Other parts of this chapter affect you if referenced in this part.

§ 1048.20 What requirements from this part apply to my excluded engines?

(a) Engine manufacturers producing an engine excluded under § 1048.5(d) must add a permanent label or tag identifying each engine. This applies equally to importers. To meet labeling requirements, you must do the following things:

(1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.

(2) Make sure it is durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Instruct equipment manufacturers that they must place a duplicate label as described in 40 CFR 1068.105 if they obscure the engine's label.

(b) Engine labels or tags required under this section must have the following information:

(1) Include the heading ''Emission Control Information''.

(2) Include your full corporate name and trademark.

(3) State the engine displacement (in liters) and maximum brake power.

(4) State: ''THIS ENGINE IS EXCLUDED FROM THE REQUIREMENTS OF 40 CFR PART 1048 AS A ''STATIONARY ENGINE.'' INSTALLING OR USING THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''.

Subpart B—Emission Standards and Related Requirements

§ 1048.101 What exhaust emission standards must my engines meet?

Apply the exhaust emission standards in this section by model year. You may choose to certify engines earlier than we require. The Tier 1 standards apply only to steady-state testing, as described in paragraph (b) of this section. The Tier 2 standards apply to steady-state, transient, and field testing, as described in paragraphs (a), (b), and (c) of this section.

(a) *Standards for transient testing.* Starting in the 2007 model year, Tier 2 exhaust emission standards apply for transient measurement of emissions with the duty-cycle test procedures in subpart F of this part:

(1) The Tier 2 $HC+NO_X$ standard is 2.7 g/kW-hr and the Tier 2 CO standard is 4.4 g/kW-hr. For severe-duty engines, the Tier 2 $HC+NO_X$ standard is 2.7 g/kW-hr and the Tier 2 CO standard is 130.0 g/kW-hr. The standards in this paragraph (a) do not apply for transient testing of high-load engines.

(2) You may optionally certify your engines according to the following formula instead of the standards in paragraph (a)(1) of this section: $(HC+NO_X) \times CO^{0.784} \leq 8.57$. The $HC+NO_X$ and CO emission levels you select to satisfy this formula, rounded to the nearest 0.1 g/kW-hr, become the emission standards that apply for those engines. You may not select an $HC+NO_X$ emission standard higher than 2.7 g/kW-hr or a CO emission standard higher than 20.6 g/kW-hr. The following table illustrates a range of possible values under this paragraph (a)(2):

TABLE 1 OF § 1048.101.—EXAMPLES OF POSSIBLE TIER 2 DUTY-CYCLE EMISSION STANDARDS

$HC+NO_X$ (g/kW-hr)	CO (g/kW-hr)
2.7	4.4
2.2	5.6
1.7	7.9
1.3	11.1
1.0	15.5
0.8	20.6

(b) *Standards for steady-state testing.* Except as we allow in paragraph (d) of this section, the following exhaust emission standards apply for steady-state measurement of emissions with the duty-cycle test procedures in subpart F of this part:

(1) The following table shows the Tier 1 exhaust emission standards that apply to engines from 2004 through 2006 model years:

TABLE 2 OF § 1048.101.—TIER 1 EMISSION STANDARDS (G/KW-HR)

Testing	General emission standards		Alternate emission standards for severe-duty engines	
	$HC+NO_X$	CO	$HC+NO_X$	CO
Certification and production-line testing	4.0	50.0	4.0	130.0
In-use testing	5.4	50.0	5.4	130.0

(2) Starting in the 2007 model year, engines must meet the Tier 2 exhaust emission standards in paragraph (a) of this section for both steady-state and transient testing. See paragraph (d) of this section for alternate standards that apply for certain engines.

(c) *Standards for field testing.* Starting in 2007, the following Tier 2 exhaust emission standards apply for emission measurements with the field-testing procedures in subpart F of this part:

(1) The $HC+NO_X$ standard is 3.8 g/kW-hr and the CO standard is 6.5 g/kW-hr. For severe-duty engines, the $HC+NO_X$ standard is 3.8 g/kW-hr and the CO standard is 200.0 g/kW-hr. For natural gas-fueled engines, you are not required to measure nonmethane hydrocarbon emissions or total hydrocarbon emissions for testing to show that the engine meets the emission standards of this paragraph (c); that is, you may assume HC emissions are equal to zero.

(2) You may apply the following formula to determine alternate emission standards that apply to your engines instead of the standards in paragraph (c)(1) of this section: $(HC+NO_X) \times CO^{0.791} \leq 16.78$. $HC+NO_X$ emission levels may not exceed 3.8 g/kW-hr and CO emission levels may not exceed 31.0 g/kW-hr. The following table illustrates a range of possible values under this paragraph (c)(2):

TABLE 3 OF § 1048.101.—EXAMPLES OF POSSIBLE TIER 2 FIELD-TESTING EMISSION STANDARDS

$HC+NO_X$ (g/kW-hr)	CO (g/kW-hr)
3.8	6.5
3.1	8.5
2.4	11.7
1.8	16.8
1.4	23.1
1.1	31.0

(d) *Engine protection.* For engines that require enrichment at high loads to protect the engine, you may ask to meet alternate Tier 2 standards of 2.7 g/kW-hr for $HC+NO_X$ and 31.0 g/kW-hr for CO instead of the emission standards described in paragraph (b)(2) of this section for steady-state testing. If we approve your request, you must still meet the transient testing standards in paragraph (a) of this section and the field-testing standards in paragraph (c) of this section. To qualify for this allowance, you must do all the following things:

(1) Show that enrichment is necessary to protect the engine from damage.

(2) Show that you limit enrichment to operating modes that require additional cooling to protect the engine from damage.

(3) Show in your application for certification that enrichment will rarely occur in use in the equipment in which your engines are installed. For example, an engine that is expected to operate 5 percent of the time in use with enrichment would clearly not qualify.

(4) Include in your installation instructions any steps necessary for someone installing your engines to prevent enrichment during normal operation (see § 1048.130).

(e) *Fuel types.* Apply the exhaust emission standards in this section for engines using each type of fuel specified in 40 CFR part 1065, subpart C, for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for engines powered by the following fuels:

(1) Gasoline- and LPG-fueled engines: THC emissions.

(2) Natural gas-fueled engines: NMHC emissions.

(3) Alcohol-fueled engines: THCE emissions.

(f) *Small engines.* Certain engines with total displacement at or below 1000 cc may comply with the requirements of 40 CFR part 90 instead of complying with the requirements of this part, as described in § 1048.615.

(g) *Useful life.* Your engines must meet the exhaust emission standards in paragraphs (a) through (c) of this section over their full useful life (§ 1048.240 describes how to use deterioration factors to show this). The minimum useful life is 5,000 hours of operation or seven years, whichever comes first.

(1) Specify a longer useful life in hours for an engine family under either of two conditions:

(i) If you design, advertise, or market your engine to operate longer than the minimum useful life (your recommended hours until rebuild may indicate a longer design life).

(ii) If your basic mechanical warranty is longer than the minimum useful life.

(2) You may request a shorter useful life for an engine family if you have documentation from in-use engines showing that these engines will rarely operate longer than the alternate useful life. The useful life value may not be shorter than any of the following:

(i) 1,000 hours of operation.

(ii) Your recommended overhaul interval.

(iii) Your mechanical warranty for the engine.

(h) *Applicability for testing.* The standards in this subpart apply to all testing, including production-line and in-use testing, as described in subparts D and E of this part.

§ 1048.105 What evaporative emissions standards and requirements apply?

(a) Starting in the 2007 model year, engines that run on a volatile liquid fuel (such as gasoline), must meet the following evaporative emissions standards and requirements:

(1) Evaporative hydrocarbon emissions may not exceed 0.2 grams per gallon of fuel tank capacity when measured with the test procedures for evaporative emissions in subpart F of this part.

(2) For nonmetallic fuel lines, you must specify and use products that meet the Category 1 specifications in SAE J2260 (incorporated by reference in § 1048.810).

(3) Liquid fuel in the fuel tank may not reach boiling during continuous engine operation in the final installation at an ambient temperature of 30° C. Note that gasoline with a Reid vapor pressure of 62 kPa (9 psi) begins to boil at about 53° C.

(b) Note that § 1048.245 allows you to use design-based certification instead of generating new emission data.

(c) If other companies install your engines in their equipment, give them any appropriate instructions, as described in § 1048.130.

§ 1048.110 How must my engines diagnose malfunctions?

(a) *Equip your engines with a diagnostic system.* Starting in the 2007 model year, equip each engine with a diagnostic system that will detect significant malfunctions in its emission-control system using one of the following protocols:

(1) If your emission-control strategy depends on maintaining air-fuel ratios at stoichiometry, an acceptable diagnostic design would identify malfunction whenever the air-fuel ratio does not cross stoichiometry for one minute of intended closed-loop operation. You may use other diagnostic strategies if we approve them in advance.

(2) If the protocol described in paragraph (a)(1) of this section does not apply to your engine, you must use an alternative approach that we approve in advance. Your alternative approach must generally detect when the emission-control system is not functioning properly.

(b) *Use a malfunction-indicator light (MIL).* The MIL must be readily visible to the operator; it may be any color except red. When the MIL goes on, it must display ''Check Engine,'' ''Service Engine Soon,'' or a similar message that we approve. You may use sound in addition to the light signal. The MIL must go on under each of these circumstances:

(1) When a malfunction occurs, as described in paragraph (a) of this section.

(2) When the diagnostic system cannot send signals to meet the requirement of paragraph (b)(1) of this section.

(3) When the engine's ignition is in the ''key-on'' position before starting or cranking. The MIL should go out after engine starting if the system detects no malfunction.

(c) *Control when the MIL can go out.* If the MIL goes on to show a malfunction, it must remain on during all later engine operation until servicing corrects the malfunction. If the engine is not serviced, but the malfunction does not recur for three consecutive engine starts during which the malfunctioning system is evaluated and found to be working properly, the MIL may stay off during later engine operation.

(d) *Store trouble codes in computer memory.* Record and store in computer memory any diagnostic trouble codes showing a malfunction that should illuminate the MIL. The stored codes must identify the malfunctioning system or component as uniquely as possible. Make these codes available through the data link connector as described in

paragraph (g) of this section. You may store codes for conditions that do not turn on the MIL. The system must store a separate code to show when the diagnostic system is disabled (from malfunction or tampering).

(e) *Make data, access codes, and devices accessible.* Make all required data accessible to us without any access codes or devices that only you can supply. Ensure that anyone servicing your engine can read and understand the diagnostic trouble codes stored in the onboard computer with generic tools and information.

(f) *Consider exceptions for certain conditions.* Your diagnostic systems may disregard trouble codes for the first three minutes after engine starting. You may ask us to approve diagnostic-system designs that disregard trouble codes under other conditions that would produce an unreliable reading, damage systems or components, or cause other safety risks. This might include operation at altitudes over 8,000 feet.

(g) *Follow standard references for formats, codes, and connections.* Follow conventions defined in the following documents (incorporated by reference in § 1048.810) or ask us to approve using updated versions of (or variations from) these documents:

(1) ISO 9141–2 Road vehicles-Diagnostic systems—Part 2: CARB requirements for interchange of digital information, February 1994.

(2) ISO 14230–4 Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems, June 2000.

§ 1048.115 What other requirements must my engines meet?

Your engines must meet the following requirements:

(a) *Closed crankcase.* Your engines may not vent crankcase emissions into the atmosphere throughout their useful life, with the following exception: your engines may vent crankcase emissions if you measure and include these crankcase emissions with all measured exhaust emissions.

(b) *Torque broadcasting.* Electronically controlled engines must broadcast their speed and output shaft torque (in newton-meters) on their controller area networks. Engines may alternatively broadcast a surrogate value for torque that can be read with a remote device. This information is necessary for testing engines in the field (see 40 CFR 1065.515). This requirement applies beginning in the 2007 model year. Small-volume engine manufacturers may omit this requirement.

(c) *EPA access to broadcast information.* If we request it, you must provide us any hardware or tools we would need to readily read, interpret, and record all information broadcast by an engine's on-board computers and electronic control modules. If you broadcast a surrogate parameter for torque values, you must provide us what we need to convert these into torque units. We will not ask for hardware or tools if they are readily available commercially.

(d) *Emission sampling capability.* Produce all your engines to allow sampling of exhaust emissions in the field without damaging the engine or equipment. Show in your application for certification how this can be done in a way that prevents diluting the exhaust sample with ambient air. To do this, you might simply allow for extending the exhaust pipe by 20 cm; you might also install exhaust ports downstream of any aftertreatment devices.

(e) *Adjustable parameters.* Engines that have adjustable parameters must meet all the requirements of this part for any adjustment in the physically adjustable range.

(1) We do not consider an operating parameter adjustable if you permanently seal it or if ordinary tools cannot readily access it.

(2) We may require that you set adjustable parameters to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or any in-use testing.

(f) *Prohibited controls.* You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

(g) *Defeat devices.* You may not equip your engines with a defeat device. A defeat device is an auxiliary emission-control device that reduces the effectiveness of emission controls under conditions you may reasonably expect the engine to encounter during normal operation and use. This does not apply to auxiliary emission-control devices you identify in your certification application if any of the following is true:

(1) The conditions of concern were substantially included in your prescribed duty cycles.

(2) You show your design is necessary to prevent catastrophic engine (or equipment) damage or accidents.

(3) The reduced effectiveness applies only to starting the engine.

§ 1048.120 What warranty requirements apply to me?

(a) *General requirements.* You must warrant to the ultimate buyer that the new nonroad engine meets two conditions:

(1) It is designed, built, and equipped it to conform at the time of sale with the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) *Warranty period.* Your emission-related warranty must be valid for at least 50 percent of the engine's useful life in hours of operation or at least three years, whichever comes first. In the case of a high-cost warranted part, the warranty must be valid for at least 70 percent of the engine's useful life in hours of operation or at least five years, whichever comes first. You may offer an emission-related warranty more generous than we require. This warranty may not be shorter than any published or negotiated warranty you offer for the engine or any of its components. If an engine has no hour meter, we base the warranty periods in this paragraph (b) only on the engine's age (in years).

(c) *Components covered.* The emission-related warranty must cover components whose failure would increase an engine's emissions, including electronic controls, fuel injection (for liquid or gaseous fuels), exhaust-gas recirculation, aftertreatment, or any other system you develop to control emissions. We generally consider replacing or repairing other components to be the owner's responsibility.

(d) *Scheduled maintenance.* You may schedule emission-related maintenance for a component named in paragraph (c) of this section, subject to the restrictions of § 1048.125. You are not required to cover this scheduled maintenance under your warranty if the component meets either of the following criteria:

(1) The component was in general use on similar engines, and was subject to scheduled maintenance, before January 1, 2000.

(2) Failure of the component would clearly degrade the engine's performance enough that the operator would need to repair or replace it.

(e) *Limited applicability.* You may deny warranty claims under this section if the operator caused the problem, as described in 40 CFR 1068.115.

(f) *Aftermarket parts.* As noted 40 CFR 1068.101, it is a violation of the Act to manufacture an engine part if one of its main effects is to reduce the

effectiveness of the engine's emission controls. If you make an aftermarket part, you may—but do not have to—certify that using the part will still allow engines to meet emission standards, as described in 40 CFR 85.2114.

§ 1048.125 What maintenance instructions must I give to buyers?

Give the ultimate buyer of each new nonroad engine written instructions for properly maintaining and using the engine, including the emission-control system. The maintenance instructions also apply to service accumulation on your test engines, as described in 40 CFR part 1065, subpart E.

(a) *Critical emission-related maintenance*. Critical emission-related maintenance includes any adjustment, cleaning, repair, or replacement of air-induction, fuel-system, or ignition components, aftertreatment devices, exhaust gas recirculation systems, crankcase ventilation valves, sensors, or electronic control units. This may also include any other component whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance. You may schedule critical emission-related maintenance on these components if you meet the following conditions:

(1) You may ask us to approve critical emission-related maintenance only if it meets two criteria:

(i) Operators are reasonably likely to do the maintenance you call for.

(ii) Engines need the maintenance to meet emission standards.

(2) We will accept scheduled maintenance as reasonably likely to occur in use if you satisfy any of four conditions:

(i) You present data showing that, if a lack of maintenance increases emissions, it also unacceptably degrades the engine's performance.

(ii) You present survey data showing that 80 percent of engines in the field get the maintenance you specify at the recommended intervals.

(iii) You provide the maintenance free of charge and clearly say so in maintenance instructions for the customer.

(iv) You otherwise show us that the maintenance is reasonably likely to be done at the recommended intervals.

(3) You may not schedule critical emission-related maintenance more frequently than the following intervals, except as specified in paragraph (a)(4) of this section:

(i) For catalysts, fuel injectors, electronic control units, superchargers, and turbochargers: the useful life of the engine family.

(ii) For gaseous fuel-system components (cleaning without disassembly only) and oxygen sensors: 2,500 hours.

(4) If your engine family has an alternate useful life shorter than the period specified in paragraph (a)(3)(ii) of this section, you may not schedule maintenance on those components more frequently than the alternate useful life (*see* § 1048.101(g)).

(b) *Recommended additional maintenance*. You may recommend any additional amount of maintenance on the components listed in paragraph (a) of this section, as long as you make clear that these maintenance steps are not necessary to keep the emission-related warranty valid. If operators do the maintenance specified in paragraph (a) of this section, but not the recommended additional maintenance, this does not allow you to disqualify them from in-use testing or deny a warranty claim.

(c) *Special maintenance*. You may specify more frequent maintenance to address problems related to special situations such as substandard fuel or atypical engine operation. For example, you may specify more frequent cleaning of fuel system components for engines you have reason to believe will be using fuel that causes substantially more engine performance problems than commercial fuels of the same type that are generally available across the United States.

(d) *Noncritical emission-related maintenance*. For engine parts not listed in paragraph (a) of this section, you may schedule any amount of emission-related inspection or maintenance. But you must state clearly that these steps are not necessary to keep the emission-related warranty valid. Also, do not take these inspection or maintenance steps during service accumulation on your test engines.

(e) *Maintenance that is not emission-related*. For maintenance unrelated to emission controls, you may schedule any amount of inspection or maintenance. You may also take these inspection or maintenance steps during service accumulation on your test vehicles or engines. This might include adding engine oil or changing air, fuel, or oil filters.

(f) *Source of parts and repairs*. Print clearly on the first page of your written maintenance instructions that any repair shop or person may maintain, replace, or repair emission-control devices and systems. Your instructions may not require components or service identified by brand, trade, or corporate name. Also, do not directly or indirectly condition your warranty on a requirement that the vehicle be serviced by your franchised dealers or any other service establishments with which you have a commercial relationship. You may disregard the requirements in this paragraph (f) if you do one of two things:

(1) Provide a component or service without charge under the purchase agreement.

(2) Get us to waive this prohibition in the public's interest by convincing us the engine will work properly only with the identified component or service.

§ 1048.130 What installation instructions must I give to equipment manufacturers?

(a) If you sell an engine for someone else to install in a piece of nonroad equipment, give the buyer of the engine written instructions for installing it consistent with the requirements of this part. Include all information necessary to ensure that engines installed this way will meet emission standards.

(b) Make sure these instructions have the following information:

(1) Include the heading: ''Emission-related installation instructions''.

(2) State: ''Failing to follow these instructions when installing a certified engine in a piece of nonroad equipment violates federal law (40 CFR 1068.105(b)), subject to fines or other penalties as described in the Clean Air Act.''.

(3) Describe any other instructions needed to install an exhaust aftertreatment device and to locate exhaust sampling ports consistent with your application for certification.

(4) Describe the steps needed to control evaporative emissions, as described in §§ 1048.105 and 1048.245.

(5) Describe any necessary steps for installing the diagnostic system described in § 1048.110.

(6) Describe any limits on the range of applications needed to ensure that the engine operates consistently with your application for certification. For example, if your engines are certified only for constant-speed operation, tell equipment manufacturers not to install the engines in variable-speed applications. Also, if you need to avoid sustained high-load operation to meet the field-testing emission standards we specify in § 1048.101(c) or to comply with the provisions of § 1048.101(d), describe how the equipment manufacturer must properly size the engines for a given application.

(7) Describe any other instructions to make sure the installed engine will operate according to design specifications in your application for certification.

(8) State: ''If you install the engine in a way that makes the engine's emission

control information label hard to read during normal engine maintenance, you must place a duplicate label on the vehicle, as described in 40 CFR 1068.105.''.

(c) You do not need installation instructions for engines you install in your own equipment.

§ 1048.135 How must I label and identify the engines I produce?

(a) Assign each production engine a unique identification number and permanently and legibly affix, engrave, or stamp it on the engine.

(b) At the time of manufacture, add a permanent emission control information label identifying each engine. To meet labeling requirements, do four things:

(1) Attach the label in one piece so it is not removable without being destroyed or defaced.

(2) Design and produce it to be durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(c) On your engine's emission control information label, do 13 things:

(1) Include the heading ''EMISSION CONTROL INFORMATION''.

(2) Include your full corporate name and trademark.

(3) State: ''THIS ENGINE IS CERTIFIED TO OPERATE ON [specify operating fuel or fuels].''.

(4) Identify the emission-control system; your identifiers must use names and abbreviations consistent with SAE J1930 (incorporated by reference in § 1048.810).

(5) List all requirements for fuel and lubricants.

(6) State the date of manufacture (DAY (optional), MONTH, and YEAR); if you stamp this information on the engine and print it in the owner's manual, you may omit it from the emission control information label.

(7) State: ''THIS ENGINE MEETS U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR (MODEL YEAR) LARGE NONROAD SI ENGINES.''.

(8) Include EPA's standardized designation for the engine family (and subfamily, where applicable).

(9) State the engine's displacement (in liters) and maximum brake power.

(10) State the engine's useful life (see § 1048.101(g)).

(11) List specifications and adjustments for engine tuneups; show the proper position for the transmission during tuneup and state which accessories should be operating.

(12) Describe other information on proper maintenance and use.

(13) Identify the emission standards to which you have certified the engine.

(d) Some of your engines may need more information on the emission control information label.

(1) If you have an engine family that has been certified only for constant-speed engines, add to the engine label ''CONSTANT-SPEED ONLY''.

(2) If you have an engine family that has been certified only for variable-speed engines, add to the engine label ''VARIABLE-SPEED ONLY''.

(3) If you have an engine family that has been certified only for high-load engines, add to the engine label ''THIS ENGINE IS NOT INTENDED FOR OPERATION AT LESS THAN 75 PERCENT OF FULL LOAD.''.

(4) If you certify an engine to the voluntary standards in § 1048.140, add to the engine label ''BLUE SKY SERIES''.

(5) If you produce an engine we exempt from the requirements of this part, see subpart G of this part and 40 CFR part 1068, subparts C and D, for more label information.

(6) If you certify an engine family under § 1048.101(d) (and show in your application for certification that in-use engines will experience infrequent high-load operation), add to the engine label ''THIS ENGINE IS NOT INTENDED FOR OPERATION AT MORE THAN __ PERCENT OF FULL LOAD.''. Specify the appropriate percentage of full load based on the nature of the engine protection. You may add other statements to discourage operation in engine-protection modes.

(e) Some engines may not have enough space for an emission control information label with all the required information. In this case, you may omit the information required in paragraphs (c)(3), (c)(4), (c)(5), and (c)(12) of this section if you print it in the owner's manual instead.

(f) If you are unable to meet these labeling requirements, you may ask us to modify them consistent with the intent of this section.

§ 1048.140 What are the provisions for certifying Blue Sky Series engines?

This section defines voluntary standards for a recognized level of superior emission control for engines designated as ''Blue Sky Series'' engines. Blue Sky Series engines must meet one of the following standards:

(a) For the 2003 model year, to receive a certificate of conformity, a ''Blue Sky Series'' engine family must meet all the requirements in this part that apply to 2004 model year engines. This includes all testing and reporting requirements.

(b) For the 2003 through 2006 model years, to receive a certificate of conformity, a ''Blue Sky Series'' engine family must meet all the requirements in this part that apply to 2007 model year engines. This includes all testing and reporting requirements.

(c) For any model year, to receive a certificate of conformity as a ''Blue Sky Series'' engine family must meet all the requirements in this part, while certifying to the following exhaust emission standards:

(1) 0.8 g/kW-hr $HC+NO_X$ and 4.4 g/kW-hr CO using steady-state and transient test procedures, as described in subpart F of this part.

(2) 1.1 g/kW-hr $HC+NO_X$ and 6.6 g/kW-hr CO using field-testing procedures, as described in subpart F of this part.

(d) If you certify an engine family under this section, it is subject to all the requirements of this part as if these voluntary standards were mandatory.

§ 1048.145 What provisions apply only for a limited time?

The provisions in this section apply instead of other provisions in this part. This section describes when these interim provisions expire.

(a) *Family banking.* You may certify an engine family to comply with Tier 1 or Tier 2 standards earlier than necessary. For each model year of early compliance for an engine family, you may delay compliance with the same standards for an equal number of engines from another engine family (or families) for one model year. If you certify engines under the voluntary standards of § 1048.140, you may not use them in your calculation under this paragraph (a). Base your calculation on actual power-weighted nationwide sales for each family. You may delay compliance for up to three model years. For example, if you sell 1,000 engines with an average power rating of 60 kW certified a year early, you may delay certification to that tier of standards for up to 60,000 kW-engine-years in any of the following ways:

(1) Delay certification of another engine family with an average power rating of 100 kW of up to 600 engines for one model year.

(2) Delay certification of another engine family with an average power rating of 100 kW of up to 200 engines for three model years.

(3) Delay certification of one engine family with an average power rating of 100 kW of up to 400 engines for one model year and a second engine family with an average power rating of 200 kW of up to 50 engines for two model years.

(b) *Hydrocarbon standards.* For 2004 through 2006 model years, engine manufacturers may use nonmethane

hydrocarbon measurements to demonstrate compliance with applicable emission standards.

(c) *Transient emission testing.* Engines rated over 560 kW are exempt from the transient emission standards in § 1048.101(a).

(d) *Tier 1 deterioration factors.* For Tier 1 engines, base the deterioration factor from § 1048.240 on 3500 hours of operation. We may assign a deterioration factor for a Tier 1 engine family, but this would not affect your need to meet all emission standards that apply.

(e) [Reserved]

(f) *Optional early field testing.* You may optionally use the field-testing procedures in subpart F of this part for any in-use testing required under subpart E of this part to show that you meet Tier 1 standards. In this case, the same Tier 1 in-use emission standards apply to both steady-state testing in the laboratory and field testing.

(g) *Small-volume provisions.* If you qualify for the hardship provisions in § 1068.250 of this chapter, we may approve extensions of up to four years total.

(h) *2004 certification.* For the 2004 model year, you may choose to have the emission standards and other requirements that apply to these engines in California serve as the emission standards and other requirements applicable under this part, instead of those in subpart A of this part. To ask for a certificate under this paragraph (h), send us the application for certification that you prepare for the California Air Resources Board instead of the information we otherwise require in § 1048.205.

(i) *Recreational vehicles.* Engines or vehicles identified in the scope of 40 CFR part 1051 that are not yet regulated under that part are excluded from the requirements of this part. For example, snowmobiles produced in 2004 are not subject to the emission standards in this part. Once emission standards apply to these engines and vehicles, they are excluded from the requirements of this part under § 1048.5(a)(1).

Subpart C—Certifying Engine Families

§ 1048.201 What are the general requirements for submitting a certification application?

(a) Send us an application for a certificate of conformity for each engine family. Each application is valid for only one model year.

(b) The application must not include false or incomplete statements or information (see § 1048.255).

(c) We may choose to ask you to send us less information than we specify in this subpart, but this would not change your recordkeeping requirements.

(d) Use good engineering judgment for all decisions related to your application (see 40 CFR 1068.5).

(e) An authorized representative of your company must approve and sign the application.

§ 1048.205 What must I include in my application?

In your application, do all the following things unless we ask you to send us less information:

(a) Describe the engine family's specifications and other basic parameters of the engine's design. List the types of fuel you intend to use to certify the engine family (for example, gasoline, liquefied petroleum gas, methanol, or natural gas).

(b) Explain how the emission-control systems operate.

(1) Describe in detail all the system components for controlling exhaust emissions, including auxiliary emission-control devices and all fuel-system components you will install on any production or test engine. Explain why any auxiliary emission-control devices are not defeat devices (see § 1048.115(g)). Do not include detailed calibrations for components unless we ask for them.

(2) Describe the evaporative emission controls.

(c) Explain how the engine diagnostic system works, describing especially the engine conditions (with the corresponding diagnostic trouble codes) that cause the malfunction-indicator light to go on. Propose what you consider to be extreme conditions under which the diagnostic system should disregard trouble codes, as described in § 1048.110.

(d) Describe the engines you selected for testing and the reasons for selecting them.

(e) Describe any special or alternate test procedures you used (see § 1048.501).

(f) Describe how you operated the engine or vehicle prior to testing, including the duty cycle and the number of engine operating hours used to stabilize emission levels. Describe any scheduled maintenance you did.

(g) List the specifications of the test fuel to show that it falls within the required ranges we specify in 40 CFR part 1065, subpart C.

(h) Identify the engine family's useful life.

(i) Propose maintenance and use instructions for the ultimate buyer of each new nonroad engine (see § 1048.125).

(j) Propose emission-related installation instructions if you sell engines for someone else to install in a piece of nonroad equipment (see § 1048.130).

(k) Identify each high-cost warranted part and show us how you calculated its replacement cost, including the estimated retail cost of the part, labor rates, and labor hours to diagnose and replace defective parts.

(l) Propose an emission control information label.

(m) Present emission data to show that you meet emission standards.

(1) Present exhaust emission data for HC, NO_X, and CO on a test engine to show your engines meet the duty-cycle emission standards we specify in § 1048.101(a) and (b). Show these figures before and after applying deterioration factors for each engine. Starting in the 2007 model year, identify the duty-cycle emission standards to which you are certifying engines in the engine family. Include test data for each type of fuel from 40 CFR part 1065, subpart C, on which you intend for engines in the engine family to operate (for example, gasoline, liquefied petroleum gas, methanol, or natural gas). If we specify more than one grade of any fuel type (for example, a summer grade and winter grade of gasoline), you only need to submit test data for one grade, unless the regulations of this part specify otherwise for your engine. Note that § 1048.235 allows you to submit an application in certain cases without new emission data.

(2) If your engine family includes a volatile liquid fuel (and you do not use design-based certification under § 1048.245) present evaporative test data to show your vehicles meet the evaporative emission standards we specify in subpart B of this part. Show these figures before and after applying deterioration factors, where applicable.

(n) Report all test results, including those from invalid tests or from any nonstandard tests (such as measurements based on exhaust concentrations in parts per million).

(o) Identify the engine family's deterioration factors and describe how you developed them. Present any emission test data you used for this.

(p) Describe all adjustable operating parameters (see § 1048.115(e)), including the following:

(1) The nominal or recommended setting.

(2) The intended physically adjustable range, including production tolerances if they affect the range.

(3) The limits or stops used to establish adjustable ranges.

(q) Describe everything we need to read and interpret all the information broadcast by an engine's onboard

computers and electronic control modules and state that you will give us any hardware or tools we would need to do this. You may reference any appropriate publicly released standards that define conventions for these messages and parameters. Format your information consistent with publicly released standards.

(r) State whether your engine will operate in variable-speed applications, constant-speed applications, or both. If your certification covers only constant-speed or only variable-speed applications, describe how you will prevent use of these engines in the applications for which they are not certified.

(s) Starting in the 2007 model year, state that all the engines in the engine family comply with the field-testing emission standards we specify in § 1048.101(c) for all normal operation and use (see § 1048.515). Describe in detail any testing, engineering analysis, or other information on which you base this statement.

(t) State that you operated your test engines according to the specified procedures and test parameters using the fuels described in the application to show you meet the requirements of this part.

(u) State unconditionally that all the engines in the engine family comply with the requirements of this part, other referenced parts, and the Clean Air Act.

(v) Include estimates of U.S.-directed production volumes.

(w) Show us how to modify your production engines to measure emissions in the field (see § 1048.115(d)).

(x) Add other information to help us evaluate your application if we ask for it.

§ 1048.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations listed in § 1048.215(b)(1) through (7). Decisions made under this section are considered to be preliminary approval. We will generally not disapprove applications under § 1048.215(b)(1) through (5) where we have given you preliminary approval, unless we find new and substantial information supporting a different decision.

(a) If you request preliminary approval related to the upcoming model year or the model year after that, we will make a ''best-efforts'' attempt to make the appropriate determinations as soon as possible. We will generally not provide preliminary approval related to a future model year more than two years ahead of time.

(b) You may consider full compliance with published guidance to be preliminary approval only if the guidance includes a statement that we intend you to consider it as such.

§ 1048.215 What happens after I complete my application?

(a) If any of the information in your application changes after you submit it, amend it as described in § 1048.225.

(b) We may deny your application (that is, determine that we cannot approve it without revision) if the engine family does not meet the requirements of this part or the Act. For example:

(1) If you inappropriately use the provisions of § 1048.230(c) or (d) to define a broader or narrower engine family, we will require you to redefine your engine family.

(2) If we determine you did not appropriately select the useful life under § 1048.101(g), we will require you to lengthen it.

(3) If we determine you did not appropriately select deterioration factors under § 1048.240(c), we will require you to revise them.

(4) If your diagnostic system is inadequate for detecting significant malfunctions in emission-control systems, as described in § 1048.110(b), we will require you to make the system more effective.

(5) If your diagnostic system inappropriately disregards trouble codes under certain conditions, as described in § 1048.110(f), we will require you to change the system to operate under broader conditions.

(6) If your proposed emission control information label is inconsistent with § 1048.135, we will require you to change it (and tell you how, if possible).

(7) If you require or recommend maintenance and use instructions inconsistent with § 1048.125, we will require you to change them.

(8) If we find any other problem with your application, we will tell you what the problem is and what needs to be corrected.

(c) If we determine your application is complete and shows that the engine family meets all the requirements of this part and the Act, we will issue a certificate of conformity for your engine family for that model year. If we deny the application, we will explain why in writing. You may then ask us to hold a hearing to reconsider our decision (see § 1048.820).

§ 1048.220 How do I amend the maintenance instructions in my application?

Send the Designated Officer a request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions.

(a) If you are decreasing the specified level of maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified level of maintenance, you may distribute the new maintenance instructions anytime after you send your request.

(c) If you are correcting or clarifying your maintenance instructions or if you are changing instructions for maintenance unrelated to emission controls, the requirements of this section do not apply.

§ 1048.225 How do I amend my application to include new or modified engines?

(a) You must amend your application for certification before you take either of the following actions:

(1) Add an engine to a certificate of conformity (this includes any changes you make in selecting emission standards under § 1048.205(m)(1)).

(2) Make a design change for a certified engine family that may affect emissions or an emission-related part over the engine's lifetime.

(b) Send the Designated Officer a request to amend the application for certification for an engine family. In your request, do all of the following:

(1) Describe the engine model or configuration you are adding or changing.

(2) Include engineering evaluations or reasons why the original test engine is or is not still appropriate.

(3) If the original test engine for the engine family is not appropriate to show compliance for the new or modified nonroad engine, include new test data showing that the new or modified nonroad engine meets the requirements of this part.

(c) You may start producing the new or modified nonroad engine anytime after you send us your request. If we determine that the affected engines do not meet applicable requirements, we will require you to cease production of the engines and to recall and correct the engines at no expense to the owner. If

you choose to produce engines under this paragraph (c), we will consider that to be consent to recall all engines that we determine do not meet applicable standards or other requirements and to remedy the nonconformity at no expense to the owner.

(d) You must give us test data within 30 days if we ask for more testing, or stop producing the engine if you cannot do this. You may give us an engineering evaluation instead of test data if we agree that you can address our questions without test data.

(e) If we determine that the certificate of conformity would not cover your new or modified nonroad engine, we will send you a written explanation of our decision. In this case, you may no longer produce these engines, though you may ask for a hearing for us to reconsider our decision (see § 1048.820).

§ 1048.230 How do I select engine families?

(a) Divide your product line into families of engines that you expect to have similar emission characteristics. Your engine family is limited to a single model year.

(b) Group engines in the same engine family if they are the same in all of the following aspects:

(1) The combustion cycle.

(2) The cooling system (water-cooled vs. air-cooled).

(3) Configuration of the fuel system (for example, fuel injection vs. carburetion).

(4) Method of air aspiration.

(5) The number, location, volume, and composition of catalytic converters.

(6) The number, arrangement, and approximate bore diameter of cylinders.

(7) Evaporative emission controls.

(c) In some cases you may subdivide a group of engines that is identical under paragraph (b) of this section into different engine families. To do so, you must show you expect emission characteristics to be different during the useful life or that any of the following engine characteristics are different:

(1) Method of actuating intake and exhaust timing (poppet valve, reed valve, rotary valve, etc.).

(2) Location or size of intake and exhaust valves or ports.

(3) Configuration of the combustion chamber.

(4) Cylinder stroke.

(5) Exhaust system.

(6) Type of fuel.

(d) If your engines are not identical with respect to the things listed in paragraph (b) of this section, but you show that their emission characteristics during the useful life will be similar, we may approve grouping them in the same engine family.

(e) If you cannot appropriately define engine families by the method in this section, we will define them based on features related to emission characteristics.

(f) You may ask us to create separate families for exhaust emissions and evaporative emissions. If we do this, list both families on the emission control information label.

(g) Where necessary, you may divide an engine family into sub-families to meet different emission standards, as specified in § 1048.101(a)(2). For issues related to compliance and prohibited actions, we will generally apply decisions to the whole engine family. For engine labels and other administrative provisions, we may approve your request for separate treatment of sub-families.

§ 1048.235 What emission testing must I perform for my application for a certificate of conformity?

This section describes the emission testing you must perform to show compliance with the emission standards in §§ 1048.101(a) and (b) and 1048.105 during certification. See § 1048.205(s) regarding emission testing related to the field-testing emission standards.

(a) Test your emission-data engines using the procedures and equipment specified in subpart F of this part. For any testing related to evaporative emissions, use good engineering judgment to include a complete fuel system with the engine.

(b) Select engine families according to the following criteria:

(1) For exhaust testing, select from each engine family a test engine for each fuel type with a configuration that is most likely to exceed the exhaust emission standards, using good engineering judgment. Consider the emission levels of all exhaust constituents over the full useful life of the engine when operated in a piece of equipment.

(2) For evaporative testing, select from each engine family a test fuel system for each fuel type with a configuration that is most likely to exceed the evaporative emission standards, using good engineering judgment.

(c) You may use previously generated emission data in either of the following cases:

(1) You may submit emission data for equivalent engine families from previous years instead of doing new tests, but only if the data show that the test engine would meet all the requirements for the latest engine models. We may require you to do new emission testing if we believe the latest engine models could be substantially different from the previously tested engine.

(2) You may submit emission data for equivalent engine families performed to show compliance with other standards (such as California standards) instead of doing new tests, but only if the data show that the test engine would meet all of this part's requirements.

(d) We may choose to measure emissions from any of your test engines (or other engines from the engine family).

(1) If we do this, you must provide the test engine at the location we select. We may decide to do the testing at your plant or any other facility. If we choose to do the testing at your plant, you must schedule it as soon as possible and make available the instruments and equipment we need.

(2) If we measure emissions on one of your test engines, the results of that testing become the official data for the engine. Unless we later invalidate this data, we may decide not to consider your data in determining if your engine family meets the emission standards.

(3) Before we test one of your engines, we may set its adjustable parameters to any point within the physically adjustable ranges (see § 1048.115(e)).

(4) Calibrate the test engine within normal production tolerances for anything we do not consider an adjustable parameter (see § 1048.205(p)).

§ 1048.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For certification, your engine family is considered in compliance with the numerical emission standards in § 1048.101 (a) and (b), if all emission-data engines representing that family have test results showing emission levels at or below these standards.

(b) Your engine family does not comply if any emission-data engine representing that family has test results showing emission levels above the standards from § 1048.101 (a) and (b) for any pollutant.

(c) To compare emission levels from the test engine with the emission standards, apply deterioration factors to the measured emission levels. The deterioration factor is a number that shows the relationship between exhaust emissions at the end of useful life and at the low-hour test point. Specify the deterioration factors based on emission measurements using four significant figures, consistent with good engineering judgment. For example, deterioration factors must be consistent with emission increases observed from in-use testing with similar engines (*see* subpart E of this part). Small-volume

engine manufacturers may use assigned deterioration factors that we establish. Apply the deterioration factors as follows:

(1) For engines that use aftertreatment technology, such as catalytic converters, the deterioration factor is the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low-hour test point. Adjust the official emission results for each tested engine at the selected test point by multiplying the measured emissions by the deterioration factor. If the factor is less than one, use one.

(2) For engines that do not use aftertreatment technology, the deterioration factor is the difference between exhaust emissions at the end of useful life and exhaust emissions at the low-hour test point. Adjust the official emission results for each tested engine at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test engine.

§ 1048.245 How do I demonstrate that my engine family complies with evaporative emission standards?

(a) For certification, your engine family is considered in compliance with the evaporative emission standards in subpart B of this part if you do either of the following:

(1) You have test results showing that evaporative emissions in the family are at or below the standards throughout the useful life.

(2) Where applicable, you comply with the design specifications in paragraph (e) of this section.

(b) Your engine family does not comply if any fuel system representing that family has test results showing emission levels above the standards.

(c) Use good engineering judgment to develop a test plan to establish deterioration factors to show how much emissions increase at the end of useful life.

(d) If you adjust the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test fuel system.

(e) You may demonstrate that your engine family complies with the evaporative emission standards by demonstrating that you use the following control technologies:

(1) For certification to the standards specified in § 1048.105(a)(1), with the following technologies:

(i) Use a tethered or self-closing gas cap on a fuel tank that stays sealed up to a positive pressure of 24.5 kPa (3.5 psig) or a vacuum pressure of 10.5 kPa (1.5 psig).

(ii) [Reserved]

(2) For certification to the standards specified in § 1048.105(a)(3), demonstrating that you use design features to prevent fuel boiling under all normal operation. You may do this using fuel temperature data measured during normal operation.

(3) We may establish additional options for design-based certification where we find that new test data demonstrate that a technology will ensure compliance with the emission standards in this section.

§ 1048.250 What records must I keep and make available to EPA?

(a) Organize and maintain the following records to keep them readily available; we may review these records at any time:

(1) A copy of all applications and any summary information you sent us.

(2) Any of the information we specify in § 1048.205 that you did not include in your application.

(3) A detailed history of each emission-data engine. In each history, describe all of the following:

(i) The test engine's construction, including its origin and buildup, steps you took to ensure that it represents production engines, any components you built specially for it, and all emission-related components.

(ii) How you accumulated engine operating hours, including the dates and the number of hours accumulated.

(iii) All maintenance (including modifications, parts changes, and other service) and the dates and reasons for the maintenance.

(iv) All your emission tests, including documentation on routine and standard tests, as specified in part 40 CFR part 1065, and the date and purpose of each test.

(v) All tests to diagnose engine or emission-control performance, giving the date and time of each and the reasons for the test.

(vi) Any other significant events.

(b) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for eight years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them.

(d) Send us copies of any engine maintenance instructions or explanations if we ask for them.

§ 1048.255 When may EPA deny, revoke, or void my certificate of conformity?

(a) We may deny your application for certification if your engine family fails to comply with emission standards or other requirements of this part or the Act. Our decision may be based on any information available to us showing you do not meet emission standards or other requirements, including any testing that we conduct under paragraph (f) of this section. If we deny your application, we will explain why in writing.

(b) In addition, we may deny your application or revoke your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information (paragraph (d) of this section applies if this is fraudulent).

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities despite our presenting a warrant or court order (see 40 CFR 1068.20).

(5) Produce engines for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(c) We may void your certificate if you do not keep the records we require or do not give us information when we ask for it.

(d) We may void your certificate if we find that you intentionally submitted false or incomplete information.

(e) If we deny your application or revoke or void your certificate, you may ask for a hearing (see § 1048.820). Any such hearing will be limited to substantial and factual issues.

(f) We may conduct confirmatory testing of your engines as part of certification. We may deny your application for certification or revoke your certificate if your engines fail to comply with emission standards or other requirements during confirmatory testing.

Subpart D—Testing Production-line Engines

§ 1048.301 When must I test my production-line engines?

(a) If you produce engines that are subject the requirements of this part, you must test them as described in this subpart.

(b) We may suspend or revoke your certificate of conformity for certain engine families if your production-line engines do not meet the requirements of this part or you do not fulfill your

obligations under this subpart (see §§ 1048.325 and 1048.340).

(c) Other requirements apply to engines that you produce. Other regulatory provisions authorize us to suspend, revoke, or void your certificate of conformity, or order recalls for engines families without regard to whether they have passed these production-line testing requirements. The requirements of this part do not affect our ability to do selective enforcement audits, as described in part 1068 of this chapter. Individual engines in families that pass these production-line testing requirements must also conform to all applicable regulations of this part and part 1068 of this chapter.

(d) You may ask to use an alternate program for testing production-line engines. In your request, you must show us that the alternate program gives equal assurance that your production-line engines meet the requirements of this part. If we approve your alternate program, we may waive some or all of this subpart's requirements.

(e) If you certify an engine family with carryover emission data, as described in § 1048.235(c), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to any number of model years. In determining whether to approve your request, we may consider the number of engines that have failed the emission tests.

(f) We may ask you to make a reasonable number of production-line engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part.

§ 1048.305 How must I prepare and test my production-line engines?

(a) *Test procedures.* Test your production-line engines using either the steady-state or transient testing procedures in subpart F of this part to show you meet the emission standards in § 1048.101(a) or (b), respectively. We may require you to test engines using the transient testing procedures to show you meet the emission standards in § 1048.101(a).

(b) *Modifying a test engine.* Once an engine is selected for testing (see § 1048.310), you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production engines and make the action routine for all the engines in the engine family.

(2) This subpart otherwise specifically allows your action.

(3) We approve your action in advance.

(c) *Engine malfunction.* If an engine malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.

(d) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed only until the engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines.

(e) *Stabilizing emission levels.* Before you test production-line engines, you may operate the engine to stabilize the emission levels. Using good engineering judgment, operate your engines in a way that represents the way production engines will be used. You may operate each engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated your emission-data engine for certifying the engine family (see 40 CFR part 1065, subpart E).

(f) *Damage during shipment.* If shipping an engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the engine. Report to us, in your written report under § 1048.345, all adjustments or repairs you make on test engines before each test.

(g) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

§ 1048.310 How must I select engines for production-line testing?

(a) Use test results from two engines for each engine family to calculate the required sample size for the model year. Update this calculation with each test.

(b) Early in each calendar quarter, randomly select and test two engines from the end of the assembly line for each engine family.

(c) Calculate the required sample size for each engine family. Separately calculate this figure for $HC+NO_X$ and for CO. The required sample size is the greater of these two calculated values. Use the following equation:

$$N = \left[\frac{(t_{95} \times \sigma)}{(x - STD)}\right]^2 + 1$$

Where:

N = Required sample size for the model year.

t_{95} = 95% confidence coefficient, which depends on the number of tests completed, n, as specified in the table in paragraph (c)(1) of this section. It defines 95% confidence intervals for a one-tail distribution.

x = Mean of emission test results of the sample.

STD = Emission standard.

σ = Test sample standard deviation (see paragraph (c)(2) of this section).

(1) Determine the 95% confidence coefficient, t_{95}, from the following table:

n	t_{95}	n	t_{95}	n	t_{95}
2	6.31	12	1.80	22	1.72
3	2.92	13	1.78	23	1.72
4	2.35	14	1.77	24	1.71
5	2.13	15	1.76	25	1.71
6	2.02	16	1.75	26	1.71
7	1.94	17	1.75	27	1.71
8	1.90	18	1.74	28	1.70
9	1.86	19	1.73	29	1.70

n	t_{95}	n	t_{95}	n	t_{95}
10	1.83	20	1.73	30+	1.70
11	1.81	21	1.72		

(2) Calculate the standard deviation, σ, for the test sample using the following formula:

$$\sigma = \sqrt{\frac{\sum (X_i - x)^2}{n-1}}$$

Where:

X_i = Emission test result for an individual engine.

n = The number of tests completed in an engine family.

(d) Use final deteriorated test results to calculate the variables in the equations in paragraph (c) of this section (see § 1048.315(a)).

(e) After each new test, recalculate the required sample size using the updated mean values, standard deviations, and the appropriate 95-percent confidence coefficient.

(f) Distribute the remaining engine tests evenly throughout the rest of the year. You may need to adjust your schedule for selecting engines if the required sample size changes. Continue to randomly select engines from each engine family; this may involve testing engines that operate on different fuels.

(g) Continue testing any engine family for which the sample mean, x, is greater than the emission standard. This applies if the sample mean for either $HC+NO_X$ or for CO is greater than the emission standard. Continue testing until one of the following things happens:

(1) The sample size, n, for an engine family is greater than the required sample size, N, and the sample mean, x, is less than or equal to the emission standard. For example, if N = 3.1 after the third test, the sample-size calculation does not allow you to stop testing.

(2) The engine family does not comply according to § 1048.325.

(3) You test 30 engines from the engine family.

(4) You test one percent of your projected annual U.S.-directed production volume for the engine family.

(5) You choose to declare that the engine family does not comply with the requirements of this subpart.

(h) If the sample-size calculation allows you to stop testing for a pollutant, you must continue measuring emission levels of that pollutant for any additional tests required under this section. However, you need not continue making the calculations specified in this section for that pollutant. This paragraph (h) does not affect the requirements in section § 1048.320.

(i) You may elect to test more randomly chosen engines than we require. Include these engines in the sample-size calculations.

§ 1048.315 How do I know when my engine family fails the production-line testing requirements?

This section describes the pass/fail criteria for the production-line testing requirements. We apply this criteria on an engine-family basis. See § 1048.320 for the requirements that apply to individual engines that fail a production-line test.

(a) Calculate your test results. Round them to the number of decimal places in the emission standard expressed to one more decimal place.

(1) *Initial and final test results.* Calculate and round the test results for each engine. If you do several tests on an engine, calculate the initial test results, then add them together and divide by the number of tests and round for the final test results on that engine.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (see § 1048.240(c)).

(b) Construct the following CumSum Equation for each engine family (for $HC+NO_X$ and for CO emissions):

$$C_i = C_{i-1} + X_i - (STD + 0.25 \times \sigma)$$

Where:

C_i = The current CumSum statistic.

C_{i-1} = The previous CumSum statistic. For the first test, CumSum statistic is 0 (*i.e.* $C_1 = 0$).

X_i = The current emission test result for an individual engine.

STD = Emission standard.

(c) Use final deteriorated test results to calculate the variables in the equation in paragraph (b) of this section (see § 1048.315(a)).

(d) After each new test, recalculate the CumSum statistic.

(e) If you test more than the required number of engines, include the results from these additional tests in the CumSum Equation.

(f) After each test, compare the current CumSum statistic, C_i, to the recalculated Action Limit, H, defined as $H = 5.0 \times \sigma$.

(g) If the CumSum statistic exceeds the Action Limit in two consecutive tests, the engine family fails the production-line testing requirements of this subpart. Tell us within ten working days if this happens.

(h) If you amend the application for certification for an engine family (see § 1048.225), do not change any previous calculations of sample size or CumSum statistics for the model year.

§ 1048.320 What happens if one of my production-line engines fails to meet emission standards?

If you have a production-line engine with final deteriorated test results exceeding one or more emission standards (see § 1048.315(a)), the certificate of conformity is automatically suspended for that failing engine. You must take the following actions before your certificate of conformity can cover that engine:

(a) Correct the problem and retest the engine to show it complies with all emission standards.

(b) Include in your written report a description of the test results and the remedy for each engine (see § 1048.345).

§ 1048.325 What happens if an engine family fails the production-line requirements?

(a) We may suspend your certificate of conformity for an engine family if it fails under § 1048.315. The suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family fails. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing (see § 1048.820). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

(d) Section § 1048.335 specifies steps you must take to remedy the cause of the production-line failure. All the engines you have produced since the end of the last test period are presumed noncompliant and should be addressed in your proposed remedy. We may require you to apply the remedy to engines produced earlier if we determine that the cause of the failure is likely to have affected the earlier engines.

§ 1048.330 May I sell engines from an engine family with a suspended certificate of conformity?

You may sell engines that you produce after we suspend the engine family's certificate of conformity under § 1048.315 only if one of the following occurs:

(a) You test each engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected engines and remedy any noncompliance at no expense to the owner if later testing shows that the engine family still does not comply.

§ 1048.335 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for noncompliance, propose a remedy for the engine family, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing that shows the remedied engine family complies with all the emission standards that apply.

§ 1048.340 When may EPA revoke my certificate under this subpart and how may I sell these engines again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails to comply with the requirements of this subpart and your proposed remedy to address a suspended certificate under § 1048.325 is inadequate to solve the problem or requires you to change the engine's design or emission-control system.

(b) To sell engines from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the requirements of this part.

(1) If we determine your proposed design change may not control emissions for the engine's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1048.345 What production-line testing records must I send to EPA?

Do all the following things unless we ask you to send us less information:

(a) Within 30 calendar days of the end of each calendar quarter, send us a report with the following information:

(1) Describe any facility used to test production-line engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe how you randomly selected engines.

(4) Describe your test engines, including the engine family's identification and the engine's model year, build date, model number, identification number, and number of hours of operation before testing for each test engine.

(5) Identify where you accumulated hours of operation on the engines and describe the procedure and schedule you used.

(6) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(7) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of equipment.

(8) Provide the CumSum analysis required in § 1048.315 for each engine family.

(9) Report on each failed engine as described in § 1048.320.

(10) State the date the calendar quarter ended for each engine family.

(b) We may ask you to add information to your written report, so we can determine whether your new nonroad engines conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

> We submit this report under Sections 208 and 213 of the Clean Air Act. Our production-line testing conformed completely with the requirements of 40 CFR part 1048. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production engines. All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send electronic reports of production-line testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. See § 1048.815 for information on how we treat information you consider confidential.

§ 1048.350 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your production-line testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1048.345.

(d) Keep the following additional records:

(1) A description of all test equipment for each test cell that you can use to test production-line engines.

(2) The names of supervisors involved in each test.

(3) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test engine and the names of all supervisors who oversee this work.

(4) If you shipped the engine for testing, the date you shipped it, the associated storage or port facility, and the date the engine arrived at the testing facility.

(5) Any records related to your production-line tests that are not in the written report.

(6) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(7) Any information specified in § 1048.345 that you do not include in your written reports.

(e) If we ask, you must give us projected or actual production figures for an engine family. We may ask you to divide your production figures by maximum brake power, displacement, fuel type, or assembly plant (if you produce engines at more than one plant).

(f) Keep a list of engine identification numbers for all the engines you produce under each certificate of conformity. Give us this list within 30 days if we ask for it.

(g) We may ask you to keep or send other information necessary to implement this subpart.

Subpart E—Testing In-use Engines

§ 1048.401 What testing requirements apply to my engines that have gone into service?

(a) If you produce engines that are subject to the requirements of this part, you must test them as described in this subpart. This generally involves testing engines in the field or removing them for measurement in a laboratory.

(b) We may approve an alternate plan for showing that in-use engines comply with the requirements of this part if one of the following is true:

(1) You produce 200 or fewer engines per year in the selected engine family.

(2) Removing the engine from most of the applications for that engine family causes significant, irreparable damage to the equipment.

(3) You identify a unique aspect of your engine applications that keeps you from doing the required in-use testing.

(c) We may void your certificate of conformity for an engine family if you do not meet your obligations under this part.

(d) Independent of your responsibility to test in-use engines, we may choose at any time to do our own testing of your in-use engines.

(e) If in-use testing shows that engines fail to meet emission standards or other requirements of this part, we may pursue a recall or other remedy as allowed by the Act (see § 1048.415).

§ 1048.405 How does this program work?

(a) You must test in-use engines, for exhaust emissions, from the families we select. We may select up to 25 percent of your engine families in any model year—or one engine family if you have three or fewer families. We will select engine families for testing before the end of the model year. When we select an engine family for testing, we may specify that you preferentially test engines based on fuel type or equipment type. In addition, we may identify specific modes of operation or sampling times. You may choose to test additional engine families that we do not select.

(b) Send us an in-use testing plan within 12 calendar months after we direct you to test a particular engine family. Complete the testing within 24 calendar months after we approve your plan.

(c) You may need to test engines from more than one model year at a given time.

§ 1048.410 How must I select, prepare, and test my in-use engines?

(a) You may make arrangements to select representative test engines from your own fleet or from other independent sources.

(b) For the selected engine families, select engines that you or your customers have—

(1) Operated for at least 50 percent of the engine family's useful life (see § 1048.101(d));

(2) Not maintained or used in an abnormal way; and

(3) Documented in terms of total hours of operation, maintenance, operating conditions, and storage.

(c) Use the following methods to determine the number of engines you must test in each engine family:

(1) Test at least two engines if you produce 2,000 or fewer engines in the model year from all engine families, or if you produce 500 or fewer engines from the selected engine family. Otherwise, test at least four engines.

(2) If you successfully complete an in-use test program on an engine family and later certify an equivalent engine family with carryover emission data, as described in § 1048.235(c), then test at least one engine instead of the testing rates in paragraph (c)(1) of this section.

(3) If you test the minimum required number of engines and all comply fully with emission standards, you may stop testing.

(4) For each engine that fails any applicable standard, test two more. Regardless of measured emission levels, you do not have to test more than ten engines in an engine family. You may do more tests than we require.

(5) You may concede that the engine family does not comply before testing a total of ten engines.

(d) You may do minimal maintenance to set components of a test engine to specifications for anything we do not consider an adjustable parameter (see § 1048.205(p)). Limit maintenance to what is in the owner's instructions for engines with that amount of service and age. Document all maintenance and adjustments.

(e) Do at least one valid exhaust emission test for each test engine.

(f) For a test program on an engine family, choose one of the following methods to test your engines:

(1) Remove the selected engines for testing in a laboratory. Use the applicable steady-state and transient procedures in subpart F of this part to show compliance with the duty-cycle standards in § 1048.101(a) and (b). We may direct you to measure emissions on the dynamometer using the supplemental test procedures in § 1048.515 to show compliance with the field-testing standards in § 1048.101(c).

(2) Test the selected engines while they remain installed in the equipment. Use the field testing procedures in subpart F of this part. Measure emissions during normal operation of the equipment to show compliance with the field-testing standards in § 1048.101(c). We may direct you to include specific areas of normal operation.

(g) You may ask us to waive parts of the prescribed test procedures if they are not necessary to determine in-use compliance.

(h) Calculate the average emission levels for an engine family from the results for the set of tested engines. Round them to the number of decimal places in the emission standards expressed to one more decimal place.

§ 1048.415 What happens if in-use engines do not meet requirements?

(a) Determine the reason each in-use engine exceeds the emission standards.

(b) If the average emission levels calculated in § 1048.410(h) exceed any of the emission standards that apply, notify us within fifteen days of completing testing on this family. Otherwise follow the reporting instructions in § 1048.420.

(c) We will consider failure rates, average emission levels, and any defects—among other things—to decide on taking remedial action under this subpart (see 40 CFR 1068.505). We may consider the results from any voluntary additional testing you conduct. We may also consider information related to testing from other engine families showing that you designed them to exceed the minimum requirements for controlling emissions. We may order a recall before or after you complete testing of an engine family if we determine a substantial number of engines do not conform to section 213 of the Act or to this part.

(d) If in-use testing reveals a design or manufacturing defect that prevents engines from meeting the requirements of this part, you must correct the defect as soon as possible for any future production for engines in every family affected by the defect.

(e) You may voluntarily recall an engine family for emission failures, as described in 40 CFR 1068.535, unless we have ordered a recall for that family under 40 CFR 1068.505.

(f) You have the right to a hearing before we order you to recall your engines or implement an alternative remedy (see § 1048.820).

§ 1048.420 What in-use testing information must I report to EPA?

(a) In a report to us within three months after you finish testing an engine family, do all the following:

(1) Identify the engine family, model, serial number, and date of manufacture.

(2) For each engine inspected or considered for testing, identify whether the diagnostic system was functioning.

(3) Describe the specific reasons for disqualifying any engines for not being properly maintained or used.

(4) For each engine selected for testing, include the following information:

(i) Estimate the hours each engine was used before testing.

(ii) Describe all maintenance, adjustments, modifications, and repairs to each test engine.

(5) State the date and time of each test attempt.

(6) Include the results of all emission testing, including incomplete or invalidated tests, if any.

(b) Send electronic reports of in-use testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(c) We will send copies of your reports to anyone from the public who asks for them. See § 1048.815 for information on how we treat information you consider confidential.

(d) We may ask for more information.

§ 1048.425 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your in-use testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1048.420.

(d) Keep any additional records related to the procurement process.

Subpart F—Test Procedures

§ 1048.501 What procedures must I use to test my engines?

(a) Use the equipment and procedures for spark-ignition engines in 40 CFR part 1065 to show your engines meet the duty-cycle emission standards in § 1048.101(a) and (b). Measure HC, NO_X, CO, and CO_2 emissions using the full-flow dilute sampling procedures in 40 CFR part 1065. Use the applicable duty cycles in §§ 1048.505 and 1048.510.

(b) We describe in § 1048.515 the supplemental procedures for showing that your engines meet the field-testing emission standards in § 1048.101(c).

(c) Use the fuels specified in 40 CFR part 1065, subpart C, for all the testing we require in this part, except as noted in § 1048.515. Use these test fuels or any commercially available fuel for service accumulation.

(d) To test engines for evaporative emissions, use the equipment and procedures specified for testing diurnal emissions in 40 CFR 86.107–96 and 86.133–96 with fuel meeting the specifications in 40 CFR part 1065, subpart C. Measure emissions from a test engine with a complete fuel system. Reported emission levels must be based on the highest emissions from three successive 24-hour periods of cycling temperatures. Note that you may not be required to test for evaporative emissions during certification if you certify by design, as specified in § 1048.245.

(e) You may use special or alternate procedures, as described in 40 CFR 1065.10.

(f) We may reject data you generate using alternate procedures if later testing with the procedures in 40 CFR part 1065 shows contradictory emission data.

§ 1048.505 What steady-state duty cycles apply for laboratory testing?

(a) Measure emissions by testing the engine on a dynamometer with one or more of the following sets of steady-state duty cycles to show that the engine meets the steady-state standards in § 1048.101(b):

(1) Use the 7-mode duty cycle described in the following table for engines from an engine family that will be used only in variable-speed applications:

TABLE 1 OF § 1048.505—7-MODE DUTY CYCLE [1]

Mode No.	Engine speed	Observed torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test speed	25	3.0	0.06
2	Intermediate test speed	100	3.0	0.02
3	Intermediate test speed	75	3.0	0.05
4	Intermediate test speed	50	3.0	0.32
5	Intermediate test speed	25	3.0	0.30
6	Intermediate test speed	10	3.0	0.10
7	Idle	0	3.0	0.15

[1] This duty cycle is analogous to the C2 cycle specified in ISO 8178–4.
[2] The percent torque is relative to the maximum torque at the given engine speed.

(2) Use the 5-mode duty cycle described in the following table if you certify an engine family for operation only at a single, rated speed:

TABLE 2 OF § 1048.505—5-MODE DUTY CYCLE FOR CONSTANT-SPEED ENGINES [1]

Mode No.	Engine speed	Torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test	100	3.0	0.05
2	Maximum test	75	3.0	0.25
3	Maximum test	50	3.0	0.30

TABLE 2 OF § 1048.505—5-MODE DUTY CYCLE FOR CONSTANT-SPEED ENGINES [1]

Mode No.	Engine speed	Torque [2]	Minimum time in mode (minutes)	Weighting factors
4	Maximum test	25	3.0	0.30
5	Maximum test	10	3.0	0.10

[1] This duty cycle is analogous to the D2 cycle specified in ISO 8178–4.
[2] The percent torque is relative to the maximum torque at maximum test speed.

(3) Use both of the duty cycles described in paragraphs (a)(1) and (a)(2) of this section if you will not restrict an engine family to constant-speed or variable-speed applications.

(4) Use only the duty cycle specified in paragraph (a)(2) of this section for all severe-duty engines.

(5) Use the 2-mode duty cycle described in the following table for high-load engines instead of the other duty cycles in this paragraph (a):

TABLE 3 OF § 1048.505—2-MODE DUTY CYCLE FOR HIGH-LOAD ENGINES [1]

Mode No.	Engine speed	Torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test	100	3.0	0.50
2	Maximum test	75	3.0	0.50

[1] This duty cycle is derived from the D1 cycle specified in ISO 8178–4.
[2] The percent torque is relative to the maximum torque at maximum test speed.

(b) If we test an engine to confirm that it meets the duty-cycle emission standards, we will use the steady-state duty cycles that apply for that engine family.

(c) During idle mode, operate the engine with the following parameters:

(1) Hold the speed within your specifications.

(2) Keep the throttle at the idle-stop position.

(3) Keep engine torque under 5 percent of the peak torque value at maximum test speed.

(d) For the full-load operating mode, operate the engine at wide-open throttle.

(e) See 40 CFR part 1065 for detailed specifications of tolerances and calculations.

(f) In the normal test sequence described in 40 CFR part 1065, subpart F, steady-state testing generally follows the transient test. For those cases where we do not require transient testing, perform the steady-state test after an appropriate warm-up period, consistent with good engineering judgment.

§ 1048.510 What transient duty cycles apply for laboratory testing?

(a) Starting with the 2007 model year, measure emissions by testing the engine on a dynamometer with one of the following transient duty cycles to show that the engine meets the transient emission standards in § 1048.101(a):

(1) If you certify an engine family for constant-speed operation only, use the transient duty-cycle described in Appendix I of this part.

(2) For all other engines, use the transient duty-cycle described in Appendix II of this part.

(b) If we test an engine to confirm that it meets the duty-cycle emission standards, we will use the transient duty cycle that applies for that engine family.

(c) Warm up the test engine as follows:

(1) Operate the engine for the first 180 seconds of the appropriate duty cycle, then allow it to idle without load for 30 seconds. At the end of the 30-second idling period, start measuring emissions as the engine operates over the prescribed duty cycle. For severe-duty engines, this engine warm-up procedure may include up to 15 minutes of operation over the appropriate duty cycle.

(2) If the engine was already operating before a test, use good engineering judgment to let the engine cool down enough so measured emissions during the next test will accurately represent those from an engine starting at room temperature. For example, if an engine starting at room temperature warms up enough in three minutes to start closed-loop operation and achieve full catalyst activity, then minimal engine cooling is necessary before starting the next test.

(3) You are not required to measure emissions while the engine is warming up. However, you must design your emission-control system to start working as soon as possible after engine starting. In your application for certification, describe how your engine meets this objective (see § 1048.205(b)).

§ 1048.515 Field-testing procedures.

(a) This section describes the procedures to determine whether your engines meet the field-testing emission standards in § 1048.101(c). These procedures may include any normal engine operation and ambient conditions that the engines may experience in use. Paragraph (b) of this section defines the limits of what we will consider normal engine operation and ambient conditions. Use the test procedures we specify in § 1048.501, except for the provisions we specify in this section. Measure emissions with one of the following procedures:

(1) Remove the selected engines for testing in a laboratory. You can use an engine dynamometer to simulate normal operation, as described in this section.

(2) Test the selected engines while they remain installed in the equipment. In 40 CFR part 1065, subpart J, we describe the equipment and sampling methods for testing engines in the field. Use fuel meeting the specifications of 40 CFR 1065.210 or a fuel typical of what you would expect the engine to use in service.

(b) An engine's emissions may not exceed the levels we specify in § 1048.101(c) for any continuous sampling period of at least 120 seconds

under the following ranges of operation and operating conditions:

(1) Engine operation during the emission sampling period may include any normal operation, subject to the following restrictions:

(i) Average power must be over 5 percent of maximum brake power.

(ii) Continuous time at idle must not be greater than 120 seconds.

(iii) The sampling period may not begin until the engine has reached stable operating temperatures. For example, this would exclude engine operation after starting until the thermostat starts modulating coolant temperature.

(iv) The sampling period may not include engine starting.

(v) For engines that qualify for the alternate Tier 2 emission standards in § 1048.101(d), operation at 90 percent or more of maximum power must be less than 10 percent of the total sampling time. You may request our approval for a different power threshold.

(2) Engine testing may occur under any normal conditions without correcting measured emission levels, subject to the following restrictions:

(i) Barometric pressure must be between 80.0 and 103.3 kPa (600 and 775 mm Hg).

(ii) Ambient air temperature must be between 13° and 35° C.

Subpart G—Compliance Provisions

§ 1048.601 What compliance provisions apply to these engines?

Engine and equipment manufacturers, as well as owners, operators, and rebuilders of these engines, and all other persons, must observe the requirements and prohibitions in 40 CFR part 1068 and the requirements of the Act. The compliance provisions in this subpart apply only to the engines we regulate in this part.

§ 1048.605 What are the provisions for exempting engines from the requirements of this part if they are already certified under the motor-vehicle program?

(a) This section applies to you if you are an engine manufacturer. See § 1048.610 if you are not an engine manufacturer.

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) If you meet all the following criteria and requirements regarding your new nonroad engine, it is exempt under this section:

(1) You must produce it by modifying an engine covered by a valid certificate of conformity under 40 CFR part 86.

(2) Do not make any changes to the certified engine that we could reasonably expect to increase its exhaust or evaporative emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for this exemption:

(i) Change any fuel system or evaporative system parameters from the certified configuration (this does not apply to refueling emission controls).

(ii) Change any other emission-related components.

(iii) Modify or design the engine cooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(3) Demonstrate that fewer than 50 percent of the engine model's total sales, from all companies, are used in nonroad applications.

(4) The engine must have the label we require under 40 CFR part 86.

(5) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the equipment. In your engine's emission control information label, do the following:

(i) Include the heading: ''Nonroad Engine Emission Control Information''.

(ii) Include your full corporate name and trademark.

(iii) State: ''THIS ENGINE WAS ADAPTED FOR NONROAD USE WITHOUT AFFECTING ITS EMISSION CONTROLS.''.

(iv) State the date you finished modifying the engine (month and year).

(6) The original and supplemental labels must be readily visible after the engine is installed in the equipment or, if the equipment obscures the engine's emission control information label, the equipment manufacturer must attach duplicate labels, as described in 40 CFR 1068.105.

(7) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the engine models you expect to produce under this exemption in the coming year.

(iii) State: ''We produce each listed engine model for nonroad application without making any changes that could increase its certified emission levels, as described in 40 CFR 1048.605.''.

(d) If your engines do not meet the criteria listed in paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in 40 CFR 1068.101.

(e) If you are the original engine manufacturer of both the highway and nonroad versions of an exempted engine, you must send us emission test data on the applicable nonroad duty cycle(s). You may include the data in your application for certification or in your letter requesting the exemption.

(f) If you are the original engine manufacturer of an exempted engine that is modified by another company under this exemption, we may require you to send us emission test data on the applicable nonroad duty cycle(s). If we ask for this data, we will allow a reasonable amount of time to collect it.

(g) The engine exempted under this section must meet all applicable requirements from 40 CFR part 86. This applies to engine manufacturers, equipment manufacturers who use these engines, and all other persons as if these engines were used in a motor vehicle.

§ 1048.610 What are the provisions for producing nonroad equipment with engines already certified under the motor-vehicle program?

If you are not an engine manufacturer, you may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:

(a) The engine or vehicle is certified to 40 CFR part 86.

(b) The engine is not adjusted outside the engine manufacturer's specifications (see § 1048.605(c)(2)).

(c) The engine or vehicle is not modified in any way that may affect its emission control. This applies to exhaust and evaporative emission controls, but not refueling emission controls.

§ 1048.615 What are the provisions for exempting engines designed for lawn and garden applications?

This section is intended for engines designed for lawn and garden applications, but it applies to any engines meeting the size criteria in paragraph (a) of this section.

(a) If an engine meets all the following criteria, it is exempt from the requirements of this part:

(1) The engine must have a total displacement of 1,000 cc or less.

(2) The engine must have a maximum brake power of 30 kW or less.

(3) The engine must be in an engine family that has a valid certificate of conformity showing that it meets emission standards for Class II engines under 40 CFR part 90.

(b) The only requirements or prohibitions from this part that apply to an engine that meets the criteria in paragraph (a) of this section are in this section.

(c) If your engines do not meet the criteria listed in paragraph (a) of this section, they will be subject to the provisions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in 40 CFR 1068.101.

(d) Engines exempted under this section are subject to all the requirements affecting engines under 40 CFR part 90. The requirements and restrictions of 40 CFR part 90 apply to anyone manufacturing these engines, anyone manufacturing equipment that uses these engines, and all other persons in the same manner as if these engines had a total maximum brake power at or below 19 kW.

§ 1048.620 What are the provisions for exempting large engines fueled by natural gas?

(a) If an engine meets all the following criteria, it is exempt from the requirements of this part:

(1) The engine must operate solely on natural gas.

(2) The engine must have maximum brake power 250 kW or higher.

(3) The engine must be in an engine family that has a valid certificate of conformity showing that it meets emission standards for engines of that power rating under 40 CFR part 89.

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) If your engines do not meet the criteria listed in paragraph (a) of this section, they will be subject to the provisions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in 40 CFR 1068.101.

(d) Engines exempted under this section are subject to all the requirements affecting engines under 40 CFR part 89. The requirements and restrictions of 40 CFR part 89 apply to anyone manufacturing these engines, anyone manufacturing equipment that uses these engines, and all other persons in the same manner as if these were nonroad diesel engines.

(e) You may request an exemption under this section by submitting an application for certification for the engines under 40 CFR part 89.

§ 1048.625 What special provisions apply to engines using noncommercial fuels?

If you are unable to meet this part's requirements with engines using noncommercial fuels (such as unrefined natural gas released by oil wells), the following provisions apply for those engines:

(a) Create a separate engine family.

(b) Disregard the limits on adjustable parameters in § 1048.115(e), but make sure the engines meet emission standards with normal settings when the engine is using fuel meeting the specifications of 40 CFR part 1065, subpart C.

(c) Add the following information to the emission control information label specified in § 1048.135:

(1) Include instructions describing how to adjust the engine to operate in a way that maintains the effectiveness of the emission-control system.

(2) State: ''THIS ENGINE IS CERTIFIED TO OPERATE IN APPLICATIONS USING NONCOMMERCIAL FUEL. USING IT IN AN APPLICATION INVOLVING ONLY COMMERCIAL FUELS MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''.

(d) Keep records to document the destinations and quantities of engines produced under this section.

Subpart H—[Reserved]

Subpart I—Definitions and Other Reference Information

§ 1048.801 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. You may ask us to exclude a parameter that is difficult to access if it cannot be adjusted to affect emissions without significantly degrading performance, or if you otherwise show us that it will not be adjusted in a way that affects emissions during in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Aircraft means any vehicle capable of sustained air travel above treetop heights.

All-terrain vehicle has the meaning we give in 40 CFR 1051.801.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part.

Blue Sky Series engine means an engine meeting the requirements of § 1048.140.

Brake power means the usable power output of the engine, not including power required to operate fuel pumps, oil pumps, or coolant pumps.

Broker means any entity that facilitates a trade of emission credits between a buyer and seller.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Constant-speed engine means an engine governed to operate at a single speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the engine crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Designated Officer means the Manager, Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from an engine.

Emission-data engine means an engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine family means a group of engines with similar emission characteristics, as specified in § 1048.230.

Engine manufacturer means the manufacturer of the engine. See the definition of ''manufacturer'' in this section.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the

combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give in 40 CFR 1068.5.

High-cost warranted part means a component covered by the emission-related warranty with a replacement cost (at the time of certification) exceeding $400 (in 1998 dollars). Adjust this value using the most recent annual average consumer price index information published by the U.S. Bureau of Labor Statistics. For this definition, replacement cost includes the retail cost of the part plus labor and standard diagnosis.

High-load engine means an engine for which the engine manufacturer can provide clear evidence that operation below 75 percent of maximum load in it's final application will be rare.

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type. For gasoline- and LPG-fueled engines, HC means total hydrocarbon (THC). For natural gas-fueled engines, HC means nonmethane hydrocarbon (NMHC). For alcohol-fueled engines, HC means total hydrocarbon equivalent (THCE).

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular engine from other similar engines.

Intermediate test speed has the meaning we give in 40 CFR 1065.515.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine, vehicle, or piece of equipment for sale in the United States or otherwise introduces a new nonroad engine into commerce in the United States. This includes importers who import engines, equipment, or vehicles for resale.

Marine engine means an engine that someone installs or intends to install on a marine vessel. There are two kinds of marine engines:

(1) *Propulsion marine engine* means a marine engine that moves a vessel through the water or directs the vessel's movement.

(2) *Auxiliary marine engine* means a marine engine not used for propulsion.

Marine vessel means a vehicle that is capable of operation in water but is not capable of operation out of water. Amphibious vehicles are not marine vessels.

Maximum brake power means the maximum brake power an engine produces at maximum test speed.

Maximum test speed has the meaning we give in 40 CFR 1065.515.

Maximum test torque has the meaning we give in 40 CFR 1065.1001.

Model year means one of the following things:

(1) For freshly manufactured engines (see definition of ''new nonroad engine,'' paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a nonroad engine after being placed into service in a motor vehicle, model year means the calendar year in which the engine was originally produced (see definition of ''new nonroad engine,'' paragraph (2)).

(3) For a nonroad engine excluded under § 1048.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the engine was originally produced (see definition of ''new nonroad engine,'' paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad equipment, model year means the calendar year in which the engine is installed in the new nonroad equipment. This installation date is based on the time that final assembly of the equipment is complete (see definition of ''new nonroad engine,'' paragraph (4)).

(5) For an engine modified by an importer (not the original engine manufacturer) who has a certificate of conformity for the imported engine (see definition of ''new nonroad engine,'' paragraph (5)), model year means one of the following:

(i) The calendar year in which the importer finishes modifying and labeling the engine.

(ii) Your annual production period for producing engines if it is different than the calendar year; follow the guidelines in paragraph (1)(ii) of this definition.

(6) For an engine you import that does not meet the criteria in paragraphs (1) through (5) of the definition of ''new nonroad engine,'' model year means the calendar year in which the engine manufacturer completed the original assembly of the engine. In general, this applies to used equipment that you import without conversion or major modification.

Motor vehicle has the meaning we give in 40 CFR 85.1703(a). In general, *motor vehicle* means a self-propelled vehicle that can transport one or more people or any material, but doesn't include any of the following:

(1) Vehicles having a maximum ground speed over level, paved surfaces no higher than 40 km per hour (25 miles per hour).

(2) Vehicles that lack features usually needed for safe, practical use on streets or highways—for example, safety features required by law, a reverse gear (except for motorcycles), or a differential.

(3) Vehicles whose operation on streets or highways would be unsafe, impractical, or highly unlikely. Examples are vehicles with tracks instead of wheels, very large size, or features associated with military vehicles, such as armor or weaponry.

New nonroad engine means any of the following things:

(1) A freshly manufactured nonroad engine for which the ultimate buyer has never received the equitable or legal title. This kind of vehicle might commonly be thought of as ''brand new.'' In the case of this paragraph (1), the engine is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine that is later intended to be used in a piece of nonroad equipment. In this case, the engine is no longer a motor vehicle engine and becomes a ''new nonroad engine''. The engine is no longer new when it is placed into nonroad service.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1048.5, where that engine is installed in a piece of equipment for which these exclusions do not apply. The engine is no longer new when it is placed into nonroad service. For example, this would apply to a stationary engine that is no longer used in a stationary application.

(4) An engine not covered by paragraphs (1) through (3) of this definition that is intended to be installed in new nonroad equipment. The engine is no longer new when the ultimate buyer receives a title for the equipment or the product is placed into service, whichever comes first. This generally includes installation of used engines in new equipment.

(5) An imported nonroad engine covered by a certificate of conformity issued under this part, where someone other than the original engine

manufacturer modifies the engine after its initial assembly and holds the certificate. The engine is no longer new when it is placed into nonroad service.

(6) An imported nonroad engine that is not covered by a certificate of conformity issued under this part at the time of importation. This addresses uncertified engines and vehicles that have been placed into service in other countries and that someone seeks to import into the United States. Importation of this kind of new nonroad engine (or vehicle containing such an engine) is generally prohibited by 40 CFR part 1068.

New nonroad equipment means either of the following things:

(1) A nonroad vehicle or other piece of equipment for which the ultimate buyer has never received the equitable or legal title. The product is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An imported nonroad piece of equipment with an engine not covered by a certificate of conformity issued under this part at the time of importation and manufactured after the date for applying the requirements of this part.

Noncommercial fuel means a fuel that is not marketed or sold as a commercial product. For example, this includes methane produced and released from landfills or oil wells.

Noncompliant engine means an engine that was originally covered by a certificate of conformity, but is not in the certified configuration or otherwise does not comply with the conditions of the certificate.

Nonconforming engine means an engine not covered by a certificate of conformity that would otherwise be subject to emission standards.

Nonmethane hydrocarbon means the difference between the emitted mass of total hydrocarbons and the emitted mass of methane.

Nonroad means relating to nonroad engines or equipment that includes nonroad engines.

Nonroad engine has the meaning given in 40 CFR 1068.30. In general this means all internal-combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition. This part does not apply to all nonroad engines (see § 1048.5).

Off-highway motorcycle has the meaning we give in 40 CFR 1051.801. (Note: highway motorcycles are regulated under 40 CFR part 86.)

Oxides of nitrogen has the meaning given it in 40 CFR part 1065

Placed into service means used for its intended purpose.

Point of first retail sale means the location at which the retail sale occurs. This generally means a dealership.

Revoke means to discontinue the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected vehicles or engines. This does not apply to vehicles or engines you no longer possess.

Round means to round numbers according to ASTM E29–02 (incorporated by reference in § 1048.810), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Severe-duty application includes concrete saws, concrete pumps, and any other application where an engine manufacturer can provide clear evidence that the majority of installations need air-cooled engines as a result of operation in a severe-duty environment.

Severe-duty engine means an engine from an engine family in which the majority of engines are installed in severe-duty applications.

Small-volume engine manufacturer means a company with fewer than 200 employees. This includes any employees working for parent or subsidiary companies.

Snowmobile has the meaning we give in 40 CFR 1051.801.

Spark-ignition means relating to a gasoline-fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Stationary engine means an internal combustion engine that is neither a nonroad engine, nor a motor-vehicle engine, nor an engine used solely for competition (see the definition of nonroad engine in 40 CFR 1068.30). In general this includes fixed engines and all portable or transportable engines that stay in a single site at a building, structure, facility, or installation for at least a full year; this does not include an engine installed in equipment that has the ability to propel itself. For year-round sources, a full year is 12 consecutive months. For seasonal sources, a full year is a full annual operating period of at least three months. A seasonal source is a site with engines operating only part of the year for at least two consecutive years. If you replace an engine with one that does the same or similar work in the same place, you may apply the previous engine's service to your calculation for residence time. If you move a stationary engine anytime in its life after it has been in place for at least a full year, it becomes a nonroad engine subject to emission standards unless it stays at the new location for a full year.

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

Suspend means to temporarily discontinue the certificate for an engine family. If we suspend a certificate, you may not sell vehicles or engines from that engine family unless we reinstate the certificate or approve a new one.

Test engine means an engine in a test sample.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

Total hydrocarbon means the combined mass organic compounds measured by our total hydrocarbon test procedure, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Tier 1 means relating to the emission standards and other requirements that apply beginning with the 2004 model year.

Tier 2 means relating to the emission standards and other requirements that apply beginning with the 2007 model year.

Ultimate buyer means ultimate purchaser.

Ultimate purchaser means, with respect to any new nonroad equipment or new nonroad engine, the first person who in good faith purchases such new nonroad equipment or new nonroad engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the

U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

Upcoming model year means for an engine family the model year after the one currently in production.

U.S.-directed production volume means the number of engine units, subject to the requirements of this part, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate buyers in the United States.

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years. It is the period during which a new nonroad engine is required to comply with all applicable emission standards. See § 1048.101(g).

Variable-speed engine means an engine that is not a constant-speed engine.

Void means to invalidate a certificate or an exemption. If we void a certificate, all the vehicles produced under that engine family for that model year are considered noncompliant, and you are liable for each vehicle produced under the certificate and may face civil or criminal penalties or both. If we void an exemption, all the vehicles produced under that exemption are considered uncertified (or nonconforming), and you are liable for each vehicle produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional vehicles using the voided exemption.

Volatile liquid fuel means any fuel other than diesel or biodiesel that is a liquid at atmospheric pressure.

Wide-open throttle means maximum throttle opening. Unless this is specified at a given speed, it refers to maximum throttle opening at maximum speed. For electronically controlled or other engines with multiple possible fueling rates, wide-open throttle also means the maximum fueling rate at maximum throttle opening under test conditions.

§ 1048.805 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

°C degrees Celsius.
ASTM American Society for Testing and Materials.
cc cubic centimeters.
CFR Code of Federal Regulations.
cm centimeter.
CO carbon monoxide.
CO_2 carbon dioxide.
EPA Environmental Protection Agency.
g/kW-hr grams per kilowatt-hour.
HC hydrocarbon.
ISO International Organization for Standardization.
kPa kilopascals.
kW kilowatts.
LPG liquefied petroleum gas.
m meters.
MIL malfunction-indicator light.
mm Hg millimeters of mercury.
NMHC nonmethane hydrocarbons.
NO_X oxides of nitrogen (NO and NO_2).
psi pounds per square inch of absolute pressure.
psig pounds per square inch of gauge pressure.
rpm revolutions per minute.
SAE Society of Automotive Engineers.
SI spark-ignition.
THC total hydrocarbon.
THCE total hydrocarbon equivalent.
U.S.C. United States Code.

§ 1048.810 What materials does this part reference?

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1048.810 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 1048.810.—ASTM MATERIALS

Document number and name	Part 1048 reference
ASTM E29–02, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications	1048.801

(b) *SAE material.* Table 2 of § 1048.810 lists material from the Society of Automotive Engineering that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096. Table 2 follows:

TABLE 2 OF § 1048.810.—SAE MATERIALS

Document number and name	Part 1048 reference
SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, May 1998	1048.135
SAE J2260, Nonmetallic Fuel System Tubing with One or More Layers, November 1996	1048.105

(c) *ISO material.* Table 3 of § 1048.810 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland. Table 3 follows:

TABLE 3 OF § 1048.810.—ISO MATERIALS

Document number and name	Part 1048 reference
ISO 9141–2 Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information, February 1994	1048.110
ISO 14230–4 Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems, June 2000	1048.110

§ 1048.815 How should I request EPA to keep my information confidential?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in 40 CFR 2.204.

§ 1048.820 How do I request a hearing?

See 40 CFR part 1068, subpart G, for information related to hearings.

Appendix I to Part 1048—Large Spark-ignition (SI) Transient Cycle for Constant-Speed Engines

The following table shows the transient duty-cycle for constant-speed engines, as described in § 1048.510:

Time(s)	Normalized speed (percent)	Normalized torque (percent)
1	58	5
2	58	5
3	58	5
4	58	5
5	58	5
6	58	5
7	58	5
8	58	5
9	58	5
10	58	5
11	58	5
12	65	8
13	72	9
14	79	12
15	86	14
16	93	16
17	93	16
18	93	16
19	93	16
20	93	16
21	93	16
22	93	16
23	93	16
24	93	31
25	93	30
26	93	27
27	93	23
28	93	24
29	93	21
30	93	20
31	93	18
32	93	16
33	93	18
34	93	16
35	93	17
36	93	20
37	93	20
38	93	22
39	93	20
40	93	17
41	93	17
42	93	17
43	93	16
44	93	18
45	93	18
46	93	21
47	93	21
48	93	18
49	94	24
50	93	28
51	93	23
52	93	19
53	93	20
54	93	20
55	93	29
56	93	23
57	93	25
58	93	23
59	93	23
60	93	23
61	93	22
62	93	21
63	93	22
64	93	30
65	93	33
66	93	25
67	93	29
68	93	27
69	93	23
70	93	21
71	93	21
72	93	19
73	93	20
74	93	24
75	93	23
76	93	21
77	93	44
78	93	34
79	93	28
80	93	37
81	93	29
82	93	27
83	93	33
84	93	28
85	93	22
86	96	30
87	95	25
88	95	17
89	95	13
90	95	10
91	95	9
92	95	8
93	95	7
94	95	7
95	95	6
96	95	6
97	93	37
98	93	35
99	93	29
100	93	23
101	93	23
102	93	21
103	93	20
104	93	29
105	93	27
106	93	26
107	93	35
108	93	43
109	95	35
110	95	24
111	95	17
112	95	13
113	95	10
114	95	9
115	95	8
116	95	7
117	95	7
118	95	6
119	93	36
120	93	30
121	93	25
122	93	21
123	93	22
124	93	19
125	93	34
126	93	36
127	93	31
128	93	26
129	93	27
130	93	22
131	93	22
132	93	18
133	93	18
134	93	19
135	93	19
136	93	23
137	93	22
138	93	20
139	93	23
140	93	20
141	93	18
142	93	18
143	93	16
144	93	19
145	94	25
146	93	30

Time(s)	Normalized speed (percent)	Normalized torque (percent)
147	93	29
148	93	23
149	93	24
150	93	22
151	94	20
152	93	17
153	93	16
154	93	16
155	93	15
156	93	17
157	93	18
158	93	20
159	93	21
160	93	18
161	93	17
162	92	54
163	93	38
164	93	29
165	93	24
166	93	24
167	93	24
168	93	23
169	93	20
170	93	20
171	93	18
172	93	19
173	93	19
174	93	16
175	93	16
176	93	16
177	93	18
178	93	21
179	93	20
180	93	20
181	93	17
182	93	19
183	93	17
184	93	18
185	93	16
186	93	16
187	93	16
188	93	17
189	93	16
190	93	17
191	93	18
192	93	17
193	93	16
194	93	17
195	93	17
196	93	22
197	93	19
198	93	19
199	95	21
200	95	16
201	95	12
202	95	10
203	96	8
204	96	7
205	95	7
206	96	7
207	95	6
208	96	6
209	96	6
210	88	6
211	89	48
212	93	34
213	93	27
214	93	26
215	93	25
216	93	22
217	93	23
218	93	21
219	93	21
220	93	23
221	93	23
222	93	23
223	93	23
224	93	23
225	93	22
226	93	22
227	93	24
228	93	23
229	93	23
230	93	21
231	93	20
232	93	20
233	93	20
234	93	22
235	93	26
236	93	22
237	93	20
238	93	18
239	93	22
240	93	20
241	94	27
242	93	22
243	93	23
244	93	21
245	93	22
246	95	22
247	95	16
248	95	12
249	95	10
250	95	9
251	95	8
252	96	7
253	95	7
254	95	6
255	92	42
256	93	36
257	93	33
258	92	60
259	93	48
260	93	36
261	93	30
262	93	28
263	93	24
264	93	24
265	93	23
266	93	23
267	93	25
268	93	27
269	93	29
270	93	26
271	93	26
272	93	21
273	93	23
274	93	23
275	94	23
276	93	40
277	94	67
278	93	46
279	93	38
280	93	29
281	93	28
282	93	27
283	93	29
284	93	28
285	94	34
286	93	31
287	93	30
288	94	42
289	93	31
290	93	29
291	93	27
292	93	23
293	93	23
294	93	20
295	93	20
296	93	23
297	93	23
298	93	24
299	93	25
300	93	20
301	93	25
302	93	23
303	93	23
304	93	24
305	93	28
306	93	23
307	93	24
308	93	34
309	93	31
310	93	35
311	93	31
312	93	32
313	93	31
314	93	30
315	93	23
316	93	23
317	93	36
318	93	32
319	93	25
320	93	31
321	93	33
322	93	31
323	93	27
324	93	24
325	93	19
326	96	21
327	96	16
328	95	12
329	95	10
330	95	8
331	95	8
332	95	7
333	95	7
334	95	6
335	95	6
336	95	6
337	87	6
338	57	6
339	58	6
340	58	6
341	58	6
342	58	6
343	58	6
344	58	6
345	58	6
346	58	6
347	58	6
348	58	6
349	58	6
350	58	6
351	58	6
352	95	73
353	93	65
354	93	52
355	93	38
356	93	30
357	93	31
358	93	26
359	93	21
360	93	22
361	93	26
362	93	23

Time(s)	Normalized speed (percent)	Normalized torque (percent)
363	93	19
364	93	27
365	93	42
366	93	29
367	94	25
368	94	26
369	94	29
370	93	28
371	93	23
372	93	21
373	93	26
374	93	23
375	93	20
376	94	23
377	93	18
378	93	19
379	93	23
380	93	19
381	93	16
382	93	25
383	93	22
384	93	20
385	93	25
386	94	28
387	93	23
388	93	23
389	93	25
390	93	23
391	93	20
392	93	19
393	93	24
394	93	20
395	93	18
396	93	21
397	95	22
398	96	16
399	96	12
400	95	10
401	96	9
402	95	8
403	96	7
404	96	7
405	96	6
406	96	6
407	95	6
408	91	6
409	58	6
410	58	6
411	58	6
412	58	6
413	58	6
414	58	6
415	58	6
416	58	6
417	58	6
418	58	6
419	58	6
420	58	6
421	58	6
422	58	6
423	58	6
424	58	6
425	58	6
426	58	6
427	58	6
428	58	6
429	58	6
430	58	6
431	58	6
432	58	6
433	58	6
434	58	6
435	58	6
436	58	6
437	58	6
438	58	6
439	58	6
440	58	6
441	58	6
442	58	6
443	93	66
444	93	48
445	93	40
446	93	34
447	93	28
448	93	23
449	93	28
450	93	27
451	93	23
452	93	19
453	93	25
454	93	24
455	93	22
456	93	31
457	93	36
458	93	28
459	93	25
460	93	35
461	93	34
462	93	29
463	93	37
464	93	36
465	93	38
466	93	31
467	93	29
468	93	34
469	93	36
470	93	34
471	93	31
472	93	26
473	93	21
474	94	16
475	96	19
476	96	15
477	95	11
478	96	10
479	95	8
480	95	7
481	95	7
482	96	7
483	96	6
484	96	6
485	95	6
486	85	6
487	56	74
488	93	52
489	93	42
490	93	36
491	93	35
492	93	33
493	93	38
494	93	40
495	93	29
496	93	23
497	93	23
498	93	24
499	93	24
500	93	20
501	93	19
502	93	16
503	93	21
504	93	23
505	93	24
506	93	22
507	93	18
508	93	21
509	95	18
510	95	20
511	95	15
512	96	11
513	95	10
514	96	8
515	95	7
516	95	7
517	95	7
518	95	6
519	96	6
520	96	6
521	83	6
522	56	6
523	58	6
524	72	54
525	94	51
526	93	42
527	93	42
528	93	31
529	93	25
530	93	21
531	93	17
532	93	15
533	93	15
534	93	16
535	93	15
536	93	14
537	93	15
538	93	16
539	94	15
540	93	45
541	93	45
542	93	41
543	93	33
544	93	26
545	93	21
546	93	20
547	93	17
548	93	16
549	93	17
550	93	16
551	93	14
552	93	16
553	93	15
554	93	14
555	93	16
556	93	15
557	93	14
558	93	13
559	93	14
560	93	14
561	93	15
562	93	17
563	93	17
564	93	22
565	93	22
566	93	19
567	93	19
568	93	20
569	93	18
570	93	20
571	93	20
572	93	42
573	93	32
574	93	25
575	93	26
576	93	23
577	93	21
578	93	23

Time(s)	Normalized speed (percent)	Normalized torque (percent)
579	93	19
580	93	21
581	93	20
582	93	20
583	93	20
584	93	18
585	93	18
586	93	21
587	93	19
588	93	21
589	93	19
590	93	19
591	93	18
592	93	18
593	93	17
594	93	16
595	93	16
596	93	15
597	93	16
598	93	19
599	93	52
600	93	45
601	95	39
602	95	39
603	95	39
604	95	39
605	94	30
606	95	30
607	95	29
608	95	24
609	94	30
610	95	28
611	94	25
612	94	29
613	95	32
614	95	33
615	95	44
616	99	37
617	98	27
618	98	19
619	98	13
620	98	11
621	98	9
622	98	7
623	98	7
624	98	6
625	98	6
626	98	6
627	98	5
628	69	6
629	49	5
630	51	5
631	51	5
632	51	5
633	51	6
634	51	6
635	51	6
636	51	6
637	51	5
638	51	5
639	51	5
640	51	5
641	51	6
642	51	6
643	51	6
644	51	6
645	51	5
646	51	6
647	51	5
648	51	6
649	51	5
650	96	35
651	95	29
652	95	26
653	95	31
654	95	34
655	95	29
656	95	29
657	95	30
658	95	24
659	95	19
660	95	23
661	95	21
662	95	22
663	95	19
664	95	18
665	95	20
666	94	60
667	95	48
668	95	39
669	95	36
670	95	27
671	95	22
672	95	19
673	95	22
674	95	19
675	94	17
676	95	27
677	95	24
678	98	19
679	98	19
680	98	14
681	98	11
682	98	9
683	98	8
684	98	7
685	98	6
686	98	6
687	98	6
688	98	6
689	98	5
690	81	5
691	49	5
692	78	48
693	95	37
694	95	31
695	94	32
696	94	34
697	95	29
698	95	25
699	94	26
700	95	28
701	95	27
702	94	28
703	95	30
704	95	27
705	95	26
706	95	27
707	95	25
708	95	26
709	95	25
710	95	23
711	95	20
712	95	23
713	95	20
714	95	18
715	94	22
716	95	19
717	95	23
718	95	27
719	95	26
720	95	23
721	95	20
722	99	23
723	98	20
724	98	14
725	98	11
726	98	9
727	98	8
728	98	7
729	98	6
730	98	6
731	98	6
732	98	5
733	98	5
734	73	6
735	49	5
736	50	77
737	95	39
738	95	30
739	95	28
740	94	31
741	95	36
742	95	36
743	95	30
744	95	26
745	95	27
746	95	22
747	95	18
748	95	19
749	95	25
750	94	25
751	95	21
752	95	22
753	95	27
754	95	27
755	95	27
756	95	24
757	94	20
758	94	23
759	94	26
760	95	25
761	95	25
762	95	21
763	95	28
764	94	39
765	95	32
766	95	24
767	95	19
768	98	20
769	98	17
770	98	12
771	98	10
772	98	8
773	98	7
774	98	6
775	98	6
776	95	61
777	94	51
778	95	40
779	94	35
780	94	36
781	94	32
782	95	24
783	94	19
784	94	19
785	95	19
786	95	19
787	94	18
788	94	20
789	94	23
790	94	22
791	95	23
792	94	20
793	94	18
794	95	16

Time(s)	Normalized speed (percent)	Normalized torque (percent)
795	95	17
796	94	16
797	94	16
798	94	17
799	94	18
800	94	21
801	95	21
802	94	19
803	95	18
804	94	19
805	95	22
806	95	21
807	95	19
808	94	20
809	94	22
810	94	22
811	94	22
812	95	23
813	94	22
814	95	22
815	95	19
816	95	16
817	95	14
818	95	18
819	95	18
820	94	20
821	94	22
822	94	19
823	95	18
824	95	17
825	95	19
826	95	19
827	95	19
828	94	19
829	94	21
830	94	19
831	94	17
832	94	18
833	94	21
834	94	19
835	95	18
836	95	19
837	95	17
838	94	15
839	94	17
840	95	19
841	94	22
842	94	21
843	94	18
844	94	16
845	95	14
846	95	14
847	94	19
848	95	20
849	95	23
850	98	23
851	98	22
852	98	16
853	98	12
854	98	9
855	98	8
856	98	7
857	98	6
858	98	6
859	98	6
860	98	5
861	98	5
862	80	5
863	49	5
864	51	5
865	51	5
866	51	6
867	51	6
868	51	6
869	51	6
870	51	5
871	51	6
872	51	7
873	96	45
874	94	44
875	94	34
876	94	41
877	95	44
878	94	32
879	95	26
880	94	20
881	95	29
882	95	27
883	95	21
884	95	34
885	95	31
886	94	26
887	95	22
888	95	23
889	95	19
890	94	18
891	94	20
892	94	26
893	95	29
894	94	32
895	95	26
896	95	34
897	95	30
898	95	24
899	95	19
900	94	17
901	94	16
902	98	19
903	98	17
904	98	12
905	98	10
906	98	8
907	98	7
908	98	6
909	98	6
910	98	6
911	98	5
912	98	5
913	98	5
914	69	5
915	49	5
916	51	5
917	51	6
918	51	6
919	69	75
920	95	70
921	95	57
922	94	49
923	94	38
924	95	43
925	94	51
926	94	41
927	98	42
928	95	89
929	95	66
930	94	52
931	95	41
932	95	34
933	95	34
934	94	30
935	94	30
936	95	29
937	94	28
938	95	24
939	94	34
940	95	26
941	94	36
942	95	27
943	95	25
944	95	26
945	94	21
946	94	19
947	98	21
948	93	53
949	94	45
950	94	35
951	95	28
952	95	23
953	95	20
954	95	17
955	94	19
956	94	18
957	94	18
958	94	18
959	94	19
960	97	17
961	98	19
962	98	14
963	98	11
964	98	9
965	98	7
966	98	7
967	98	6
968	98	6
969	98	6
970	98	5
971	98	5
972	82	5
973	49	5
974	51	6
975	51	6
976	51	6
977	51	5
978	51	6
979	72	58
980	94	36
981	95	28
982	95	24
983	95	25
984	95	26
985	94	30
986	94	26
987	95	34
988	95	57
989	95	45
990	94	37
991	95	34
992	95	27
993	95	27
994	95	29
995	98	22
996	94	84
997	94	74
998	95	62
999	94	51
1000	95	50
1001	95	81
1002	94	65
1003	95	49
1004	94	56
1005	95	65
1006	94	59
1007	99	58
1008	98	41
1009	98	27
1010	98	19

Time(s)	Normalized speed (percent)	Normalized torque (percent)
1011	98	13
1012	98	11
1013	98	9
1014	98	8
1015	98	7
1016	98	6
1017	98	6
1018	98	6
1019	71	6
1020	49	5
1021	51	6
1022	51	6
1023	51	6
1024	51	6
1025	51	6
1026	51	6
1027	51	6
1028	51	6
1029	51	6
1030	51	6
1031	51	5
1032	51	6
1033	51	5
1034	51	6
1035	51	6
1036	51	6
1037	51	5
1038	51	5
1039	51	6
1040	51	6
1041	69	59
1042	94	48
1043	95	34
1044	95	29
1045	95	26
1046	94	27
1047	95	31
1048	95	26
1049	95	34
1050	95	29
1051	95	31
1052	95	29
1053	95	35
1054	95	38
1055	94	41
1056	95	28
1057	95	36
1058	94	30
1059	94	26
1060	94	33
1061	95	34
1062	95	27
1063	98	26
1064	98	19
1065	98	13
1066	98	11
1067	98	9
1068	98	7
1069	98	7
1070	98	6
1071	98	6
1072	98	6
1073	98	5
1074	89	6
1075	49	5
1076	51	6
1077	51	6
1078	51	6
1079	51	6
1080	51	6
1081	51	6
1082	51	6
1083	50	6
1084	51	6
1085	51	6
1086	51	6
1087	51	6
1088	51	6
1089	51	6
1090	51	6
1091	56	74
1092	95	56
1093	94	49
1094	95	47
1095	94	43
1096	94	33
1097	95	50
1098	94	40
1099	95	33
1100	95	24
1101	94	22
1102	94	22
1103	94	25
1104	95	27
1105	95	32
1106	94	29
1107	94	26
1108	94	26
1109	94	24
1110	98	52
1111	94	41
1112	99	35
1113	95	58
1114	95	58
1115	98	57
1116	98	38
1117	98	26
1118	93	63
1119	94	59
1120	98	100
1121	94	73
1122	98	53
1123	94	76
1124	95	61
1125	94	49
1126	94	37
1127	97	50
1128	98	36
1129	98	25
1130	98	18
1131	98	12
1132	98	10
1133	98	8
1134	98	7
1135	98	7
1136	98	6
1137	98	6
1138	98	6
1139	80	6
1140	49	6
1141	78	61
1142	95	50
1143	94	43
1144	94	42
1145	94	31
1146	95	30
1147	95	34
1148	95	28
1149	95	27
1150	94	27
1151	95	31
1152	95	42
1153	94	41
1154	95	37
1155	95	43
1156	95	34
1157	95	31
1158	95	27
1159	95	23
1160	95	27
1161	96	38
1162	95	40
1163	95	39
1164	95	26
1165	95	33
1166	94	28
1167	94	34
1168	98	73
1169	95	49
1170	95	51
1171	94	55
1172	95	48
1173	95	35
1174	95	39
1175	95	39
1176	94	41
1177	95	30
1178	95	23
1179	94	19
1180	95	25
1181	94	29
1182	98	27
1183	95	89
1184	95	74
1185	94	60
1186	94	48
1187	94	41
1188	94	29
1189	94	24
1190	95	19
1191	94	21
1192	95	29
1193	95	28
1194	95	27
1195	94	23
1196	95	25
1197	95	26
1198	94	22
1199	95	19
1200	94	17

Appendix II to Part 1048—Large Spark-ignition (SI) Composite Transient Cycle

The following table shows the transient duty-cycle for engines that are not constant-speed engines, as described in § 1048.510:

Time(s)	Normalized speed (percent)	Normalized torque (percent)
0	0	0
1	0	0
2	0	0
3	0	0
4	0	0
5	0	0
6	0	0
7	0	0
8	0	0
9	1	8
10	6	54
11	8	61
12	34	59

Time(s)	Normalized speed (percent)	Normalized torque (percent)
13	22	46
14	5	51
15	18	51
16	31	50
17	30	56
18	31	49
19	25	66
20	58	55
21	43	31
22	16	45
23	24	38
24	24	27
25	30	33
26	45	65
27	50	49
28	23	42
29	13	42
30	9	45
31	23	30
32	37	45
33	44	50
34	49	52
35	55	49
36	61	46
37	66	38
38	42	33
39	17	41
40	17	37
41	7	50
42	20	32
43	5	55
44	30	42
45	44	53
46	45	56
47	41	52
48	24	41
49	15	40
50	11	44
51	32	31
52	38	54
53	38	47
54	9	55
55	10	50
56	33	55
57	48	56
58	49	47
59	33	44
60	52	43
61	55	43
62	59	38
63	44	28
64	24	37
65	12	44
66	9	47
67	12	52
68	34	21
69	29	44
70	44	54
71	54	62
72	62	57
73	72	56
74	88	71
75	100	69
76	100	34
77	100	42
78	100	54
79	100	58
80	100	38
81	83	17
82	61	15
83	43	22
84	24	35
85	16	39
86	15	45
87	32	34
88	14	42
89	8	48
90	5	51
91	10	41
92	12	37
93	4	47
94	3	49
95	3	50
96	4	49
97	4	48
98	8	43
99	2	51
100	5	46
101	8	41
102	4	47
103	3	49
104	6	45
105	3	48
106	10	42
107	18	27
108	3	50
109	11	41
110	34	29
111	51	57
112	67	63
113	61	32
114	44	31
115	48	54
116	69	65
117	85	65
118	81	29
119	74	21
120	62	23
121	76	58
122	96	75
123	100	77
124	100	27
125	100	79
126	100	79
127	100	81
128	100	57
129	99	52
130	81	35
131	69	29
132	47	22
133	34	28
134	27	37
135	83	60
136	100	74
137	100	7
138	100	2
139	70	18
140	23	39
141	5	54
142	11	40
143	11	34
144	11	41
145	19	25
146	16	32
147	20	31
148	21	38
149	21	42
150	9	51
151	4	49
152	2	51
153	1	58
154	21	57
155	29	47
156	33	45
157	16	49
158	38	45
159	37	43
160	35	42
161	39	43
162	51	49
163	59	55
164	65	54
165	76	62
166	84	59
167	83	29
168	67	35
169	84	54
170	90	58
171	93	43
172	90	29
173	66	19
174	52	16
175	49	17
176	56	38
177	73	71
178	86	80
179	96	75
180	89	27
181	66	17
182	50	18
183	36	25
184	36	24
185	38	40
186	40	50
187	27	48
188	19	48
189	23	50
190	19	45
191	6	51
192	24	48
193	49	67
194	47	49
195	22	44
196	25	40
197	38	54
198	43	55
199	40	52
200	14	49
201	11	45
202	7	48
203	26	41
204	41	59
205	53	60
206	44	54
207	22	40
208	24	41
209	32	53
210	44	74
211	57	25
212	22	49
213	29	45
214	19	37
215	14	43
216	36	40
217	43	63
218	42	49
219	15	50
220	19	44
221	47	59
222	67	80
223	76	74
224	87	66
225	98	61
226	100	38
227	97	27
228	100	53

Time(s)	Normalized speed (percent)	Normalized torque (percent)
229	100	72
230	100	49
231	100	4
232	100	13
233	87	15
234	53	26
235	33	27
236	39	19
237	51	33
238	67	54
239	83	60
240	95	52
241	100	50
242	100	36
243	100	25
244	85	16
245	62	16
246	40	26
247	56	39
248	81	75
249	98	86
250	100	76
251	100	51
252	100	78
253	100	83
254	100	100
255	100	66
256	100	85
257	100	72
258	100	45
259	98	58
260	60	30
261	43	32
262	71	36
263	44	32
264	24	38
265	42	17
266	22	51
267	13	53
268	23	45
269	29	50
270	28	42
271	21	55
272	34	57
273	44	47
274	19	46
275	13	44
276	25	36
277	43	51
278	55	73
279	68	72
280	76	63
281	80	45
282	83	40
283	78	26
284	60	20
285	47	19
286	52	25
287	36	30
288	40	26
289	45	34
290	47	35
291	42	28
292	46	38
293	48	44
294	68	61
295	70	47
296	48	28
297	42	22
298	31	29
299	22	35
300	28	28
301	46	46
302	62	69
303	76	81
304	88	85
305	98	81
306	100	74
307	100	13
308	100	11
309	100	17
310	99	3
311	80	7
312	62	11
313	63	11
314	64	16
315	69	43
316	81	67
317	93	74
318	100	72
319	94	27
320	73	15
321	40	33
322	40	52
323	50	50
324	11	53
325	12	45
326	5	50
327	1	55
328	7	55
329	62	60
330	80	28
331	23	37
332	39	58
333	47	24
334	59	51
335	58	68
336	36	52
337	18	42
338	36	52
339	59	73
340	72	85
341	85	92
342	99	90
343	100	72
344	100	18
345	100	76
346	100	64
347	100	87
348	100	97
349	100	84
350	100	100
351	100	91
352	100	83
353	100	93
354	100	100
355	94	43
356	72	10
357	77	3
358	48	2
359	29	5
360	59	19
361	63	5
362	35	2
363	24	3
364	28	2
365	36	16
366	54	23
367	60	10
368	33	1
369	23	0
370	16	0
371	11	0
372	20	0
373	25	2
374	40	3
375	33	4
376	34	5
377	46	7
378	57	10
379	66	11
380	75	14
381	79	11
382	80	16
383	92	21
384	99	16
385	83	2
386	71	2
387	69	4
388	67	4
389	74	16
390	86	25
391	97	28
392	100	15
393	83	2
394	62	4
395	40	6
396	49	10
397	36	5
398	27	4
399	29	3
400	22	2
401	13	3
402	37	36
403	90	26
404	41	2
405	25	2
406	29	2
407	38	7
408	50	13
409	55	10
410	29	3
411	24	7
412	51	16
413	62	15
414	72	35
415	91	74
416	100	73
417	100	8
418	98	11
419	100	59
420	100	98
421	100	99
422	100	75
423	100	95
424	100	100
425	100	97
426	100	90
427	100	86
428	100	82
429	97	43
430	70	16
431	50	20
432	42	33
433	89	64
434	89	77
435	99	95
436	100	41
437	77	12
438	29	37
439	16	41
440	16	38
441	15	36
442	18	44
443	4	55
444	24	26

Time(s)	Normalized speed (percent)	Normalized torque (percent)
445	26	35
446	15	45
447	21	39
448	29	52
449	26	46
450	27	50
451	13	43
452	25	36
453	37	57
454	29	46
455	17	39
456	13	41
457	19	38
458	28	35
459	8	51
460	14	36
461	17	47
462	34	39
463	34	57
464	11	70
465	13	51
466	13	68
467	38	44
468	53	67
469	29	69
470	19	65
471	52	45
472	61	79
473	29	70
474	15	53
475	15	60
476	52	40
477	50	61
478	13	74
479	46	51
480	60	73
481	33	84
482	31	63
483	41	42
484	26	69
485	23	65
486	48	49
487	28	57
488	16	67
489	39	48
490	47	73
491	35	87
492	26	73
493	30	61
494	34	49
495	35	66
496	56	47
497	49	64
498	59	64
499	42	69
500	6	77
501	5	59
502	17	59
503	45	53
504	21	62
505	31	60
506	53	68
507	48	79
508	45	61
509	51	47
510	41	48
511	26	58
512	21	62
513	50	52
514	39	65
515	23	65
516	42	62
517	57	80
518	66	81
519	64	62
520	45	42
521	33	42
522	27	57
523	31	59
524	41	53
525	45	72
526	48	73
527	46	90
528	56	76
529	64	76
530	69	64
531	72	59
532	73	58
533	71	56
534	66	48
535	61	50
536	55	56
537	52	52
538	54	49
539	61	50
540	64	54
541	67	54
542	68	52
543	60	53
544	52	50
545	45	49
546	38	45
547	32	45
548	26	53
549	23	56
550	30	49
551	33	55
552	35	59
553	33	65
554	30	67
555	28	59
556	25	58
557	23	56
558	22	57
559	19	63
560	14	63
561	31	61
562	35	62
563	21	80
564	28	65
565	7	74
566	23	54
567	38	54
568	14	78
569	38	58
570	52	75
571	59	81
572	66	69
573	54	44
574	48	34
575	44	33
576	40	40
577	28	58
578	27	63
579	35	45
580	20	66
581	15	60
582	10	52
583	22	56
584	30	62
585	21	67
586	29	53
587	41	56
588	15	67
589	24	56
590	42	69
591	39	83
592	40	73
593	35	67
594	32	61
595	30	65
596	30	72
597	48	51
598	66	58
599	62	71
600	36	63
601	17	59
602	16	50
603	16	62
604	34	48
605	51	66
606	35	74
607	15	56
608	19	54
609	43	65
610	52	80
611	52	83
612	49	57
613	48	46
614	37	36
615	25	44
616	14	53
617	13	64
618	23	56
619	21	63
620	18	67
621	20	54
622	16	67
623	26	56
624	41	65
625	28	62
626	19	60
627	33	56
628	37	70
629	24	79
630	28	57
631	40	57
632	40	58
633	28	44
634	25	41
635	29	53
636	31	55
637	26	64
638	20	50
639	16	53
640	11	54
641	13	53
642	23	50
643	32	59
644	36	63
645	33	59
646	24	52
647	20	52
648	22	55
649	30	53
650	37	59
651	41	58
652	36	54
653	29	49
654	24	53
655	14	57
656	10	54
657	9	55
658	10	57
659	13	55
660	15	64

Time(s)	Normalized speed (percent)	Normalized torque (percent)
661	31	57
662	19	69
663	14	59
664	33	57
665	41	65
666	39	64
667	39	59
668	39	51
669	28	41
670	19	49
671	27	54
672	37	63
673	32	74
674	16	70
675	12	67
676	13	60
677	17	56
678	15	62
679	25	47
680	27	64
681	14	71
682	5	65
683	6	57
684	6	57
685	15	52
686	22	61
687	14	77
688	12	67
689	12	62
690	14	59
691	15	58
692	18	55
693	22	53
694	19	69
695	14	67
696	9	63
697	8	56
698	17	49
699	25	55
700	14	70
701	12	60
702	22	57
703	27	67
704	29	68
705	34	62
706	35	61
707	28	78
708	11	71
709	4	58
710	5	58
711	10	56
712	20	63
713	13	76
714	11	65
715	9	60
716	7	55
717	8	53
718	10	60
719	28	53
720	12	73
721	4	64
722	4	61
723	4	61
724	10	56
725	8	61
726	20	56
727	32	62
728	33	66
729	34	73
730	31	61
731	33	55
732	33	60
733	31	59
734	29	58
735	31	53
736	33	51
737	33	48
738	27	44
739	21	52
740	13	57
741	12	56
742	10	64
743	22	47
744	15	74
745	8	66
746	34	47
747	18	71
748	9	57
749	11	55
750	12	57
751	10	61
752	16	53
753	12	75
754	6	70
755	12	55
756	24	50
757	28	60
758	28	64
759	23	60
760	20	56
761	26	50
762	28	55
763	18	56
764	15	52
765	11	59
766	16	59
767	34	54
768	16	82
769	15	64
770	36	53
771	45	64
772	41	59
773	34	50
774	27	45
775	22	52
776	18	55
777	26	54
778	39	62
779	37	71
780	32	58
781	24	48
782	14	59
783	7	59
784	7	55
785	18	49
786	40	62
787	44	73
788	41	68
789	35	48
790	29	54
791	22	69
792	46	53
793	59	71
794	69	68
795	75	47
796	62	32
797	48	35
798	27	59
799	13	58
800	14	54
801	21	53
802	23	56
803	23	57
804	23	65
805	13	65
806	9	64
807	27	56
808	26	78
809	40	61
810	35	76
811	28	66
812	23	57
813	16	50
814	11	53
815	9	57
816	9	62
817	27	57
818	42	69
819	47	75
820	53	67
821	61	62
822	63	53
823	60	54
824	56	44
825	49	39
826	39	35
827	30	34
828	33	46
829	44	56
830	50	56
831	44	52
832	38	46
833	33	44
834	29	45
835	24	46
836	18	52
837	9	55
838	10	54
839	20	53
840	27	58
841	29	59
842	30	62
843	30	65
844	27	66
845	32	58
846	40	56
847	41	57
848	18	73
849	15	55
850	18	50
851	17	52
852	20	49
853	16	62
854	4	67
855	2	64
856	7	54
857	10	50
858	9	57
859	5	62
860	12	51
861	14	65
862	9	64
863	31	50
864	30	78
865	21	65
866	14	51
867	10	55
868	6	59
869	7	59
870	19	54
871	23	61
872	24	62
873	34	61
874	51	67
875	60	66
876	58	55

Time(s)	Normalized speed (percent)	Normalized torque (percent)
877	60	52
878	64	55
879	68	51
880	63	54
881	64	50
882	68	58
883	73	47
884	63	40
885	50	38
886	29	61
887	14	61
888	14	53
889	42	6
890	58	6
891	58	6
892	77	39
893	93	56
894	93	44
895	93	37
896	93	31
897	93	25
898	93	26
899	93	27
900	93	25
901	93	21
902	93	22
903	93	24
904	93	23
905	93	27
906	93	34
907	93	32
908	93	26
909	93	31
910	93	34
911	93	31
912	93	33
913	93	36
914	93	37
915	93	34
916	93	30
917	93	32
918	93	35
919	93	35
920	93	32
921	93	28
922	93	23
923	94	18
924	95	18
925	96	17
926	95	13
927	96	10
928	95	9
929	95	7
930	95	7
931	96	7
932	96	6
933	96	6
934	95	6
935	90	6
936	69	43
937	76	62
938	93	47
939	93	39
940	93	35
941	93	34
942	93	36
943	93	39
944	93	34
945	93	26
946	93	23
947	93	24
948	93	24
949	93	22
950	93	19
951	93	17
952	93	19
953	93	22
954	93	24
955	93	23
956	93	20
957	93	20
958	94	19
959	95	19
960	95	17
961	96	13
962	95	10
963	96	9
964	95	7
965	95	7
966	95	7
967	95	6
968	96	6
969	96	6
970	89	6
971	68	6
972	57	6
973	66	32
974	84	52
975	93	46
976	93	42
977	93	36
978	93	28
979	93	23
980	93	19
981	93	16
982	93	15
983	93	16
984	93	15
985	93	14
986	93	15
987	93	16
988	94	15
989	93	32
990	93	45
991	93	43
992	93	37
993	93	29
994	93	23
995	93	20
996	93	18
997	93	16
998	93	17
999	93	16
1000	93	15
1001	93	15
1002	93	15
1003	93	14
1004	93	15
1005	93	15
1006	93	14
1007	93	13
1008	93	14
1009	93	14
1010	93	15
1011	93	16
1012	93	17
1013	93	20
1014	93	22
1015	93	20
1016	93	19
1017	93	20
1018	93	19
1019	93	19
1020	93	20
1021	93	32
1022	93	37
1023	93	28
1024	93	26
1025	93	24
1026	93	22
1027	93	22
1028	93	21
1029	93	20
1030	93	20
1031	93	20
1032	93	20
1033	93	19
1034	93	18
1035	93	20
1036	93	20
1037	93	20
1038	93	20
1039	93	19
1040	93	18
1041	93	18
1042	93	17
1043	93	16
1044	93	16
1045	93	15
1046	93	16
1047	93	18
1048	93	37
1049	93	48
1050	93	38
1051	93	31
1052	93	26
1053	93	21
1054	93	18
1055	93	16
1056	93	17
1057	93	18
1058	93	19
1059	93	21
1060	93	20
1061	93	18
1062	93	17
1063	93	17
1064	93	18
1065	93	18
1066	93	18
1067	93	19
1068	93	18
1069	93	18
1070	93	20
1071	93	23
1072	93	25
1073	93	25
1074	93	24
1075	93	24
1076	93	22
1077	93	22
1078	93	22
1079	93	19
1080	93	16
1081	95	17
1082	95	37
1083	93	43
1084	93	32
1085	93	27
1086	93	26
1087	93	24
1088	93	22
1089	93	22
1090	93	22
1091	93	23
1092	93	22

Time(s)	Normalized speed (percent)	Normalized torque (percent)
1093	93	22
1094	93	23
1095	93	23
1096	93	23
1097	93	22
1098	93	23
1099	93	23
1100	93	23
1101	93	25
1102	93	27
1103	93	26
1104	93	25
1105	93	27
1106	93	27
1107	93	27
1108	93	24
1109	93	20
1110	93	18
1111	93	17
1112	93	17
1113	93	18
1114	93	18
1115	93	18
1116	93	19
1117	93	22
1118	93	22
1119	93	19
1120	93	17
1121	93	17
1122	93	18
1123	93	18
1124	93	19
1125	93	19
1126	93	20
1127	93	19
1128	93	20
1129	93	25
1130	93	30
1131	93	31
1132	93	26
1133	93	21
1134	93	18
1135	93	20
1136	93	25
1137	93	24
1138	93	21
1139	93	21
1140	93	22
1141	93	22
1142	93	28
1143	93	29
1144	93	23
1145	93	21
1146	93	18
1147	93	16
1148	93	16
1149	93	16
1150	93	17
1151	93	17
1152	93	17
1153	93	17
1154	93	23
1155	93	26
1156	93	22
1157	93	18
1158	93	16
1159	93	16
1160	93	17
1161	93	19
1162	93	18
1163	93	16
1164	93	19
1165	93	22
1166	93	25
1167	93	29
1168	93	27
1169	93	22
1170	93	18
1171	93	16
1172	93	19
1173	93	19
1174	93	17
1175	93	17
1176	93	17
1177	93	16
1178	93	16
1179	93	15
1180	93	16
1181	93	15
1182	93	17
1183	93	21
1184	93	30
1185	93	53
1186	93	54
1187	93	38
1188	93	30
1189	93	24
1190	93	20
1191	95	20
1192	96	18
1193	96	15
1194	96	11
1195	95	9
1196	95	8
1197	96	7
1198	94	33
1199	93	46
1200	93	37
1201	16	8
1202	0	0
1203	0	0
1204	0	0
1205	0	0
1206	0	0
1207	0	0
1208	0	0
1209	0	0

PART 1051—CONTROL OF EMISSIONS FROM RECREATIONAL ENGINES AND VEHICLES

Subpart A—Determining How To Follow This Part

Sec.

1051.1 Does this part apply to me?
1051.5 Which engines are excluded or exempted from this part's requirements?
1051.10 What main steps must I take to comply with this part?
1051.15 Do any other regulation parts affect me?
1051.20 May I certify a recreational engine instead of the vehicle?
1051.25 What requirements apply when installing certified engines in recreational vehicles?

Subpart B—Emission Standards and Related Requirements

1051.101 What emission standards and other requirements must my vehicles meet?
1051.103 What are the exhaust emission standards for snowmobiles?
1051.105 What are the exhaust emission standards for off-highway motorcycles?
1051.107 What are the exhaust emission standards for all-terrain vehicles (ATVs) and offroad utility vehicles?
1051.110 What evaporative emission standards must my vehicles meet?
1051.115 What other requirements must my vehicles meet?
1051.120 What warranty requirements apply to me?
1051.125 What maintenance instructions must I give to buyers?
1051.130 What installation instructions must I give to vehicle manufacturers?
1051.135 How must I label and identify the vehicles I produce?
1051.145 What provisions apply only for a limited time?

Subpart C—Certifying Engine Families

1051.201 What are the general requirements for submitting a certification application?
1051.205 What must I include in my application?
1051.210 May I get preliminary approval before I complete my application?
1051.215 What happens after I complete my application?
1051.220 How do I amend the maintenance instructions in my application?
1051.225 How do I amend my application to include new or modified vehicles or to change an FEL?
1051.230 How do I select engine families?
1051.235 What emission testing must I perform for my application for a certificate of conformity?
1051.240 How do I demonstrate that my engine family complies with exhaust emission standards?
1051.245 How do I demonstrate that my engine family complies with evaporative emission standards?
1051.250 What records must I keep and make available to EPA?
1051.255 When may EPA deny, revoke, or void my certificate of conformity?

Subpart D—Testing Production-Line Engines

1051.301 When must I test my production-line vehicles or engines?
1051.305 How must I prepare and test my production-line vehicles or engines?
1051.310 How must I select vehicles or engines for production-line testing?
1051.315 How do I know when my engine family fails the production-line testing requirements?
1051.320 What happens if one of my production-line vehicles or engines fails to meet emission standards?
1051.325 What happens if an engine family fails the production-line requirements?
1051.330 May I sell vehicles from an engine family with a suspended certificate of conformity?
1051.335 How do I ask EPA to reinstate my suspended certificate?
1051.340 When may EPA revoke my certificate under this subpart and how may I sell these vehicles again?

1051.345 What production-line testing records must I send to EPA?
1051.350 What records must I keep?

Subpart E—Testing In-Use Engines [Reserved]

Subpart F—Test Procedures

1051.501 What procedures must I use to test my vehicles or engines?
1051.505 What special provisions apply for testing snowmobiles?
1051.510 What special provisions apply for testing ATV engines? [Reserved]
1051.515 How do I test my fuel tank for permeation emissions?
1051.520 How do I perform exhaust durability testing?

Subpart G—Compliance Provisions

1051.601 What compliance provisions apply to vehicles and engines subject to this part?
1051.605 What are the provisions for exempting vehicles from the requirements of this part if they use engines you have certified under the motor-vehicle program or the Large Spark-ignition program?
1051.610 What are the provisions for producing recreational vehicles with engines already certified under the motor-vehicle program or the Large SI program?
1051.615 What are the special provisions for certifying small recreational engines?
1051.620 When may a manufacturer obtain an exemption for competition recreational vehicles?
1051.625 What special provisions apply to unique snowmobile designs for small-volume manufacturers?
1051.630 What special provisions apply to unique snowmobile designs for all manufacturers?
1051.635 What provisions apply to new manufacturers that are small businesses?

Subpart H—Averaging, Banking, and Trading for Certification

1051.701 General provisions.
1051.705 How do I average emission levels?
1051.710 How do I generate and bank emission credits?
1051.715 How do I trade emission credits?
1051.720 How do I calculate my average emission level or emission credits?
1051.725 What information must I keep?
1051.730 What information must I report?
1051.735 Are there special averaging provisions for snowmobiles?

Subpart I—Definitions and Other Reference Information

1051.801 What definitions apply to this part?
1051.805 What symbols, acronyms, and abbreviations does this part use?
1051.810 What materials does this part reference?
1051.815 How should I request EPA to keep my information confidential?
1051.820 How do I request a hearing?

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Determining How to Follow This Part

§ 1051.1 Does this part apply to me?

(a) This part applies to you if you manufacture or import any of the following recreational vehicles or engines used in them, unless we exclude them under § 1051.5:

(1) Snowmobiles.

(2) Off-highway motorcycles.

(3) All-terrain vehicles (ATVs).

(4) Offroad utility vehicles with engines with displacement less than or equal to 1000 cc, maximum brake power less than or equal to 30 kW, and maximum vehicle speed of 25 miles per hour or higher. Offroad utility vehicles that are subject to this part are subject to the same requirements as ATVs. This means that any requirement that applies to ATVs also applies to these offroad utility vehicles, without regard to whether the regulatory language mentions offroad utility vehicles.

(b) [Reserved]

(c) As noted in subpart G of this part, 40 CFR part 1068 applies to everyone, including anyone who manufactures, installs, owns, operates, or rebuilds any of the vehicles or engines this part covers.

(d) You need not follow this part for vehicles you produce before the 2006 model year, unless you certify voluntarily. See §§ 1051.103 through 1051.110, § 1051.145, and the definition of ''model year'' in § 1051.801 for more information about the timing of the requirements.

(e) The requirements of this part begin to apply when a vehicle is new. See the definition of ''new'' in § 1051.801 for more information. In some cases, vehicles or engines that have been previously used may be considered ''new'' for the purposes of this part.

(f) See §§ 1051.801 and 1051.805 for definitions and acronyms that apply to this part. The definition section contains significant regulatory provisions and it is very important that you read them.

§ 1051.5 Which engines are excluded or exempted from this part's requirements?

(a) You may exclude vehicles with compression-ignition engines. See 40 CFR part 89 for regulations that cover these engines.

(b) See subpart G of this part and 40 CFR part 1068, subpart C, for exemptions of specific engines.

(c) We may require you to label an engine or vehicle (or both) if this section excludes it and other requirements in this chapter do not apply.

(d) Send the Designated Officer a written request with supporting documentation if you want us to determine whether this part covers or excludes certain vehicles. Excluding engines from this part's requirements does not affect other requirements that may apply to them.

§ 1051.10 What main steps must I take to comply with this part?

(a) You must get a certificate of conformity from us for each engine family before you do any of the following things with a new vehicle or new engine covered by this part: sell, offer for sale, introduce into commerce, distribute or deliver for introduction into commerce, or import it into the United States. ''New'' vehicles or engines may include some already placed in service (see the definition of ''new'' in § 1051.801). You must get a new certificate of conformity for each new model year.

(b) To get a certificate of conformity and comply with its terms, you must do five things:

(1) Meet the emission standards and other requirements in subpart B of this part.

(2) Perform preproduction emission tests.

(3) Apply for certification (see subpart C of this part).

(4) Do routine emission testing on production vehicles or engines as required by subpart D of this part.

(5) Follow our instructions throughout this part.

(c) Subpart F of this part describes how to test your engines or vehicles (including references to other parts) and when you may test the engine alone instead of the entire vehicle.

(d) Subpart G of this part and 40 CFR part 1068 describe requirements and prohibitions that apply to manufacturers, owners, operators, rebuilders, and all others. They also describe exemptions available for special circumstances.

§ 1051.15 Do any other regulation parts affect me?

(a) Parts 86 and 1065 of this chapter describe procedures and equipment specifications for testing vehicles and engines. Subpart F of this part describes how to apply part 86 or 1065 of this chapter to show you meet the emission standards in this part.

(b) Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited actions and penalties for manufacturers and others.

(2) Rebuilding and other aftermarket changes.

(3) Exemptions and exclusions for certain vehicles and engines.

(4) Importing vehicles and engines.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for hearings.

(c) Other parts of this chapter affect you if referenced in this part.

§ 1051.20 May I certify a recreational engine instead of the vehicle?

(a) You may certify engines sold separately from vehicles in either of two cases:

(1) If you manufacture recreational engines but not recreational vehicles, you may ask to certify the engine alone. In your request, explain why you cannot certify the entire vehicle.

(2) If you manufacture complete recreational vehicles containing engines you also sell separately, you may ask to certify all these engines in a single engine family or in separate engine families.

(b) If you certify an engine under this section, you must use the test procedures in subpart F of this part. If the test procedures require vehicle testing, use good engineering judgment to install the engine in an appropriate vehicle for measuring emissions.

(c) If we allow you to certify recreational engines, the vehicles must meet the applicable emission standards (including evaporative emission standards) with the engines installed in the appropriate vehicles. You must prepare installation instructions as described in § 1051.130 and use good engineering judgment so that the engines will meet emission standards after proper installation in the vehicle.

(d) Identify and label engines you produce under this section consistent with the requirements of § 1051.135. On the emission control information label, identify the manufacturing date of the engine rather than the vehicle.

(e) You may not use the provisions of this section to circumvent or reduce the stringency of this part's standards or other requirements.

(f) If you certify under paragraph (a)(1) of this section, you may ask us to allow you to perform production-line testing on the engine. If you certify under paragraph (a)(2) of this section, use good engineering judgment to ensure that these engines are produced in the same manner as the engines you produce for your vehicles, so that your production-line testing results under subpart D of this part would apply to them.

§ 1051.25 What requirements apply when installing certified engines in recreational vehicles?

(a) If you manufacture recreational vehicles with engines certified under § 1051.20, you need not also certify the vehicle under this part. The vehicle must nevertheless meet emission standards with the engine installed.

(b) You must follow the engine manufacturer's emission-related installation instructions, as described in § 1051.135 and 40 CFR 1068.105. For example, you must use a fuel system that meets the permeation requirements of this part, consistent with the engine manufacturer's instructions.

(c) If you install the engine in a way that makes the engine's emission control information label hard to read during normal engine maintenance, you must place a duplicate label on the vehicle, as described in 40 CFR 1068.105.

Subpart B—Emission Standards and Related Requirements

§ 1051.101 What emission standards and other requirements must my vehicles meet?

(a) You must show that your vehicles meet the following:

(1) The applicable exhaust emission standards in § 1051.103, § 1051.105, or § 1051.107.

(i) For snowmobiles, see § 1051.103.

(ii) For off-highway motorcycles, see § 1051.105.

(iii) For all-terrain vehicles and offroad utility vehicles subject to this part, see § 1051.107.

(2) The evaporative emission standards in § 1051.110.

(3) All the requirements in § 1051.115.

(b) The certification regulations in subpart C of this part describe how you make this showing.

(c) These standards and requirements apply to all testing, including production-line and in-use testing, as described in subparts D and E of this part.

(d) Other sections in this subpart describe other requirements for manufacturers such as labeling or warranty requirements.

(e) It is important that you read § 1051.145 to determine if there are other interim requirements or interim compliance options that apply for a limited time.

(f) As is described in § 1051.1(a)(4), offroad utility vehicles that are subject to this part are subject to the same requirements as ATVs.

§ 1051.103 What are the exhaust emission standards for snowmobiles?

(a) Apply the exhaust emission standards in this section by model year. Measure emissions with the snowmobile test procedures in subpart F of this part.

(1) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with these standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). Table 1 also shows the maximum value you may specify for a family emission limit, as follows:

TABLE 1 OF § 1051.103.—EXHAUST EMISSION STANDARDS FOR SNOWMOBILES (G/KW–HR)

Phase	Model year	Phase-in (percent)	Emission standards			Maximum allowable family emission limits		
			HC	$HC+NO_X$	CO	HC	$HC+NO_X$	CO
Phase 1	2006	50	100		275			
Phase 1	2007–2009	100	100		275			
Phase 2	2010 and 2011	100	75		275			
Phase 3	2012 and later	100	75	(1)	(1)	150	165	400

[1] See § 1051.103(a)(2).

(2) For Phase 3, the HC+NO_X and CO standards are defined by a functional relationship. Choose your corporate average HC+NO_X and CO standards for each model year according to the following criteria:

(i) Prior to production, select the HC+NO_X standard and CO standard (specified as g/kW-hr) so that the combined percent reduction from baseline emission levels is greater than or equal to 100 percent; that is, that the standards comply with the following equation:

$$\left(1-\frac{(HC+NO_x)_{STD}-15}{150}\right)\times 100+\left(1-\frac{CO_{STD}}{400}\right)\times 100 \geq 100$$

(ii) Your corporate average HC+NO_X standard may not be higher than 90 g/kW-hr.

(iii) Your corporate average CO standard may not be higher than 275 g/kW-hr.

(iv) You may use the averaging and banking provisions of subpart H of this part to show compliance with these HC+NO_X and CO standards in this paragraph (a)(2). You may modify your selection of the HC+NO_X and CO standards at the end of the model year under paragraph (a)(2)(i) of this section. You must comply with these final corporate average emission standards.

(b) Apply the exhaust emission standards in this section for snowmobiles using each type of fuel specified in 40 CFR part 1065, subpart C, for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for snowmobiles powered by the following fuels:

(1) Gasoline- and LPG-fueled snowmobiles: THC emissions.

(2) Natural gas-fueled snowmobiles: NMHC emissions.

(3) Alcohol-fueled snowmobiles: THCE emissions.

(c) Your snowmobiles must meet emission standards over their full useful life (§ 1051.240 describes how to use deterioration factors to show this). The minimum useful life is 8,000 kilometers, 400 hours of engine operation, or five calendar years, whichever comes first. You must specify a longer useful life in terms of kilometers and hours for the engine family if the average service life of your vehicles is longer than the minimum value, as follows:

(1) Except as allowed by paragraph (c)(2) of this section, your useful life (in kilometers and hours) may not be less than either of the following:

(i) Your projected operating life from advertisements or other marketing materials for any vehicles in the engine family.

(ii) Your basic mechanical warranty for any engines in the engine family.

(2) Your useful life may be based on the average service life of vehicles in the engine family if you show that the average service life is less than the useful life required by paragraph (c)(1) of this section, but more than the minimum useful life (8,000 kilometers or 400 hours of engine operation). In determining the actual average service life of vehicles in an engine family, we will consider all available information and analyses. Survey data is allowed but not required to make this showing.

§ 1051.105 What are the exhaust emission standards for off-highway motorcycles?

(a) Apply the exhaust emission standards in this section by model year. Measure emissions with the off-highway motorcycle test procedures in subpart F of this part.

(1) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with the HC+NO_X and/or CO standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). The phase-in values specify the percentage of your U.S.-directed production that must comply with the emission standards for those model years. Calculate this compliance percentage based on a simple count of production units within the engine family. Table 1 follows:

TABLE 1 OF § 1051.105.—EXHAUST EMISSION STANDARDS FOR OFF-HIGHWAY MOTORCYCLES (G/KM)

Phase	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits	
			HC+NO_X	CO	HC+NO_X	CO
Phase 1	2006	50	2.0	25	20.0	50
	2007 and later	100	2.0	25	20.0	50

(2) For model years 2007 and later you may choose to certify all of your off-highway motorcycles to an HC+NO_X standard of 4.0 g/km and a CO standard of 35 g/km, instead of the standards listed in paragraph (a)(1) of this section. To certify to the standards in this paragraph (a)(2), you must comply with the following provisions:

(i) You may not request an exemption for any off-highway motorcycles under § 1051.620

(ii) At least ten percent of your off-highway motorcycles for the model year must have four of the following features:

(A) The absence of a headlight or other lights.

(B) The absence of a spark arrestor.

(C) The absence of manufacturer warranty.

(D) Suspension travel greater than 10 inches.

(E) Engine displacement greater than 50 cc.

(F) The absence of a functional seat.

(iii) You may use the averaging and banking provisions of subpart H of this part to show compliance with this HC+NO_X standard, but not this CO standard. If you use the averaging or banking provisions to show compliance, your FEL for HC+NO_X may not exceed 8.0 g/km for any engine family. You may not use the trading provisions of subpart H of this part.

(3) You may certify off-highway motorcycles with engines that have total

displacement of 70 cc or less to the exhaust emission exhaust standards in § 1051.615 instead of certifying them to the exhaust emission standards of this section.

(b) Apply the exhaust emission standards in this section for off-highway motorcycles using each type of fuel specified in 40 CFR part 1068, subpart C, for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for off-highway motorcycles powered by the following fuels:

(1) Gasoline- and LPG-fueled off-highway motorcycles: THC emissions.

(2) Natural gas-fueled off-highway motorcycles: NMHC emissions.

(3) Alcohol-fueled off-highway motorcycles: THCE emissions.

(c) Your off-highway motorcycles must meet emission standards over their full useful life (§ 1051.240 describes how to use deterioration factors to show this). The minimum useful life is 10,000 kilometers or five years, whichever comes first. You must specify a longer useful life for the engine family in terms of kilometers if the average service life of your vehicles is longer than the minimum value, as follows:

(1) Except as allowed by paragraph (c)(2) of this section, your useful life (in kilometers) may not be less than either of the following:

(i) Your projected operating life from advertisements or other marketing materials for any vehicles in the engine family.

(ii) Your basic mechanical warranty for any engines in the engine family.

(2) Your useful life may be based on the average service life of vehicles in the engine family if you show that the average service life is less than the useful life required by paragraph (c)(1) of this section, but more than the minimum useful life (10,000 kilometers). In determining the actual average service life of vehicles in an engine family, we will consider all available information and analyses. Survey data is allowed but not required to make this showing.

§ 1051.107 What are the exhaust emission standards for all-terrain vehicles (ATVs) and offroad utility vehicles?

This section specifies the exhaust emission standards that apply to ATVs. As is described in § 1051.1(a)(4), offroad utility vehicles that are subject to this part are subject to these same standards.

(a) Apply the exhaust emission standards in this section by model year. Measure emissions with the ATV test procedures in subpart F of this part.

(1) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with these $HC+NO_X$ standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). Table 1 also shows the maximum value you may specify for a family emission limit. The phase-in values in the table specify the percentage of your total U.S.-directed production that must comply with the emission standards for those model years. Calculate this compliance percentage based on a simple count of production units within the engine family. This applies to your total production of ATVs and offroad utility vehicles that are subject to the standards of this part; including both ATVs and offroad utility vehicles subject to the standards of this section and ATVs and offroad utility vehicles certified to the standards of other sections in this part 1051 (such as § 1051.615, but not including vehicles certified under other parts in this chapter (such as 40 CFR part 90). Table 1 follows:

TABLE 1 OF § 1051.107.—EXHAUST EMISSION STANDARDS FOR ATVS (G/KM)

Phase	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits	
			$HC+NO_X$	CO	$HC+NO_X$	CO
Phase 1	2006	50	1.5	35	20.0	50
	2007 and later	100	1.5	35	20.0	50

(2) You may certify ATVs with engines that have total displacement of less than 100 cc to the exhaust emission exhaust standards in § 1051.615 instead of certifying them to the exhaust emission standards of this section.

(b) Apply the exhaust emission standards in this section for ATVs using each type of fuel specified in 40 CFR 1065, subpart C for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for ATVs powered by the following fuels:

(1) Gasoline- and LPG-fueled ATVs: THC emissions.

(2) Natural gas-fueled ATVs: NMHC emissions.

(3) Alcohol-fueled ATVs: THCE emissions.

(c) Your ATVs must meet emission standards over their full useful life (§ 1051.240 describes how to use deterioration factors to show this). The minimum useful life is 10,000 kilometers, 1000 hours of engine operation, or five years, whichever comes first. You must specify a longer useful life for the engine family in terms of kilometers and hours if the average service life of your vehicles is longer than the minimum value, as follows:

(1) Except as allowed by paragraph (c)(2) of this section, your useful life (in kilometers) may not be less than either of the following:

(i) Your projected operating life from advertisements or other marketing materials for any vehicles in the engine family.

(ii) Your basic mechanical warranty for any engines in the engine family.

(2) Your useful life may be based on the average service life of vehicles in the engine family if you show that the average service life is less than the useful life required by paragraph (c)(1) of this section, but more than the minimum useful life (10,000 kilometers or 1,000 hours of engine operation). In determining the actual average service life of vehicles in an engine family, we will consider all available information and analyses. Survey data is allowed but not required to make this showing.

§ 1051.110 What evaporative emission standards must my vehicles meet?

All of your new vehicles must meet the emission standards of this section over their full useful life, as specified in this section. Note that § 1051.245 allows you to use design-based certification instead of generating new emission data.

(a) Beginning with the 2008 model year, permeation emissions from your vehicle's fuel tank(s) may not exceed 1.5 grams per square-meter per day when measured with the test procedures for tank permeation in subpart F of this part. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance.

(b) Beginning with the 2008 model year, permeation emissions from your vehicle's fuel lines may not exceed 15 grams per square-meter per day when measured with the test procedures for fuel-line permeation in subpart F of this part. Use the inside diameter of the hose to determine the surface area of the hose.

§ 1051.115 What other requirements must my vehicles meet?

Your vehicles must meet the following requirements:

(a) *Closed crankcase.* Design and produce your vehicles so they release no crankcase emissions into the atmosphere throughout their useful life.

(b) *Emission sampling capability.* Produce all your vehicles to allow sampling of exhaust emissions in the field without damaging the vehicle. Show in your application for certification how this can be done in a way that prevents diluting the exhaust sample with ambient air. To do this, you might simply allow for extending the exhaust pipe by 20 cm; you might also install sample ports in the exhaust (downstream of any aftertreatment devices).

(c) *Adjustable parameters.* If your vehicles have adjustable parameters, they must meet all the requirements of this part for any adjustment in the physically adjustable range. Note that parameters that control the air-fuel ratio may be treated separately under paragraph (d) of this section.

(1) We do not consider an operating parameter adjustable if you permanently seal it or if ordinary tools cannot readily access it.

(2) We may require you to adjust the engine to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or in-use testing.

(d) *Other adjustments.* This provision applies if an experienced mechanic can change your engine's air-fuel ratio in less than one hour with a few parts whose total cost is under $50 (in 2001 dollars). Examples include carburetor jets and needles. In the case of carburetor jets and needles, your vehicle must meet all the requirements of this part for any air-fuel ratio within the adjustable range described in paragraph (d)(1) of this section.

(1) In your application for certification, specify the adjustable range of air-fuel ratios you expect to occur in use. You may specify it in terms of engine parts (such as the carburetor jet size and needle configuration as a function of atmospheric conditions).

(2) This adjustable range (specified in paragraph (d)(1) of this section) must include all air-fuel ratios between the lean limit and the rich limit, unless you can show that some air-fuel ratios will not occur in use.

(i) The lean limit is the air-fuel ratio that produces the highest engine power output (averaged over the test cycle).

(ii) The rich limit is the richest of the following air-fuel ratios:

(A) The air-fuel ratio that would result from operating the vehicle as you produce it at the specified test conditions. This paragraph (d)(2)(ii)(A) does not apply if you produce the vehicle with an unjetted carburetor so that the vehicle must be jetted by the dealer or operator.

(B) The air-fuel ratio of the engine when you do durability testing.

(C) The richest air-fuel ratio that you recommend to your customers for the applicable ambient conditions.

(3) If the air-fuel ratio of your vehicle is adjusted primarily by changing the carburetor jet size and/or needle configuration, you may submit your recommended jetting chart instead of the range of air-fuel ratios required by paragraph (d)(1) of this section if the following criteria are met:

(i) Good engineering judgment indicates that vehicle operators would not have an incentive to operate the vehicle with richer air-fuel ratios than recommended.

(ii) The chart is based on use of a fuel that is equivalent to the specified test fuel(s). As an alternative you may submit a chart based on a representative in-use fuel if you also provide instructions for converting the chart to be applicable to the test fuel(s).

(iii) The chart is specified in units that are adequate to make it practical for an operator to keep the vehicle properly jetted during typical use. For example, charts that specify jet sizes based on increments of temperature smaller than 20°F (11.1°C) or increments of altitude less than 2000 feet would not meet this criteria. Temperature ranges must overlap by at least 5°F (2.8°C).

(iv) You follow the jetting chart for durability testing.

(v) You do not produce your vehicles with jetting richer than the jetting chart recommendation for the intended vehicle use.

(4) We may require you to adjust the engine to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or in-use testing. If we allow you to submit your recommended jetting chart instead of the range of air-fuel ratios required by paragraph (d)(1) of this section, adjust the engine to the richest specification within the jetting chart for the test conditions, unless we specify a leaner setting. We may not specify a setting leaner than that described in paragraph (d)(2)(i) of this section.

(e) *Prohibited controls.* You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

(f) *Defeat devices.* You may not equip your vehicles with a defeat device. A defeat device is an auxiliary emission-control device or other control feature that reduces the effectiveness of emission controls under conditions you may reasonably expect the vehicle to encounter during normal operation and use. This does not apply to auxiliary emission-control devices you identify in your certification application if any of the following is true:

(1) The conditions of concern were substantially included in your prescribed duty cycles.

(2) You show your design is necessary to prevent catastrophic vehicle damage or accidents.

(3) The reduced effectiveness applies only to starting the engine.

(g) *Noise standards.* There are no noise standards specified in this part 1051. See 40 CFR Chapter I, Subchapter G, to determine if your vehicle must meet noise emission standards under another part our regulations.

§ 1051.120 What warranty requirements apply to me?

(a) *General requirements.* You must warrant to the ultimate buyer that the new engine meets two conditions:

(1) It is designed, built, and equipped to conform at the time of sale with the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) *Warranty period.* Your emission-related warranty must be valid for at least 50 percent of the vehicle's

minimum useful life in kilometers or at least 30 months, whichever comes first. You may offer an emission-related warranty more generous than we require. This warranty may not be shorter than any published or negotiated warranty you offer for the engine or any of its components. If a vehicle has no odometer, base warranty periods in this paragraph (b) only on the vehicle's age (in years).

(c) *Components covered.* The emission-related warranty must cover components whose failure would increase an engine's emissions, including electronic controls, fuel injection (for liquid or gaseous fuels), exhaust-gas recirculation, aftertreatment, or any other system you develop to control emissions. We generally consider replacing or repairing other components to be the owner's responsibility.

(d) *Scheduled maintenance.* You may schedule emission-related maintenance for a component named in paragraph (c) of this section, subject to the restrictions of § 1051.125. You are not required to cover this scheduled maintenance under your warranty if the component meets either of the following criteria:

(1) The component was in general use on similar engines, and was subject to scheduled maintenance, before January 1, 2000.

(2) Failure of the component would clearly degrade the engine's performance enough that the operator would need to repair or replace it.

(e) *Limited applicability.* You may deny warranty claims under this section if the operator caused the problem, as described in 1068.115 of this chapter. You may ask us to allow you to exclude from your emission-related warranty certified vehicles that have been used significantly for competition, especially certified motorcycles that meet at least four of the criteria in § 1051.620(b)(1).

(f) *Aftermarket parts.* As noted in § 1068.101 of this chapter, it is a violation of the Act to manufacture a vehicle part if one of its main effects is to reduce the effectiveness of the vehicle's emission controls. If you make an aftermarket part, you may—but do not have to—certify that using the part will still allow engines to meet emission standards, as described in § 85.2114 of this chapter.

§ 1051.125 What maintenance instructions must I give to buyers?

Give the ultimate buyer of each new vehicle written instructions for properly maintaining and using the vehicle, including the emission-control system. The maintenance instructions also apply to service accumulation on your test vehicles or engines, as described in 40 CFR part 1065, subpart E.

(a) *Critical emission-related maintenance.* Critical emission-related maintenance includes any adjustment, cleaning, repair, or replacement of air-induction, fuel-system, or ignition components, aftertreatment devices, pulse-air valves, exhaust gas recirculation systems, crankcase ventilation valves, sensors, or electronic control units. This may also include any other component whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance. You may schedule critical emission-related maintenance on these components if you meet the following conditions:

(1) You may ask us to approve critical emission-related maintenance only if it meets two criteria:

(i) Operators are reasonably likely to do the maintenance you call for.

(ii) Vehicles need the maintenance to meet emission standards.

(2) We will accept scheduled maintenance as reasonably likely to occur in use if you satisfy any of four conditions:

(i) You present data showing that, if a lack of maintenance increases emissions, it also unacceptably degrades the vehicle's performance.

(ii) You present survey data showing that 80 percent of vehicles in the field get the maintenance you specify at the recommended intervals.

(iii) You provide the maintenance free of charge and clearly say so in maintenance instructions for the customer.

(iv) You otherwise show us that the maintenance is reasonably likely to be done at the recommended intervals.

(3) You may not schedule critical emission-related maintenance within the minimum useful life period for aftertreatment devices, pulse-air valves, fuel injectors, oxygen sensors, electronic control units, superchargers, or turbochargers.

(b) *Recommended additional maintenance.* You may recommend, but not require, any additional amount of maintenance on the components listed in paragraph (a) of this section. However, you must make it clear that these maintenance steps are not necessary to keep the emission-related warranty valid. If operators do the maintenance specified in paragraph (a) of this section, but not the recommended additional maintenance, this does not allow you to disqualify them from in-use testing or deny a warranty claim.

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations such as substandard fuel or atypical engine operation. You may not perform this special maintenance during service accumulation or durability testing.

(d) *Noncritical emission-related maintenance.* For engine parts not listed in paragraph (a) of this section, you may schedule any amount of emission-related inspection or maintenance. But you must state clearly that these steps are not necessary to keep the emission-related warranty valid. Also, do not take these inspection or maintenance steps during service accumulation on your test vehicles or engines.

(e) *Maintenance that is not emission-related.* For maintenance unrelated to emission controls, you may schedule any amount of inspection or maintenance. You may also take these inspection or maintenance steps during service accumulation on your test vehicles or engines. This might include adding engine oil or adjusting chain tension, clutch position, or tire pressure.

(f) *Source of parts and repairs.* Print clearly on the first page of your written maintenance instructions that any repair shop or person may maintain, replace, or repair emission-control devices and systems. Your instructions may not require any component or service identified by brand, trade, or corporate name. Also, do not directly or indirectly condition your warranty on a requirement that the vehicle be serviced by your franchised dealers or any other service establishments with which you have a commercial relationship. You may disregard the requirements in this paragraph (f) if you do one of two things:

(1) Provide a component or service without charge under the purchase agreement.

(2) Get us to waive this prohibition in the public's interest by convincing us the vehicle will work properly only with the identified component or service.

§ 1051.130 What installation instructions must I give to vehicle manufacturers?

(a) If you sell an engine for someone else to install in a recreational vehicle, give the engine buyer written instructions for installing it consistent with the requirements of this part. Include all information necessary to ensure that engines installed this way will meet emission standards.

(b) These instructions must have the following information:

(1) Include the heading: ''Emission-related installation instructions''.

(2) State: ''Failing to follow these instructions when installing a certified engine in a recreational vehicle may violate federal law (40 CFR 1068.105(b)), and subject you to fines or other penalties as described in the Clean Air Act.''.

(3) Describe any other instructions needed to install an exhaust aftertreatment device consistent with your application for certification.

(4) Describe the steps needed to comply with the evaporative emission standards in § 1051.110.

(5) Describe any limits on the range of applications needed to ensure that the engine operates consistently with your application for certification. For example, if your engines are certified only to the snowmobile standards, tell vehicle manufacturers not to install the engines in other vehicles.

(6) Describe any other instructions to make sure the installed engine will operate according to any design specifications you describe in your application for certification.

(7) State: ''If you install the engine in a way that makes the engine's emission control information label hard to read during normal engine maintenance, you must place a duplicate label on the vehicle, as described in 40 CFR 1068.105.''.

(c) You do not need installation instructions for engines you install in your own vehicles.

§ 1051.135 How must I label and identify the vehicles I produce?

Each of your vehicles must have three labels: a vehicle identification number as described in paragraph (a) of this section, an emission control information label as described in paragraphs (b) through (e) of this section, and a consumer information label as described in paragraph (g) of this section.

(a) Assign each production vehicle a unique identification number and permanently and legibly affix, stamp, or engrave it on the vehicle.

(b) At the time of manufacture, add a permanent label identifying the emission controls for each vehicle. This is the vehicle's ''emission control information label.'' To meet labeling requirements, do the following things:

(1) Attach the label in one piece so it is not removable without being destroyed or defaced.

(2) Design and produce it to be durable and readable for the vehicle's entire life.

(3) Secure it to a part of the vehicle (or engine) needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Attach the label in a location where it can be easily read.

(c) On your label, do these things:

(1) Include the heading ''EMISSION CONTROL INFORMATION''.

(2) Include your full corporate name and trademark.

(3) State: ''THIS VEHICLE IS CERTIFIED TO OPERATE ON [specify operating fuel or fuels].''.

(4) Identify the emission-control system; your identifiers must use names and abbreviations consistent with SAE J1930 (incorporated by reference in § 1051.810).

(5) List all requirements for fuel and lubricants.

(6) State the date of manufacture [DAY (optional), MONTH, and YEAR]; if you stamp it on the engine and print it in the owner's manual, you may omit this information from the emission control information label.

(7) State: ''THIS VEHICLE MEETS U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR [MODEL YEAR] [SNOWMOBILES or OFF-ROAD MOTORCYCLES or ATVs].''.

(8) Include EPA's standardized designation for the engine family.

(9) State the engine's displacement (in liters) and maximum brake power. You do not need to include the engine's displacement and power on the emission control information label if the vehicle is permanently labeled with a unique model name that corresponds to a specific displacement/power configuration.

(10) State the engine's useful life if it is different than the minimum value.

(11) List specifications and adjustments for engine tuneups; show the proper position for the transmission during tuneup and state which accessories should be operating.

(12) Identify the emission standards or family emission limits to which you have certified the engine.

(d) Some of your engines may need more information on the emission control information label. If you produce an engine or vehicle that we exempt from the requirements of this part, see subpart G of this part and 40 CFR part 1068, subparts C and D, for more label information.

(e) Some engines may not have enough space for an emission control information label with all the required information. In this case, you may omit the information required in paragraphs (c)(3), (c)(4), and (c)(5) of this section if you print it in the owner's manual instead.

(f) If you are unable to meet these labeling requirements, you may ask us to modify them consistent with the intent of this section.

(g) Label every vehicle certified under this part with a removable hang-tag showing its emission characteristics relative to other models. The label should be attached securely to the vehicle before it is offered for sale in such a manner that it would not be accidentally removed prior to sale. Use the applicable equations of this paragraph (g) to determine the normalized emission rate (NER) from the FEL for your vehicle. If the vehicle is certified without using the averaging provisions of subpart H, use the final deteriorated emission level. Round the resulting normalized emission rate for your vehicle to the nearest whole number. We may specify a standardized format for labels. At a minimum, the tag should include: The manufacturer's name, vehicle model name, engine description (500 cc two-stroke with DFI), the NER, and a brief explanation of the scale (for example, note that 0 is the cleanest and 10 is the least clean).

(1) For snowmobiles, use the following equation:

$$NER = 16.61 \times \log(2.667 \times HC + CO) - 38.22$$

Where:

HC and CO are the cycle-weighted FELs (or emission rates) for hydrocarbons and carbon monoxide in g/kW–hr.

(2)(i) For off-highway motorcycles with $HC+NO_X$ emissions less than or equal to 2.0 g/km, use the following equation:

$$(NER = 2.500 \times (HC + NO_X)$$

Where:

$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

(ii) For off-highway motorcycles with $HC+NO_X$ emissions greater than 2.0 g/km, use the following equation:

$$NER = 5.000 \times \log(HC + NO_X) + 3.495$$

Where:

$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

(3)(i) For ATVs with $HC+NO_X$ emissions less than or equal to 1.5 g/km, use the following equation:

$$NER = 3.333 \times (HC + NO_X)$$

Where:

$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

(ii) For ATVs with $HC+NO_X$ emissions greater than 1.5 g/km, use the following equation:

$$NER = 4.444 \times \log(HC + NO_X) + 4.217$$

Where:

$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

§ 1051.145 What provisions apply only for a limited time?

Apply the following provisions instead of others in this part for the periods and circumstances specified in this section.

(a) *Provisions for small-volume manufacturers.* Special provisions apply to you if you are a small-volume manufacturer subject to the requirements of this part. Contact us before 2006 if you intend to use these provisions.

(1) You may delay complying with otherwise applicable emission standards (and other requirements) for two model years.

(2) If you are a small-volume manufacturer of snowmobiles, only 50 percent of the models you produce (instead of all of the models you produce) must meet emission standards in the first two years they apply to you as a small-volume manufacturer, as described in paragraph (a)(1) of this section. For example, this alternate phase-in allowance would allow small-volume snowmobile manufacturers to comply with the Phase 1 exhaust standards by certifying 50 percent of their snowmobiles in 2008, 50 percent of their snowmobiles in 2009, and 100 percent in 2010.

(3) Your vehicles for model years before 2011 may be exempt from the exhaust standards of this part if you meet the following criteria:

(i) Produce your vehicles by installing engines covered by a valid certificate of conformity under 40 CFR part 90 that shows the engines meet standards for Class II engines for each engine's model year.

(ii) Do not change the engine in a way that we could reasonably expect to increase its exhaust emissions.

(iii) The engine meets all applicable requirements from 40 CFR part 90. This applies to engine manufacturers, vehicle manufacturers who use these engines, and all other persons as if these engines were not used in recreational vehicles.

(iv) Demonstrate that fewer than 50 percent of the engine model's total sales, from all companies, are used in recreational vehicles regulated under this part.

(4) All vehicles certified or exempted under this paragraph (a) must be labeled according to our specifications. The label must include the following:

(i) The heading ''EMISSION CONTROL INFORMATION''.

(ii) Your full corporate name and trademark.

(iii) A description of the provisions under which the vehicle is either exempted or certified.

(iv) Other information that we specify to you in writing.

(b) *Optional emission standards for ATVs.* To meet ATV standards for model years before 2009, you may apply the exhaust emission standards by model year in paragraph (b)(1) of this section while measuring emissions using the engine-based test procedures in 40 CFR part 1065 instead of the chassis-based test procedures in 40 CFR part 86.

(1) Follow Table 1 of this section for exhaust emission standards, while meeting all the other requirements of § 1051.107. You may use emission credits to show compliance with these standards (see subpart H of this part). You may not exchange emission credits with engine families meeting the standards in § 1051.107(a). You may also not exchange credits between engine families certified to the standards for engines above 225 cc and engine families certified to the standards for engines below 225 cc. The phase-in percentages in the table specify the percentage of your U.S.-directed production that must comply with the emission standards for those model years. Table 1 follows:

TABLE 1 OF § 1051.145.—OPTIONAL EXHAUST EMISSION STANDARDS FOR ATVS (G/KW–HR)

Engine displacement	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits
			$HC+NO_X$	CO	$HC+NO_X$
<225 cc	2006	50	16.1	400	32.2
	2007 and 2008	100	16.1	400	32.2
≥225 cc	2006	50	13.4	400	26.8
	2007 and 2008	100	13.4	400	26.8

(2) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in Table 2 of this section.

(i) During idle mode, hold the speed within your specifications, keep the throttle fully closed, and keep engine torque under 5 percent of the peak torque value at maximum test speed.

(ii) For the full-load operating mode, operate the engine at its maximum fueling rate.

(iii) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(iv) Table 2 follows:

TABLE 2 OF § 1051.145.—6-MODE DUTY CYCLE FOR RECREATIONAL ENGINES

Mode No.	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at test speed)	Minimum time in mode (minutes)	Weighting factors
1	85	100	5.0	0.09
2	85	75	5.0	0.20

TABLE 2 OF § 1051.145.—6-MODE DUTY CYCLE FOR RECREATIONAL ENGINES—Continued

Mode No.	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at test speed)	Minimum time in mode (minutes)	Weighting factors
3	85	50	5.0	0.29
4	85	25	5.0	0.30
5	85	10	5.0	0.07
6	Idle	0	5.0	0.05

(3) For ATVs certified to the standards in this paragraph (b) use the following equation to determine the normalized emission rate required by § 1051.135(g):

$$NER = 9.898 \times \log(HC + NO_X - 4.898$$

Where:

$HC + NO_X$ is the sum of the cycle-weighted emission rates for hydrocarbons and oxides of nitrogen in g/kW–hr.

(c) *Production-line testing.* Vehicles certified to the Phase 1 or Phase 2 standards in § 1051.103, or the Phase 1 standards in §§ 1051.105 or 1051.107 are exempt from the production-line testing requirements of subpart D of this part if they are certified without participating in the emission averaging, banking and trading program described in Subpart H of this part.

(d) *Phase-in flexibility.* For model years before 2014, if you make a good faith effort to comply, but fail to meet the sales requirements of this part during a phase-in period for new standards, or fail to meet the average emission standards, we may approve an alternative remedy to offset the emission reduction deficit using future emission credits under this part. To apply for this, you must:

(1) Submit a plan during the certification process for the first model year of the phase-in showing how you project to meet the sales requirement of the phase-in.

(2) Notify us less than 30 days after you determine that you are likely to fail to comply with the sales requirement of the phase-in.

(3) Propose a remedy that will achieve equivalent or greater emission reductions compared to the specified phase-in requirements, and that will offset the deficit within one model year.

(e) *Snowmobile testing.* You may use the raw sampling procedures described in 40 CFR part 91, subparts D and E, for emission testing of snowmobiles for model years prior to 2010. For later model years, you may use these procedures if you show that they produce emission measurements equivalent to the otherwise specified test procedures.

(f) *Early credits.* Snowmobile manufacturers may generate early emission credits in one of the following ways, by certifying some or all of their snowmobiles prior to 2006. Credit generating snowmobiles must meet all other applicable requirements of this part. No early credits may be generated by off-highway motorcycles or ATVs.

(1) You may certify one or more snowmobile engine families to FELs (HC and CO) below the numerical level of the Phase 2 standards prior to the date when compliance with the Phase 1 standard is otherwise required. Credits are calculated relative to the Phase 2 standards. Credits generated under this paragraph (f)(1) may be used at any time before 2012.

(2) You may certify a snowmobile engine family to FELs (HC and CO) below the numerical level of the Phase 1 standards prior to the date when compliance with the Phase 1 standard is otherwise required. Credits are calculated relative to the Phase 1 standards. Credits generated under this paragraph (f)(2) may only be used for compliance with the Phase 1 standards. You may generate credits under this paragraph (f)(2) without regard to whether the FELs are above or below the numerical level of the Phase 2 standards.

(g) *Pull-ahead option for permeation emissions.* Manufacturers choosing to comply with an early tank permeation standard of 3.0 g/m²/day prior to model year 2008 may be allowed to delay compliance with the 1.5 g/m²/day standard, for an equivalent number of tanks, subject to the following provisions:

(1) Pull-ahead tanks meeting the 3.0 g/m²/day standard must be certified and must meet all applicable requirements other than those limited to compliance with the exhaust standards.

(2) Tanks for which compliance with the 1.5 g/m²/day standard is delayed must meet the 3.0 g/m²/day standard.

(3) You may delay compliance with the 1.5 g/m²/day standard for one tank for one year for each tank-year of credit generated early.

(4) You may not use credits for a tank that is larger than the tank from which you generated the credits.

Subpart C—Certifying Engine Families

§ 1051.201 What are the general requirements for submitting a certification application?

(a) Send us an application for a certificate of conformity for each engine family. Each application is valid for only one model year.

(b) The application must not include false or incomplete statements or information (see § 1051.255).

(c) We may choose to ask you to send us less information than we specify in this subpart, but this would not change your recordkeeping requirements.

(d) Use good engineering judgment for all decisions related to your application (see § 1068.5 of this chapter).

(e) An authorized representative of your company must approve and sign the application.

§ 1051.205 What must I include in my application?

In your application, do all the following things unless we ask you to send us less information:

(a) Describe the engine family's specifications and other basic parameters of the vehicle design. List the types of fuel you intend to use to certify the engine family (for example, gasoline, liquefied petroleum gas, methanol, or natural gas). List vehicle configurations and model names that are included in the engine family.

(b) Explain how the emission-control systems operate.

(1) Describe in detail all the system components for controlling exhaust emissions, including auxiliary emission-control devices and all fuel-system components you will install on any production or test vehicle or engine. Explain why any auxiliary emission-control devices are not defeat devices (see § 1051.115(f)). Do not include

detailed calibrations for components unless we ask for them.

(2) Describe the evaporative emission controls.

(c) Describe the vehicles or engines you selected for testing and the reasons for selecting them.

(d) Describe any special or alternate test procedures you used (see § 1051.501).

(e) Describe how you operated the engine or vehicle prior to testing, including the duty cycle and the number of engine operating hours used to stabilize emission levels, and any scheduled maintenance you performed.

(f) List the specifications of the test fuels to show that they fall within the required ranges.

(g) Identify the engine family's useful life.

(h) Propose maintenance and use instructions for the ultimate buyer of each new vehicle (see § 1051.125).

(i) Propose emission-related installation instructions if you sell engines for someone else to install in a vehicle (see § 1051.130).

(j) Propose an emission control information label.

(k) Present emission data to show that you meet emission standards.

(1) Present exhaust emission data for HC, NO_X (as applicable), and CO on a test vehicle or engine to show your vehicles meet the emission standards we specify in subpart B of this part. Show these figures before and after applying deterioration factors for each vehicle or engine. Include test data for each type of fuel from part 1065, subpart C, of this chapter on which you intend for vehicles in the engine family to operate (for example, gasoline, liquefied petroleum gas, methanol, or natural gas). If we specify more than one grade of any fuel type (for example, a summer grade and winter grade of gasoline), you only need to submit test data for one grade, unless the regulations of this part explicitly specify otherwise for your vehicle.

(2) Present evaporative test data for HC to show your vehicles meet the evaporative emission standards we specify in subpart B of this part. Show these figures before and after applying deterioration factors for each vehicle or engine, where applicable. If you did not perform the testing, identify the source of the test data.

(3) Note that § 1051.235 and 1051.245 allows you to submit an application in certain cases without new emission data.

(l) Report all test results, including those from invalid tests or from any nonstandard tests (such as measurements based on exhaust concentrations in parts per million).

(m) Identify the engine family's deterioration factors and describe how you developed them. Present any emission test data you used for this.

(n) Describe all adjustable operating parameters and other adjustments (see § 1051.115 (c) and (d)), including the following:

(1) The nominal or recommended setting.

(2) The intended physically adjustable range, including production tolerances if they affect the range.

(3) The limits or stops used to establish adjustable ranges.

(4) The air-fuel ratios or jet chart specified in § 1051.115(d).

(o) State that you operated your test vehicles or engines according to the specified procedures and test parameters using the fuels described in the application to show you meet the requirements of this part.

(p) State unconditionally that all the vehicles (and/or engines) in the engine family comply with the requirements of this part, other referenced parts, and the Clean Air Act.

(q) Include estimates of U.S.-directed production volumes.

(r) Show us how to modify your production vehicles to measure emissions in the field (see § 1051.115).

(s) Add other information to help us evaluate your application if we ask for it.

§ 1051.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations listed in § 1051.215(b)(1) through (5). Decisions made under this section are considered to be preliminary approval. We will generally not disapprove applications under § 1051.215(b)(1) through (5) where we have given you preliminary approval, unless we find new and substantial information supporting a different decision.

(a) If you request preliminary approval related to the upcoming model year or the model year after that, we will make a ''best-efforts'' attempt to make the appropriate determinations as soon as possible. We will generally not provide preliminary approval related to a future model year more than two years ahead of time.

(b) If we have published general guidance that serves as our determination for your situation, you may consider that to be preliminary approval.

§ 1051.215 What happens after I complete my application?

(a) If any of the information in your application changes after you submit it, amend it as described in § 1051.225.

(b) We may deny your application (that is, determine that we cannot approve it without revision) if the engine family does not meet the requirements of this part or the Act. For example:

(1) If you inappropriately use the provisions of § 1051.230(c) or (d) to define a broader or narrower engine family, we will require you to redefine your engine family.

(2) If we determine you did not appropriately select the useful life as specified in § 1051.103(c), § 1051.105(c), or § 1051.107(c), we will require you to lengthen it.

(3) If we determine you did not appropriately select deterioration factors under § 1051.240(c), we will require you to revise them.

(4) If your proposed emission control information label is inconsistent with § 1051.135, we will require you to change it (and tell you how, if possible).

(5) If you require or recommend maintenance and use instructions inconsistent with § 1051.125, we will require you to change them.

(6) If we find any other problem with your application, we will tell you what the problem is, and what needs to be corrected.

(c) If we determine your application is complete and shows that the engine family meets all the requirements of this part and the Act, we will issue a certificate of conformity for your engine family for that model year. If we deny the application, we will explain why in writing. You may then ask us to hold a hearing to reconsider our decision (see § 1051.820).

§ 1051.220 How do I amend the maintenance instructions in my application?

Send the Designated Officer a request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions.

(a) If you are decreasing the specified level of maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified level of

maintenance, you may distribute the new maintenance instructions anytime after you send your request.

(c) If you are correcting or clarifying your maintenance instructions or if you are changing instructions for maintenance unrelated to emission controls, the requirements of this section do not apply.

§ 1051.225 How do I amend my application to include new or modified vehicles or to change an FEL?

(a) You must amend your application for certification before you take either of the following actions:

(1) Add a vehicle to a certificate of conformity.

(2) Make a design change for a certified engine family that may affect emissions or an emission-related part over the vehicle's lifetime.

(3) Modify an FEL for an engine family, as described in paragraph (f) of this section.

(b) Send the Designated Officer a request to amend the application for certification for an engine family. In your request, do all of the following:

(1) Describe the vehicle model or configuration you are adding or changing.

(2) Include engineering evaluations or reasons why the original test vehicle or engine is or is not still appropriate.

(3) If the original test vehicle or engine for the engine family is not appropriate to show compliance for the new or modified vehicle, include new test data showing that the new or modified vehicle meets the requirements of this part.

(c) You may start producing the new or modified vehicle anytime after the time at which you send us your request (for example, the day you mail your request). If we determine that the affected vehicles do not meet applicable requirements, we will require you to cease production of the vehicles and to recall and correct the vehicles at no expense to the owner. If you choose to produce vehicles under this paragraph, we will consider that to be consent to recall all vehicles that we determine do not meet applicable standards and other requirements and to remedy the nonconformity at no expense to the owner.

(d) You must give us test data within 30 days if we ask for more testing, or stop producing the vehicle if you are not able to do this. You may give us an engineering evaluation instead of test data if we agree that you can address our questions without test data.

(e) If we determine that the certificate of conformity would not cover your new or modified vehicle, we will send you a written explanation of our decision. In this case, you may no longer produce these vehicles, though you may ask for a hearing for us to reconsider our decision (see § 1051.820).

(f) You may ask to change your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family after the start of production. You must use the higher FEL for the entire family to calculate your average emission level under subpart H of this part. In your request, you must demonstrate that you will still be able to comply with the applicable average emission standards as specified in subparts B and H of this part.

(2) You may ask to lower the FEL for your engine family after the start of production only when you have test data from production vehicles indicating that your vehicles comply with the lower FEL. You may create a separate subfamily with the lower FEL. Otherwise, you must use the higher FEL for the family to calculate your average emission level under subpart H of this part.

(3) If you change the FEL during production, you must include the new FEL on the emission control information label for all vehicles produced after the change.

§ 1051.230 How do I select engine families?

(a) Divide your product line into families of vehicles that you expect to have similar emission characteristics. Your engine family is limited to a single model year.

(b) Group vehicles in the same engine family if they are the same in all of the following aspects:

(1) The combustion cycle.

(2) The cooling system (water-cooled vs. air-cooled).

(3) Configuration of the fuel system (for example, port fuel injection vs. carburetion).

(4) Method of air aspiration.

(5) The number, location, volume, and composition of catalytic converters.

(6) Type of fuel.

(7) The number, arrangement, and approximate bore diameter of cylinders.

(8) Evaporative emission controls.

(c) In some cases you may subdivide a group of vehicles that is identical under paragraph (b) of this section into different engine families. To do this under normal circumstances, you must show you expect emission characteristics to be different during the useful life or that any of the following engine characteristics are different:

(1) Method of actuating intake and exhaust timing (poppet valve, reed valve, rotary valve, etc.).

(2) Location or size of intake and exhaust valves or ports.

(3) Configuration of the combustion chamber.

(4) Cylinder stroke or actual bore diameter.

(5) Exhaust system.

(d) In some cases, you may include different engines in the same engine family, even though they are not identical with respect to the things listed in paragraph (b) of this section.

(1) If different engines have similar emission characteristics during the useful life, we may approve grouping them in the same engine family.

(2) If you are a small-volume manufacturer, you may group engines from any vehicles subject to the same emission standards into a single engine family. This does not change any of the requirements of this part for showing that an engine family meets emission standards.

(e) If you cannot appropriately define engine families by the method in this section, we will define them based on features related to emission characteristics.

(f) You may ask us to create separate families for exhaust emissions and evaporative emissions. If we do this, list both families on the emission control information label.

§ 1051.235 What emission testing must I perform for my application for a certificate of conformity?

This section describes the emission testing you must perform to show compliance with the emission standards in subpart B of this part during certification.

(a) Test your emission-data vehicles using the procedures and equipment specified in subpart F of this part. Where specifically required or allowed, test the engine instead of the vehicle. For evaporative emissions, test the fuel system components separate from the vehicle.

(b) Select from each engine family a test vehicle or engine, and a fuel system for each fuel type with a configuration that is most likely to exceed the emission standards, using good engineering judgment, consider the emission levels of all exhaust constituents over the full useful life of the vehicle.

(c) You may use previously generated emission data in the following cases:

(1) You may submit emission data for equivalent engine families from previous years instead of doing new tests, but only if the data show that the test vehicle or engine would meet all the requirements for the latest vehicle or engine models. We may require you to

do new emission testing if we believe the latest vehicle or engine models could be substantially different from the previously tested vehicle or engine.

(2) You may submit emission data for equivalent engine families performed to show compliance with other standards (such as California standards) instead of doing new tests, but only if the data show that the test vehicle or engine would meet all of this part's requirements.

(3) You may submit evaporative emission data measured by a fuel system supplier. We may require you to verify that the testing was conducted in accordance with the applicable regulations.

(d) We may choose to measure emissions from any of your test vehicles or engines (or other vehicles or engines in the engine family).

(1) If we do this, you must provide the test vehicle or engine at the location we select. We may decide to do the testing at your plant or any other facility. If we choose to do the testing at your plant, you must schedule it as soon as possible and make available the instruments and equipment we need.

(2) If we measure emissions on one of your test vehicles or engines, the results of that testing become the official data for the vehicle or engine. Unless we later invalidate this data, we may decide not to consider your data in determining if your engine family meets the emission standards.

(3) Before we test one of your vehicles or engines, we may set its adjustable parameters to any point within the physically adjustable ranges (see § 1051.115(c)). We may also adjust the air-fuel ratio within the adjustable range specified in § 1051.115(d).

(4) Calibrate the test vehicle or engine within normal production tolerances for anything not covered by § 1051.115(c) and (d) of this section.

(e) If you are a small-volume manufacturer, you may certify by design on the basis of preexisting exhaust emission data for similar technologies and other relevant information, and in accordance with good engineering judgment. In those cases, you are not required to test your vehicles.

This is called ''design-certification'' or ''certifying by design.'' To certify by design, you must show that the technology used on your engines is sufficiently similar to the previously tested technology that a person reasonably familiar with emission-control technology would believe that your engines will comply with the emission standards.

(f) For fuel tanks that are certified based on permeability treatments for plastic fuel tanks, you do not need to test each engine family. However, you must use good engineering judgment to determine permeation rates for the tanks. This requires that more than one fuel tank be tested for each set of treatment conditions. You may not use test data from a given tank for any other tanks that have thinner walls. You may, however, use test data from a given tank for other tanks that have thicker walls. This applies to both low-hour (*i.e.*, baseline testing) and durability testing. Note that § 1051.245 allows you to use design-based certification instead of generating new emission data.

§ 1051.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For certification, your engine family is considered to be in compliance with the numerical exhaust emission standards in subpart B of this part if all emission-data vehicles representing that family have test results showing emission levels at or below the standards.

(b) Your engine family does not comply if any emission-data vehicle representing that family has test results showing emission levels above the standards for any pollutant.

(c) To compare emission levels from the emission-data vehicle with the emission standards, apply deterioration factors (to three significant figures) to the measured emission levels. The deterioration factor is a number that shows the relationship between exhaust emissions at the end of useful life and at the low-hour test point. Section 1051.520 specifies how to test your vehicle to develop deterioration factors that estimate the change in emissions over your vehicle's full useful life. Small-volume manufacturers may use assigned deterioration factors that we establish. Apply the deterioration factors as follows:

(1) For vehicles that use aftertreatment technology, such as catalytic converters, the exhaust deterioration factor is the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by multiplying the measured emissions by the deterioration factor. If the factor is less than one, use one.

(2) For vehicles that do not use aftertreatment technology, the exhaust deterioration factor is the difference between exhaust emissions at the end of useful life and exhaust emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test vehicle.

§ 1051.245 How do I demonstrate that my engine family complies with evaporative emission standards?

(a) For certification, your engine family is considered in compliance with the evaporative emission standards in subpart B of this part if you do either of the following:

(1) You have test results showing permeation emission levels from the fuel tanks and fuel lines in the family are at or below the standards in § 1051.110 throughout the useful life.

(2) You comply with the design specifications in paragraph (e) of this section.

(b) Your engine family does not comply if any fuel tank or fuel line representing that family has test results showing emission levels above the standards.

(c) To compare emission levels with the emission standards, apply deterioration factors (to three significant figures) to the measured emission levels. The deterioration factor is a number that shows the relationship between emissions at the end of useful life and at the low-hour test point. For permeation emissions, the deterioration factor is the difference between evaporative emissions at the end of useful life and evaporative emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(1) Section 1051.515 specifies how to test your fuel tanks to develop deterioration factors that estimate the change in emissions over your vehicle's full useful life. Small-volume manufacturers may use assigned deterioration factors that we establish. Apply the deterioration factors as follows:

(i) Calculate the deterioration factor from emission tests performed before and after the durability tests described in § 1051.515(c) and using good engineering judgment. The durability tests described in § 1051.515(c) represent the minimum requirements for determining a deterioration factor. You may not use a deterioration factor that is less than the difference between evaporative emissions before and after

the durability tests described in § 1051.515(c).

(ii) Do not apply the deterioration factor to test results for tanks that have already undergone these durability tests.

(2) Determine the deterioration factor for fuel lines using good engineering judgment.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test vehicle.

(e) You may demonstrate for certification that your engine family complies with the evaporative emission standards by demonstrating that you use the following control technologies:

(1) For certification to the standards specified in § 1051.110(a) with the control technologies shown in the following table:

TABLE 1 OF § 1051.245.—DESIGN-CERTIFICATION TECHNOLOGIES FOR CONTROLLING TANK PERMEATION

If the tank permeability control technology is . . .	Then you may design-certify with a tank emission level of . . .
(i) A metal fuel tank with no non-metal gaskets or with gaskets made from a low-permeability material [1].	1.5 g/m ^{2}/day.
(ii) A metal fuel tank with non-metal gaskets with an exposed surface area of 1000 mm ^{2} or less.	1.5 g/m ^{2}/day.

[1] Permeability of 10 g/m ^{2}/day or less according to ASTM D 814–95 (incorporated by reference in § 1051.810).

(2) For certification to the standards specified in § 1051.110(b) with the control technologies shown in the following table:

TABLE 2 OF § 1051.245.—DESIGN-CERTIFICATION TECHNOLOGIES FOR CONTROLLING FUEL-LINE PERMEATION

If the fuel-line permeability control technology is . . . jennifer	Then you may design-certify with a fuel line permeation emission level of . . .
(i) Hose meeting Category 1 permeation specifications in SAE J2260 (incorporated by reference in § 1051.810).	15 g/m^2/day.
(ii) Hose meeting the R11–A or R12 permeation specifications in SAE J30 (incorporated by reference in § 1051.810).	15 g/m^2/day.

(3) We may establish additional design certification options where we find that new test data demonstrate that the use of other technology designs will ensure compliance with the applicable emission standards.

§ 1051.250 What records must I keep and make available to EPA?

(a) Organize and maintain the following records to keep them readily available; we may review these records at any time:

(1) A copy of all applications and any summary information you sent us.

(2) Any of the information we specify in § 1051.205 that you did not include in your application.

(3) A detailed history of each emission-data vehicle. In each history, describe all of the following:

(i) The emission-data vehicle's construction, including its origin and buildup, steps you took to ensure that it represents production vehicles, any components you built specially for it, and all emission-related components.

(ii) How you accumulated vehicle or engine operating hours, including the dates and the number of hours accumulated.

(iii) All maintenance (including modifications, parts changes, and other service) and the dates and reasons for the maintenance.

(iv) All your emission tests, including documentation on routine and standard tests, as specified in part 1065 of this chapter or other applicable test procedures regulations, and the date and purpose of each test.

(v) All tests to diagnose engine or emission-control performance, giving the date and time of each and the reasons for the test.

(vi) Any other significant events.

(b) Keep routine data from emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for eight years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them.

(d) Send us copies of any maintenance instructions or explanations if we ask for them.

§ 1051.255 When may EPA deny, revoke, or void my certificate of conformity?

(a) We may deny your application for certification if your engine family fails to comply with emission standards or other requirements of the regulation or the Act. Our decision may be based on any information available to us showing you do not meet emission standards or other requirements, including any testing that we conduct under paragraph (g) of this section. If we deny your application, we will explain why in writing.

(b) In addition, we may deny your application or revoke your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information (paragraph (d) of this section applies if this is fraudulent).

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities despite our presenting a warrant or court order (see § 1068.20 of this chapter).

(5) Produce vehicle or engines for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(c) We may void your certificate if you do not keep the records we require or do not give us information when we ask for it.

(d) We may void your certificate if we find that you intentionally submitted false or incomplete information.

(e) We may void your certificate for any family certified to an FEL above the allowable average if you fail to show in your end-of-year report that your average emission levels are below the

applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year.

(f) If we deny your application or revoke or void your certificate, you may ask for a hearing (see § 1051.820). Any such hearing will be limited to substantial and factual issues.

(g) We may conduct confirmatory testing of your vehicles as part of certification. We may deny your application for certification or revoke your certificate if your vehicles fail to comply with emission standards or other requirements during confirmatory testing.

Subpart D—Testing Production-line Engines

§ 1051.301 When must I test my production-line vehicles or engines?

(a) If you certify vehicles to the standards of this part, you must test them as described in this subpart. If your vehicle is certified to g/kW-hr standards, then test the engine; otherwise, test the vehicle. The provisions of this subpart do not apply to small-volume manufacturers.

(b) We may suspend or revoke your certificate of conformity for certain engine families if your production-line vehicles or engines do not meet the requirements of this part or you do not fulfill your obligations under this subpart (see §§ 1051.325 and 1051.340).

(c) Other requirements apply to vehicles and engines that you produce. Other regulatory provisions authorize us to suspend, revoke, or void your certificate of conformity, or order recalls for engines families without regard to whether they have passed these production-line testing requirements. The requirements of this subpart do not affect our ability to do selective enforcement audits, as described in part 1068 of this chapter. Individual vehicles and engines in families that pass these production-line testing requirements must also conform to all applicable regulations of this part and part 1068 of this chapter.

(d) You may ask to use an alternate program for testing production-line vehicles or engines. In your request, you must show us that the alternate program gives equal assurance that your products meet the requirements of this part. If we approve your alternate program, we may waive some or all of this subpart's requirements.

(e) If you certify an engine family with carryover emission data, as described in § 1051.235(c), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one vehicle or engine per engine family. If we reduce your testing rate, we may limit our approval to a any number of model years. In determining whether to approve your request, we may consider the number of vehicles or engines that have failed the emission tests.

(f) We may ask you to make a reasonable number of production-line vehicles or engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part.

(g) The requirements of this subpart do not apply to engine families certified under the provisions of § 1051.630.

§ 1051.305 How must I prepare and test my production-line vehicles or engines?

(a) *Test procedures.* Test your production-line vehicles or engines using the applicable testing procedures in subpart F of this part to show you meet the emission standards in subpart B of this part.

(b) *Modifying a test vehicle or engine.* Once a vehicle or engine is selected for testing (see § 1051.310), you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production vehicles or engines and make the action routine for all the vehicles or engines in the engine family.

(2) This subpart otherwise specifically allows your action.

(3) We approve your action in advance.

(c) *Malfunction.* If a vehicle or engine malfunction prevents further emission testing, ask us to approve your decision to either repair it or delete it from the test sequence.

(d) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed only until the vehicle or engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use vehicles.

(3) We may adjust the air-fuel ratio within the adjustable range specified in § 1051.115(d).

(e) *Stabilizing emission levels.* Before you test production-line vehicles or engines, you may operate the vehicle or engine to stabilize the emission levels. Using good engineering judgment, operate your vehicles or engines in a way that represents the way they will be used. You may operate each vehicle or engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated the emission-data vehicle used for certifying the engine family (see 40 CFR part 1065, subpart E, or the applicable regulations governing how you should prepare your test vehicle or engine).

(f) *Damage during shipment.* If shipping a vehicle or engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the vehicle or engine. Report to us, in your written report under § 1051.345, all adjustments or repairs you make on test vehicles or engines before each test.

(g) *Retesting after invalid tests.* You may retest a vehicle or engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest a vehicle or engine, you may ask us to substitute results of the new tests for the original ones. You must ask us within ten days of testing. We will generally answer within ten days after we receive your information.

§ 1051.310 How must I select vehicles or engines for production-line testing?

(a) Use test results from two vehicles or engines for each engine family to calculate the required sample size for the test period. Update this calculation with each test.

(1) For engine families with projected annual sales of at least 1600, the test periods are consecutive quarters (3 months). If your annual production period is less than 12 months long, define your test periods by dividing your annual production period into approximately equal segments of 70 to 125 calendar days.

(2) For engine families with projected annual sales below 1600, the test period is the whole model year.

(b) Early in each test period, randomly select and test an engine from the end of the assembly line for each engine family.

(1) In the first test period for newly certified engines, randomly select and test one more engine. Then, calculate the required sample size for the test period as described in paragraph (c) of this section.

(2) In later test periods or for engine families relying on previously submitted test data, combine the new test result with the last test result from the previous test period. Then, calculate the required sample size for the new test period as described in paragraph (c) of this section.

(c) Calculate the required sample size for each engine family. Separately calculate this figure for HC, NO_X (or $HC+NO_X$), and CO (and other regulated pollutants). The required sample size is the greater of these calculated values. Use the following equation:

$$N = \left[\frac{(t_{95} \times \sigma}{(x - STD)}\right]^2 + 1$$

Where:

N = Required sample size for the model year.

t_{95} = 95% confidence coefficient, which depends on the number of tests completed, n, as specified in the table in paragraph (c)(1) of this section. It defines 95% confidence intervals for a one-tail distribution.

x = Mean of emission test results of the sample.

STD = Emission standard (or family emission limit, if applicable).

σ = Test sample standard deviation (see paragraph (c)(2) of this section).

(1) Determine the 95% confidence coefficient, t_{95}, from the following table:

n	t_{95}	n	t_{95}	n	t_{95}
2	6.31	12	1.80	22	1.72
3	2.92	13	1.78	23	1.72
4	2.35	14	1.77	24	1.71
5	2.13	15	1.76	25	1.71
6	2.02	16	1.75	26	1.71
7	1.94	17	1.75	27	1.71
8	1.90	18	1.74	28	1.70
9	1.86	19	1.73	29	1.70
10	1.83	20	1.73	30+	1.70
11	1.81	21	1.72	.....	.....

(2) Calculate the standard deviation, σ, for the test sample using the following formula:

$$\sigma = \sqrt{\frac{\sum (X_i - x)^2}{n - 1}}$$

Where:

X_i = Emission test result for an individual vehicle or engine.

n = The number of tests completed in an engine family.

(d) Use final deteriorated test results to calculate the variables in the equations in paragraph (c) of this section (see § 1051.315(a)).

(e) After each new test, recalculate the required sample size using the updated mean values, standard deviations, and the appropriate 95-percent confidence coefficient.

(f) Distribute the remaining vehicle or engine tests evenly throughout the rest of the year. You may need to adjust your schedule for selecting vehicles or engines if the required sample size changes. Continue to randomly select vehicles or engines from each engine family; this may involve testing vehicles or engines that operate on different fuels.

(g) Continue testing any engine family for which the sample mean, x, is greater than the emission standard. This applies if the sample mean for either HC, NO_X (or $HC+NO_X$), or CO (or other regulated pollutants) is greater than the emission standard. Continue testing until one of the following things happens:

(1) The sample size, n, for an engine family is greater than the required sample size, N, and the sample mean, x, is less than or equal to the emission standard. For example, if N = 3.1 after the third test, the sample-size calculation does not allow you to stop testing.

(2) The engine family does not comply according to § 1051.325.

(3) You test 30 vehicles or engines from the engine family.

(4) You test one percent of your projected annual U.S.-directed production volume for the engine family.

(5) You choose to declare that the engine family fails the requirements of this subpart. (h) If the sample-size calculation allows you to stop testing for a pollutant, you must continue measuring emission levels of that pollutant for any additional tests required under this section. However, you need not continue making the calculations specified in this section for that pollutant. This paragraph does not affect the requirements in section § 1051.320.

(i) You may elect to test more randomly chosen vehicles or engines than we require. Include these vehicles or engines in the sample-size calculations.

§ 1051.315 How do I know when my engine family fails the production-line testing requirements?

This section describes the pass-fail criteria for the production-line testing requirements. We apply this criteria on an engine family basis. See § 1051.320 for the requirements that apply to individual vehicles or engines that fail a production-line test. (a) Calculate your test results. Round them to the number of decimal places in the emission standard expressed to one more decimal place.

(1) *Initial and final test results.* Calculate and round the test results for each vehicle or engine. If you do several tests on a vehicle or engine, calculate the initial test results, then add them together and divide by the number of tests and round for the final test results on that vehicle or engine.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (see § 1051.240(c)).

(b) Construct the following CumSum Equation for each engine family for HC, NO_X (or $HC+NO_X$), and CO emissions (and other regulated pollutants):

$$C_i = C_{i-1} + X_i - (STD + 0.25 \times \sigma)$$

Where:

C_i = The current CumSum statistic.

C_{i-1} = The previous CumSum statistic. For the first test, the CumSum statistic is 0 (*i.e.* $C_1 = 0$).

X_i = The current emission test result for an individual vehicle or engine.

STD = Emission standard.

(c) Use final deteriorated test results to calculate the variables in the equation in paragraph (b) of this section (see § 1051.315(a)).

(d) After each new test, recalculate the CumSum statistic.

(e) If you test more than the required number of vehicles or engines, include the results from these additional tests in the CumSum Equation.

(f) After each test, compare the current CumSum statistic, C_i, to the recalculated Action Limit, H, defined as $H = 5.0 \times \sigma$.

(g) If the CumSum statistic exceeds the Action Limit in two consecutive tests, the engine family fails the production-line testing requirements of this subpart. Tell us within ten working days if this happens. You may request to amend the application for certification to raise the FEL of the engine family at this point if you meet the requirements of § 1051.225(f).

(h) If you amend the application for certification for an engine family under § 1051.225, do not change any previous calculations of sample size or CumSum statistics for the model year.

§ 1051.320 What happens if one of my production-line vehicles or engines fails to meet emission standards?

(a) If you have a production-line vehicle or engine with final deteriorated test results exceeding one or more emission standards (see § 1051.315(a)), the certificate of conformity is automatically suspended for that failing vehicle or engine. You must take the following actions before your certificate of conformity can cover that vehicle or engine:

(1) Correct the problem and retest the vehicle or engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each vehicle or engine (see § 1051.345).

(b) You may request to amend the application for certification to raise the FEL of the entire engine family at this point (see § 1051.225).

§ 1051.325 What happens if an engine family fails the production-line requirements?

(a) We may suspend your certificate of conformity for an engine family if it fails under § 1051.315. The suspension may apply to all facilities producing vehicles or engines from an engine family, even if you find noncompliant vehicles or engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family fails. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing (see § 1051.820). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

(d) Section 1051.335 specifies steps you must take to remedy the cause of the production-line failure. All the vehicles you have produced since the end of the last test period are presumed noncompliant and should be addressed in your proposed remedy. We may require you to apply the remedy to engines produced earlier if we determine that the cause of the failure is likely to have affected the earlier engines.

(e) You may request to amend the application for certification to raise the FEL of the engine family before or after we suspend your certificate if you meet the requirements of § 1051.225(f).

§ 1051.330 May I sell vehicles from an engine family with a suspended certificate of conformity?

You may sell vehicles that you produce after we suspend the engine family's certificate of conformity under § 1051.315 only if one of the following occurs:

(a) You test each vehicle or engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected vehicles and remedy any noncompliance at no expense to the owner if later testing shows that the engine family still does not comply.

§ 1051.335 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for noncompliance, propose a remedy for the engine family, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing that shows the remedied engine family complies with all the emission standards that apply.

§ 1051.340 When may EPA revoke my certificate under this subpart and how may I sell these vehicles again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails to comply with the requirements of this subpart and your proposed remedy to address a suspended certificate under § 1051.325 is inadequate to solve the problem or requires you to change the vehicle's design or emission-control system.

(b) To sell vehicles from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the requirements of this part.

(1) If we determine your proposed design change may not control emissions for the vehicle's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line vehicles or engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1051.345 What production-line testing records must I send to EPA?

Do all the following things unless we ask you to send us less information:

(a) Within 30 calendar days of the end of each calendar quarter, send us a report with the following information:

(1) Describe any facility used to test production-line vehicles or engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe how you randomly selected vehicles or engines.

(4) Describe your test vehicles or engines, including the engine family's identification and the vehicle's model year, build date, model number, identification number, and number of hours of operation before testing for each test vehicle or engine.

(5) Identify where you accumulated hours of operation on the vehicles or engines and describe the procedure and schedule you used.

(6) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(7) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test vehicle or engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of vehicle.

(8) Provide the CumSum analysis required in § 1051.315 for each engine family.

(9) Report on each failed vehicle or engine as described in § 1051.320.

(10) State the date the calendar quarter ended for each engine family.

(b) We may ask you to add information to your written report, so we can determine whether your new vehicles conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

We submit this report under Sections 208 and 213 of the Clean Air Act. Our production-line testing conformed completely with the requirements of 40 CFR part 1051. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production vehicles (or engines). All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send electronic reports of production-line testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. See § 1051.815 for information on how we treat information you consider confidential.

§ 1051.350 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your production-line testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1051.345.

(d) Keep the following additional records:

(1) A description of all test equipment for each test cell that you can use to test production-line vehicles or engines.

(2) The names of supervisors involved in each test.

(3) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test vehicle or engine and the names of all supervisors who oversee this work.

(4) If you shipped the vehicle or engine for testing, the date you shipped it, the associated storage or port facility, and the date the vehicle or engine arrived at the testing facility.

(5) Any records related to your production-line tests that are not in the written report.

(6) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(7) Any information specified in § 1051.345 that you do not include in your written reports.

(e) If we ask, you must give us projected or actual production figures for an engine family. We may ask you to divide your production figures by rated brake power, displacement, fuel type, or assembly plant (if you produce vehicles or engines at more than one plant).

(f) Keep a list of vehicle or engine identification numbers for all the vehicles or engines you produce under each certificate of conformity. Give us this list within 30 days if we ask for it.

(g) We may ask you to keep or send other information necessary to implement this subpart.

Subpart E—Testing In-use Engines [Reserved]

Subpart F—Test Procedures

§ 1051.501 What procedures must I use to test my vehicles or engines?

This section describes test procedures that you use to show compliance with the requirements of this part. See § 1051.235 to determine when testing is required for certification. See subpart D of this part for the production-line testing requirements.

(a) *Snowmobiles.* For snowmobiles, use the equipment and procedures for spark-ignition engines in part 1065 of this chapter to show your snowmobiles meet the duty-cycle emission standards in § 1051.103. Measure HC, NO_X (as applicable), CO, and CO_2 emissions using the dilute sampling procedures in part 1065 of this chapter. For steady-state testing, you may use raw-gas sampling methods (such as those described in 40 CFR part 91), provided they have been shown to produce measurements equivalent to the dilute sampling methods specified in part 1065 of this chapter. Use the duty cycle in § 1051.505.

(b) *Motorcycles and ATVs.* For motorcycles and ATVs, use the equipment, procedures, and duty cycle in 40 CFR part 86, subpart F, to show your vehicles meet the exhaust emission standards in § 1051.105 or § 1051.107. Measure HC, NO_X, CO, and CO_2. If we allow you to certify ATVs based on engine testing, use the equipment, procedures, and duty cycle described or referenced in that section that allows engine testing. For motorcycles with engine displacement at or below 169 cc and all ATVs, use the driving schedule in paragraph (c) of Appendix I to 40 CFR part 86. For all other motorcycles use the driving schedule in paragraph (b) of Appendix I to part 86. With respect to vehicle-speed governors, test motorcycles and ATVs in their ungoverned configuration, unless we approve in advance testing in a governed configuration. We will only approve testing in a governed configuration if you can show that the governor is permanently installed on all production vehicles and is unlikely to be removed in-use. With respect to engine-speed governors, test motorcycles and ATVs in their governed configuration.

(c) *Permeation testing.* (1) Use the equipment and procedures specified in § 1051.515 to measure fuel tank permeation emissions.

(2) Prior to permeation testing of fuel hose, the hose must be preconditioned by filling the hose with the fuel specified in (d)(3) of this section, sealing the openings, and soaking the hose for 4 weeks at 23 °C±5° C. To measure fuel-line permeation emissions, use the equipment and procedures specified in SAE J30 (incorporated by reference in § 1051.810). The measurements must be performed at 23 ° C using the fuel specified in paragraph (d)(3) of this section.

(d) *Fuels.* Use the fuels meeting the following specifications:

(1) *Exhaust.* Use the fuels and lubricants specified in 40 CFR part 1065, subpart C, for all the testing and service accumulation we require in this part.

(2) *Fuel Tank Permeation.* (i) For the preconditioning soak described in § 1051.515(a)(1) and fuel slosh durability test described in § 1051.515(c)(4), use the fuel specified in Table 1 of § 1065.210 of this chapter blended with 10 percent ethanol by volume. As an alternative, you may use Fuel CE10, which is Fuel C as specified in ASTM D 471–98 (incorporated by reference in § 1051.810) blended with 10 percent ethanol by volume.

(ii) For the permeation measurement test in § 1051.515(b), use the fuel specified in Table 1 of § 1065.210 of this chapter. As an alternative, you may use the fuel specified in paragraph (d)(2)(i) of this section.

(3) *Fuel Hose Permeation.* Use the fuel specified in Table 1 of § 1065.210 of this chapter blended with 10 percent ethanol by volume for permeation testing of fuel lines and tanks. As an alternative, you may use Fuel CE10, which is Fuel C as specified in ASTM D 471–98

(incorporated by reference in § 1051.810) blended with 10 percent ethanol by volume.

(e) *Special procedures for engine testing.* (1) You may use special or alternate procedures, as described in § 1065.10 of this chapter.

(2) We may reject data you generate using alternate procedures if later testing with the procedures in part 1065 of this chapter shows contradictory emission data.

(f) *Special procedures for vehicle testing.* (1) You may use special or alternate procedures, as described in paragraph (f)(3) of this section.

(2) We may reject data you generate using alternate procedures if later testing with the otherwise specified procedures shows contradictory emission data.

(3)(i) The test procedures specified for vehicle testing are intended to produce emission measurements equivalent to those that would result from measuring emissions during in-use operation using the same vehicle configuration. If good engineering judgment indicates that use of the procedures in this part for a vehicle would result in measurements that are not representative of in-use operation of that vehicle, you must notify us. If we determine that using these procedures would result in measurements that are significantly unrepresentative and that changes to the procedures will result in more representative measurements that do not decrease the stringency of emission standards or other requirements, we will specify changes to the procedures. In your notification to us, you should recommend specific changes you think are necessary.

(ii) You may ask to use emission data collected using other test procedures, such as those of the California Air Resources Board or the International Organization for Standardization. We will allow this only if you show us that these data are equivalent to data collected using our test procedures.

(iii) You may ask to use alternate procedures that produce measurements equivalent to those obtained using the specified procedures. In this case, send us a written request showing that your alternate procedures are equivalent to the test procedures of this part. If you prove to us that the procedures are equivalent, we will allow you to use them. You may not use alternate procedures until we approve them.

(iv) You may ask to use special test procedures if your vehicle cannot be tested using the specified test procedures (for example, it is incapable of operating on the specified transient cycle). In this case, send us a written request showing that you cannot satisfactorily test your engines using the test procedures of this part. We will allow you to use special test procedures if we determine that they would produce emission measurements that are representative of those that would result from measuring emissions during in-use operation. You may not use special procedures until we approve them.

§ 1051.505 What special provisions apply for testing snowmobiles?

Use the following special provisions for testing snowmobiles:

(a) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in the following Table:

TABLE 1 OF § 1051.505.—5–MODE DUTY CYCLE FOR SNOWMOBILES

	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at maximum test speed)	Minimum time in mode (minutes)	Weighting factors
Mode number:				
1	100	100	3.0	0.12
2	85	51	3.0	0.27
3	75	33	3.0	0.25
4	65	19	3.0	0.31
5	Idle	0	3.0	0.05

(b) During idle mode, operate the engine with the following parameters:

(1) Hold the speed within your specifications.

(2) Keep the throttle at the idle-stop position.

(3) Keep engine torque under 5 percent of the peak torque value at maximum test speed.

(c) For the full-load operating mode, operate the engine at wide-open throttle.

(d) Ambient temperatures during testing must be between 20 °C and 30 °C (68 °F and 86 °F), or other representative test temperatures, as specified in paragraph (g) of this section.

(e) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(f) You may test snowmobiles at ambient temperatures below 20 °C or using intake air temperatures below 20 °C if you show that such testing complies with § 1065.10(c)(1) of this chapter. You must get our approval before you begin the emission testing. For example, the following approach would be appropriate to show that such testing complies with § 1065.10(c)(1) of this chapter:

(1) Using good engineering judgment, instrument a representative snowmobile built with a representative engine from the family being tested with an appropriate temperature measuring device located in the intake air plenum where fuel spitback is not likely to occur.

(2) Choose a time and location with the following weather conditions: windspeed less than 10 knots, no falling precipitation, air temperature between −20 °C and 0 °C (−4 °F and 32 °F).

(3) Operate the snowmobile until its engine reaches a steady operating temperature.

(4) Operate the snowmobile on a level surface free of other vehicle traffic. Operate the snowmobile at each specified engine speed corresponding to each mode in the emissions test specific to the engine being tested. When readings are stable, record the temperature in the intake air plenum

and the ambient temperature. Calculate the temperature difference between the air in the plenum and the ambient air for each mode.

(5) Calculate the nominal intake air test temperature for each test mode as −10 °C (14 °F) plus the temperature difference for the corresponding mode determined in (g)(4) of this section.

(6) Before the emissions test, select the appropriate carburetor jetting for −10 °C (14 °F) conditions according to the jet chart. For each mode, maintain the inlet air temperature within 5 °C of the corresponding modal temperature calculated in (g)(5) of this section.

(7) Adjust other operating parameters to be consistent with operation at −10 °C (14 °F). For example, this may require that you modify the engine cooling system used in the laboratory to make its performance representative of cold-temperature operation.

§ 1051.510 What special provisions apply for testing ATV engines? [Reserved]

§ 1051.515 How do I test my fuel tank for permeation emissions?

Measure permeation emissions by weighing a sealed fuel tank before and after a temperature-controlled soak.

(a) *Preconditioning.* To precondition your fuel tank, follow these five steps:

(1) Fill the tank with the fuel specified in § 1051.501(d)(2)(i), seal it, and allow it to soak at 28 ±5 °C for 20 weeks. Alternatively, the tank may be soaked for a shorter period of time at a higher temperature if you can show that the hydrocarbon permeation rate has stabilized.

(2) Determine the fuel tank's internal surface area in square-meters accurate to at least three significant figures. You may use less accurate estimates of the surface area if you make sure not to overestimate the surface area.

(3) Fill the fuel tank with the test fuel specified in § 1051.501(d)(2)(ii) to its nominal capacity. If you fill the tank inside the temperature-controlled room or enclosure, do not spill any fuel.

(4) Allow the tank and its contents to equilibrate to 28±2 °C.

(5) Seal the fuel tank using nonpermeable fittings, such as metal or Teflon™.

(b) *Test run.* To run the test, follow these nine steps for a tank that was preconditioned as specified in paragraph (a) of this section:

(1) Weigh the sealed fuel tank and record the weight to the nearest 0.1 grams. (You may use less precise weights as long as the difference in mass from the start of the test to the end of the test has at least three significant figures.)

(2) Carefully place the tank within a ventilated temperature-controlled room or enclosure. Do not spill any fuel.

(3) Close the room or enclosure and record the time.

(4) Ensure that the measured temperature in the room or enclosure is 28±2 °C.

(5) Leave the tank in the room or enclosure for 2 to 4 weeks, consistent with good engineering judgment (based on the permeation rate). Do not stop soaking before 4 weeks unless you know that you can measure the weight loss during the test to at least three significant figures earlier.

(6) Hold the temperature of the room or enclosure to 28±2 °C; measure and record the temperature at least daily.

(7) At the end of the soak period, weigh the sealed fuel tank and record the weight to the nearest 0.1 grams. (You may use less precise weights as long as the difference in mass from the start of the test to the end of the test has at least three significant figures.)

(8) Subtract the weight of the tank at the end of the test from the weight of the tank at the beginning of the test; divide the difference by the internal surface area of the fuel tank. Divide this g/m^2 value by the number of test days (using at least three significant figures) to calculate the g/m^2/day emission rate. Example: If a tank with an internal surface area of 1.51 m^2 weighed 31882.3 grams at the beginning of the test and weighed 31760.2 grams after soaking for 25.03 days, then the g/m^2/day emission rate would be: (31882.3 g − 31760.2 g)/ 1.51 m^2/25.03 days = 3.23 g/m^2/day.

(9) Round your result to the same number of decimal places as the emission standard.

(c) *Durability testing.* You normally need to perform a separate durability demonstration for each substantially different combination of treatment approaches and tank materials. Perform these demonstrations before an emission test by taking the following steps, unless you can use good engineering judgment to apply the results of previous durability testing with a different fuel system. You can determine a deterioration factor by measuring emissions on a tank after these durability tests if you previously tested the same tank before the durability tests (but after the preconditioning step described in paragraph (a) of this section). For the purposes of deterioration factor determination, the permeation tests before and after the durability testing must be performed on the fuel specified in § 1051.501 (d)(2)(i). You may ask to exclude any of the following durability tests if you can clearly demonstrate that it does not affect the emissions from your fuel tank.

(1) Perform a pressure test by sealing the tank and cycling it between +2.0 psig and −0.5 psig and back to +2.0 psig for 10,000 cycles at a rate 60 seconds per cycle.

(2) Perform a sunlight-exposure test by exposing the tank to an ultraviolet light of at least 0.40 W-hr/m^2/min on the tank surface for 15 hours per day for 4 weeks. Alternatively, the fuel tank may be exposed to direct natural sunlight for an equivalent period of time, as long as you ensure that the tank is exposed to at least 450 daylight hours.

(3) Perform a slosh test by filling the tank to 40 percent of its capacity with the fuel specified in § 1051.501(d)(2)(i) and rocking it at a rate of 15 cycles per minute until you reach one million total cycles.

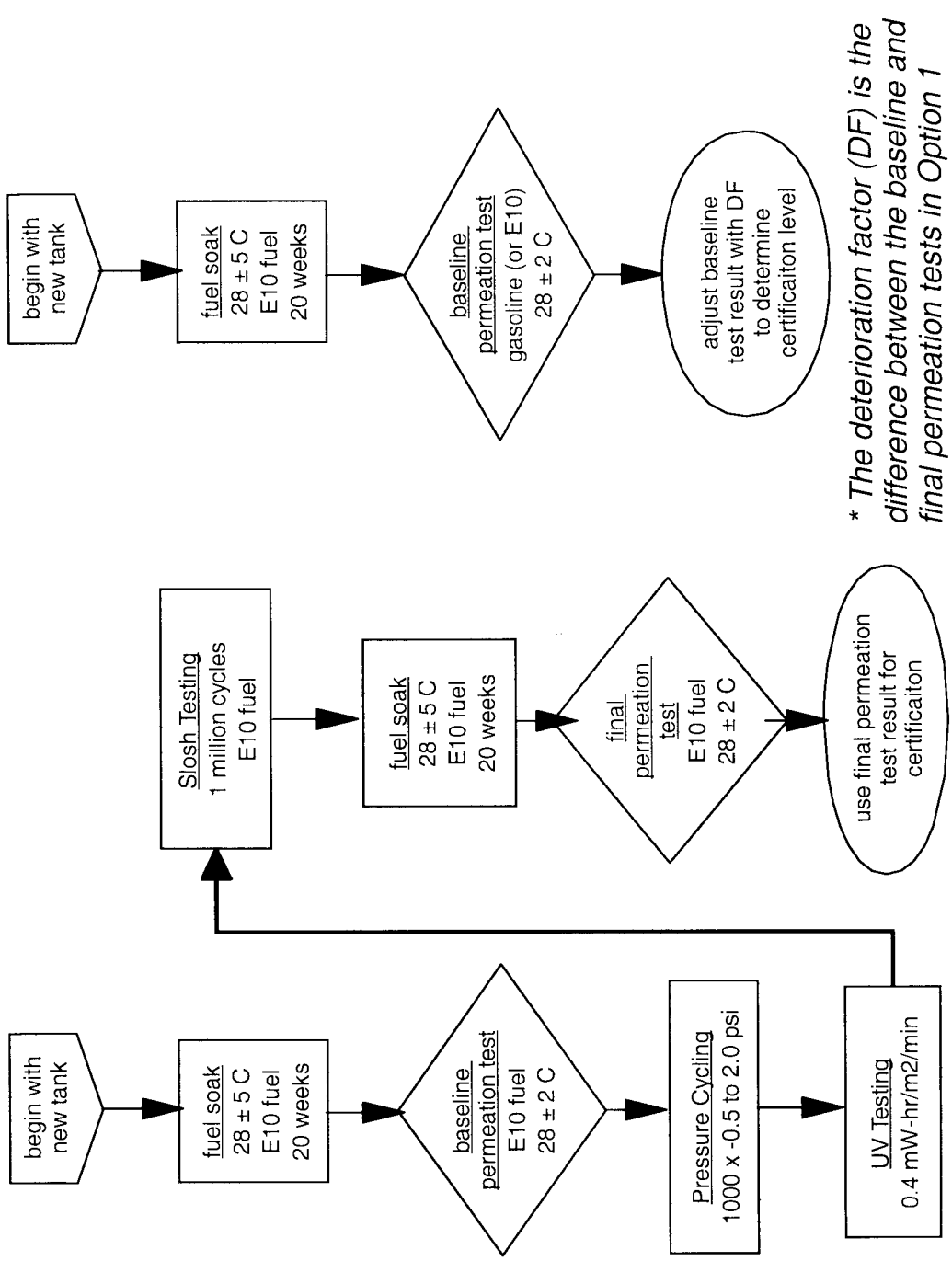
Use an angle deviation of +15° to −15° from level. This test must be performed at a temperature of 28°C ±5° C.

(4) Following the durability testing, the fuel tank must be soaked (as described in paragraph (a) of this section) to ensure that the permeation rate is stable. The period of slosh testing and the period of ultraviolet testing (if performed with fuel in the tank consistent with paragraph (a)(1) of this section) may be considered to be part of this soak, provided that the soak begins immediately after the slosh testing. To determine the final permeation rate, drain and refill the tank with fresh fuel, and repeat the test run (as described in paragraph (b) of this section) immediately after this soak period.

(d) *Flow chart.* The following figure presents a flow chart for the permeation testing described in this section, showing full test procedure with durability testing, as well as the simplified test procedure with an applied deterioration factor:

BILLING CODE 6560–50–P

Figure 1051.515-1: Flow Chart of Permeation Test Procedure with and without DF Determination



BILLING CODE 6560–50–C

§ 1051.520 How do I perform exhaust durability testing?

This section applies for durability testing to determine deterioration factors for exhaust emissions. Small-volume manufacturers may omit durability testing if they use our assigned deterioration factors that we establish based on our projection of the likely deterioration in the performance of specific emission controls.

(a) Calculate your deterioration factor by testing a vehicle or engine that is representative of your engine family at a low-hour test point and the end of its useful life. You may also test at intermediate points.

(b) Operate the vehicle or engine over a representative duty cycle for a period at least as long as the useful life (in hours or kilometers). You may operate the vehicle or engine continuously.

(c) You may perform critical emission-related maintenance during durability testing, consistent with § 1051.125(a). You may not perform any other emission-related maintenance during durability testing.

(d) Use a linear least-squares fit of your test data for each pollutant to calculate your deterioration factor.

(e) You may ask us to allow you to use other testing methods to determine deterioration factors, consistent with good engineering judgment.

Subpart G—Compliance Provisions

§ 1051.601 What compliance provisions apply to vehicles and engines subject to this part?

Engine and vehicle manufacturers, as well as owners, operators, and rebuilders of these vehicles, and all other persons, must observe the requirements and prohibitions in part 1068 of this chapter and the requirements of the Act. The compliance provisions in this subpart apply only to the vehicles and engines we regulate in this part.

§ 1051.605 What are the provisions for exempting vehicles from the requirements of this part if they use engines you have certified under the motor-vehicle program or the Large Spark-ignition program?

(a) You may ask for an exemption under this section if you are the manufacturer of an engine certified under the motor-vehicle program or the Large Spark-ignition program. See § 1051.610 if you are not the engine manufacturer.

(b)(1) The only requirements or prohibitions from this part that apply to a vehicle that is exempt under this section are in this section and § 1051.610.

(2) If the vehicles do not meet the criteria listed in paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these vehicles without a valid exemption or certificate of conformity would violate the prohibitions in § 1068.101 of this chapter.

(3) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 86 or part 1048, as applicable. The requirements and restrictions of 40 CFR part 86 or 1048 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if these engines were used in a motor vehicle or other nonrecreational application.

(c) If you meet all the following criteria regarding your engine, the vehicle using the engine is exempt under this section:

(1) The vehicle is produced using an engine or incomplete vehicle covered by a valid certificate of conformity under 40 CFR part 86 or part 1048.

(2) No changes are made to the certified engine or vehicle that we could reasonably expect to increase any of its regulated emissions. For example, if any of the following changes are made to the engine, it does not qualify for this exemption:

(i) Any fuel system or evaporative system parameters are changed from the certified configuration (this does not apply to refueling emission controls).

(ii) Any other emission-related components are changed.

(iii) The engine cooling system is modified or assembled so that temperatures or heat rejection rates are outside the original engine's specified ranges.

(3) The engine must have the emission control information label we require under 40 CFR part 86 or part 1048.

(4) You must demonstrate that fewer than 50 percent of the engine model's total sales, from all companies, are used in recreational vehicles.

(d) If you manufacture both the engine and vehicle under this exemption, you must do all of the following to keep the exemption valid:

(1) Make sure the original emission control information label is intact.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the vehicle. In your engine's emission control information label, do the following:

(i) Include the heading: ''Recreational Vehicle Emission Control Information''.

(ii) Include your full corporate name and trademark.

(iii) State: ''THIS ENGINE WAS ADAPTED FOR RECREATIONAL USE WITHOUT AFFECTING ITS EMISSION CONTROLS.''.

(iv) State the date you finished installation (month and year).

(3) Make sure the original and supplemental labels are readily visible after the engine is installed in the vehicle or, if the vehicle obscures the engine's emission control information label, make sure the vehicle manufacturer attaches duplicate labels, as described in § 1068.105 of this chapter.

(4) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the models you expect to produce under this exemption in the coming year.

(iii) State: ''We produce each listed model for recreational application without making any changes that could increase its certified emission levels, as described in 40 CFR 1051.605.''.

(e) If we request it, you must send us emission test data on the applicable recreational duty cycle(s). You may include the data in your application for certification under 40 CFR part 86 or part 1048, or in your letter requesting the exemption. We will generally not ask you for these data under normal circumstances, especially when they are more readily available from another source.

§ 1051.610 What are the provisions for producing recreational vehicles with engines already certified under the motor-vehicle program or the Large SI program?

(a) You may produce a recreational vehicle without certifying it under this part by using a certified motor vehicle engine, or Large SI engine. This section does not apply if you manufacture the engine yourself; see § 1051.605. In order to produce recreational vehicles under this section, you must meet all of the following criteria:

(1) The engine or vehicle is certified to 40 CFR part 86 or part 1048.

(2) The engine is not adjusted outside the certifying manufacturer's specifications (see § 1051.605(c)(2)).

(3) The engine or vehicle is not modified in any way that may affect its emission control. This does not apply to refueling emission controls.

(4) The vehicle is labeled consistent with paragraph (c) of this section.

(b)(1) The only requirements or prohibitions from this part that apply to a vehicle that is exempt under this section are in this section and § 1051.605.

(2) If the vehicles do not meet the criteria listed in § 1051.605(c) and paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these vehicles without a valid exemption or certificate of conformity would violate the prohibitions in § 1068.101 of this chapter.

(3) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 86 or part 1048, as applicable. The requirements and restrictions of 40 CFR part 86 or 1048 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if these engines were used in a motor vehicle or other nonrecreational application.

(c)(1) Make sure the original emission control information label is intact after assembly in the vehicle.

(2) Add a permanent supplemental label to the vehicle in a position where it will be clearly visible. In this emission control information label, do the following:

(i) Include the heading: ''Recreational Vehicle Emission Control Information''.

(ii) Include your full corporate name and trademark.

(iii) State: ''THIS ENGINE WAS ADAPTED FOR RECREATIONAL USE WITHOUT AFFECTING ITS EMISSION CONTROLS.''.

(iv) State the date you finished installation (month and year).

(3) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the models you expect to produce under this exemption in the coming year.

(iii) State: ''We produce each listed model for recreational application without making any changes that could increase its certified emission levels, as described in 40 CFR 1051.605.''.

(d) If you build recreational vehicles under this section, we may require (as a condition of the exemption) that you comply with the emission-related warranty and recall responsibilities of this part.

(e) If you build a recreational vehicle using a motor vehicle engine that was certified as part of a vehicle-based engine family, we may require you to certify under this part instead of granting you an exemption under this part. If we do this, we may allow you to submit an abbreviated application for certification to show that you comply with the requirements of this part. You may reference the information in the original motor vehicle application.

§ 1051.615 What are the special provisions for certifying small recreational engines?

(a) You may certify ATVs with engines that have total displacement of less than 100 cc to the following emission exhaust standards instead of certifying them to the exhaust emission standards of subpart B of this part:

(1) 25.0 g/kW-hr $HC+NO_X$, with an FEL cap of 40.0 g/kW-hr $HC+NO_X$.

(2) 500 g/kW-hr CO.

(b) You may certify off-highway motorcycles with engines that have total displacement of 70 cc or less to the following emission exhaust standards instead of certifying them to the exhaust emission standards of subpart B of this part:

(1) 16.1 g/kW-hr $HC+NO_X$, with an FEL cap of 32.2 g/kW-hr $HC+NO_X$.

(2) 519 g/kW-hr CO.

(c) You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with this $HC+NO_X$ standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). You may not use averaging to meet the CO standards of this section.

(d) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in Table 1 of this section.

(1) During idle mode, hold the speed within your specifications, keep the throttle fully closed, and keep engine torque under 5 percent of the peak torque value at maximum test speed.

(2) For the full-load operating mode, operate the engine at wide-open throttle.

(3) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(4) Table 1 follows:

TABLE 1 OF § 1051.615.—6-MODE DUTY CYCLE FOR RECREATIONAL ENGINES

	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at test speed)	Minimum time in mode (minutes)	Weighting factors
Mode number:				
1	85	100	5.0	0.09
2	85	75	5.0	0.20
3	85	50	5.0	0.29
4	85	25	5.0	0.30
5	85	10	5.0	0.07
6	Idle	0	5.0	0.05

(e) All other requirements and prohibitions of this part apply to these engines and vehicles.

§ 1051.620 When may a manufacturer obtain an exemption for competition recreational vehicles?

(a) We may grant you an exemption from the standards and requirements of this part for a new recreational vehicle on the grounds that it is to be used solely for competition. The provisions of this part other than those in this section do not apply to recreational vehicles that we exempt for use solely for competition.

(b) We will exempt vehicles that we determine will be used solely for competition. The basis of our determinations are described in paragraphs (b)(1), (b)(2), and (c) of this section. Exemptions granted under this section are good for only one model year and you must request renewal for each subsequent model year. We will not approve your renewal request if we determine the vehicles will not be used solely for competition.

(1) *Off-highway motorcycles.* Motorcycles that are marketed and labeled as only for competitive use and that meet at least four of the criteria listed in paragraphs (b)(1)(i) through (vi) of this section are considered to be used solely for competition, except in cases where other information is available that indicates that they are not used solely for competition. The following features are indicative of motorcycles used solely for competition:

(i) The absence of a headlight or other lights.

(ii) The absence of a spark arrestor.

(iii) The absence of manufacturer warranty.

(iv) Suspension travel greater than 10 inches.

(v) Engine displacement greater than 50 cc.

(vi) The absence of a functional seat. (For example, a seat less with than 30 square inches of seating surface would

generally not be considered a functional seat).

(2) *Snowmobiles and ATVs.* Snowmobiles and ATVs meeting all of the following criteria are considered to be used solely for competition, except in cases where other information is available that indicates that they are not used solely for competition:

(i) The vehicle or engine may not be displayed for sale in any public dealership.

(ii) Sale of the vehicle must be limited to professional racers or other qualified racers.

(iii) The vehicle must have performance characteristics that are substantially superior to noncompetitive models.

(c) Vehicles not meeting the applicable criteria listed in paragraph (b) of this section will be exempted only in cases where the manufacturer has clear and convincing evidence that the vehicles will be used solely for competition.

(d) You must permanently label vehicles exempted under this section to clearly indicate that they are to be used only for competition. Failure to properly label a vehicle will void the exemption for that vehicle.

(e) If we request it, you must provide us any information we need to determine whether the vehicles are used solely for competition.

§ 1051.625 What special provisions apply to unique snowmobile designs for small-volume manufacturers?

(a) If you are a small-volume manufacturer, we may permit you to produce up to 600 snowmobiles per year that are certified to less stringent emission standards than those in § 1051.103, as long as you meet all the conditions and requirements in this section.

(b) To apply for alternate standards under this section, send the Designated Officer a written request. In your request, do two things:

(1) Show that the snowmobile has unique design, calibration, or operating characteristics that make it atypical and infeasible or highly impractical to meet the emission standards in § 1051.103, considering technology, cost, and other factors.

(2) Identify the level of compliance you can achieve, including a description of available emission-control technologies and any constraints that may prevent more effective use of these technologies.

(c) You must give us other relevant information if we ask for it.

(d) An authorized representative of your company must sign the request and include the statement: ''All the information in this request is true and accurate, to the best of my knowledge.''.

(e) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers.

(f) If we approve your request, we will set alternate standards for your qualifying snowmobiles. These standards will not be above 400 g/kW-hr for CO or 150 g/kW-hr for HC.

(g) You may produce these snowmobiles to meet the alternate standards we establish under this section as long as you continue to produce them at the same or lower emission levels.

(h) You may not include snowmobiles you produce under this section in any averaging, banking, or trading calculations under Subpart H of this part.

(i) You must meet all the requirements of this part, except as noted in this section.

§ 1051.630 What special provisions apply to unique snowmobile designs for all manufacturers?

(a) We may permit you to produce up to 600 snowmobiles per year that are certified to the FELs listed in this section without new test data, as long as you meet all the conditions and requirements in this section.

(b) You may certify these snowmobiles with FELs of 560 g/kW-hr for CO and 270 g/kW-hr for HC (using the normal certification procedures).

(c) The emission levels described in this section are intended to represent worst-case emission levels. You may not certify snowmobiles under this section if good engineering judgment indicates that they have emission rates higher than these levels.

(d) Include snowmobiles you produce under this section in your averaging calculations under Subpart H of this part.

(e) You must meet all the requirements of this part, unless the regulations of this part specify otherwise.

§ 1051.635 What provisions apply to new manufacturers that are small businesses?

(a) If you are a small business (as defined by the Small Business Administration) that manufactures recreational vehicles, but does not otherwise qualify for the small-volume manufacturer provisions of this part, you may ask us to designate you to be a small-volume manufacturer. You may do this whether you began manufacturing recreational vehicles before, during, or after 2002.

(b) We may set other reasonable conditions that are consistent with the intent of this section and the Act. For example, we may place sales limits on companies that we designate to be small-volume manufacturers under this section.

Subpart H—Averaging, Banking, and Trading for Certification

§ 1051.701 General provisions.

(a) You may average, bank, and trade emission credits for purposes of certification as described in this subpart to show compliance with the standards of this part. To do this you must show that your average emission levels are below the applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year (as calculated in § 1051.720). If you cannot show in your end-of-year report that your average emission levels are below the applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year, we may void the certificates for all families certified to FELs above the allowable average. (b) The following averaging set restrictions apply:

(1) You may not average together engine families that are certified to different standards. You may, however, use banked credits that were generated relative to different standards, except as prohibited by paragraphs (b)(2) and (3) of this section, paragraph (e) of this section, or by other provisions in this part. For example, you may not average together within a model year off-highway motorcycles that are certified to the standards in § 1051.105(a)(1) and § 1051.105(a)(2); but you may use banked credits generated by off-highway motorcycles that are certified to the standards in § 1051.105(a)(1) to show compliance with the standards in § 1051.105(a)(2) in a later model year, and vice versa.

(2) There are separate averaging, banking, and trading programs for snowmobiles, ATVs, and off-highway motorcycles. You may not average or exchange banked or traded credits from engine families of one type of vehicle with those from engine families of another type of vehicle.

(3) You may not average or exchange banked or traded credits with other engine families if you use fundamentally different measurement procedures for the different engine families (for example, ATVs certified to

chassis-based vs. engine-based standards). This paragraph (b)(3) does not restrict you from averaging together engine families that use test procedures that we determine provide equivalent emission results.

(4) You may not average or exchange banked or traded exhaust credits with evaporative credits, or vice versa.

(c) The definitions of Subpart I of this part apply to this subpart. The following definitions also apply:

(1) *Average standard* means a standard that allows you comply by averaging all your vehicles under this part. See subpart B of this part to determine which standards are average standards.

(2) *Broker* means any entity that facilitates a trade between a buyer and seller.

(3) *Buyer* means the entity that receives credits as a result of trade.

(4) *Family emission limit (FEL)* has the meaning given in it in § 1051.801.

(5) *Reserved credits* means credits you have generated that we have not yet verified in reviewing the end-of-year report.

(6) *Seller* means the entity that provides credits during a trade.

(d) Do not include any exported vehicles in the certification averaging, banking, and trading program. Include only vehicles certified under this part.

§ 1051.705 How do I average emission levels?

(a) As specified in subpart B of this part, certify each vehicle to a family emission limit (FEL).

(b) Calculate a preliminary average emission level according to § 1051.720 using projected U.S.-directed production volumes for your application for certification.

(c) After the end of your model year, calculate a final average emission level according to § 1051.720 for each type of recreational vehicle or engine you manufacture or import. Use actual U.S.-directed production volumes.

(d) If your preliminary average emission level is below the allowable average standard, see § 1051.710 for information about generating and banking emission credits. These credits will be considered reserved until we verify them in reviewing the end-of-year report.

§ 1051.710 How do I generate and bank emission credits?

(a) If your average emission level is below the average standard, you may calculate credits according to § 1051.720.

(b) You may generate credits if you are a certifying manufacturer.

(c) You may bank unused emission credits, but only after the end of the calendar year and after we have reviewed your end-of-year reports. Credits you generate do not expire.

(d) During the calendar year and before you send in your end-of-year report, you may consider reserved any credits you originally designate for banking during certification. You may redesignate these credits for trading in your end-of-year report, but they are not valid to demonstrate compliance until verified.

(e) You may use for averaging or trading any credits you declared for banking from the previous calendar year that we have not reviewed. But, we may revoke these credits later—following our review of your end-of-year report or audit actions. For example, this could occur if we find that credits are based on erroneous calculations; or that emission levels are misrepresented, unsubstantiated, or derived incorrectly in the certification process.

§ 1051.715 How do I trade emission credits?

(a) You may trade only banked emission credits, not reserved credits.

(b) You may trade banked credits to any certifying manufacturer.

(c) If a negative credit balance results from a credit trade, both buyers and sellers are liable, except in cases involving fraud. We may void the certificates of all emission families participating in a negative trade.

(1) If you buy credits but have not caused the negative credit balance, you must only supply more credits equivalent to the amount of invalid credits you used.

(2) If you caused the credit shortfall, you may be subject to the requirement sof § 1051.730(b)(6).

§ 1051.720 How do I calculate my average emission level or emission credits?

(a) Calculate your average emission level for each type of recreational vehicle or engine for each model year according to the following equation and round it to the nearest tenth of a g/km or g/kW-hr. Use consistent units throughout the calculation.

(1) For exhaust emissions:

(i) Calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL})_i \times (\text{UL})_i \times (\text{Production})_i\right] \Big/ \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

Where:

FEL_i = The FEL to which the engine family is certified.

UL_i = The useful life of the engine family.

$Production_i$ = The number of vehicles in the engine family.

(ii) Use U.S.-directed production projections for initial certification, and actual U.S.-directed production volumes to determine compliance at the end of the model year.

(2) For vehicles that have standards expressed as g/kW-hr and a useful life in km, convert the useful life to kW-hr based on the maximum power output observed over the emission test and an assumed vehicle speed of 30 km/hr as follows: UL (kW-hr) = UL (km) × Maximum Test Power (kW)÷30 km/hr. (Note: It is not necessary to include a load factor, since credit exchange is not allowed between vehicles certified to g/kW-hr standards and vehicles certified to g/km standards.)

(3) For evaporative permeation standards expressed as g/m²/day, use the useful life value in years multiplied by 365.24, and calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL})_i \times (\text{UL})_i \times (\text{Production})_i\right] \Big/ \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

Where:

$Production_i$ = The number of vehicles in the engine family times the average internal surface area of the vehicles' fuel tanks.

(b) If your average emission level is below the average standard, calculate credits available for banking according to the following equation and round them to the nearest tenth of a gram:

$$\text{Credit} = \left[(\text{Average standard} - \text{Emission level})\right] \times \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

(c) If your average emission level is above the average standard, calculate your preliminary credit deficit according to the following equation, rounding to the nearest tenth of a gram:

$$\text{Deficit} = \left[(\text{Emission level} - \text{Average standard})\right] \times \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

§ 1051.725 What information must I keep?

(a) Maintain and keep five types of properly organized and indexed records for each engine family:

(1) Model year and EPA engine family.

(2) FEL.

(3) Useful life.

(4) Projected U.S.-directed production volume for the model year.

(5) Actual U.S.-directed production volume for the model year.

(b) Keep paper records of this information for three years from the due date for the end-of-year report. You may use any additional storage formats or media if you like.

(c) Keep a copy of all of the information you send us under § 1051.730.

(d) We may ask you to keep or send other information necessary to implement this subpart.

§ 1051.730 What information must I report?

(a) Include the following information in each of your applications for certification:

(1) A statement that, to the best of your belief, you will not have a negative credit balance for any type of recreational vehicle or engine when all credits are calculated. This means that if you believe that your average emission level will be above the standard (i.e., that you will have a deficit for the model year), you must have banked credits (or project to have received traded credits) to offset the deficit.

(2) Detailed calculations of projected emission credits (zero, positive, or negative) based on U.S.-directed production projections. If you project a credit deficit, state the source of credits needed to offset the credit deficit.

(b) At the end of each model year, send an end-of-year report.

(1) Your report must include three things:

(i) Calculate in detail your average emission level and any emission credits (positive, or negative) based on actual U.S.-directed production volumes.

(ii) If your average emission level is above the allowable average standard, demonstrate that you have the credits needed to offset the credit deficit. If you cannot demonstrate that you have the credits at the time you submit your end-of-year report, we may void the certificates for all families certified to FELs above the allowable average.

(iii) If your average emission level is below the allowable average standard, state whether you will reserve the credits for banking.

(2) Base your U.S.-directed production volumes on the point of first retail sale. You may consider distributors to be the point of first retail sale if all their engines are sold to ultimate buyers in the United States.

(3) Send end-of-year reports to the Designated Officer within 120 days of the end of the model year. If you send reports later, you are violating the Act.

(4) If you generate credits for banking and you do not send your end-of-year reports within 120 days after the end of the model year, you may not use or trade the credits until we receive and review your reports. You may not use projected credits pending our review.

(5) You may correct errors discovered in your end-of-year report, including errors in calculating credits according to the following table:

If—	And if—	Then we—
(i) Our review discovers an error in your end-of-year report that increases your credit balance.	the discovery occurs within 180 days of receipt	restore the credits for your use.
(ii) You discover an error in your report that increases your credit balance.	the discovery occurs within 180 days of receipt	restore the credits for your use.
(iii) We or you discover and error in your report that increases your credit balance.	the discovery occurs more than 180 days after receipt	do not restore the credits for your use.
(iv) We discover an error in your report that reduces your credit balance.	at any time after receipt	reduce your credit balance

(6) If our review of a your end-of year-report shows a negative balance, you may buy credits to bring your credit balance to zero. But you must buy 1.1 credits for each 1.0 credit needed. If enough credits are not available to bring

your credit balance to zero within 90 days of when we notify you, we may void the certificates for all families certified to FELs above the allowable average.

(c) Within 90 days of any credit trade, you must send the Designated Officer a report of the trade that includes three types of information:

(1) The corporate names of the buyer, seller, and any brokers.

(2) Copies of contracts related to credit trading from the buyer, seller, and broker, as applicable.

(d) Include in each report a statement certifying the accuracy and authenticity of its contents.

(e) We may void a certificate of conformity for any emission family if you do not keep the records this section requires or give us the information when we ask for it.

§ 1051.735 Are there special averaging provisions for snowmobiles?

For snowmobiles, you may only use credits for the same phase or set of standards against which they were generated, except as allowed by this section.

(a) *Restrictions.* (1) You may not use any Phase 1 or Phase 2 credits for Phase 3 compliance.

(2) You may not use Phase 1 HC credits for Phase 2 HC compliance. However, because the Phase 1 and Phase 2 CO standards are the same, you may use Phase 1 CO credits for compliance with the Phase 2 CO standards.

(b) *Special credits for next phase of standards.* You may choose to generate credits early for banking for purposes of compliance with later phases of standards as follows:

(1) If your corporate average emission level at the end of the model year exceeds the applicable (current) phase of standards (without the use of traded or previously banked credits), you may choose to redesignate some of your snowmobile production to a calculation to generate credits for a future phase of standards. To generate credits the snowmobiles designated must have an FEL below the emission level of that set of standards. This can be done on a pollutant specific basis.

(2) Do not include the snowmobiles that you redesignate in the final compliance calculation of your average emission level for the otherwise applicable (current) phase of standards. Your average emission level for the remaining (non-redesignated) snowmobiles must comply with the otherwise applicable (current) phase of standards.

(3) Include the snowmobiles that you redesignate in a separate calculation of your average emission level for redesignated engines. Calculate credits using this average emission level relative to the specific pollutant in the future phase of standards. These credits may be used for compliance with the future standards.

(4) For generating early Phase 3 credits, you may generate credits for $HC+NO_X$ or CO separately as described:

(i) To determine if you qualify to generate credits in accordance with paragraphs (b)(1) through (3) of this section, you must meet the credit trigger level. For $HC+NO_X$ this value is 62 g/kW-hr (which would be the $HC+NO_X$ standard that would result from inputting the highest allowable CO standard (275 g/kW-hr) into the Phase 3 equation). For CO the value is 200 g/kW-hr (which would be the CO standard that would result from inputting the highest allowable $HC+NO_X$ standard (90 g/kW-hr) into the Phase 3 equation).

(ii) $HC+NO_X$ and CO credits for Phase 3 are calculated relative to the 62 g/kW-hr and 200 g/kW-hr values, respectively.

(5) Credits can also be calculated for Phase 3 using both sets of standards. Without regard to the trigger level values, if your net emission reduction for the redesignated averaging set exceeds the requirements of Phase 3 in § 1051.103 (using both $HC+NO_X$ and CO in the Phase 3 equation in § 1051.103), then your credits are the difference between the Phase 3 reduction requirement of that section and your calculated value.

Subpart I—Definitions and Other Reference Information

§ 1051.801 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. You may ask us to exclude a parameter that is difficult to access if it cannot be adjusted to affect emissions without significantly degrading performance, or if you otherwise show us that it will not be adjusted in use in a way that affect emissions

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

All-terrain vehicle means a land-based or amphibious nonroad vehicle that meets the criteria listed in paragraph (1) of this definition; or, alternatively, the criteria of paragraph (2) of this definition but not the criteria of paragraph (3) of this definition.

(1) Vehicles designed to travel on four low pressure tires, having a seat designed to be straddled by the operator and handlebars for steering controls, and intended for use by a single operator and no other passengers are all-terrain vehicles.

(2) Other all-terrain vehicles have three or more wheels and one or more seats, are designed for operation over rough terrain, and are intended primarily for transportation. Golf carts generally do not meet these criteria since they are generally not designed for operation over rough terrain.

(3) Vehicles that meet the definition of ''offroad utility vehicle'' in this section are not all-terrain vehicles. However, § 1051.1(a) specifies that some offroad utility vehicles are required to meet the same requirements as all-terrain vehicles.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part. For example, an accelerator pump would be considered an auxiliary emission-control device.

Brake power means the usable power output of the engine not including power required to operate fuel pumps, oil pumps, or coolant pumps.

Broker means any entity that facilitates a trade of emission credits between a buyer and seller.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the engine crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Designated Officer means the Manager, Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from a vehicle.

Emission-data vehicle means a vehicle or engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine family means a group of vehicles with similar emission characteristics, as specified in § 1051.230.

Evaporative means relating to fuel emissions that result from permeation of fuel through the fuel system materials and from ventilation of the fuel system.

Family emission limit (FEL) means an emission level declared by the manufacturer to serve in place of an emission standard for certification under the emission-credit program in subpart H of this part. The family emission limit must be expressed to the same number of decimal places as the emission standard it replaces.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give it in § 1068.5 of this chapter.

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type. For gasoline- and LPG-fueled engines, HC means total hydrocarbon (THC). For natural gas-fueled engines, HC means nonmethane hydrocarbon (NMHC). For alcohol-fueled engines, HC means total hydrocarbon equivalent (THCE).

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular vehicle or engine from other similar vehicle or engines.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures a vehicle or engine for sale in the United States or otherwise introduces a new vehicle or engine into commerce in the United States. This includes importers that import for resale.

Maximum brake power means the maximum brake power of an engine at test conditions.

Maximum test power means the maximum brake power of an engine at maximum test speed.

Maximum test speed has the meaning we give in § 1065.515 of this chapter

Maximum test torque means the torque output observed at wide-open throttle at a given speed.

Model year means one of the following things:

(1) For freshly manufactured vehicles or engines (see definition of ''new,'' paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For a vehicle or engine that is converted to a nonroad vehicle or engine after being placed into service in a motor vehicle, model year means the calendar year in which the vehicle or engine was originally produced (see definition of ''new,'' paragraph (2)).

(3) For a nonroad vehicle excluded under § 1051.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the vehicle was originally produced (see definition of ''new,'' paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad vehicles, model year means the calendar year in which the engine is installed in the new nonroad vehicle. This installation date is based on the time that final assembly of the vehicle is complete (see definition of ''new,'' paragraph (4)).

(5) For a vehicle or engine modified by an importer (not the original manufacturer) who has a certificate of conformity for the imported vehicle or engine (see definition of ''new,'' paragraph (5)), model year means one of the following:

(i) The calendar year in which the importer finishes modifying and labeling the vehicle or engine.

(ii) Your annual production period for producing vehicles or engines if it is different than the calendar year; follow the guidelines in paragraph (1)(ii) of this definition.

(6) For a vehicle or engine you import that does not meet the criteria in paragraphs (1) through (5) of the definition of ''new'' model year means the calendar year in which the manufacturer completed the original assembly of the vehicle or engine. In general, this applies to used equipment that you import without conversion or major modification.

Motor vehicle has the meaning we give in § 85.1703(a) of this chapter. In general, motor vehicle means a self-propelled vehicle that can transport one or more people or any material, but does not include any of the following:

(1) Vehicles having a maximum ground speed over level, paved surfaces no higher than 40 km per hour (25 miles per hour).

(2) Vehicles that lack features usually needed for safe, practical use on streets or highways-for example, safety features required by law, a reverse gear (except for motorcycles), or a differential.

(3) Vehicles whose operation on streets or highways would be unsafe, impractical, or highly unlikely. Examples are vehicles with tracks instead of wheels, very large size, or features associated with military vehicles, such as armor or weaponry.

New means relating to any of the following vehicles or engines:

(1) A freshly manufactured engine or vehicle for which the ultimate buyer has never received the equitable or legal title. This kind of vehicle might commonly be thought of as ''brand new.'' In the case of this paragraph (1), the vehicle or engine is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine that is later intended to be used in a piece of nonroad equipment. In this case, the engine ceases being a motor vehicle engine and becomes a ''new nonroad engine''. The engine is no longer new when it is placed into nonroad service.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1051.5 or exempt under 1051.620, where that engine is installed in a piece of equipment for which these exclusions or exemptions do not apply. The engine is no longer new when it is placed into nonroad service. For example, this would apply to a competition vehicle that is no longer used solely for competition.

(4) An engine not covered by paragraphs (1) through (3) of this

definition that is intended to be installed in new nonroad equipment. The engine is no longer new when the ultimate buyer receives a title for the equipment or the product is placed into service, whichever comes first. This generally includes installation of used engines in new vehicles.

(5) An imported nonroad vehicle or engine covered by a certificate of conformity issued under this part, where someone other than the original manufacturer modifies the vehicle or engine after its initial assembly and holds the certificate. The vehicle or engine is no longer new when it is placed into nonroad service.

(6) An imported nonroad vehicle or engine that is not covered by a certificate of conformity issued under this part at the time of importation. This addresses uncertified engines and vehicles that have been placed into service in other countries and that someone seeks to import into the United States. Importation of this kind of new nonroad engine or vehicle is generally prohibited by part 1068 of this chapter.

Noncompliant vehicle or engine means a vehicle or engine that was originally covered by a certificate of conformity, but is not in the certified configuration or otherwise does not comply with the conditions of the certificate.

Nonconforming vehicle or engine means a vehicle or engine not covered by a certificate of conformity that would otherwise be subject to emission standards.

Nonmethane hydrocarbon means the difference between the emitted mass of total hydrocarbons and the emitted mass of methane.

Nonroad means relating to nonroad engines, or to vehicles or equipment that include nonroad engines.

Nonroad engine has the meaning given in § 1068.30 of this chapter. In general this means all internal-combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition. This part only applies to nonroad engines that are used in snowmobiles, off-highway motorcycles, and ATVs (see § 1051.5).

Off-highway motorcycle means a two-wheeled vehicle with a nonroad engine and a seat (excluding marine vessels and aircraft). (Note: highway motorcycles are regulated under 40 CFR part 86.)

Offroad utility vehicle means a nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload 350 pounds or more or seating for six or more passengers. Vehicles intended primarily for recreational purposes that are not capable of transporting six passengers (such as dune buggies) are not offroad utility vehicles. (Note: § 1051.1(a) specifies that some offroad utility vehicles are required to meet the requirements that apply for all-terrain vehicles.)

Oxides of nitrogen has the meaning given it in 40 CFR part 1065.

Phase 1 means relating to Phase 1 standards of §§ 1051.103, 1051.105, or 1051.107, or other Phase 1 standards specified in subpart B of this part.

Phase 2 means relating to Phase 2 standards of § 1051.103, or other Phase 2 standards specified in subpart B of this part.

Phase 3 means relating to Phase 3 standards of § 1051.103, or other Phase 3 standards specified in subpart B of this part.

Physically adjustable range means the entire range over which an engine parameter can be adjusted, except as modified by § 1051.115(c). For parts described in § 1051.115(d), ''physically adjustable range'' means the adjustable range defined in that paragraph.

Placed into service means used for its intended purpose.

Point of first retail sale means the location at which the retail sale occurs. This generally means a dealership.

Recreational means, for purposes of this part, relating to snowmobiles, all-terrain vehicles, off-highway motorcycles, and other vehicles that we regulate under this part. Note that 40 CFR part 90 applies to other recreational vehicles.

Revoke means to discontinue the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected vehicles or engines. This does not apply to vehicles or engines you no longer possess.

Round means to round numbers according to ASTM E29–02 (incorporated by reference in § 1051.810), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Small-volume manufacturer means:

(1) For motorcycles and ATVs, a manufacturer that sold motorcycles or ATVs before 2003 and had annual U.S.-directed production of no more than 5,000 off-road motorcycles and ATVs (combined number) in 2002 and all earlier calendar years. For manufacturers owned by a parent company, the limit applies to the production of the parent company and all of its subsidiaries.

(2) For snowmobiles, a manufacturer that sold snowmobiles before 2003 and had annual U.S.-directed production of no more than 300 snowmobiles in 2002 and all earlier model years. For manufacturers owned by a parent company, the limit applies to the production of the parent company and all of its subsidiaries.

(3) A manufacturer that we designate to be a small-volume manufacturer under § 1051.635.

Snowmobile means a vehicle designed to operate outdoors only over snow-covered ground, with a maximum width of 1.5 meters or less.

Spark-ignition means relating to a gasoline-fueled engine, or any other engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Suspend means to temporarily discontinue the certificate for an engine family. If we suspend a certificate, you may not sell vehicles or engines from that engine family unless we reinstate the certificate or approve a new one.

Test sample means the collection of vehicles or engines selected from the population of an engine family for emission testing.

Test vehicle or engine means a vehicle or engine in a test sample.

Total hydrocarbon means the combined mass organic compounds measured by our total hydrocarbon test procedure, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Ultimate buyer means ultimate purchaser.

Ultimate purchaser means, with respect to any new vehicle or engine, the first person who in good faith purchases such vehicle or engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the

Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

Upcoming model year means for an engine family the model year after the one currently in production.

U.S.-directed production means the number of vehicle units, subject to the requirements of this part, produced by a manufacturer (and/or imported) for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate buyers in the United States.

Useful life means the period during which a vehicle is required to comply with all applicable emission standards, specified as a number of kilometers, hours, and/or calendar years. It must be at least as long as both of the following:

(1) The expected average service life before the vehicle is remanufactured or retired from service.

(2) The minimum useful life value.

Void means to invalidate a certificate or an exemption. If we void a certificate, all the vehicles produced under that engine family for that model year are considered noncompliant, and you are liable for each vehicle produced under the certificate and may face civil or criminal penalties or both. If we void an exemption, all the vehicles produced under that exemption are considered uncertified (or nonconforming), and you are liable for each vehicle produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional vehicles using the voided exemption.

Wide-open throttle means maximum throttle opening. Unless this is specified at a given speed, it refers to maximum throttle opening at maximum speed. For electronically controlled or other engines with multiple possible fueling rates, wide-open throttle also means the maximum fueling rate at maximum throttle opening under test conditions.

§ 1051.805 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

°—degrees.
ASTM—American Society for Testing and Materials.
ATV—all-terrain vehicle.
cc—cubic centimeters.
cm—centimeter.
C—Celsius.
CO—carbon monoxide.
CO_2—carbon dioxide.
EPA—Environmental Protection Agency.
F—Fahrenheit.
g—grams.
g/gal/day—grams per gallon per test day.
g/m^2/day—grams per meter-square per test day.
Hg—mercury.
hr—hours.
km—kilometer.
kW—kilowatt.
LPG—liquefied petroleum gas.
m—meters.
mm—millimeters.
mW—milliwatts.
NMHC—nonmethane hydrocarbons.
NO_X—oxides of nitrogen (NO and NO_X).
psig—pounds per square inches of gauge pressure.
rpm—revolutions per minute.
SAE—Society of Automotive Engineers.
SI—spark-ignition.
THC—total hydrocarbon.
THCE—total hydrocarbon equivalent.
U.S.C.—United States Code.

§ 1051.810 What materials does this part reference?

We have incorporated by reference the documents listed in this section. The Director of the **Federal Register** approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1051.810 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 1051.810.—ASTM MATERIALS

Document number and name	Part 1051 reference
ASTM D471–98, Standard Test Method for Rubber Property-Effect of Liquids.	1051.501
ASTM D814–95 (reapproved 2000), Standard Test Method for Rubber Property-Vapor Transmission of Volatile Liquids.	1051.245
ASTM E29–02, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	1051.801

(b) *SAE material.* Table 2 of § 1051.810 lists material from the Society of Automotive Engineering that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096. Table 2 follows:

TABLE 2 OF § 1051.810.—SAE MATERIALS

Document number and name	Part 1051 reference
SAE J30, Fuel and Oil Hoses, June 1998.	1051.245, 1051.501
SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, May 1998.	1051.135
SAE J2260, Nonmetallic Fuel System Tubing with One or More Layers, November 1996.	1051.245

§ 1051.815 How should I request EPA to keep my information confidential?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

§ 1051.820 How do I request a hearing?

See 40 CFR part 1068, subpart G, for information related to hearings.

PART 1065—TEST PROCEDURES AND EQUIPMENT

Subpart A—Applicability and General Provisions

Sec.
1065.1 Applicability.
1065.5 Overview of test procedures.
1065.10 Other test procedures.
1065.15 Engine testing.
1065.20 Limits for test conditions.

Subpart B—Equipment and Analyzers

1065.101 Overview.
1065.105 Dynamometer and engine equipment specifications.
1065.110 Exhaust gas sampling system; spark-ignition (SI) engines.

1065.115 Exhaust gas sampling system; compression-ignition engines. [Reserved]
1065.120 Raw sampling. [Reserved]
1065.125 Analyzers (overview/general response characteristics).
1065.130 Hydrocarbon analyzers.
1065.135 NO_X analyzers.
1065.140 CO and CO_2 analyzers.
1065.145 Smoke meters. [Reserved]
1065.150 Flow meters.
1065.155 Temperature and pressure sensors.

Subpart C—Test Fuels and Analytical Gases

1065.201 General requirements for test fuels.
1065.205 Test fuel specifications for distillate diesel fuel. [Reserved]
1065.210 Test fuel specifications for gasoline.
1065.215 Test fuel specifications for natural gas.
1065.220 Test fuel specifications for liquefied petroleum gas.
1065.240 Lubricating oils.
1065.250 Analytical gases.

Subpart D—Analyzer and Equipment Calibrations

1065.301 Overview.
1065.305 International calibration standards.
1065.310 CVS calibration. [Reserved]
1065.315 Torque calibration.

Subpart E—Engine Selection, Preparation, and Service Accumulation

1065.401 Selecting a test engine.
1065.405 Preparing and servicing a test engine.
1065.410 Service limits for stabilized test engines.
1065.415 Durability demonstration.

Subpart F—Running an Emission Test

1065.501 Overview of the engine dynamometer test procedures.
1065.510 Engine mapping procedures.
1065.515 Test cycle generation.
1065.520 Engine starting, restarting, and shutdown.
1065.525 Engine dynamometer test run.
1065.530 Test cycle validation criteria.

Subpart G—Data Analysis and Calculations

1065.601 Overview.
1065.605 Required records.
1065.610 Bag sample analysis.
1065.615 Bag sample calculations.

Subpart H—Particulate Measurements [Reserved]

Subpart I—Testing With Oxygenated Fuels

1065.801 Applicability.
1065.805 Sampling system.
1065.810 Calculations.

Subpart J—Field Testing

1065.901 Applicability.
1065.905 General provisions.
1065.910 Measurement accuracy and precision.
1065.915 Equipment specifications for SI engines.
1065.920 Equipment setup and test run for SI engines.
1065.925 Calculations.
1065.930 Specifications for mass air flow sensors.
1065.935 Specifications for THC analyzers.
1065.940 Specifications for NO_X and air/fuel sensors.
1065.945 Specifications for CO analyzers.
1065.950 Specifications for speed and torque measurement.

Subpart K—Definitions and Other Reference Information

1065.1001 Definitions.
1065.1005 Symbols, acronyms, and abbreviations.
1065.1010 Reference materials.
1065.1015 Confidential information.

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Applicability and General Provisions

§ 1065.1 Applicability.

(a) This part describes the procedures that apply to testing that we require for the following engines or for equipment using the following engines:

(1) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.

(2) Vehicles that we regulate under 40 CFR part 1051 (*i.e.,* recreational SI vehicles) that are regulated based on engine testing. See 40 CFR part 1051 to determine which vehicles may be certified based on engine test data.

(b) This part does not apply to any of the following engine or vehicle categories:

(1) Light-duty highway vehicles (see 40 CFR part 86).

(2) Heavy-duty highway Otto-cycle engines (see 40 CFR part 86).

(3) Heavy-duty highway diesel engines (see 40 CFR part 86).

(4) Aircraft engines (see 40 CFR part 87).

(5) Locomotive engines (see 40 CFR part 92).

(6) Land-based nonroad diesel engines (see 40 CFR part 89).

(7) General marine engines (see 40 CFR parts 89 and 94).

(8) Marine outboard and personal watercraft engines (see 40 CFR part 91).

(9) Small nonroad spark-ignition engines (see 40 CFR part 90).

(c) This part is addressed to you as a manufacturer, but it applies equally to anyone who does testing for you, and to us when we conduct testing to determine if you meet emission standards.

(d) Paragraph (a) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines. In this part 1065, we refer to each of these other parts generically as the ''standard-setting part.'' For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Follow the standard-setting part if it differs from this part.

(e) For equipment subject to this part and regulated under equipment-based or vehicle-based standards, interpret the term ''engine'' in this part to include equipment and vehicles(see 40 CFR 1068.30).

§ 1065.5 Overview of test procedures.

(a) Some of the provisions of this part do not apply to all types of engines. For example, measurement of particulate matter is generally not required for spark-ignition engines. See the standard-setting part to determine which provisions in this part may not apply. Before using this part's procedures, read the standard-setting part to answer at least the following questions:

(1) How should I warm up the test engine before measuring emissions? Do I need to measure cold-start emissions during this warm-up segment of the duty cycle?

(2) Do I measure emissions while the warmed-up engine operates over a steady-state schedule, a transient schedule, or both?

(3) What are the speed and load points of the test cycle(s)?

(4) Which exhaust constituents do I need to measure?

(5) Does testing require full-flow dilute sampling? Is raw sampling acceptable? Is partial-flow dilute sampling acceptable?

(6) Do any unique specifications apply for test fuels?

(7) What maintenance steps may I do before or between tests on an emission-data engine?

(8) Do any unique requirements apply to stabilizing emission levels on a new engine?

(9) Do any unique requirements apply to testing conditions, such as ambient temperatures or pressures?

(10) Are there special emission standards that affect engine operation and ambient conditions?

(11) Are there different emission standards that apply to field testing under normal operation?

(b) The following table shows how this part divides testing specifications into subparts:

This subpart...	Describes these specifications or procedures...
Subpart A	General provisions for test procedures.
Subpart B	Equipment for testing.
Subpart C	Fuels and analytical gases for testing.

This subpart...	Describes these specifications or procedures...
Subpart D	How to calibrate test equipment.
Subpart E	How to prepare engines for testing, including service accumulation.
Subpart F	How to test for emissions.
Subpart G	How to calculate emission levels from measured data.
Subpart H	[Reserved].
Subpart I	How to measure emissions from engines fueled with an oxygenated fuel such as methanol or ethanol.
Subpart J	How to do field testing of in-use vehicles and equipment.
Subpart K	Definitions, abbreviations, and other reference information that apply to emission testing.

§ 1065.10 Other test procedures.

(a) *Your testing.* These test procedures apply for all testing that you do to show compliance with emission standards, with a few exceptions listed in this section.

(b) *Our testing.* These test procedures generally apply for testing that we do to determine if your engines comply with applicable emission standards. We may conduct other testing as allowed by the Act.

(c) *Exceptions.* You may be allowed or required to use test procedures other than those specified in this part in the following cases:

(1) The test procedures in this part are intended to produce emission measurements equivalent to those that would result from measuring emissions during in-use operation using the same engine configuration installed in a piece of equipment. If good engineering judgment indicates that use of the procedures in this part for an engine would result in measurements that are not representative of in-use operation of that engine, you must notify us. If we determine that using these procedures would result in measurements that are significantly unrepresentative and that changing the procedures will result in more representative measurements and not decrease the stringency of emission standards, we will specify changes to the procedures. In your notification to us, you should recommend specific changes you think are necessary.

(2) You may ask to use emission data collected using other test procedures, such as those of the California Air Resources Board or the International Organization for Standardization. We will allow this only if you show us that these data are equivalent to data collected using our test procedures.

(3) You may ask to use alternate procedures that produce measurements equivalent to those from the specified procedures. If you send us a written request showing your procedures are equivalent, and we agree that they are equivalent, we will allow you to use them. You may not use an alternate procedure until we approve them, either by: telling you directly that you may use this procedure; or issuing guidance to all manufacturers, which allows you to use the alternate procedure without additional approval.

(4) You may ask to use special test procedures if your engine cannot be tested under the specified procedures (for example, your engine cannot operate on the specified transient cycle). In this case, tell us in writing why you cannot satisfactorily test your engines using this part's procedures and ask to use a different approach. We will approve your special test procedures if we determine they would produce emission measurements that are representative of those that would result from measuring emissions during in-use operation. You may not use special procedures until we approve them.

(5) The standard-setting part may contain other specifications for test procedures that apply for your engines. In cases where it is not possible to comply with both the test procedures in those parts and the test procedures in this part, you must comply with the test procedures specified in the standard-setting part. Those other parts may also allow you to deviate from the test procedures of this part for other reasons.

§ 1065.15 Engine testing.

(a) This part describes the procedures for performing exhaust emission tests on engines that must meet emission standards.

(b) Generally, you must test an engine while operating it on a laboratory dynamometer over a prescribed sequence. (Subpart J of this part describes in-use testing of engines installed in vehicles or equipment.) You need to sample and analyze the exhaust gases generated during engine operation to determine the concentration of the regulated pollutants.

(c) Concentrations are converted into units of grams of pollutant per kilowatt-hour (g/kW-hr) or similar units for comparison to emission standards. If the applicable emission standards are expressed as g/bhp-hr, references in this part to kW should generally be interpreted to mean horsepower.

§ 1065.20 Limits for test conditions.

(a) Unless specified elsewhere in this chapter, you may conduct tests to determine compliance with duty-cycle emission standards at ambient temperatures of 20–30° C (68–86° F), ambient pressures of 600–775 mm Hg, and any ambient humidity level.

(b) Follow the standard-setting part for ambient conditions when testing to determine compliance with not-to-exceed or other off-cycle emission standards.

(c) For engine testing in a laboratory, you may heat, cool, and/or dehumidify the dilution air before it enters the CVS.

(d) For engine testing in a laboratory, if the barometric pressure observed while generating the maximum-torque curve changes by more than 25 mm Hg from the value measured when you started mapping, you must remap the engine. Also, to have a valid test, the average barometric pressure observed during the exhaust emission test must be within 25 mm Hg of the average observed during the maximum torque curve generation (see § 1065.510).

Subpart B—Equipment and Analyzers

§ 1065.101 Overview.

This subpart describes equipment and analyzers for measuring emissions. Subpart D of this part describes how to calibrate these devices and subpart C of this part defines the accuracy and purity specifications of analytical gases.

§ 1065.105 Dynamometer and engine equipment specifications.

(a) The engine dynamometer system must be able to control engine torque and speed simultaneously over the applicable test cycles within the accuracies specified in § 1065.530. If your dynamometer cannot meet the accuracy requirements in § 1065.530, you must get our approval before using it. For transient testing, issue command set points for engine torque and speed at 5 Hz or greater (10 Hz recommended). Record feedback engine torque and speed at least once every second during the test. In addition to these general requirements, make sure your engine or dynamometer's readout signals for speed and torque meet the following accuracies for all testing:

(1) Engine speed readout must be accurate to within ±2 percent of the absolute standard value. A 60-tooth (or greater) wheel in combination with a common mode rejection frequency counter is considered an absolute standard for engine or dynamometer speed.

(2) Engine flywheel torque readout must meet one of the two following standards for accuracy:

(i) Within ±3 percent of the NIST true value torque (as defined in § 1065.315).

(ii) The following accuracies:

If the full-scale torque value is...	Engine flywheel torque readout must be within...
T ≤ 550 ft-lbs.	±2.5 ft-lbs. of NIST true value.
550 < T ≤ 1050 ft-lbs.	±5.0 ft-lbs. of NIST true value.
T > 1050 ft-lbs.	±10.0 ft-lbs. of NIST true value.

(3) Option: You may use internal dynamometer signals (such as armature current) to measure torque if you can show that the engine flywheel torque during the test cycle conforms to paragraph (b)(2) of this section. Your measurements must compensate for increased or decreased flywheel torque because of the armature's inertia during accelerations and decelerations in the test cycle.

(b) To verify that the test engine has followed the test cycle correctly, collect the dynamometer or engine readout signals for speed and torque so you can statistically correlate the engine's actual performance with the test cycle (see § 1065.530). Normally, to do this, you would convert analog signals from the dynamometer or engine into digital values for computer storage, but all conversions must meet two criteria:

(1) Speed values used to evaluate cycles must be accurate to within 2 percent of the readout value for dynamometer or engine speed.

(2) Engine flywheel torque values used to evaluate cycles must be accurate to within 2 percent of the readout value for dynamometer or engine flywheel torque.

(c) You may combine the tolerances in paragraphs (a) and (b) of this section if you use the root mean square (RMS) method and refer accuracies of the RMS values to absolute-standard or NIST true values.

(1) Speed values used to evaluate cycles must be accurate to within ±2.8 percent of the absolute standard values, as defined in paragraph (a)(1) of this section.

(2) Engine flywheel torque values used to evaluate cycles must be accurate to within ±3.6 percent of NIST true values, as determined in § 1065.315.

§ 1065.110 Exhaust gas sampling system; spark-ignition (SI) engines.

(a) *General.* The exhaust gas sampling system described in this section is designed to measure the true mass of gaseous emissions in the exhaust of SI engines. (If the standard-setting part requires determination of THCE or NMHCE for your engine, then see subpart I of this part for additional requirements.) Under the constant-volume sampler (CVS) concept, you must measure the total volume of the mixture of exhaust and dilution air and collect a continuously proportioned volume of sample for analysis. You must control flow rates so that the ratio of sample flow to CVS flow remains constant. You then determine the mass emissions from the sample concentration and total flow over the test period.

(1) Do not let the CVS or dilution air inlet system artificially lower exhaust system backpressure. To verify proper backpressures, measure pressure in the raw exhaust immediately upstream of the inlet to the CVS. Continuously measure and compare the static pressure of the raw exhaust observed during a transient cycle—with and without the CVS operating. Static pressure measured with the CVS system operating must remain within ±5 inches of water (1.2 kPa) of the static pressure measured when disconnected from the CVS, at identical moments in the test cycle. (Note: We will use sampling systems that can maintain the static pressure to within ±1 inch of water (0.25 kPa) if your written request shows that this closer tolerance is necessary.) This requirement serves as a design specification for the CVS/dilution air inlet system, and should be performed as often as good engineering practice dictates (for example, after installing an uncharacterized CVS, adding an unknown inlet restriction on the dilution air, or otherwise altering the system).

(2) The system for measuring temperature (sensors and readout) must have an accuracy and precision of ±3.4° F (±1.9° C). The temperature measuring system for a CVS without a heat exchanger must respond within 1.50 seconds to 62.5 percent of a temperature change (as measured in hot silicone oil). For a CVS with a heat exchanger, there is no specific requirement for response time.

(3) The system for measuring pressure (sensors and readout) must have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS must be large enough to keep water from condensing in the system. You may dehumidify the dilution air before it enters the CVS. You also may heat or cool the air if three conditions exist:

(i) The air (or air plus exhaust gas) temperature does not exceed 250° F (121° C).

(ii) You calculate the CVS flow rate necessary to prevent water condensation based on the lowest temperature in the CVS before sampling. (We recommend insulating the CVS system when you use heated dilution air.)

(iii) The dilution ratio is high enough to prevent condensation in bag samples as they cool to room temperature.

(5) Bags for collecting dilution air and exhaust samples must be big enough for samples to flow freely.

(6) The general CVS sample system consists of a dilution air filter (optional) and mixing assembly, cyclone particulate separator (optional), a sample line for the bag sample or other sample lines a dilution tunnel, and associated valves and sensors for pressure and temperature. Except for the system to sample hydrocarbons from two-stroke engines, the temperature of the sample lines must be more than 3° C above the mixture's maximum dew point and less than 121° C. We recommend maintaining them at 113 ± 8° C. For the hydrocarbon sampling system with two-stroke engines, the temperature of the sample lines should be maintained at 191 ± 11° C. A general schematic of the SI sampling system is shown in Figure 1065.110–1, which follows:

BILLING CODE 6560–50–P

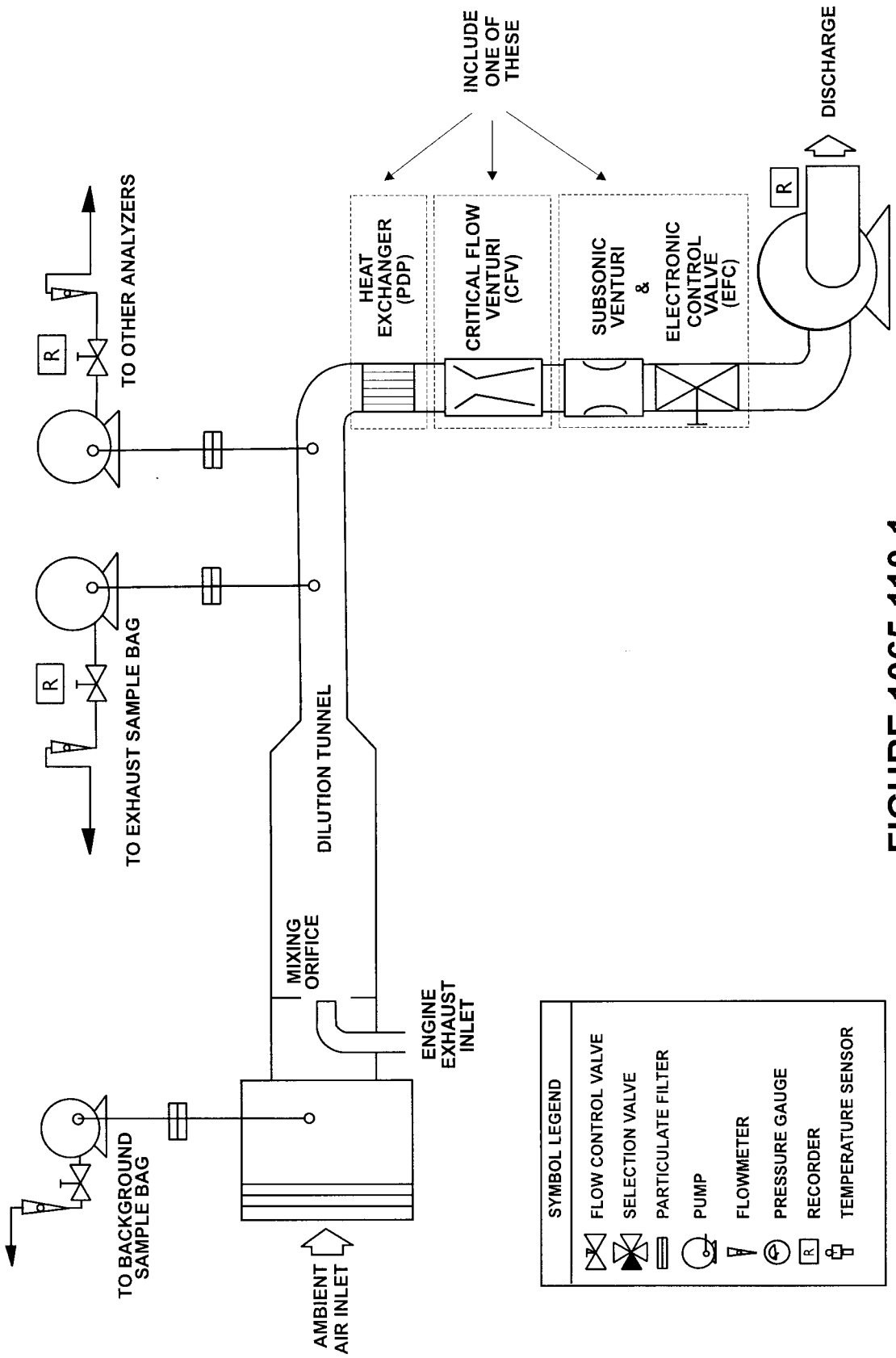


FIGURE 1065.110-1
GENERIC GASEOUS EMISSIONS SAMPLING SYSTEM

BILLING CODE 6460–50–C

(b) *Steady-state testing.* Constant proportional sampling is required throughout transient testing, but is not required throughout steady-state testing.

Steady-state testing requires that you draw a proportional sample for each test mode, but you may sample in different proportions for different test modes, as long as you know the ratio of the sample flow to total flow during each test mode. This allowance means that you may use simpler flow control systems for steady-state testing than are shown in Figure 1065.110–1 of this section.

(c) *Configuration variations.* Since various configurations can produce equivalent results, you need not conform exactly to the drawings in this subpart. You may use other components—such as instruments, valves, solenoids, pumps and switches—to provide more information and coordinate the components' functions. Based on good engineering judgment, you may exclude other components that are not needed to maintain accuracy on some systems.

(d) *CFV–CVS component description.* The flow characteristics of a Critical-Flow Venturi, Constant-Volume Sampler (CFV–CVS) are governed by the principles of fluid dynamics associated with critical flow. The CFV system is commonly called a constant-volume system (CVS) even though the mass flow varies. More properly, they are constant-proportion sampling systems, because small CFVs in each of the sample lines maintains proportional sampling while temperatures vary. This CFV maintains the mixture's flow rate at choked flow, which is inversely proportional to the square root of the gas temperature, and the system computes the actual flow rate continuously. Because pressures and temperatures are the same at all venturi inlets, the sample volume is proportional to the total volume. The CFV–CVS sample system uses critical flow venturis for the bag sample or other sample lines (these are shown in the figure as flow control valves) and a critical flow venturi for the dilution tunnel. All venturis must be maintained at the same temperature.

(e) *EFC–CVS component description.* The electronic flow control-CVS (EFC–CVS) system for sampling is identical to the CFV system described in paragraph (b) of this section, except that it adds electronic flow controllers (instead of sampling venturis), a subsonic venturi and an electronic flow controller for the CVS (instead of the critical flow venturi), metering valves, and separate flow meters (optional) to totalize sample flow volumes. The EFC sample system must conform to the following requirements:

(1) The system must meet all the requirements in paragraph (b) of this section.

(2) The ratio of sample flow to CVS flow must not vary by more than ±5 percent from the test's setpoint.

(3) Sample flow totalizers must meet the accuracy specifications in § 1065.150. You may obtain total volumes from the flow controllers, with our advance approval, if you can show they meet these accuracies.

(f) *Component description, PDP–CVS.* The positive-displacement pump-CVS (PDP–CVS) system for sampling is identical to the CFV system described in paragraph (b) of this section, except for the following changes:

(1) Include a heat exchanger.

(2) Use positive-displacement pumps for the CVS flow and sampling-system flow. You do not need sampling venturis or a venturi for the dilution tunnel. All pumps must operate at a constant flow rate.

(3) All pumps must operate at a nominally constant temperature. Maintain the gas mixture's temperature—measured at a point just ahead of the positive-displacement pump (and after the heat exchanger for the main CVS pump)—within ±10° F (±5.6° C) of the average operating temperature observed during the test. (You may estimate the average operating temperature from the temperatures observed during similar tests.) The system for measuring temperature (sensors and readout) must have an accuracy and precision of ±3.4° F (1.9° C), and response time consistent with good engineering judgment.

(g) *Mixed systems.* You may combine elements of paragraphs (d), (e), and (f) consistent with good engineering judgment. For example, you may control the CVS flow rate using a CFV, and control sample flow rates using electronic flow controllers.

§ 1065.115 Exhaust gas sampling system; compression-ignition engines. [Reserved]

§ 1065.120 Raw sampling. [Reserved]

§ 1065.125 Analyzers (overview/general response characteristics).

(a) *General.* The following sections and subparts describe the specifications for analyzers and analytical equipment:

(1) The analyzers for measuring hydrocarbon, NO_X, CO, and CO_2 emission concentrations are specified in § 1065.130 through § 1065.140.

(2) The analytical equipment for measuring particulate emissions is specified in Subpart H of this part.

(3) The analytical equipment for measuring emissions of oxygenated compounds (for example, methanol) is specified in Subpart I of this part.

(4) The analytical equipment for measuring in-use emissions is specified in Subpart J of this part.

(b) *Response time.* Analyzers must have the following response characteristics:

(1) For steady-state testing and transient testing with bag sample analysis, the analyzer must reach at least 90 percent of its final response within 5.0 seconds after any step change to the input concentration at or above 80 percent of full scale.

(2) For transient testing with continuous measurement, the analyzer must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration at or above 80 percent of full scale.

(c) *Precision and noise.* Analyzers must meet the following characteristics for precision and noise:

(1) Precision must be no worse than ±1 percent of full-scale concentration for each range used above 155 ppm (or ppmC), or ±2 percent for each range used below 155 ppm (or ppmC). For this paragraph (c)(1), we define precision as 2.5 times the standard deviation of 10 repetitive responses to a given calibration or span gas.

(2) Peak-to-peak response to zero and calibration or span gases over any 10-second period must be no more than 2 percent of full-scale chart deflection on all ranges used.

(d) *Drift.* Analyzers must meet specifications for zero-response and span drift.

(1) The zero-response drift during one hour must be less than 2 percent of full-scale chart deflection on the lowest range used. Zero-response is the mean response, including noise, to a zero-gas during a 30-second interval.

(2) The span drift during one hour must be less than 2 percent of full-scale chart deflection on the lowest range used. Span is the difference between the span-response and the zero-response. Span-response is the mean response, including noise, to a span gas during a 30-second interval.

(e) *Calibration.* See subpart D of this part for specifications to calibrate analyzers.

§ 1065.130 Hydrocarbon analyzers.

This section describes the requirements for flame ionization detectors (FIDs) used to measure hydrocarbons.

(a) Fuel the FID with a mixture of hydrogen in helium and calibrate it using propane.

(b) If you use a heated FID (required only for diesels and two-stroke, spark-ignition engines), keep the temperature 191 ±11° C).

(c) Use an overflow sampling system for heated continuous FIDs. (In an overflow system excess zero gas or span gas spills out of the probe when you are doing zero or span checks.)

(d) Do not premix the FID fuel and burner air.

(e) Make sure the FID meets accuracy and precision specifications in ISO 8178–1 (incorporated by reference in § 1065.1010).

§ 1065.135 NO_X analyzers.

This section describes the requirements for chemiluminescent detectors (CLD) used to measure NO_X. Good engineering practice may require the use of other detectors.

(a) A CLD must meet the following requirements:

(1) Make sure your CLD meets the accuracy and precision specifications in ISO 8178–1 (incorporated by reference in § 1065.1010).

(2) The NO to NO_2 converter must have an efficiency of at least 90 percent.

(3) Use an overflow sampling system for continuous CLDs. (In an overflow system excess zero gas or span gas spills out of the probe when you are doing zero or span checks.)

(4) You do not need a heated CLD to test spark-ignition engines.

(b) Using CLDs is generally acceptable even though they measure only NO and NO_2, since conventional engines do not emit significant amounts of other NO_X species.

§ 1065.140 CO and CO_2 analyzers.

This section describes the requirements for non-dispersive infrared absorption detectors (NDIR) to measure CO and CO_2.

(a) The NDIR must meet the applicable accuracy and precision specifications of ISO 8178–1 (incorporated by reference in § 1065.1010).

(b) The NDIR must meet the applicable quench and interference requirements of ISO 8178–1 (incorporated by reference in § 1065.1010).

§ 1065.145 Smoke meters. [Reserved]

§ 1065.150 Flow meters.

(a) Flow meters must have accuracy and precision of ±2 percent of point or better and be traceable to NIST standards.

(b) You may correct flow measurements for temperature or pressure, if your temperature and pressure measurements have accuracy and precision of ±2 percent of point or better (absolute).

§ 1065.155 Temperature and pressure sensors.

(a) Except where we specify otherwise in this part, must meet the applicable accuracy and precision specifications of ISO 8178–1 (incorporated by reference in § 1065.1010).

(b) Use good engineering judgment to design and operate your temperature and pressure measuring systems to minimize delays in response time and avoid hysteresis.

Subpart C—Test Fuels and Analytical Gases

§ 1065.201 General requirements for test fuels.

(a) For all emission tests, use test fuels meeting the specifications in this subpart, unless the standard-setting part directs otherwise. For any service accumulation on a test engine, if we do not specify a fuel, use the specified test fuel or a fuel typical of what you would expect the engine to use in service.

(b) We may require you to test the engine with each type of fuel it can use (for example, gasoline and natural gas).

(c) If you will produce engines that can run on a type of fuel (or mixture of fuels) that we do not specify in this subpart, we will allow you to test with fuel representing commercially available fuels of that type. However, we must approve your fuel's specifications before you may use it for emission testing.

(d) You may use a test fuel other than those we specify in this subpart if you do all of the following:

(1) Show that it is commercially available.

(2) Show that your engines will use only the designated fuel in service.

(3) Show that operating the engines on the fuel we specify would increase emissions or decrease durability.

(4) Get our written approval before you start testing.

(e) We may allow you to use other test fuels (for example, California Phase 2 gasoline) if they do not affect the demonstration of compliance.

§ 1065.205 Test fuel specifications for distillate diesel fuel. [Reserved]

§ 1065.210 Test fuel specifications for gasoline.

Gasoline used as a test fuel must meet the following specifications:

(a) Unless the standard-setting part requires testing with fuel appropriate for low temperatures, use gasoline test fuels meeting the specifications in the following table:

TABLE 1 OF § 1065.210.—GENERAL TEST-FUEL SPECIFICATIONS FOR GASOLINE

Item	Procedure [1]	Value [1]
Distillation Range:		
1. Initial boiling point, °C	ASTM D 86–01	23.9–35.0[2]
2. 10% point, °C	ASTM D 86–01	48.9–57.2
3.50% point, °C	ASTM D 86–01	93.3–110.0
4. 90% point, °C	ASTM D 86–01	148.9–162.8
5. End point, °C (maximum)	ASTM D 86–01	212.8.
Hydrocarbon composition:		
1. Olefins, volume %	ASTM D 1319–02	10 maximum
2. Aromatics, volume %	ASTM D 1319–02	35 maximum
3. Saturates	ASTM D 1319–02	Remainder
Lead (organic), g/liter	ASTM D 3237–97	0.013 maximum
Phosphorous, g/liter	ASTM D 3231–02	0.0013 maximum

TABLE 1 OF § 1065.210.—GENERAL TEST-FUEL SPECIFICATIONS FOR GASOLINE—Continued

Item	Procedure [1]	Value [1]
Sulfur, weight %	ASTM D 1266–98	0.008 maximum
Volatility (Reid Vapor Pressure), kPa	ASTM D 323–99a	60.0 to 63.4.[2,3]

[1]All ASTM standards are incorporated by reference in § 1065.1010.
[2]For testing at altitudes above 1 219 m, the specified volatility range is 52 to 55 kPa (7.5 to 8.0) and the specified initial boiling point range is 23.9° to 40.6° C.
[3]For testing unrelated to evaporative emissions, the specified range is 55 to 63 kPa (8.0 to 9.1 psi).

(b) If the standard-setting part requires testing with fuel appropriate for low temperatures, use gasoline test fuels meeting the specifications in the following table:

TABLE 2 OF § 1065.210.—LOW-TEMPERATURE TEST-FUEL SPECIFICATIONS FOR GASOLINE

Item	Procedure [1]	Value [1]
Distillation Range:		
1. Initial boiling point, °C	ASTM D 86–01	24.4–35.6.
2. 10% point, °C	ASTM D 86–01	36.7–47.8.
3. 50% point, °C	ASTM D 86–01	81.7–101.1.
4. 90% point, °C	ASTM D 86–01	157.8–174.4.
5. End point, °C (maximum)	ASTM D 86–01	211.7.
Hydrocarbon composition:		
1. Olefins, volume %	ASTM D 1319–02	17.5 maximum.
2. Aromatics, volume %	ASTM D 1319–02	30.4 maximum.
3. Saturates	ASTM D 1319–02	Remainder.
Lead (organic), g/liter	ASTM D 3237–97	0.013 maximum.
Phosphorous, g/liter	ASTM D 3231–02	0.005 maximum.
Sulfur, weight %	ASTM D 1266–98	0.08 maximum.
Volatility (Reid Vapor Pressure), kPa	ASTM D 323–99a	11.2—11.8 psi.

[1]All ASTM standards are incorporated by reference in § 1065.1010.

(c) Use gasoline test fuel with octane values that represent commercially available fuels for the appropriate application.

§ 1065.215 Test fuel specifications for natural gas.

(a) Natural gas used as a test fuel must meet the specifications in the following table:

TABLE 1 OF § 1065.215.—TEST-FUEL SPECIFICATIONS FOR NATURAL GAS

Item	Procedure[1]	Value (mole percent)
1. Methane	ASTM D 1945–96	87.0 minimum.
2. Ethane	ASTM D 1945–96	5.5 maximum.
3. Propane	ASTM D 1945–96	1.2 maximum.
4. Butane	ASTM D 1945–96	0.35 maximum.
5. Pentane	ASTM D 1945–96	0.13 maximum.
6. C6 and higher	ASTM D 1945–96	0.1 maximum.
7. Oxygen	ASTM D 1945–96	1.0 maximum.
8. Inert gases (sum of CO_2 and N_2)	ASTM D 1945–96	5.1 maximum.

[1]All ASTM standards are incorporated by reference in § 1065.1010.

(b) At ambient conditions, the fuel must have a distinctive odor detectable down to a concentration in air of not more than one-fifth of the lower flammability limit.

§ 1065.220 Test fuel specifications for liquefied petroleum gas.

(a) Liquefied petroleum gas used as a test fuel must meet the specifications in the following table:

TABLE 1 OF § 1065.220.—TEST-FUEL SPECIFICATIONS FOR LIQUEFIED PETROLEUM GAS

Item	Procedure [1]	Value
1. Propane	ASTM D 2163–91	85.0 vol. percent minimum.
2. Vapor pressure at 38° C	ASTM D 1267–02 or 2598–02 [2]	14 bar maximum.
3. Volatility residue (evaporated temp., 35° C)	ASTM D 1837–02	–38° C maximum.
4. Butanes	ASTM D 2163–91	5.0 vol. percent maximum.
5. Butenes	ASTM D 2163–91	2.0 vol. percent maximum.
6. Pentenes and heavier	ASTM D 2163–91	0.5 vol. percent maximum.
7. Propene	ASTM D 2163–91	10.0 vol. percent maximum.
8. Residual matter (residue on evap. of 100 ml oil stain observ.)	ASTM D 2158–02	0.05 ml maximum pass.[3]
9. Corrosion, copper strip	ASTM D 1838–91	No. 1 maximum.
10. Sulfur	ASTM D 2784–98	80 ppm maximum.
11. Moisture content	ASTM D 2713–91	pass.

[1] All ASTM standards are incorporated by reference in § 1065.1010.
[2] If these two test methods yield different results, use the results from ASTM D 1267–02.
[3] The test fuel must not yield a persistent oil ring when you add 0.3 ml of solvent residue mixture to a filter paper in 0.1 ml increments and examine it in daylight after two minutes (see ASTM D 2158–02).

(b) At ambient conditions, the fuel must have a distinctive odor detectable down to a concentration in air of not over one-fifth of the lower flammability limit.

§ 1065.240 Lubricating oils.

Lubricating oils you use to comply with this part must be commercially available and represent the oil that will be used with your in-use engines.

§ 1065.250 Analytical gases.

Analytical gases that you use to comply with this part must meet the accuracy and purity specifications of this section. You must record the expiration date specified by the gas supplier and may not use any gas after the expiration date.

(a) *Pure gases.* Use the ''pure gases'' shown in the following table:

TABLE 1 OF § 1065.250.—CONCENTRATION LIMITS FOR PURE GASES

Gas type	Maximum contaminant concentrations				Oxygen content
	Organic carbon	Carbon monoxide	Carbon dioxide	Nitric oxide (NO)	
Purified Nitrogen	1 ppmC	1 ppm	400 ppm	0.1 ppm	NA.
Purified Oxygen	NA	NA	NA	NA	99.5–100.0%.
Purified Synthetic Air, or Zero-Grade Air.	1 ppmC	1 ppm	400 ppm	0.1 ppm	18–21%.

(b) *Fuel for flame ionization detectors.* Use a hydrogen-helium mixture as the fuel. Make sure the mixture contains 40 ± 2 percent hydrogen and no more than 1 ppmC of organic carbon or 400 ppm of CO_2.

(c) *Calibration and span gases.* Apply the following provisions to calibration and span gases:

(1) Use the following gas mixtures, as applicable, for calibrating and spanning your analytical instruments:

(i) Propane in purified synthetic air. You may ask us to allow you to use propane in purified nitrogen for high concentrations of propane.

(ii) CO in purified nitrogen.

(iii) NO and NO_2 in purified nitrogen (the amount of NO_2 in this calibration gas must not exceed 5 percent of the NO content).

(iv) Oxygen in purified nitrogen.

(v) CO_2 in purified nitrogen.

(vi) Methane in purified synthetic air.

(2) The calibration gases in paragraph (c)(1) of this section must be traceable to within one percent of NIST gas standards or other gas standards we have approved. Span gases in paragraph (c)(1) of this section must be accurate to

within two percent of true concentration, where true concentration refers to NIST gas standards, or other gas standards we have approved. Record concentrations of calibration gas as volume percent or volume ppm.

(3) You may use gases for species other than those in paragraph (c)(1) of this section (such as methanol in air gases used to determine response factors), as long as they meet the following criteria:

(i) They are traceable to within ±2 percent of NIST gas standards or other standards we have approved.

(ii) They remain within ±2 percent of the labeled concentration. Show this by measuring quarterly with a precision of ±2 percent (two standard deviations) or by using another method we approve. You may take multiple measurements. If the true concentration of the gas changes by more than two percent, but less than ten percent, you may relabel the gas with the new concentration.

(4) You may generate calibration and span gases using precision blending devices (gas dividers) to dilute gases with purified nitrogen or with purified synthetic air. Make sure the mixing device produces a concentration of blended calibration gases that is accurate to within ± 1.5 percent. To do so, you must know the concentration of primary gases used for blending to an accuracy of at least ± 1 percent, traceable to NIST gas standards or other gas standards we have approved. For each calibration incorporating a blending device, verify the blending accuracy between 15 and 50 percent of full scale. You may optionally check the blending device with an instrument that is linear by nature (for example, using NO gas with a CLD). Adjust the instrument's span value with the span gas connected directly to it. Check the blending device at the used settings to ensure that the difference between nominal values and measured concentrations at each point stays within ± 0.5 percent of the nominal value.

(d) *Oxygen interference gases.* Gases to check oxygen interference are mixtures of oxygen, nitrogen, and propane. The oxygen concentration must be 20–22 percent and the propane concentration must be 50–90 percent of the maximum value in the most typically used FID range. Independently measure the concentration of total hydrocarbons plus impurities by chromatographic analysis or by dynamic blending.

Subpart D—Analyzer and Equipment Calibrations

§ 1065.301 Overview.

Calibrate all analyzers and equipment at least annually, but make the actual frequency consistent with good engineering judgment. We may establish other guidelines as appropriate. Calibrate following specifications in one of three sources:

(a) Recommendations from the manufacturer of the analyzers or equipment.

(b) 40 CFR part 86, subpart F or subpart N.

(c) 40 CFR part 90, subparts D and E, as applicable.

§ 1065.305 International calibration standards.

(a) You may ask to use international standards for calibration.

(b) You need not ask for approval to use standards that have been shown to be traceable to NIST standards.

§ 1065.310 CVS calibration. [Reserved]

§ 1065.315 Torque calibration.

You must use one of two techniques to calibrate torque: the lever-arm dead-weight or the transfer technique. You may use other techniques if you show they are equally accurate. The NIST ''true value'' torque is defined as the torque calculated by taking the product of an NIST traceable weight or force and a sufficiently accurate horizontal distance along a lever arm, corrected for the lever arm's hanging torque.

(a) The lever-arm dead-weight technique involves placing known weights at a known horizontal distance from the torque-measuring device's center of rotation. You need two types of equipment:

(1) *Calibration weights.* This technique requires at least six calibration weights for each range of torque-measuring device used. Equally space the weights and make sure each one is traceable to NIST weights. You also may use weights certified by a U.S. state government's bureau of weights and measures. If your laboratory is outside the U.S., see § 1065.305 for information about using non-NIST standards. You may account for effects of changes in gravitational constant at the test site.

(2) *Lever arm.* This technique also requires a lever arm at least 20 inches long. Make sure the horizontal distance from the torque-measurement device's centerline to the point where you apply the weight is accurate to within ±0.10 inches. You must balance the arm or know its hanging torque to within ±0.1 ft-lbs.

(b) The transfer technique involves calibrating a master load cell (dynamometer case load cell). You may calibrate the master load cell with known calibration weights at known horizontal distances. Or you may use a hydraulically actuated, precalibrated, master load cell and then transfer this calibration to the device that measures the flywheel torque. The transfer technique involves three main steps:

(1) Precalibrate a master load cell or calibrate it following paragraph (a)(1) of this section. Use known weights traceable to NIST with the lever arms specified in paragraph (b)(2) of this section. Run or vibrate the dynamometer during this calibration to reduce static hysteresis.

(2) Use lever arms at least 20 inches long. The horizontal distances from the master load cell's centerline to the dynamometer's centerline and to the point where you apply weight or force must be accurate to within ±0.10 inches. Balance the arms or know their net hanging torque to within ±0.1 ft-lbs.

(3) Transfer calibration from the case or master load cell to the torque-measuring device with the dynamometer operating at a constant speed. Calibrate the torque-measurement device's readout to the master load cell's torque readout at a minimum of six loads spaced about equally across the full useful ranges of both measurement devices. (Good engineering practice requires that both devices have about the same useful ranges of torque measurement.) Transfer the calibration so it meets the accuracy requirements in § 1065.105(a)(2) for readouts from the torque-measurement device.

Subpart E—Engine Selection, Preparation, and Service Accumulation

§ 1065.401 Selecting a test engine.

While all engine configurations within a certified engine family must comply with the applicable standards in the standard-setting part, you are not required to test each configuration for certification.

(a) Select for testing according to the following guidance the engine configuration within the engine family that is most likely to exceed an emission standard:

(1) Test the engine that we specify, whether we do this through general guidance or give you specific instructions.

(2) If we do not tell you which engine to test, follow any instructions in the standard-setting part.

(3) If we do not tell you which engine to test and the standard-setting part does

not include specifications for selecting test engines, use good engineering judgment to select the engine configuration within the engine family that is most likely to exceed an emission standard.

(b) In the absence of other information, the following characteristics are appropriate to consider when selecting the engine to test:

(1) Maximum fueling rates.

(2) Maximum in-use engine speed (governed or ungoverned, as applicable).

(3) Highest sales volume.

(c) We may select any engine configuration within the engine family for our testing.

§ 1065.405 Preparing and servicing a test engine.

(a) If you are testing an emission-data engine for certification, make sure you have built it to represent production engines.

(b) Run the test engine, with all emission-control systems operating, long enough to stabilize emission levels. If you accumulate 50 hours of operation, you may consider emission levels stable without measurement.

(c) Do not service the test engine before you stabilize emission levels, unless we approve other maintenance in advance. This prohibition does not apply to your recommended oil and filter changes for newly produced engines, or to idle-speed adjustments.

(d) Select engine operation for accumulating operating hours on your test engines to represent normal in-use operation for the engine family.

(e) If you need more than 50 hours to stabilize emission levels, record your reasons and the method you use to do this. Give us these records if we ask for them.

§ 1065.410 Service limits for stabilized test engines.

(a) After you stabilize the test engine's emission levels, you may do scheduled maintenance, other than during emission testing, as the standard-setting part specifies.

(b) You may not do any unscheduled maintenance to the test engine or its emission-control system or fuel system without our advance approval. Unscheduled maintenance includes adjusting, repairing, removing, disassembling, cleaning, or replacing the test engine. We may approve routine maintenance that is not scheduled such as maintaining the proper oil level.

(1) We may approve other unscheduled maintenance if all of the following occur:

(i) You determine that a part failure or system malfunction (or the associated repair) does not make the engine unrepresentative of production engines in the field and does not require anyone to access the combustion chamber.

(ii) Something clearly malfunctions (such as persistent misfire, engine stall, overheating, fluid leakage, or loss of oil pressure) and needs maintenance or repair.

(iii) You give us a chance to verify the extent of the malfunction before you do the maintenance.

(2) If we determine that a part's failure or a system's malfunction (or the associated repair) has made the engine unrepresentative of production engines, you may no longer use it as a test engine.

(3) You may not do unscheduled maintenance based on emission measurements from the test engine.

(4) Unless we approve otherwise in advance, you may not use equipment, instruments, or tools to identify bad engine components unless you specify they should be used for scheduled maintenance on production engines. In this case, if they are not generally available, you must also make them available at dealerships and other service outlets.

(c) If you do maintenance that might affect emissions, you must completely test the engine for emissions before and after the maintenance, unless we waive this requirement.

(d) If your test engine has a major mechanical failure that requires you to take it apart, you may no longer use it as a test engine.

§ 1065.415 Durability demonstration.

If the standard-setting part requires durability testing, you must accumulate service in a way that represents how you expect the engine to operate in use. You may accumulate service hours using an accelerated schedule, such as through continuous operation.

(a) *Maintenance.* The following limits apply to the maintenance that we allow you to do on test engine:

(1) You may perform scheduled maintenance that you recommend to operators, but only if it is consistent with the standard-setting part's restrictions.

(2) You may perform additional maintenance only if we approve it in advance, as specified in § 1065.410(b).

(3) If your test engine has a major mechanical failure that requires you to take it apart, you may no longer use it as a test engine.

(b) *Emission measurements.* You must measure emissions following two main requirements:

(1) Perform emission tests to determine deterioration factors consistent with good engineering judgment. Evenly space any tests between the first and last test points throughout the durability period.

(2) Perform emission tests following the provisions of this part and the standard-setting part.

Subpart F—Running an Emission Test

§ 1065.501 Overview of the engine dynamometer test procedures.

(a) The engine dynamometer test procedure measures brake-specific emissions of hydrocarbons (total and nonmethane, as applicable), carbon monoxide, and oxides of nitrogen. To perform this test procedure, you first dilute exhaust emissions with ambient air and collect a continuous proportional sample for analysis, then analyze the composite samples (either in bags after the test or continuously during the test). The general test procedure consists of a test cycle made of one or more segments (check the standard-setting part for specific cycles):

(1) Either a cold-start cycle (where you measure emissions) or a warm-up cycle (where you do not measure emissions).

(2) A hot-start transient test (some test cycles may omit engine starting from the ''hot-start'' cycle).

(3) A steady-state test.

(b) Measure power using the dynamometer's feedback signals for torque and speed. The power measurement produces a brake kilowatt-hour value that allows you to calculate brake-specific emissions (see Subpart G of this part).

(c) Prepare engines for testing consistent with § 1065.10(c)(1) and according to the following provisions:

(1) When you test an engine or operate it for service accumulation, use the complete engine with all emission-control devices installed and functioning.

(2) Install the fan for any air-cooled engine (if applicable).

(3) You may install accessories such as an oil cooler, alternators, and air compressors or simulate their loading if they are typical of in-use operation. Apply this loading during all testing operations, including mapping.

(4) You may install a production-type starter on the engine.

(5) Cool the engine in a way that will maintain its operating temperatures including the intake air, oil, water temperatures about the same as they would be during normal operation. You may use auxiliary fans if necessary. You may use rust inhibitors and lubrication additives, up to the levels that the additive manufacturer recommends.

You may also use antifreeze mixtures and other coolants typical of those approved for use by the manufacturer.

(6) Use representative exhaust and air-intake systems. Make sure the exhaust restriction is 80 to 100 percent of the recommended maximum specified exhaust restriction and the air inlet restriction is between that of a clean filter and the maximum restriction specification. As the manufacturer, you are liable for emission compliance from the minimum in-use restrictions to the maximum restrictions you specify for that particular engine.

§ 1065.510 Engine mapping procedures.

(a) *Torque map.* Map your engine's torque while it is mounted on the dynamometer. Use the torque curve resulting from the mapping to convert the normalized torque values in the engine cycle to actual torque values for the test cycle. Make sure the speed ranges at least from the warm no-load idle speed to 105 percent of the maximum test speed. Because you determine the maximum test speed from the torque map, you may have to perform a preliminary torque map to determine the full mapping range. You may perform this preliminary torque map while the engine warms up. To map the engine, do the following things in sequence:

(1) Warm up the engine so oil and water temperatures (on an absolute scale such as the Kelvin scale) vary by less than two percent for two minutes; or until the thermostat opens if the engine-coolant system includes a thermostat.

(2) Operate the engine at the warm no-load idle speed.

(3) Fully open the throttle.

(4) While maintaining wide-open throttle and full-load, keep the engine at minimum speed for at least 15 seconds. Record the average torque during the last 5 seconds.

(5) In increments of 100±20 rpm, determine the maximum torque curve for the full speed range. Hold each test point for 15 seconds and record the average torque over the last 5 seconds. You may use larger increments for engines with maximum test speed over 4000 rpm, as long as you include at least 40 points and space them evenly.

(6) Fit all data points recorded with a cubic spline, Akima, or other technique we approve in advance. The resultant curve must be accurate to within ±1.0 ft-lbs. of all recorded engine torques.

(b) *Torque map with continual engine speed sweep.* In place of paragraphs (a)(1) through (a)(4) of this section, you may do a continual sweep of engine speed. While operating at wide-open throttle, increase the engine speed at an average rate of 8±1 rpm/sec over the full speed range. You may use higher sweeping rates for naturally-aspirated engines, in accordance with good engineering judgment. Record speed and torque points at a rate of at least one point per second. Connect all points generated under this approach by linear interpolation.

(c) *Alternate mapping.* You may use other mapping techniques if you believe those in paragraphs (a) and (b) of this section are unsafe or unrepresentative for any engine or engine family. These alternate techniques must satisfy the intent of the specified mapping procedures—to determine the maximum available torque at all engine speeds that occur during the test cycles. Report deviations from this section's mapping techniques for reasons of safety or representativeness. In no case, however, may you use descending continual sweeps of engine speed for governed or turbocharged engines.

(d) *Replicate tests.* You need not map an engine before every test, but you do need to remap the engine in any of the following situations:

(1) Good engineering judgment determines that an unreasonable amount of time has passed since the last map.

(2) The barometric pressure before the test begins has changed more than 25 mm Hg from the average barometric pressure observed during the map.

(3) The engine has undergone physical changes or recalibration that might affect its performance.

(e) *Power map.* Where applicable, generate a power map using the procedures this section specifies for torque maps. You may generate the power map directly or convert the torque map to a power map using engine speeds. The power map is also called a lug curve.

(f) *Cycles based only on torque/power at maximum test speed.* If the applicable test cycle for your engine does not require map information for engine speeds other than the maximum test speed, you may make the following simplifications:

(1) You need not perform the entire torque or power map, as long as you map the engines for speeds between 75 and 105 percent of the maximum test speed.

(2) You need not remap an engine according to paragraph (d) of this section. You need only verify the maximum torque or power at maximum test speed.

§ 1065.515 Test cycle generation.

(a) *Denormalizing test cycles.* The standard-setting parts establish the applicable test cycles consisting of second-by-second specifications for normalized torque and speed for transient cycles, or modal specifications for normalized torque and speed (or power and speed) for steady-state cycles. You must denormalize these values to get actual torque and speed for your engine.

(1) Torque is normalized to a maximum-torque value. Check the standard-setting part to see if it is normalized based on the maximum torque at the given speed or based on the maximum torque for all speeds. To denormalize the torque values in the cycle, use the engine's maximum-torque point or its torque map (§ 1065.510 describes how to generate the torque map).

(2) Power is normalized to a maximum-power value. Check the standard-setting part to see if it is normalized based on the maximum power at the given speed or based on the maximum power for all speeds. To denormalize the power values in the cycle, use the engine's maximum-power point or its power map (§ 1065.510 describes how to generate the power map).

(3) To denormalize speed, use the following equation:

$$\text{Actual engine speed} = (0.01) \times (\%\text{engine speed}) \times (\text{Maximum test speed—warm idle speed}) + \text{warm idle speed}$$

(4) Paragraph (d) of this section describes how to calculate maximum test speed.

(b) *Example of denormalizing a test points.* For an engine with maximum test speed of 3800 rpm and warm idle speed of 600 rpm, denormalize the following test point: percent engine speed = 43, percent torque = 82.

(1) *Calculate actual engine speed.* The following equation applies for this example:

$$\text{Actual engine speed} = (0.01) \times (43) \times (3800 - 600) + 600 = 1976 \text{ rpm.}$$

(2) *Determine actual torque.* Determine the maximum observed torque at 1976 rpm from the maximum torque curve. Then multiply this value (for example, 358 ft-lbs.) by 0.82. The resulting actual torque is 294 ft-lbs.

(c) *Cold-start enhancement devices.* If an engine has a properly operating automatic enhancement device for cold starts, let it override the zero-percent speed specified in the test cycles.

(d) *Maximum test speed.* For constant-speed engines, maximum test speed is the same as the engine's maximum operating speed in use. Maximum test speed for variable-speed engines occurs on the lug curve at the

point farthest from the origin on a plot of power vs. speed. To find this speed, follow three main steps:

(1) *Generate the lug curve.* Before testing an engine for emissions, generate data points for maximum measured brake power with varying engine speed (see § 1065.510). These data points form the lug curve.

(2) *Normalize the lug curve.* To normalize the lug curve, do three things:

(i) Identify the point (power and speed) on the lug curve where maximum power occurs.

(ii) Normalize the power values of the lug curve—divide them by the maximum power and multiply the resulting values by 100.

(iii) Normalize the engine speed values of the lug curve—divide them by the speed at which maximum power occurs and multiply the resulting values by 100.

(3) *Determine maximum test speed.* Calculate the maximum test speed from the following speed-factor analysis:

(i) For a given power-speed point, the speed factor is the normalized distance to the power-speed point from the zero-power, zero-speed point. Compute the speed factor's value:

$$\text{Speed factor} = \sqrt{(\text{power})^2 + (\text{speed})^2}$$

(ii) Determine the maximum value of speed factors for all the power-speed data points on the lug curve. Maximum test speed is the speed at which the speed factor's maximum value occurs. Note that this maximum test speed is the 100-percent speed point for normalized transient duty cycles.

(e) *Intermediate test speed.* Determine intermediate test speed with the following provisions:

(1) If peak torque speed is 60 to 75 percent of the maximum test speed, the intermediate speed point is at that same speed.

(2) If peak torque speed is less than 60 percent of the maximum test speed, the intermediate speed point is at 60 percent of maximum test speed.

(3) If peak torque speed is greater than 75 percent of the maximum test speed, the intermediate speed point is at 75 percent of maximum test speed.

§ 1065.520 Engine starting, restarting, and shutdown.

Unless the standard-setting part specifies otherwise, follow the steps in this section to start and shut down the test engine:

(a) *Engine starting.* Start the engine according to the manufacturer's recommended starting procedure in the owner's manual, using either a production starter motor or the dynamometer. Use the dynamometer to crank (or motor) the engine at the typical in-use cranking speed with a fully charged battery (nominal speed ±10 percent), accelerating the engine to cranking speed in the same time it would take with a starter motor (nominal ±0.5 seconds). Stop motoring by the dynamometer within one second of starting the engine. The cycle's free-idle period begins when you determine that the engine has started.

(1) If the engine does not start after 15 seconds of cranking, stop cranking and determine the reason it failed to start. While diagnosing the problem, turn off the device that measures gas flow (or revolution counter) on the constant-volume sampler (and all integrators when measuring emissions continuously). Also, turn off the constant-volume sampler or disconnect the exhaust tube from the tailpipe. If failure to start is an operational error, reschedule the engine for testing (this may require soaking the engine if the test requires a cold-start).

(2) If longer cranking times are necessary, you may use them instead of the 15-second limit, as long as the owner's manual and the service-repair manual describe the longer cranking times as normal.

(3) If an engine malfunction causes a failure to start, you may correct it in less than 30 minutes and continue the test. Reactivate the sampling system at the same time cranking begins. When the engine starts, begin the timing sequence. If an engine malfunction causes a failure to start, and you cannot restart the engine, the test is void.

(b) *Engine stalling.* Respond to engine stalling as follows:

(1) If the engine stalls during the warm-up period, the initial idle period of test, or the steady-state segment, you may restart the engine immediately using the appropriate starting procedure and continue the test.

(2) If the engine stalls at any other time, the test is void.

(c) *Engine shutdown.* Shut the engine down according to the manufacturer's specifications.

§ 1065.525 Engine dynamometer test run.

Take the following steps for each test:

(a) Prepare the engine, dynamometer, and sampling system. Change filters or other replaceable items and check for leaks as necessary.

(b) If you are using bag samples, connect evacuated sample-collection bags to the collection system for the dilute exhaust and dilution air sample.

(c) Attach the CVS to the engine's exhaust system any time before starting the CVS.

(d) Start the CVS (if not already started), the sample pumps, the engine cooling fans, and the data-collection system. Before the test begins, preheat the CVS's heat exchanger (if used) and the heated components of any continuous sampling systems to designated operating temperatures.

(e) Adjust the sample flow rates to the desired levels and set to zero the devices in the CVS that measure gas flow. The venturi design fixes the sample flow rate in a CFV–CVS.

(f) Start the engine if engine starting is not part of the test cycle, as specified in the standard-setting part.

(g) Run the test cycle specified in the standard-setting part and collect the test data.

(h) As soon as practical after the test cycle is complete, analyze the bag samples.

§ 1065.530 Test cycle validation criteria.

(a) *Steady-state emission testing.* Make sure your engine's speeds and loads stay within ±2 percent of the set point during the sampling period.

(b) *Transient emission testing performed by EPA.* Emission tests must meet the specifications of this paragraph (b). Otherwise, they do not comply with the test cycle requirements of the standard-setting part, unless we determine the cause of the failure to meet these specifications is related to the engine rather than the test equipment.

(1) *Shifting feedback signals.* The time lag between the feedback and reference-cycle values may bias results. To reduce this effect, you may advance or delay the entire sequence of engine-speed and torque-feedback signals with respect to the reference sequence for speed and torque. If you shift the feedback signals, you must shift speed and torque the same amount in the same direction.

(2) *Calculating brake kilowatt-hour emissions.* Calculate brake kilowatt-hour emissions for each pair of feedback values recorded for engine speed and torque. Also calculate the reference brake kilowatt-hour for each pair of reference values for engine speed and torque. Calculate to five significant figures.

(3) *Performing regression-line analysis.* Perform regression analysis to calculate validation statistics as follows:

(i) Perform linear regressions of feedback value on reference value for speed, torque, and brake power on 1 Hz data after the feedback shift has occurred (see paragraph (b)(1) of this section). Use the method of least squares, with the best-fit equation having the form:

$$y = mx + b$$

Where:

y = The feedback (actual) value of speed (rpm), torque (ft-lbs.), or brake power.

m = Slope of the regression line.

x = The reference value (speed, torque, or brake power).

b = The y-intercept of the regression line.

(ii) Calculate the standard error of estimate (SE) of y on x and the coefficient of determination (r^2) for each regression line.

(iii) For a valid test, make sure the feedback cycle's integrated brake kilowatt-hour is within 5 percent of the reference cycle's integrated brake kilowatt-hour. Also, ensure that the slope, intercept, standard error, and coefficient of determination meet the criteria in the following table (you may delete individual points from the regression analyses, consistent with good engineering judgment):

TABLE 1 OF § 1065.530.—STATISTICAL CRITERIA FOR VALIDATING TEST CYCLES

	Speed	Torque	Power
1. Slope of the regression line (m)	0.980 to 1.020	0.880 to 1.030	0.880 to 1.030.
2. Y intercept of the regression line (b).	$\lvert b \rvert \leq 40$ rpm	$\lvert b \rvert \leq 5.0$ percent of maximum torque from power map.	$\lvert b \rvert \leq 3.0$ percent of maximum torque from power map.
3. Standard error of the estimate of Y on X (SE).	100 rpm	15 percent of maximum torque from power map.	10 percent of maximum power from power map.
4. Coefficient of determination (r^2)	$r^2 \geq 0.970$	$r^2 \geq 0.900$	$r^2 \geq 0.900$.

(c) *Transient testing performed by manufacturers.* Emission tests that meet the specifications of paragraph (b) of this section satisfy the standard-setting part's requirements for test cycles. You may ask to use a dynamometer that cannot meet those specifications, consistent with good engineering practice. We will approve your request as long as using the alternate dynamometer does not affect your ability to show that you comply with all applicable emission standards.

Subpart G—Data Analysis and Calculations

§ 1065.601 Overview.

This subpart describes how to use the responses on the analyzers and other meters to calculate final gram per kilowatt-hour emission rates.

Note: Volume and density values used in these calculations are generally corrected to standard conditions of 20°C and 101.3 kPa.)

§ 1065.605 Required records.

Retain the following information for each test:

(a) Test number.

(b) System or device tested (brief description).

(c) Date and time of day for each part of the test schedule.

(d) Test results.

(e) Operator's name.

(f) Engine: ID number, manufacturer, model year, emission standards, engine family, basic engine description, fuel system, engine code, and idle speed, as applicable.

(g) Dynamometer: Dynamometer identification, records to verify compliance with the duty cycle requirements of the test.

(h) Gas analyzers: Analyzer bench identification, analyzer ranges, recordings of analyzer output during zero, span, and sample readings.

(i) Recorder charts: Test number, date, identification, operator's name, and identification of the measurements recorded.

(j) Test cell barometric pressure, ambient temperature, and humidity as required. (Some test systems may require continuous measurements; others may require a single measurement, or measurements before and after the test.)

(k) Temperatures: Records to verify compliance with the ambient temperature requirements throughout the test procedure.

(l) CFV–CVS: Total dilute exhaust volume (Vmix) for each phase of the exhaust test.

(m) PDP–CVS: Test measurements for calculating the total dilute exhaust volume (Vmix), and the Vmix for each phase of the exhaust test.

(n) The humidity of the dilution air.

Note: If you do not use conditioning columns, this measurement is not necessary. If you use conditioning columns and take the dilution air from the test cell, you may use the ambient humidity for this measurement.

§ 1065.610 Bag sample analysis.

(a) Zero the analyzers and obtain a stable zero reading. Recheck after tests.

(b) Introduce span gases and set instrument gains. To avoid errors, span and calibrate at the same flow rates used to analyze the test sample. Span gases should have concentrations equal to 75 to 100 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on the chart.

(c) Check zeroes; if necessary, repeat the procedure in paragraphs (a) and (b) of this section.

(d) Check flow rates and pressures.

(e) Measure HC, CO, CO_2, and NO_X concentrations of samples.

(f) Check zero and span points. If the difference is greater than 2 percent of full scale, repeat the procedure in paragraphs (a) through (e) of this section.

§ 1065.615 Bag sample calculations.

(a) Calculate the dilution factor. The dilution factor is the ratio of the total volume of the raw exhaust to the total volume of the diluted exhaust. It is calculated as 134,000 divided by the sum of the diluted ppmC concentrations of carbon-containing compounds in the exhaust, as follows:

$$DF = 134{,}000/(CO_{2sample}+THC_{sample}+CO_{sample}),$$

Where:

$CO_{2sample}$ and CO_{sample} are expressed as ppm, and THC_{sample} is expressed as ppmC.

(b) Calculate mass emission rates (g/test) for the transient segment using the general equation in paragraph (b)(1) of this section:

(1) The general equation is:

Emission rate = (total dilute exhaust flow volume)(ppm)(density factor)/10^6

$$M_x = (V_{mix})(C_i)(f_{di})/10^6$$

Where:

M_x = Mass emission rate in g/test segment.

V_{mix} = Total dilute exhaust flow volume flow in m^3 per test segment corrected to 20°C and 101.3 kPa.

C_i = The concentration of species i, in ppm or ppmC, corrected for background

contribution according to the equation in paragraph (b)(2) of this section.

f_{di} = The density factor for species i. The density factors are 576.8 g/m³ for THC, 1913 g/m³ for NO_X, and 1164 g/m³ for CO.

(2) The equation to calculate C_i is:

$C_i = C_{sample} - C_{background}\ [1 - (1/DF)]$

Where:

C_{sample} = Concentration of species i in the diluted exhaust sample, in ppm or ppmC.

$C_{background}$ = Concentration of species i in the dilution air background sample, in ppm or ppmC.

DF = Dilution factor, as calculated in paragraph (a) of this section.

(c) Calculate total brake work (kW–hr) done during the emissions sampling period of each segment or mode.

(d) Calculate emissions in g/kW–hr by dividing the mass emission rate (g/test segment) by the total brake work for the test segment.

(e) Apply deterioration factors or other adjustment factors to the brake-specific emission rate in paragraph (e) as specified in the standard-setting part.

Subpart H—Particulate Measurements [Reserved]

Subpart I—Testing With Oxygenated Fuels

§ 1065.801 Applicability.

(a) This subpart applies for testing with oxygenated fuels. Except where specified otherwise in the standard-setting part, compliance with this subpart is not required for fuels that contain less than 25 percent oxygenated compounds by volume. For example, you generally would not need to follow the requirements of this subpart for tests performed using a fuel that was 10 percent ethanol and 90 percent gasoline, but you would need to follow these requirements for tests performed using a fuel that was 85 percent ethanol and 15 percent gasoline.

(b) This subpart specifies sampling procedures and calculations that are different than those used for non-oxygenated fuels. The other test procedures of this part apply for testing with oxygenated fuels.

§ 1065.805 Sampling system.

(a) Use the sampling procedures specified in 40 CFR part 86 for methanol and formaldehyde to measure alcohols and aldehydes in the exhaust. This requires the following:

(1) Bubbling a sample of the exhaust through water to collect the alcohols.

(2) Passing a sample of the exhaust through cartridges impregnated with 2,4-dinitrophenylhydrazine to measure aldehydes.

(b) Use good engineering judgment to measure other oxygenated compounds in the exhaust.

§ 1065.810 Calculations.

(a) *THCE emissions.* (1) Calculate THCE emissions as the sum of the mass of the nonoxygenated hydrocarbons in the exhaust and the carbon-equivalent mass of each measured oxygenated species in the exhaust.

(2) Calculate carbon-equivalent mass of each measured oxygenated species from the following equation:

Carbon equivalent = 13.8756 × MOC/MWPC

Where:

MOC is the mass of the oxygenated compound in the exhaust, and MWPC is the molecular weight of compound per carbon atom of compound.

(b) *NMHCE emissions.* Calculate NMHCE emissions as either:

(1) The sum of the mass of the nonoxygenated nonmethane hydrocarbons in the exhaust and the carbon-equivalent mass of each measured oxygenated species in the exhaust.

(2) THCE minus the mass of methane in the exhaust.

(c) *Sample calculation.* (1) Assume the following emissions for a test: 40.00 grams of nonoxygenated hydrocarbons, 100.00 grams of ethanol, and 10.00 grams of acetaldehyde, and 1.00 gram of formaldehyde.

(2) The carbon-equivalent of the masses of oxygenated compounds are:

(i) 13.8756 × 100.00/(46.068/2) = 60.24 grams of ethanol.

(ii) 13.8756 × 10.00/(44.052/2) = 6.30 grams of acetaldehyde.

(iii) 13.8756 × 1.00/(30.026) = 0.46 grams of formaldehyde.

(3) THCE = 40.00 + 60.24 + 6.30 + 0.46 = 107.00 grams per test.

Subpart J—Field Testing

§ 1065.901 Applicability.

(a) The test procedures in this subpart measure brake-specific emissions from engines while they remain installed in vehicles or equipment in the field.

(b) These test procedures apply to your engines as specified in the standard-setting part. For example, part 1048 of this chapter specifies emission standard to be used for in-use tests conducted in accordance with the provisions of this part. Unless this subpart is specifically mentioned in the standard-setting part, compliance with the provisions of this subpart is not required.

§ 1065.905 General provisions.

(a) Unless the standard-setting part specifies deviations from the provisions of this subpart, testing conducted under this subpart must conform to all of the provisions of this subpart.

(b) Testing conducted under this subpart may include any normal in-use operation of the engine.

§ 1065.910 Measurement accuracy and precision.

(a) Measurement systems used for in-use testing must be accurate to within ±5 percent compared to engine dynamometer testing conducted according to the test procedures of this part that are applicable for your engine. These systems must also have a precision of ±5 percent or better. Determine accuracy and precision of an in-use system by simultaneously measuring emissions using the engine-dynamometer test procedures of this part and the in-use system. To have a statistically valid sample, measure emissions during at least 3 tests each for at least 3 different engines. You must conduct these verification tests using the test cycle specified in the standard-setting part, unless we approve a different test cycle.

(1) A system must meet the following conditions to be considered sufficiently accurate:

(i) The correlation coefficient (r) for a least-squares linear fit that includes the origin must be 0.95 or higher.

(ii) The average ratio (for all tests) of the emission rate from the in-use system divided by the emission rate from the dynamometer procedure must be 0.97 to 1.05.

(2) For a system to be considered sufficiently precise, the average coefficient of variance for all engines must be 5 percent or less for each pollutant.

Note: Increasing the length of the sampling period may be an effective way to improve precision.

(b) Measurement systems that conform to the provisions of §§ 1065.915 through 1065.950 are considered to be in compliance with the accuracy and precision requirements of paragraph (a) of this section.

§ 1065.915 Equipment specifications for SI engines.

This section describes equipment you may use to measure in-use emissions. You may use other equipment and measurement systems that conform to the requirements of §§ 1065.905 and 1065.910.

(a) The primary components of the in-use measurement system are a mass air flow sensor, a portable FID, a zirconia-

based NO_X sensor, a zirconia-based air/fuel ratio sensor, and a portable NDIR analyzer.

(1) The mass air flow sensor must meet the requirements of § 1065.930.

(2) The portable FID must meet the requirements of § 1065.935.

(3) The NO_X and air/fuel sensors must meet the requirements of § 1065.940

(4) The NDIR analyzer must meet the requirements of § 1065.945.

(b) You must measure the following parameters continuously at a rate of 3 Hz or higher and store the data electronically:

(1) THC, NO_X, CO concentrations.

(2) Mass air-fuel ratio.

(3) Intake air flow rate.

(4) Engine speed.

(5) Parameters used to calculate torque.

(c) You must minimize sample line length for any analyzers that require a physical sample be drawn from the exhaust to the analyzer (*i.e.*, THC and CO analyzers). You must draw these samples at a constant flow rate. In no case may you use any combination of sample line length and sample flow rate that would require more than 10 seconds for the analyzer to reach 90 percent of its final response after a step change to the input concentration at the opening of the sample probe. For residence time delays between 1 and 10 seconds, you must correct the measurements to be consistent with the data for engine speed, torque, and air intake. You may also correct other measurements with less than delays less than 1 second.

(d) You may insert the sample probes and sensors into the exhaust pipe, or mount them in an exhaust extension that is connected to the exhaust pipe with negligible leaking. Place the sample probes and sensors close enough to the center line of the exhaust pipe to minimize boundary layer effects from the wall.

§ 1065.920 Equipment setup and test run for SI engines.

This section describes how to set up the equipment specified in § 1065.915, and how to use it to measure in-use emissions from SI engines.

(a) Inspect the vehicle or equipment to determine whether it meets any applicable requirements of the standard-setting part. This may include requirements related to model year, accumulated hours of operation, fuel specifications, maintenance history, engine temperatures, etc.

(b) Perform calibrations as specified in this subpart. In the field, this generally will require only zeroing and spanning the instruments. However, each instrument must have been fully calibrated according to the instrument manufacturer's specifications. Nonlinear calibrations generated previously from the full calibration may be used after zeroing and spanning the instruments. Spanning can be performed using a single gas bottle, consistent with good engineering practice, and provided that stability of the span mixture has been demonstrated.

(c) Connect the data recorder (with any necessary signal interpreters or converters) to the engine's electronic control module.

(d) Disconnect the air intake system, as necessary, to attach the mass air flow sensor. Reconnect the system after attaching the mass air flow sensor.

(e) Attach the sample extension to the exhaust outlet.

(f) Turn on instruments and allow them to warm up as necessary.

(g) Begin sampling. You do not need to begin recording the data at this point.

(h) Begin operating the vehicle or equipment in a normal manner.

Note: We may require you to operate the vehicle or equipment in a specific manner.

(i) Begin recording engine speed, engine torque (or surrogate), intake air flow, emissions data (THC, NO_X, CO, air/fuel ratio), and time. This time marks the beginning of the sampling period.

(j) Continue recording data and operating the vehicle or equipment in a normal manner until the end of the sampling period. The length of the sampling period is based on good engineering practice, the precision requirements of § 1065.910, and applicable limits in the standard-setting part.

(k) You may measure background concentrations and correct measured emission values accordingly. However, if any background corrections are equivalent to 5 percent or more of the maximum emissions allowed by the applicable standard, the test shall be voided and repeated in an environment with lower background concentrations.

§ 1065.925 Calculations.

(a) [Reserved]

(b) Convert emission analyzer data to instantaneous concentrations in ppm (ppmC for the FID).

(c) Calculate instantaneous exhaust volumetric flow rates in standard m^3/hr (volume and density values used in these calculations are corrected to standard conditions of 20 °C and 101.3 kPa.). Calculate exhaust volumetric flow rate from the following equation:

Exhaust volumetric flow rate = (intake air mass flow rate)(1+mass fuel/air ratio)/(density of exhaust)

(1) If you do not know the instantaneous density of the exhaust, use the minimum density of the exhaust that occurs over the course of the test, corrected to standard conditions.

(2) For gasoline-fueled engines designed to be operated at stoichiometric fuel/air ratios, you may assume that the density of the exhaust is 1202 g/m^3 at standard conditions of 20 °C and 101.3 kPa.

(3) For LPG-fueled engines designed to be operated at stoichiometric fuel/air ratios, you may assume that the density of the exhaust is 1175 g/m^3 at standard conditions of 20 °C and 101.3 kPa.

(4) For CNG-fueled engines designed to be operated at stoichiometric fuel/air ratios, you may assume that the density of the exhaust is 1149 g/m^3 at standard conditions of 20 °C and 101.3 kPa.

(d) Calculate instantaneous emission rates (g/hr) using the following general equation:

Emission rate = (exhaust volumetric flow rate)(ppm)(density factor)/10^6

Where:

Density factors are 576.8 g/m^3 for THC, 1913 g/m^3 for NO_X, 1164 g/m^3 for CO.

(e) Integrate instantaneous emission rates for the entire specified sample period.

(f) Determine instantaneous brake torque and speed.

(g) Calculate instantaneous brake power.

(h) Integrate instantaneous brake power for the entire specified sample period.

(i) Divide the integrated emission rates by the integrated brake power. These are your final brake-specific emission rates.

§ 1065.930 Specifications for mass air flow sensors.

(a) Measure the intake air flow using the engine's mass air flow sensor. If the engine is not equipped with a mass air flow sensor, you need to install one.

(b) The sensor design must have an accuracy and precision of ±5 percent under steady-state laboratory conditions.

(c) The sensor must reach at least 90 percent of its final response within 0.3 seconds after any step change to the flow rate greater than or equal 80 percent of full scale.

(d) Calibrate the sensor according to good engineering practice. Verify for each engine before testing that the sensor accurately reads the idle intake air flow rate based on measured manifold temperature (T_M) and pressure P_M). Use the following equation:

Intake air flow = (displacement)(rpm)(volumetric efficiency)(P_M/101.3 kPa)(293.15 K/T_M)

§ 1065.935 Specifications for THC analyzers.

(a) Use a flame ionization detector (FID).

(b) The analyzer must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The analyzer must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) Zero and span the analyzer daily during testing. Calibrate it according to the analyzer manufacturer's specifications.

§ 1065.940 Specifications for NO_X and air/fuel sensors.

(a) Use stabilized zirconia-based sensors.

(b) The sensors must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The sensors must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) The sensors must be zeroed and spanned daily during testing, and must be calibrated according to the sensor manufacturer's specifications.

§ 1065.945 Specifications for CO analyzers.

(a) Use a non-dispersive infrared (NDIR) detector that is compensated for CO_2 and water interference.

(b) The analyzer must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The analyzer must reach at least 90 percent of its final response within 5.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) The analyzer must be zeroed and spanned daily during testing, and must be calibrated according to the analyzer manufacturer's specifications.

§ 1065.950 Specifications for speed and torque measurement.

(a) Determine torque from a previously determined relationship of torque and engine speed, throttle position, and/or manifold absolute pressure. Torque estimates must be between 85 percent and 105 percent of the true value. You can demonstrate compliance with this accuracy requirement using steady-state laboratory data.

(b) Measure speed from the engine's electronic control module. Speed estimates must be within ±5 rpm of the true value.

Subpart K—Definitions and Other Reference Information

§ 1065.1001 Definitions.

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Accuracy means the maximum difference between a measured or calculated value and the true value, where the true value is determined by NIST.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Auxiliary emission-control device means any element of design that senses temperature, engine speed, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part.

Brake power has the meaning given in the standard-setting part. If it is not defined in the standard-setting part, brake power means the usable power output of the engine not including power required to operate fuel pumps, oil pumps, or coolant pumps.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Constant-speed engine means an engine governed to operate only at its rated speed.

Designated Officer means the Manager, Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from an engine.

Emission-data engine means an engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine means an engine to which this part applies.

Engine-based means having emission standards related to measurements using an engine dynamometer, in units of grams of pollutant per kilowatt-hour.

Engine family means a group of engines with similar emission characteristics, as specified in the standard-setting part.

Equipment-based or vehicle-based means relating to programs that require that a piece of equipment of vehicle be certified, rather than only the engine.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Fuel type means a general category of fuels such as gasoline or LPG. There can be multiple grades within a single type of fuel, such as summer-grade gasoline and winter-grade gasoline.

Good engineering judgment has the meaning we give it in § 1068.5 of this chapter.

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular engine from other similar engines.

Idle speed means the lowest engine speed with zero load.

Note: Warm idle speed is the idle speed of a warmed-up engine.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine for sale in the United States or otherwise introduces a new engine into commerce in the United States. This includes importers that import engines for resale.

Maximum test torque means:

(1) For throttled engines, the torque output observed at wide-open throttle at a given speed.

(2) For non-throttled engines, the torque output observed with the maximum fueling rate possible at a given speed.

Nonmethane hydrocarbons means the sum of all hydrocarbon species measured by a FID except methane, expressed with an assumed mass 13.876 grams per mole of carbon atoms.

Nonroad means relating to nonroad engines.

Nonroad engine has the meaning given in § 89.2 of this chapter. In general this means all internal combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition.

Oxides of nitrogen means compounds containing only nitrogen and oxygen. Oxides of nitrogen are expressed quantitatively as if the NO is in the form of NO_2 (assume a molecular weight for all oxides of nitrogen equivalent to that of NO_2). This correction is included in the equations specified for calculating NO_X emissions.

Oxygenated fuel means a fuel that is comprised of oxygen-containing compound, such as ethanol or methanol. Generally, testing engines that use oxygenated fuels requires the use of the sampling methods in subpart I of this part. However, you should read the standard-setting part and subpart I of this part to determine which sampling methods to use.

Precision means two times the coefficient of variance of multiple measurements, except where specified otherwise.

Revoking a certificate of conformity means discontinuing the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to introduce into commerce the affected engines. This does not apply to engines you no longer possess.

Scheduled maintenance means maintenance (*i.e.*, adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems) that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Span means to adjust an instrument so that it gives a proper response to a calibration standard that represents between 75 and 100 percent of the maximum value in the instrument range (*e.g.* a span gas).

Spark-ignition means relating to a gasoline-fueled engine or other engines with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Standard-setting part means the part in the Code of Federal Regulations that defines emission standards for a particular engine (see § 1065.1(a)).

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

Suspending a certificate of conformity means temporarily discontinuing the certificate for an engine family. If we suspend a certificate, you may not sell engines from that engine family unless we reinstate the certificate or approve a new one.

Test engine means an engine in a test sample.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

Total Hydrocarbon (THC) means the sum of all hydrocarbon species measured by an FID, expressed with an assumed mass 13.876 grams per mole of carbon atoms.

Total Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

Wide-open throttle means maximum throttle opening for throttled engines. Unless this is specified at a given speed, it refers to maximum throttle opening at maximum speed. For electronically controlled or other engines with multiple possible fueling rates, wide-open throttle also means the maximum fueling rate at maximum throttle opening under test conditions.

Zero means to adjust an instrument so that it gives a proper response to a blank calibration standard (*e.g.* zero-grade air).

§ 1065.1005 Symbols, acronyms, and abbreviations.

The following symbols, acronyms, and abbreviations apply to this part:

° degrees.
″ inches.
ASTM American Society for Testing and Materials.
C Celsius.
cc cubic centimeters.
CFR Code of Federal Regulations.
CFV critical-flow venturi.
CI compression-ignition.
CLD chemiluminescent detector.
CO carbon monoxide.
CO_2 carbon dioxide.
CVS constant-volume sampler.
DF deterioration factor.
F Fahrenheit.
EFC electronic flow control.
EPA Environmental Protection Agency.
ft feet.
FID flame ionization detector.
g/kW-hr grams per kilowatt-hour.
g/liter grams per liter.
g/m^3 grams per cubic meter.
Hz hertz.
IBP initial boiling point.
ISO International Organization for Standardization.
kPa kilopascal.
lbs. pounds.
LPG liquefied petroleum gas.
m meters.
ml milliliters.
mm Hg millimeters of mercury.
NDIR nondispersive infrared.
NIST National Institute for Standards and Testing.
NMHC nonmethane hydrocarbons.
NMHCE nonmethane hydrocarbon equivalent.
NO nitric oxide.
NO_2 nitrogen dioxide.
NO_X oxides of nitrogen (NO and NO_2).
O_2 oxygen.
PDP positive-displacement pump.
ppm parts per million.
ppmC parts per million carbon.
RMS root-mean square.
rpm revolutions per minute.
sec seconds.
SI spark-ignition.
THC total hydrocarbon.
THCE total hydrocarbon equivalent.
U.S.C. United States Code.

§ 1065.1010 Reference materials.

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1065.1010 lists material from the American Society for Testing and

Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 1065.1010.—ASTM MATERIALS

Document number and name	Part 1065 reference
ASTM D 86–01, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure	1065.210
ASTM D 323–99a, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)	1065.210
ASTM D 1266–98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method)	1065.210
ASTM D 1319–02, Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption	1065.210
ASTM D 1267–02, Standard Test Method for Gage Vapor Pressure of Liquefied Petroleum (LP) Gases (LP-Gas Method)	1065.220
ASTM D 1837–02, Standard Test Method for Volatility of Liquefied Petroleum (LP) Gases	1065.220
ASTM D 1838–91 (Reapproved 2001), Standard Test Method for Copper Strip Corrosion by Liquefied Petroleum (LP) Gases	1065.220
ASTM D 1945–96 (Reapproved 2001), Standard Test Method for Analysis of Natural Gas by Gas Chromatography	1065.215
ASTM D 2158–02, Standard Test Method for Residues in Liquefied Petroleum (LP) Gases	1065.220
ASTM D 2163–91 (Reapproved 1996), Standard Test Method for Analysis of Liquefied Petroleum (LP) Gases and Propene Concentrates by Gas Chromatography	1065.220
ASTM D 2598–02, Standard Practice for Calculation of Certain Physical Properties of Liquefied Petroleum (LP) Gases from Compositional Analysis	1065.220
ASTM D 2713–91 (Reapproved 2001), Standard Test Method for Dryness of Propane (Valve Freeze Method)	1065.220
ASTM D 2784–98, Standard Test Method for Sulfur in Liquefied Petroleum Gases (Oxy-Hydrogen Burner or Lamp)	1065.220
ASTM D 3231–02, Standard Test Method for Phosphorus in Gasoline	1065.210
ASTM D 3237–97, Standard Test Method for Lead in Gasoline By Atomic Absorption Spectroscopy	1065.210

(b) *ISO material.* Table 2 of § 1065.1010 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland. Table 2 follows:

TABLE 2 OF § 1065.1010.—ISO MATERIALS

Document number and name	Part 1065 reference
ISO 8178–1, Reciprocating internal combustion engines—Exhaust emission measurement—Part 1: Test-bed measurement of gaseous and particulate exhaust emissions, 1996.	1065.130, 1065.135, 1065.140, 1065.155.

§ 1065.1015 Confidential information.

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR NONROAD PROGRAMS

Subpart A—Applicability and Miscellaneous Provisions

Sec.

1068.1 Does this part apply to me?
1068.5 How must manufacturers apply good engineering judgment?
1068.10 How do I request EPA to keep my information confidential
1068.15 Who is authorized to represent the Agency?
1068.20 May EPA enter my facilities for inspections?
1068.25 What information must I give to EPA?
1068.30 What definitions apply to this part?
1068.35 What symbols, acronyms, and abbreviations does this part use?

Subpart B—Prohibited Actions and Related Requirements

1068.101 What general actions does this regulation prohibit?
1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?
1068.110 What other provisions apply to engines in service?
1068.115 When must manufacturers honor emission-related warranty claims?
1068.120 What requirements must I follow to rebuild engines?
1068.125 What happens if I violate the regulations?

Subpart C—Exemptions and Exclusions

1068.201 Does EPA exempt or exclude any engines from the prohibited acts?
1068.210 What are the provisions for exempting test engines?
1068.215 What are the provisions for exempting manufacturer-owned engines?
1068.220 What are the provisions for exempting display engines?
1068.225 What are the provisions for exempting engines for national security?
1068.230 What are the provisions for exempting engines for export?
1068.235 What are the provisions for exempting engines used solely for competition?
1068.240 What are the provisions for exempting new replacement engines?
1068.245 What temporary provisions address hardship due to unusual circumstances?
1068.250 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?
1068.255 What are the provisions for exempting engines for hardship for equipment manufacturers and secondary engine manufacturers?

Subpart D—Imports

1068.301 Does this subpart apply to me?
1068.305 How do I get an exemption or exclusion for imported engines?
1068.310 What are the exclusions for imported engines?
1068.315 What are the permanent exemptions for imported engines?
1068.320 How must I label an imported engine with a permanent exemption?
1068.325 What are the temporary exemptions for imported engines?
1068.330 How do I import engines to modify for other applications?
1068.335 What are the penalties for violations?

Subpart E—Selective Enforcement Auditing

11068.401 What is a selective enforcement audit?
1068.405 What is in a test order?
1068.410 How must I select and prepare my engines?
1068.415 How do I test my engines?
1068.420 How do I know when my engine family fails an SEA?
1068.425 What happens if one of my production-line engines exceeds the emission standards?
1068.430 What happens if an engine family fails an SEA?
1068.435 May I sell engines from an engine family with a suspended certificate of conformity?
1068.440 How do I ask EPA to reinstate my suspended certificate?
1068.445 When may EPA revoke my certificate under this subpart and how may I sell these engines again?
1068.450 What records must I send to EPA?
1068.455 What records must I keep?
Appendix A to Subpart E of Part 1068-Plans for Selective Enforcement Auditing

Subpart F—Reporting Defects and Recalling Engines

1068.501 How do I report engine defects?
1068.505 How does the recall program work?
1068.510 How do I prepare and apply my remedial plan?
1068.515 How do I mark or label repaired engines?
1068.520 How do I notify affected owners?
1068.525 What records must I send to EPA?
1068.530 What records must I keep?
1068.535 How can I do a voluntary recall for emission-related problems?
1068.540 What terms do I need to know for this subpart?

Subpart G—Hearings

1068.601 What are the procedures for hearings?
Appendix I to Part 1068—Emission-Related Components
Appendix II to Part 1068—Emission-Related Parameters and Specifications

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Applicability and Miscellaneous Provisions

§ 1068.1 Does this part apply to me?

(a) The provisions of this part apply to everyone with respect to the following engines or to equipment using the following engines (including owners, operators, parts manufacturers, and persons performing maintenance):

(1) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.

(2) Recreational SI engines and vehicles that we regulate under 40 CFR part 1051 (such as snowmobiles and off-highway motorcycles).

(b) This part does not apply to any of the following engine or vehicle categories:

(1) Light-duty motor vehicles (see 40 CFR part 86).

(2) Heavy-duty motor vehicles and motor vehicle engines (see 40 CFR part 86).

(3) Aircraft engines (see 40 CFR part 87).

(4) Locomotive engines (see 40 CFR part 92).

(5) Land-based nonroad diesel engines (see 40 CFR part 89).

(6) Marine diesel engines (see 40 CFR parts 89 and 94)

(7) Marine outboard and personal watercraft engines (see 40 CFR part 91).

(8) Small nonroad spark-ignition engines (see 40 CFR part 90).

(c) For equipment subject to this part and regulated under equipment-based standards, interpret the term ''engine'' in this part to include equipment (see § 1068.30).

(d) Paragraph (a)(1) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines and vehicles. This part 1068 refers to each these other parts generically as the ''standard-setting part.'' For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Follow the provisions of the standard-setting part if they are different than any of the provisions in this part.

§ 1068.5 How must manufacturers apply good engineering judgment?

(a) You must use good engineering judgment for decisions related to any requirements under this chapter. This includes your applications for certification, any testing you do to show that your production-line or in-use engines comply with requirements that apply to them, and how you select, categorize, determine, and apply these requirements.

(b) If we send you a written request, you must give us a written description of the engineering judgment in question. Respond within 15 working days of receiving our request unless we allow more time.

(c) We may reject your decision if it is not based on good engineering judgment or is otherwise inconsistent with the requirements that apply, based on the following provisions:

(1) We may suspend, revoke, or void a certificate of conformity if we determine you deliberately used incorrect information or overlooked important information, that you did not decide in good faith, or that your decision was not rational.

(2) If we believe a different decision would better reflect good engineering judgment, but none of the provisions of paragraph (c)(1) of this section apply, we will tell you of our concern (and its basis). You will have 30 days to respond to our concerns, or more time if we agree that you need it to generate more information. After considering your information, we will give you a final ruling. If we conclude that you did not use good engineering judgment, we may reject your decision and apply the new ruling to similar situations as soon as possible.

(d) We will tell you in writing of the conclusions we reach under paragraph

(c) of this section and explain our reasons for them.

(e) If you disagree with our conclusions, you may file a request for a hearing with the Designated Officer as described in subpart F of this part. In your request, specify your objections, include data or supporting analysis, and get your authorized representative's signature. If we agree that your request raises a substantial factual issue, we will hold the hearing according to subpart F of this part.

§ 1068.10 How do I request EPA to keep my information confidential

(a) Clearly identify any information you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2. This procedure applies equally to the Environmental Appeals Board.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

§ 1068.15 Who is authorized to represent the Agency?

(a) The Administrator of the Environmental Protection Agency or any official to whom the Administrator has delegated specific authority may represent the Agency. For more information, ask for a copy of the relevant sections of the EPA Delegation Manual from the Designated Officer.

(b) The regulations in this part and in the standard-setting part have specific requirements describing how to get EPA approval before you take specific actions. These regulations also allow us to waive some specific requirements. For provisions or flexibilities that we address frequently, we may choose to provide detailed guidance in supplemental compliance instructions for manufacturers. Such instructions will generally state how they relate to the need for pre-approval. Unless we explicitly state so, you should not consider full compliance with the instructions to be equivalent to EPA approval.

§ 1068.20 May EPA enter my facilities for inspections?

(a) We may inspect your engines, testing, manufacturing processes, engine storage facilities (including port facilities for imported engines or other relevant facilities), or records, as authorized by the Act, to enforce the provisions of this chapter. Inspectors will have authorizing credentials and will limit inspections to reasonable times—usually, normal operating hours.

(b) If we come to inspect, we may or may not have a warrant or court order.

(1) If we do not have a warrant or court order, you may deny us entry.

(2) If we have a warrant or court order, you must allow us to enter the facility and carry out the activities it describes.

(c) We may seek a warrant or court order authorizing an inspection described in this section, whether or not we first tried to get your permission to inspect.

(d) We may select any facility to do any of the following:

(1) Inspect and monitor any aspect of engine manufacturing, assembly, storage, or other procedures, and any facilities where you do them.

(2) Inspect and monitor any aspect of engine test procedures or test-related activities, including test engine selection, preparation, service accumulation, emission duty cycles, and maintenance and verification of your test equipment's calibration.

(3) Inspect and copy records or documents related to assembling, storing, selecting, and testing an engine.

(4) Inspect and photograph any part or aspect of engines and components you use for assembly.

(e) You must give us reasonable help without charge during an inspection authorized by the Act. For example, you may need to help us arrange an inspection with the facility's managers, including clerical support, copying, and translation. You may also need to show us how the facility operates and answer other questions. If we ask in writing to see a particular employee at the inspection, you must ensure that he or she is present (legal counsel may accompany the employee).

(f) If you have facilities in other countries, we expect you to locate them in places where local law does not keep us from inspecting as described in this section. We will not try to inspect if we learn that local law prohibits it, but we may suspend your certificate if we are not allowed to inspect.

§ 1068.25 What information must I give to EPA?

If you are subject to the requirements of this part, we may require you to give us information to evaluate your compliance with any regulations that apply, as authorized by the Act. This includes the following things:

(a) You must provide the information we require in this chapter.

(b) You must establish and maintain records, perform tests, make reports and provide additional information that we may reasonably require under section 208 of the Act. This also applies to engines we exempt from emission standards.

§ 1068.30 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Aircraft means any vehicle capable of sustained air travel above treetop heights.

Certificate holder means a manufacturer (including importers) with a valid certificate of conformity for at least one engine family in a given calendar year.

Designated Officer means the Manager of the Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-related defect means a defect in design, materials or workmanship (in an emission control device or vehicle component or system) that affects an emission-related component, parameter, or specification that is identified in Appendix I or Appendix II of this part.

Engine means an engine to which this part applies. For equipment subject to this part and regulated under equipment-based standards, the term engine in this part shall be interpreted to include equipment.

Engine-based means having emission standards related to measurements using an engine dynamometer, in units of grams of pollutant per kilowatt-hour.

Engine manufacturer means the manufacturer that is subject to the certification requirements of the standard-setting part. For vehicles/equipment subject to this part and regulated under vehicle/equipment-based standards, the term engine manufacturer in this part includes vehicles/equipment manufacturers.

Equipment-based means having emission standards related to measurements from an engine installed in a vehicle using a chassis dynamometer, in units of grams of pollutant per kilometer.

Equipment manufacturer means any company producing a piece of equipment (such as a vehicle) for sale or use in the United States.

Manufacturer has the meaning given in section 216(1) of the Act. In general,

this term includes any person who manufactures an engine or vehicle for sale in the United States or otherwise introduces a new engine or vehicle into commerce in the United States. This includes importers that import new engines or new equipment into the United States for resale. It also includes secondary engine manufacturers.

New has the meaning we give it in the standard-setting part.

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.,* at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph (2)(iii) does not apply to an engine after the engine is removed from the location.

Operating hours means:

(1) For engine storage areas or facilities, times during which people other than custodians and security personnel are at work near, and can access, a storage area or facility.

(2) For other areas or facilities, times during which an assembly line operates or any of the following activities occurs:

(i) Testing, maintenance, or service accumulation.

(ii) Production or compilation of records.

(iii) Certification testing.

(iv) Translation of designs from the test stage to the production stage.

(v) Engine manufacture or assembly.

Piece of equipment means any vehicle, vessel, locomotive, aircraft, or other type of equipment using engines to which this part applies.

Placed into service means used for its intended purpose.

Reasonable technical basis means information that would lead a person familiar with engine design and function to reasonably believe a conclusion, related to compliance with the requirements of this part. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.

Standard-setting part means the part in the Code of Federal Regulations that defines emission standards for a particular engine (see § 1068.1(a)). For example, the standard-setting part for non-recreational spark-ignition engines over 19 kW is part 1048 of this chapter.

Ultimate purchaser means the first person who in good faith buys a new engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

§ 1068.35 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

$ U.S. dollars.
CFR Code of Federal Regulations.
EPA Environmental Protection Agency.
U.S. United States.
U.S.C. United States Code.

Subpart B—Prohibited Actions and Related Requirements

§ 1068.101 What general actions does this regulation prohibit?

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation. The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2002. As described in paragraph (e) of this section, maximum penalty limits for later years are set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of new engines and manufacturers of equipment containing these engines, except as described in subparts C and D of this part:

(1) You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine or equipment after emission standards take effect for that engine or equipment, unless it has a valid certificate of conformity for its model year and the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions, unless the engine has a valid certificate of conformity for its model year and the required engine label or tag. This requirement also covers new engines you produce to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in § 1068.240. We may assess a civil penalty up to $31,500 for each engine in violation.

(2) This chapter requires you to record certain types of information to show that you meet our standards. You must comply with these requirements to make and maintain required records (including those described in § 1068.501). You may not deny us access to or copying of your records if we have the authority to see or copy them. Also, you must give us the required reports or information without delay. Failure to comply with the requirements of this paragraph is prohibited. We may assess a civil penalty up to $31,500 for each day in violation.

(3) You may not keep us from entering your facility to test engines or inspect if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited. We may assess a civil penalty up to $31,500 for each day in violation.

(b) The following prohibitions apply to everyone with respect to the engines to which this part applies:

(1) You may not remove or disable a device or element of design that may affect an engine's emission levels. This restriction applies before and after the engine is placed in service. Section 1068.120 describes how this applies to rebuilding engines. For a manufacturer or dealer, we may assess a civil penalty up to $31,500 for each engine in violation. For anyone else, we may assess a civil penalty up to $3,150 for each engine in violation. This does not apply in any of the following situations:

(i) You need to repair an engine and you restore it to proper functioning when the repair is complete.

(ii) You need to modify an engine to respond to a temporary emergency and you restore it to proper functioning as soon as possible.

(iii) You modify a new engine that another manufacturer has already certified to meet emission standards, intending to recertify it under your own engine family. In this case you must tell the original manufacturer not to include the modified engines in the original engine family.

(2) You may not knowingly manufacture, sell, offer to sell, or install, an engine part if one of its main effects is to bypass, impair, defeat, or disable the engine's control of emissions. We may assess a civil penalty up to $3,150 for each part in violation.

(3) For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment, except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in § 1068.30. We may assess a civil penalty up to $31,500 for each day in violation.

(4) For an uncertified engine or piece of equipment that is excluded or exempted from any requirements of this chapter because it is to be used solely for competition, you may not use it in a manner that is inconsistent with use solely for competition. We may assess a civil penalty up to $31,500 for each day in violation.

(5) You may not import an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part, and it would have been subject to standards had it been built in the United States. We may assess a civil penalty up to $31,500 for each day in violation. Note the following:

(i) The definition of new is broad for imported engines; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Engines that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.

(c) Exemptions from these prohibitions are described in subparts C and D of this part.

(d) The standard-setting parts describe more requirements and prohibitions that apply to manufacturers (including importers) and others under this chapter.

(e) The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2002. Maximum penalty limits for later years may be adjusted based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based. The following table is shown here for informational purposes:

TABLE 1 OF § 1068.101.—LEGAL CITATION FOR SPECIFIC PROHIBITIONS FOR DETERMINING MAXIMUM PENALTY AMOUNTS

Part 1068 regulatory citation of prohibited action	General description of prohibition	U.S. Code citation for Clean Air Act authority
§ 1068.101(a)(1)	Introduction into commerce of an uncertified product	42 U.S.C. 7522(a)(1)
§ 1068.101(a)(1)	Failure to provide information	42 U.S.C. 7522(a)(2)
§ 1068.101(a)(3)	Denying access to facilities	42 U.S.C. 7522(a)(2)
§ 1068.101(b)(1)	Tampering with emission controls by a manufacturer or dealer. Tampering with emission controls by someone other than a manufacturer or dealer.	42 U.S.C. 7522(a)(3)
§ 1068.101(b)(2)	Sale or use of a defeat device	42 U.S.C. 7522(a)(3)
§ 1068.101(b)(3)	Mobile use of a stationary engine	42 U.S.C. 7522(a)(1)
§ 1068.101(b)(4)	Noncompetitive use of an uncertified engine that is exempted for competition.	42 U.S.C. 7522(a)(1)
§ 1068.101(b)(5)	Importation of an uncertified product	42 U.S.C. 7522(a)(1)

§ 1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

(a) *Transitioning to new standards.* You may use up your normal inventory of engines not certified to new emission standards if they were built before the date of the new standards. However, stockpiling these engines violates § 1068.101(a)(1).

(b) *Installing engines.* You must follow the engine manufacturer's emission-related installation instructions. For example, you may need to constrain where you place an exhaust aftertreatment device or integrate into your equipment models a device for sending visual or audible signals to the operator. Not meeting the manufacturer's emission-related installation instructions is a violation of § 1068.101(b)(1).

(c) *Attaching a duplicate label.* If you obscure the engine's label, you must do three things to avoid violating § 1068.101(a)(1):

(1) Permanently attach to your equipment a duplicate label. Secure it to a part needed for normal operation and not normally requiring replacement.

(2) Make sure your label is identical to the engine label. You may make the label yourself or get it from the engine manufacturer.

(3) Make sure an average person can easily read it.

(d) *Producing nonroad equipment certified to highway emission standards.* You may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:

(1) The engine or vehicle is certified to 40 CFR part 86.

(2) The engine is not adjusted outside the manufacturer's specifications.

(3) The engine or vehicle is not modified in any way that may affect its emission control. This applies to evaporative emission controls, but not refueling emission controls.

§ 1068.110 What other provisions apply to engines in service?

(a) *Aftermarket parts and service.* As the engine manufacturer, you may not require anyone to use your parts or service to maintain or repair an engine, unless we approve this in your application for certification. It is a violation of the Act for anyone to manufacture an engine or vehicle part if one of its main effects is to reduce the effectiveness of the emission controls. See § 1068.101(b)(2).

(b) *Certifying aftermarket parts.* As the manufacturer or rebuilder of an aftermarket engine part, you may—but are not required to—certify according to § 85.2114 of this chapter that using the part will not cause engines to fail to meet emission standards. Whether you certify or not, however, you must keep any information showing how your parts or service affect emissions.

(c) *Compliance with standards.* We may test engines or equipment to investigate compliance with emission standards. We may also require the manufacturer to do this testing.

(d) *Defeat devices.* We may test engines or equipment to investigate potential defeat devices. We may also require the manufacturer to do this testing. If we choose to investigate one of your designs, we may require you to show us that it does not have a defeat device. To do this, you may have to share with us information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies. It is a violation of the Act for anyone to make, install or use defeat devices. See § 1068.101(b)(2) and the standard-setting part.

(e) *Warranty and maintenance.* Owners may make warranty claims against the manufacturer for emission-related parts, as described in § 1068.115. This generally includes any emission-related engine parts that were not in common use before we have adopted emission standards. In general, we consider replacement or repair of any other components to be the owner's responsibility. The warranty period begins when the engine is first placed into service. See the standard-setting part for specific requirements. It is a violation of the Act for anyone to disable emission controls. See § 1068.101(b)(1) and the standard-setting part.

§ 1068.115 When must manufacturers honor emission-related warranty claims?

Section 207(a) of the Clean Air Act (42 U.S.C. 7541(a)) requires certifying manufacturers to warrant to purchasers that their engines are designed, built, and equipped to conform at the time of sale to the applicable regulations for their full useful life, including a warranty that the engines are free from defects in materials and workmanship that would cause an engine to fail to conform to the applicable regulations during the specified warranty period. This section codifies the warranty requirements of section 207(a) without intending to limit these requirements.

(a) As a certifying manufacturer, you may deny warranty claims for failures that have been caused by the owner's or operator's improper maintenance or use. For example, you would not need to honor warranty claims for failures that have been directly caused by the operator's abuse of an engine or the operator's use of the engine in a manner for which it was not designed, and are not attributable to you in any way.

(b) As a certifying manufacturer, you may not deny emission-related warranty claims based on any of the following:

(1) Maintenance or other service you or your authorized facilities performed.

(2) Engine repair work that an operator performed to correct an unsafe, emergency condition attributable to you, as long as the operator tries to restore the engine to its proper configuration as soon as possible.

(3) Any action or inaction by the operator unrelated to the warranty claim.

(4) Maintenance that was performed more frequently than you specify.

(5) Anything that is your fault or responsibility.

(6) The use of any fuel that is commonly available where the engine operates, unless your written maintenance instructions state that this fuel would harm the engine's emission control system and operators can readily find the proper fuel.

§ 1068.120 What requirements must I follow to rebuild engines?

(a) This section describes the steps to take when rebuilding engines to avoid violating the tampering prohibition in § 1068.101(b)(1). These requirements apply to anyone rebuilding an engine subject to this part, but the recordkeeping requirements in paragraphs (j) and (k) of this section apply only to businesses.

(b) The term ''rebuilding'' refers to a rebuild of an engine or engine system, including a major overhaul in which you replace the engine's pistons or power assemblies or make other changes that significantly increase the service life of the engine. It also includes replacing or rebuilding an engine's turbocharger or aftercooler or the engine's systems for fuel metering or electronic control so that it significantly increases the service life of the engine. For these provisions, rebuilding may or may not involve removing the engine from the equipment. Rebuilding does not normally include the following:

(1) Scheduled emission-related maintenance that the standard-setting part allows during the useful life period (such as replacing fuel injectors).

(2) Unscheduled maintenance that occurs commonly within the useful life period. For example, replacing a water pump is not rebuilding.

(c) For maintenance or service that is not rebuilding, you may not make changes that might increase emissions, but you do not need to keep any records.

(d) If you rebuild an engine or engine system, you must have a reasonable technical basis for knowing that the rebuilt engine has the same emissions performance as the engine in its certified configuration. Identify the model year of the resulting engine configuration. You have a reasonable basis if you meet two main conditions:

(1) Install parts—new, used, or rebuilt—so a person familiar with engine design and function would reasonably believe that the engine with those parts will control emissions to the same degree as with the original parts. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.

(2) Adjust parameters or change design elements only according to the original engine manufacturer's instructions. Or, if you differ from these instructions, you must have data or some other technical basis to show you should not expect in-use emissions to increase.

(e) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the original configuration or another certified configuration of the same or later model year.

(f) If the rebuilt engine replaces another engine in a piece of equipment, you must rebuild it to a certified configuration that equals the emissions performance of the engine you are replacing.

(g) Do not erase or reset emission-related codes or signals from onboard monitoring systems without diagnosing and responding appropriately to any diagnostic codes. This requirement applies regardless of the manufacturer's reason for installing the monitoring system and regardless of its form or interface. Clear any codes from diagnostic systems when you return the rebuilt engine to service. Do not disable a diagnostic signal without addressing its cause.

(h) When you rebuild an engine, check, clean, adjust, repair, or replace all emission-related components (listed in Appendix I of this part) as needed according to the original manufacturer's recommended practice. In particular, replace oxygen sensors, replace the catalyst if there is evidence of malfunction, clean gaseous fuel system components, and replace fuel injectors (if applicable), unless you have a reasonable technical basis for believing they do not need replacement.

(i) If you are installing an engine that someone else has rebuilt, check all emission-related components listed in Appendix I of this part as needed according to the original manufacturer's recommended practice.

(j) Keep at least the following records:

(1) Identify the hours of operation (or mileage, as appropriate) at time of rebuild.

(2) Identify the work done on the engine or any emission-related control components, including a listing of parts and components you used.

(3) Describe any engine parameter adjustments.

(4) Identify any emission-related codes or signals you responded to and reset.

(k) You must show us or send us your records if we ask for them. Keep records for at least two years after rebuilding an engine. Keep them in any format that allows us to readily review them.

(1) You do not need to keep information that is not reasonably available through normal business practices. We do not expect you to have information that you cannot reasonably access.

(2) You do not need to keep records of what other companies do.

(3) You may keep records based on engine families rather than individual engines if that is the way you normally do business.

§ 1068.125 What happens if I violate the regulations?

(a) *Civil penalties and injunctions.* We may bring a civil action to assess and recover civil penalties and/or enjoin and restrain violations in the United States District Court for the district where you allegedly violated a requirement, or the district where you live or have your main place of business. Actions to assess civil penalties or restrain violations of § 1068.101 must be brought by and in the name of the United States. The selected court has jurisdiction to restrain violations and assess civil penalties.

(1) To determine the amount of a civil penalty and reach a just conclusion, the court considers these main factors:

(i) The seriousness of your violation.

(ii) How much you benefitted or saved because of the violation.

(iii) The size of your business.

(iv) Your history of compliance with Title II of the Act.

(v) What you did to remedy the violation.

(vi) How the penalty will affect your ability to continue in business.

(vii) Such other matters as justice may require.

(2) Subpoenas for witnesses who must attend a district court in any district may apply to any other district.

(b) *Administrative penalties.* Instead of bringing a civil action, we may assess administrative penalties if the total is less than $250,000 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that is appropriate for administrative penalty assessment, or if the limit is adjusted under 40 CFR part 19. No court may review such a determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22). The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section.

(1) To determine the amount of an administrative penalty, we will consider the factors described in paragraph (a)(1) of this section.

(2) An administrative order we issue under this paragraph (b) becomes final 30 days after we issue it, unless you ask for judicial review by that time (see paragraph (c) of this section). You may ask for review by any of the district courts listed in paragraph (a) of this section. Send the Administrator a copy of the filing by certified mail.

(3) We will not pursue an administrative action for a violation if either of the following two conditions is true:

(i) We are separately prosecuting the violation under this part.

(ii) We have issued a final order for a violation, no longer subject to judicial review, for which you have already paid a penalty.

(c) *Judicial review.* If you ask a court to review a civil or administrative penalty, we will file in the appropriate court within 30 days of your request a certified copy or certified index of the record on which the court or the Administrator issued the order.

(1) The judge may set aside or remand any order issued under this section only if one of the following is true:

(i) Substantial evidence does not exist in the record, taken as a whole, to support finding a violation.

(ii) The Administrator's assessment of the penalty is an abuse of discretion.

(2) The judge may not add civil penalties unless our penalty is an abuse of discretion that favors you.

(d) *Effect of enforcement actions on other requirements.* Our pursuit of civil or administrative penalties does not affect or limit our authority to enforce any provisions of this chapter.

(e) *Penalties.* In any proceedings, the United States government may seek to collect civil penalties assessed under this section.

(1) Once a penalty assessment is final, if you do not pay it, the Administrator will ask the Attorney General to bring a civil action in an appropriate district court to recover the money. We may collect interest from the date of the final order or final judgment at rates established by the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)). In this action to collect overdue penalties, the court will not review the validity, amount, and appropriateness of the penalty. (2) In addition, if you do not pay the full amount of a penalty on time, you must then pay more to cover interest, enforcement expenses (including attorney's fees and costs for collection), and a quarterly nonpayment penalty for each quarter you do not pay. The nonpayment penalty is 10 percent of your total penalties plus any unpaid nonpayment penalties from previous quarters.

Subpart C—Exemptions and Exclusions

§ 1068.201 Does EPA exempt or exclude any engines from the prohibited acts?

We may exempt new engines from the prohibited acts in subpart B of this part under requirements described in this subpart. We may exempt an engine already placed in service in the United States from the prohibition in § 1068.101(b)(1) if the exemption for engines used solely for competition applies (see § 1068.235). In addition, see § 1068.1 and the standard-setting parts to determine if other engines are excluded from some or all of the regulations in this chapter.

(a) This subpart identifies which engines qualify for exemptions and what information we need. We may ask for more information.

(b) If you violate any of the terms, conditions, instructions, or requirements to qualify for an exemption, we may void the exemption.

(c) If you use an exemption under this subpart, we may require you to add a permanent label to your exempted engines. You may ask us to approve wording on the emission label different than we specify in this subpart if it is more appropriate for your engine.

(d) If you produce engines we exempt under this subpart, we may require you to make and keep records, perform tests, make reports and provide information as needed to reasonably evaluate the validity of the exemption.

(e) If you own or operate engines we exempt under this subpart, we may require you to provide information as needed to reasonably evaluate the validity of the exemption.

(f) Subpart D of this part describes how we apply these exemptions to engines you import (or intend to import).

(g) If you want to ask for an exemption or need more information, write to the Designated Officer.

(h) You may ask us to modify the administrative requirements for the exemptions described in this subpart. We may approve your request if we determine that such approval is consistent with the intent of this part. For example, waivable administrative requirements might include some reporting requirements, but would not include any eligibility requirements or use restrictions.

(i) If you want to take an action with respect to an exempted or excluded engine that is prohibited by the exemption or exclusion, such as selling it, you need to certify the engine. We will issue a certificate of conformity if you send us an application for certification showing that you meet all the applicable requirements from the standard-setting part. Also, in some cases, it may be sufficient to modify the engine as needed to make it identical to engines already covered by a certificate. Make sure these engines have emission control information labels that accurately describe their status.

§ 1068.210 What are the provisions for exempting test engines?

(a) We may exempt engines that are not exempted under other sections of this part that you will use for research, investigations, studies, demonstrations, or training.

(b) Anyone may ask for a testing exemption.

(c) If you are a certificate holder, you may request an exemption for engines you intend to include in test programs over a two-year period.

(1) In your request, tell us the maximum number of engines involved and describe how you will make sure exempted engines are used only for this testing.

(2) Give us the information described in paragraph (d) of this section if we ask for it.

(d) If you are not a certificate holder do all of the following:

(1) Show that the proposed test program has a valid purpose under paragraph (a) of this section.

(2) Show you need an exemption to achieve the purpose of the test program (time constraints may be a basis for needing an exemption, but the cost of certification alone is not).

(3) Estimate the duration of the proposed test program and the number of engines involved.

(4) Allow us to monitor the testing.

(5) Describe how you will ensure that you stay within this exemption's purposes. Address at least the following things:

(i) The technical nature of the test.

(ii) The test site.

(iii) The duration and accumulated engine operation associated with the test.

(iv) Ownership of the engines involved in the test.

(v) The intended final disposition of the engines.

(vi) How you will identify, record, and make available the engine identification numbers.

(vii) The means or procedure for recording test results.

(e) If we approve your request for a testing exemption, we will send you a letter or a memorandum for your signature describing the basis and scope of the exemption. The exemption does not take effect until we receive the signed letter or memorandum from you. It will also include any necessary terms and conditions, which normally require you to do the following:

(1) Stay within the scope of the exemption.

(2) Create and maintain adequate records that we may inspect.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Engine displacement, engine family identification (as applicable), and model year of the engine; or whom to contact for further information.

(iv) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.210 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

(4) Tell us when the test program is finished.

(5) Tell us the final disposition of the engines.

(6) Send us a written confirmation that you meet the terms and conditions of this exemption.

§ 1068.215 What are the provisions for exempting manufacturer-owned engines?

(a) You are eligible for the exemption for manufacturer-owned engines only if you are a certificate holder.

(b) An engine may be exempt without a request if it is a nonconforming engine under your ownership and control and you operate it to develop products, assess production methods, or promote your engines in the marketplace. You may not lease, sell, or use the engine to generate revenue, either by itself or in a piece of equipment.

(c) To use this exemption, you must do three things:

(1) Establish, maintain, and keep adequately organized and indexed information on each exempted engine, including the engine identification number, the use of the engine on exempt status, and the final disposition of any engine removed from exempt status.

(2) Let us access these records, as described in § 1068.20.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(i) The label heading ''EMISSION CONTROL INFORMATION''.

(ii) Your corporate name and trademark.

(iii) Engine displacement, engine family identification, and model year of

the engine or whom to contact for further information.

(iv) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

§ 1068.220 What are the provisions for exempting display engines?

(a) Anyone may request an exemption for display engines.

(b) A nonconforming display engine will be exempted if it is used only for displays in the interest of a business or the general public. This exemption does not apply to engines displayed for private use or any other purpose we determine is inappropriate for a display exemption.

(c) You may operate the exempted engine, but only if we approve specific operation that is part of the display.

(d) You may sell or lease the exempted engine only with our advance approval; you may not use it to generate revenue.

(e) To use this exemption, you must add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement, engine family identification, and model year of the engine or whom to contact for further information.

(4) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.220 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

(f) We may set other conditions for approval of this exemption.

§ 1068.225 What are the provisions for exempting engines for national security?

(a) You are eligible for the exemption for national security only if you are a manufacturer.

(b) Your engine is exempt without a request if you produce it for a piece of equipment owned or used by an agency of the federal government responsible for national defense, where the equipment has armor, permanently attached weaponry, or other substantial features typical of military combat.

(c) You may request a national security exemption for engines not meeting the conditions of paragraph (b) of this section, as long as your request is endorsed by an agency of the federal government responsible for national defense. In your request, explain why you need the exemption.

§ 1068.230 What are the provisions for exempting engines for export?

(a) If you export a new engine to a country with emission standards identical to ours, we will not exempt it. These engines must comply with our certification requirements.

(b) If you export an engine to a country with different emission standards or no emission standards, it is exempt from the prohibited acts in this part without a request. If you produce an exempt engine for export and it is sold or offered for sale to someone in the United States (except for export), we will void the exemption.

(c) Label each exempted engine and shipping container with a label or tag showing the engine is not certified for sale or use in the United States. The label must include at least the statement ''THIS ENGINE IS SOLELY FOR EXPORT AND IS THEREFORE IS EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

§ 1068.235 What are the provisions for exempting engines used solely for competition?

(a) New engines you produce that are used solely for competition are generally excluded from emission standards. See the standard-setting parts for specific provisions where applicable.

(b) If you modify an engine after it has been placed into service in the United States so it will be used solely for competition, it is exempt without request. This exemption applies only to the prohibition in § 1068.101(b)(1) and is valid only as long as the engine is used solely for competition.

(c) If you modify an engine under this exemption, you must destroy the original emission label. If you sell or give one of these engines to someone else, you must tell the new owner in writing that it may be used only for competition.

§ 1068.240 What are the provisions for exempting new replacement engines?

(a) You are eligible for the exemption for new replacement engines only if you are a certificate holder.

(b) The prohibitions in § 1068.101(a)(1) do not apply to an engine if all the following conditions apply:

(1) You produce a new engine to replace an engine already placed in service in a piece of equipment.

(2) The engine being replaced was manufactured before the emission standards that would otherwise apply to the new engine took effect.

(3) No engine certified to current emission requirements is available with the appropriate physical or performance characteristics for the piece of equipment.

(4) You or your agent takes possession of the old engine.

(5) You make the replacement engine in a configuration identical in all material respects to the engine being replaced (or that of another certified engine of the same or later model year). This requirement applies only if the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine.

(c) If the old engine was not certified to any emission standards under this chapter, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when standards began to apply to engines of that size and type] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(d) If the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH CURRENT FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earlier tier of emission standards began to apply to the old engine] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

§ 1068.245 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, we may permit you to introduce into commerce engines or equipment that do not comply with emission standards if all the following conditions apply:

(1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(b) To apply for an exemption, you must send the Designated Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption. For example, in the case of multiple tiers of emission standards, we may require that you meet the less stringent standards.

(f) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this section. This label must include at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

§ 1068.250 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?

(a) After considering the circumstances, we may extend the compliance deadline for you to meet new or revised emission standards, as long as you meet all the conditions and requirements in this section.

(b) To be eligible for this exemption, you must qualify under the standard-setting part for special provisions for small businesses or small-volume manufacturers.

(c) To apply for an extension, you must send the Designated Officer a written request. In your request, show that all the following conditions and requirements apply:

(1) You have taken all possible business, technical, and economic steps to comply.

(i) In the case of importers of engines produced by other companies, show that you attempted to find a manufacturer capable of supplying complying products as soon as you became aware of the applicable requirements, but were unable to do so.

(ii) For all other manufacturers, show that the burden of compliance costs prevents you from meeting the requirements of this chapter.

(2) Not having the exemption will jeopardize the solvency of your company.

(3) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(d) In describing the steps you have taken to comply under paragraph (c)(1) of this section, include at least the following information:

(1) Describe your business plan, showing the range of projects active or under consideration.

(2) Describe your current and projected financial standing, with and without the burden of complying fully with the applicable regulations in this chapter.

(3) Describe your efforts to raise capital to comply with regulations in this chapter (this may not apply for importers).

(4) Identify the engineering and technical steps you have taken or plan to take to comply with regulations in this chapter.

(5) Identify the level of compliance you can achieve. For example, you may be able to produce engines that meet a somewhat less stringent emission standard than the regulations in this chapter require.

(e) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(f) You must give us other relevant information if we ask for it.

(g) An authorized representative of your company must sign the request and include the statement: ''All the information in this request is true and accurate, to the best of my knowledge.''.

(h) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers. Otherwise, do not send your request more than three years before the relevant deadline.

(i) We may include reasonable requirements on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit. For example, we may require that you meet a less stringent emission standard or buy and use available emission credits.

(j) We will approve extensions of up to one year. We may review and revise an extension as reasonable under the circumstances.

(k) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this section. This label must include at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.250 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

§ 1068.255 What are the provisions for exempting engines for hardship for equipment manufacturers and secondary engine manufacturers?

This section describes how, in unusual circumstances, we may exempt certain engines to prevent a hardship to an equipment manufacturer or a secondary engine manufacturer. This section does not apply to products that are subject to vehicle-based emission standards.

(a) *Equipment exemption.* As an equipment manufacturer, you may ask for approval to produce exempted equipment for up to 12 months. We will generally limit this to the first year that new or revised emission standards apply. Send the Designated Officer a written request for an exemption before you are in violation. In your request, you must show you are not at fault for the impending violation and that you would face serious economic hardship if we do not grant the exemption. This exemption is not available under this paragraph (a) if you manufacture the engine you need for your own equipment or if complying engines are available from other engine manufacturers that could be used in your equipment, unless we allow it elsewhere in this chapter. We may impose other conditions, including provisions to recover the lost environmental benefit. In determining whether to grant the exemptions, we will consider all relevant factors, including the following:

(1) The number of engines to be exempted.

(2) The size of your company and your ability to endure the hardship.

(3) The amount of time you had to redesign your equipment to accommodate a complying engine.

(4) Whether there was any breach of contract by an engine supplier.

(5) The potential for market disruption.

(b) *Engine exemption.* As an engine manufacturer, you may produce nonconforming engines for the equipment we exempt in paragraph (a) of this section. You do not have to request this exemption for your engines, but you must have written assurance from equipment manufacturers that they need a certain number of exempted engines under this section. Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(1) The label heading ''EMISSION CONTROL INFORMATION''.

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement ''THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.255 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.''.

(c) *Secondary engine manufacturers.* As a secondary engine manufacturer, you may ask for approval to produce exempted engines under this section for up to one year. We may require you to certify your engines to compliance levels above the emission standards that apply. For example, if you need an exemption from a second tier of standards, we may require you to meet the standards that applied to earlier model years.

(1) For the purpose of this section, a secondary engine manufacturer is a manufacturer that produces an engine by modifying an engine that is made by a different manufacturer for a different type of application. This includes, for example, automotive engines converted for use in industrial applications, or land-based engines converted for use in marine applications. This applies whether the secondary engine manufacturer is modifying a complete or partially complete engine and whether the engine was previously certified to emission standards or not. To be a secondary engine manufacturer, you must not be controlled by the manufacturer of the base engine (or by an entity that also controls the manufacturer of the base engine). In addition, equipment manufacturers that substantially modify engines become secondary engine manufacturers. For the purpose of this definition, ''substantially modify'' means changing an engine in a way that could change its emission characteristics.

(2) The provisions in paragraph (a) of this section that apply to equipment manufacturers requesting an exemption apply equally to you, except that you may manufacture the engines. Before we can approve the exemption under this section, you must commit to a plan to make up the lost environmental benefit.

(i) If you produce uncertified engines under this exemption, we will calculate the lost environmental benefit based on our best estimate of uncontrolled emission rates for your engines.

(ii) If you produce engines under this exemption that are certified to a compliance level less stringent than the emission standards that would otherwise apply, we will calculate the lost environmental benefit based on the compliance level you select for your engines.

(3) The labeling requirements in paragraph (b) of this section apply to your exempted engines; however, if you certify engines to specific compliance levels, state on the label the compliance levels that apply to each engine.

Subpart D—Imports

§ 1068.301 Does this subpart apply to me?

(a) This subpart applies to you if you import into the United States engines or equipment subject to our emission standards or equipment containing engines subject to our emission standards.

(b) In general, engines that you import must be covered by a certificate of conformity unless they were built before emission standards started to apply. This subpart describes the limited cases where we allow importation of exempt or excluded engines.

(c) The U.S. Customs Service may prevent you from importing an engine if you do not meet the requirements of this subpart. In addition, U.S. Customs Service regulations may contain other requirements for engines imported into the United States (see 19 CFR Chapter I).

§ 1068.305 How do I get an exemption or exclusion for imported engines?

(a) Complete the appropriate EPA declaration form before importing any nonconforming engine. These forms are available on the Internet at http://www.epa.gov/OMS/imports/ or by phone at 202–564–9660.

(b) If we ask for it, prepare a written request in which you do the following:

(1) Give your name, address, telephone number, and taxpayer identification number.

(2) Give the engine owner's name, address, telephone number, and taxpayer identification number.

(3) Identify the make, model, identification number, and original production year of each engine.

(4) Identify which exemption or exclusion in this subpart allows you to import a nonconforming engine and describe how your engine qualifies.

(5) Tell us where you will keep your engines if you might need to store them until we approve your request.

(6) Authorize us to inspect or test your engines as the Act allows.

(c) We may ask for more information.

(d) You may import the nonconforming engines you identify in your request if you get prior written approval from us. The U.S. Customs Service may require you to show them the approval letter. We may temporarily or permanently approve the exemptions or exclusions, as described in this subpart.

(e) Make sure the engine meets any labeling requirements that apply.

§ 1068.310 What are the exclusions for imported engines?

Emission standards do not apply to excluded engines that you import. If you show us that your engines qualify under one of the paragraphs of this section, we will approve your request to import excluded engines. You must have our approval to import an engine under paragraph (a) of this section. You may, but are not required to request our approval for the other exclusions in this section. The following engines are excluded:

(a) *Engines used solely for competition.* Engines you use solely for competition are excluded. The standard-setting part may set special provisions for the manufacture, sale, or import of engines used solely for competition. Section 1068.101(b)(4) prohibits using these excluded engines for other purposes.

(b) *Stationary engines.* This includes engines that will be used in a permanently fixed location and engines meeting the criteria for the exclusion in paragraph (2)(iii) of the nonroad engine definition in § 1068.30. Section 1068.101(b)(3) prohibits using these engines for other purposes.

(c) *Other engines.* The standard-setting parts may exclude engines used in certain applications. For example, engines used in aircraft, underground mining, and hobby vehicles are generally excluded.

§ 1068.315 What are the permanent exemptions for imported engines?

We may approve a permanent exemption for an imported engine under the following conditions:

(a) *National security exemption.* You may import engine under the national security exemption in § 1068.225.

(b) *Manufacturer-owned engine exemption.* You may import a manufacturer-owned engine, as described in § 1068.215.

(c) *Replacement engine exemption.* You may import a nonconforming replacement engine as described in § 1068.240. To use this exemption, you must be a certificate holder for an engine family we regulate under the same part as the replacement engine.

(d) *Extraordinary circumstances exemption.* You may import a nonconforming engine if we grant hardship relief as described in § 1068.245.

(e) *Hardship exemption.* You may import a nonconforming engine if we grant an exemption for the transition to new or revised emission standards, as described in § 1068.255.

(f) *Identical configuration exemption.* You may import a nonconforming engine if it is identical to certified engines produced by the same manufacturer, subject to the following provisions:

(1) You may import only the following engines under this exemption:

(i) Large nonroad spark-ignition engines (see part 1048 of this chapter).

(ii) Recreational nonroad spark-ignition engines and equipment (see part 1051 of this chapter).

(2) You must meet all the following criteria:

(i) You have owned the engine for at least one year.

(ii) You agree not to sell, lease, donate, trade, or otherwise transfer ownership of the engine for at least five years, or until the engine is eligible for the exemption in paragraph (g) of this section. During this period, the only acceptable way to dispose of the engine is to destroy or export it.

(iii) You use data or evidence sufficient to show that the engine is in a configuration that is the same as an engine the original manufacturer has certified to meet emission standards that apply at the time the manufacturer finished assembling or modifying the engine in question. If you modify the engine to make it identical, you must follow the original manufacturer's complete written instructions.

(3) We will tell you in writing if we find the information insufficient to show that the engine is eligible for this exemption. In this case, we will not consider your request further until you address our concerns.

(g) *Ancient engine exemption.* If you are not the original engine manufacturer, you may import a nonconforming engine that is subject to a standard-setting part and was first manufactured at least 21 years earlier, as long as it is still in its original configuration.

§ 1068.320 How must I label an imported engine with a permanent exemption?

(a) For engines imported under § 1068.315 (a), (b), (c), (d), or (e), you must place a permanent label or tag on each engine. If no specific label requirements from subpart C of this part apply, you must meet the following requirements:

(1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.

(2) Make sure it is durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Make it readily visible to the average person after the engine is installed in the equipment.

(b) On the engine label or tag, do the following:

(1) Include the heading ''Emission Control Information.''

(2) Include your full corporate name and trademark.

(3) State the engine displacement (in liters) and rated power. If the engine's rated power is not established, state the approximate power rating accurately enough to allow a detemination of which stanadards would otherwise apply.

(4) State: ''THIS ENGINE IS EXEMPT FROM THE REQUIREMENTS OF [identify the part referenced in 40 CFR 1068.1(a) that would otherwise apply], AS PROVIDED IN [identify the paragraph authorizing the exemption (for example, ''40 CFR 1068.315(a)'')]. INSTALLING THIS ENGINE IN ANY DIFFERENT APPLICATION IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''.

(c) Get us to approve alternate label language if it is more accurate for your engine.

§ 1068.325 What are the temporary exemptions for imported engines?

If we approve a temporary exemption for an engine, you may import it under the conditions in this section. We may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart. You may not sell or lease one of these engines while it is in the United States. You must eventually export the engine as we describe in this section unless you get a certificate of conformity for it or it qualifies for one of the permanent exemptions in § 1068.315. Section 1068.330 specifies an additional temporary exemption allowing you to import certain engines you intend to sell or lease.

(a) *Exemption for repairs or alterations.* You may temporarily import a nonconforming engine under bond solely to repair or alter it. You may operate the engine in the United States only to repair or alter it or to ship it to or from the service location. Export the engine directly after the engine servicing is complete.

(b) *Testing exemption.* You may temporarily import a nonconforming engine under bond for testing if you follow the requirements of § 1068.210. You may operate the engine in the United States only to allow testing. This exemption expires one year after you import the engine, unless we approve a one-time request for an extension of up to one more year. The engine must be exported before the exemption expires.

(c) *Display exemption.* You may temporarily import a nonconforming engine under bond for display, as described in § 1068.220. This exemption expires one year after you import the engine, unless we approve your request for an extension. We may approve an extension of up to one more year for each request, but no more than three years in total. The engine must be exported by the time the exemption expires or directly after the display concludes, whichever comes first.

(d) *Export exemption.* You may temporarily import a nonconforming engine to export it, as described in § 1068.230. You may operate the engine in the United States only as needed to prepare it for export. Label the engine as described in § 1068.230.

(e) *Diplomatic or military exemption.* You may temporarily import nonconforming engines without bond if you represent a foreign government in a diplomatic or military capacity. In your request to the Designated Officer (see § 1068.305), include either written confirmation from the U.S. State Department that you qualify for this exemption or a copy of your orders for military duty in the United States. We will rely on the State Department or your military orders to determine when your diplomatic or military status expires, at which time you must export your exempt engines.

§ 1068.330 How do I import engines to modify for other applications?

This section allows you to import engines in configurations different than their final configuration. This exemption is temporary, as described in paragraph (d) of this section.

(a) This section applies in the following cases:

(1) You import a partially complete engine with the intent to manufacture complete engines for which you have either a certificate of conformity or an exemption that allows you to sell completed engines.

(2) You import an uncertified complete engine with the intent to modify it for installation in an application different than its otherwise intended application (for example, you import a land-based engine to modify it for a marine application). In this case, to qualify for an exemption under this section, you need either a certificate of conformity or an exemption that allows you to sell completed engines.

(3) You import a complete or partially complete engine to modify for an application for which emission standards do not apply.

(b) You may request this exemption in an application for certification. Otherwise, send your request to the Designated Officer. Your request must include:

(1) The name of the supplier of the partially complete engine, or the original manufacturer of the complete engine.

(2) A description of the certificate or exemption that will apply to the engines in the final configuration, or an explanation why a certificate or exemption is not needed.

(3) A brief description of how and where final assembly will be completed.

(4) An unconditional statement that the engines will comply with all applicable regulations in their final configuration.

(c) If we approve a temporary exemption for an engine, you may import it under the conditions in this section. We may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart.

(d) These provisions are intended only to allow you to import engines in the specific circumstances identified in this section, so any exemption under this section expires when you complete the assembly of the engine in its final configuration. If the engine in its final configuration is subject to emission standards, then it must be covered by a certificate or a different exemption before you introduce it into commerce.

§ 1068.335 What are the penalties for violations?

(a) *All imported engines.* Unless you comply with the provisions of this subpart, importation of nonconforming engines is violation of sections 203 and 213(d) of the Act. You may then have to export the engines, or pay civil penalties, or both. The U.S. Customs Service may seize unlawfully imported engines.

(b) *Temporarily imported engines.* If you do not comply with the provisions of this subpart for a temporary exemption, you may forfeit the total amount of the bond in addition to the sanctions we identify in paragraph (a) of this section. We will consider an engine to be exported if it has been destroyed or delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. EPA or the U.S. Customs Service may offer you a grace period to allow you to export a temporarily exempted engine without penalty after the exemption expires.

Subpart E—Selective Enforcement Auditing

§ 1068.401 What is a selective enforcement audit?

(a) We may conduct or require you to conduct emission tests on your production engines in a selective enforcement audit. This requirement is independent of any requirement for you to routinely test production-line engines.

(b) If we send you a signed test order, you must follow its directions and the provisions of this subpart. We will tell you where to test the engines. This may be where you produce the engines or any other emission testing facility.

(c) If we select one or more of your engine families for a selective enforcement audit, we will send the test order to the person who signed the application for certification or we will deliver it in person.

(d) Within one working day of receiving the test order, notify the Designated Officer which test facility you have selected for emission testing.

(e) You must do everything we require in the audit without delay.

§ 1068.405 What is in a test order?

(a) In the test order, we will specify the following things:

(1) The engine family and configuration (if any) we have identified for testing.

(2) The engine assembly plant, storage facility, or (if you import the engines) port facility from which you must select engines.

(3) The procedure for selecting engines for testing, including a selection rate.

(4) The test procedures, duty cycles, and test points, as appropriate, for testing the engines to show that they meet emission standards.

(b) We may state that we will select the test engines.

(c) We may identify alternate engine families or configurations for testing in case we determine the intended engines are not available for testing or if you do not produce enough engines to meet the minimum rate for selecting test engines.

(d) We may include other directions or information in the test order.

(e) We may ask you to show us that you meet any additional requirements that apply to your engines (closed crankcases, for example).

(f) In anticipation of a potential audit, you may give us a list of your preferred engine families and the corresponding assembly plants, storage facilities, or (if you import the engines) port facilities from which we should select engines for testing. The information would apply only for a single model year, so it would be best to include this information in your application for certification. If you give us this list before we issue a test order, we will consider your recommendations, but we may select engines differently.

(g) If you also do routine production-line testing with the selected engine family in the same time period, the test order will tell you what changes you might need to make in your production-line testing schedule.

§ 1068.410 How must I select and prepare my engines?

(a) *Selecting engines.* Select engines as described in the test order. If you are unable to select test engines this way, you may ask us to approve an alternate plan, as long as you make the request before you start selecting engines.

(b) *Assembling engines.* Produce and assemble test engines using your normal production and assembly process for that engine family.

(1) Notify us directly if you make any change in your production, assembly, or quality control processes that might affect emissions between the time you receive the test order and the time you finish selecting test engines.

(2) If you do not fully assemble engines at the specified location, we will describe in the test order how to select components to finish assembling the engines. Assemble these components onto the test engines using your documented assembly and quality control procedures.

(c) *Modifying engines.* Once an engine is selected for testing, you may adjust,

repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production engines and make the action routine for all the engines in the engine family.

(2) This subpart otherwise allows your action.

(3) We approve your action in advance.

(d) *Engine malfunction.* If an engine malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.

(e) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed until the engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines.

(f) *Stabilizing emission levels.* Before you test production-line engines, you may operate the engine to stabilize the emission levels. Using good engineering judgment, operate your engines in a way that represents the way production engines will be used. You may operate each engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated your emission-data engine for certifying the engine family (see 40 CFR part 1065, subpart E).

(g) *Damage during shipment.* If shipping an engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the engine. Report to us, in your written report under § 1068.450, all adjustments or repairs you make on test engines before each test.

(h) *Shipping engines.* If you need to ship engines to another facility for testing, make sure the test engines arrive at the test facility within 24 hours after being selected. You may ask that we allow more time if you are unable to do this.

(i) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

§ 1068.415 How do I test my engines?

(a) Use the test procedures specified in the standard-setting part for showing that your engines meet emission standards. The test order will give further testing instructions.

(b) If no test cells are available at a given facility, you may make alternate testing arrangements with our approval.

(c) Test at least two engines in each 24-hour period (including void tests). However, if your projected U.S. nonroad engine sales within the engine family are less than 7,500 for the year, you may test a minimum of one engine per 24-hour period. If you request and justify it, we may approve a lower testing rate.

(d) Accumulate service on test engines at a minimum rate of 6 hours per engine during each 24-hour period. The first 24-hour period for service accumulation begins when you finish preparing an engine for testing. The minimum service accumulation rate does not apply on weekends or holidays. You may ask us to approve a lower service accumulation rate. Plan your service accumulation to allow testing at the rate specified in § 1068.415. Select engine operation for accumulating operating hours on your test engines to represent normal in-use engine operation for the engine family.

(e) Test engines is the same order you select them.

§ 1068.420 How do I know when my engine family fails an SEA?

(a) A failed engine is one whose final deteriorated test results exceed an applicable emission standard for any regulated pollutant.

(b) Continue testing engines until you reach a pass decision for all pollutants or a fail decision for one pollutant.

(c) You reach a pass decision for the SEA requirements when the number of failed engines is less than or equal to the pass decision number in Appendix A to this subpart for the total number of engines tested. You reach a fail decision for the SEA requirements when the number of failed engines is greater than or equal to the fail decision number in Appendix A to this subpart for the total number of engines you test. An acceptable quality level of 40 percent is the basis for the pass or fail decision.

(d) Consider test results in the same order as the engine testing sequence.

(e) If you reach a pass decision for one pollutant, but need to continue testing for another pollutant, we will disregard these later test results for the pollutant with the pass decision.

(f) Appendix A to this subpart lists multiple sampling plans. Use the sampling plan for the projected sales volume you reported in your application for the audited engine family.

(g) We may choose to stop testing after any number of tests.

(h) If we test some of your engines in addition to your own testing, we may decide not to include your test results as official data for those engines if there is substantial disagreement between your testing and our testing. We will reinstate your data as valid if you show us that we made an error and your data are correct.

(i) If we rely on our test data instead of yours, we will notify you in writing of our decision and the reasons we believe your facility is not appropriate for doing the tests we require under this subpart. You may request in writing that we consider your test results from the same facility for future testing if you show us that you have made changes to resolve the problem.

§ 1068.425 What happens if one of my production-line engines exceeds the emission standards?

(a) If one of your production-line engines fails to meet one or more emission standards (see § 1068.420), the certificate of conformity is automatically suspended for that engine. You must take the following actions before your certificate of conformity can cover that engine:

(1) Correct the problem and retest the engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each engine (see § 1068.450).

(b) You may at any time ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part).

§ 1068.430 What happens if an engine family fails an SEA?

(a) We may suspend your certificate of conformity for an engine family if it fails the SEA under § 1068.420. The suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in

part. We will not suspend a certificate until at least 15 days after the engine family fails the SEA. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

§ 1068.435 May I sell engines from an engine family with a suspended certificate of conformity?

You may sell engines that you produce after we suspend the engine family's certificate of conformity only if one of the following occurs:

(a) You test each engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected engines and remedy any noncompliance at no expense to the owner if later testing shows that engines in the engine family still do not comply.

§ 1068.440 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for the SEA failure, propose a remedy, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing showing that engines in the remedied engine family comply with all the emission standards that apply.

§ 1068.445 When may EPA revoke my certificate under this subpart and how may I sell these engines again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails an SEA and your proposed remedy to address a suspended certificate is inadequate to solve the problem or requires you to change the engine's design or emission-control system.

(b) To sell engines from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the applicable requirements.

(1) If we determine your proposed design change may not control emissions for the engine's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1068.450 What records must I send to EPA?

(a) Within 30 calendar days of the end of each audit, send us a report with the following information:

(1) Describe any facility used to test production-line engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe your test engines, including the engine family's identification and the engine's model year, build date, model number, identification number, and number of hours of operation before testing for each test engine.

(4) Identify where you accumulated hours of operation on the engines and describe the procedure and schedule you used.

(5) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission figures for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(6) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of equipment.

(7) Report on each failed engine as described in § 1068.425. (b) We may ask you to add information to your written report, so we can determine whether your new engines conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

> We submit this report under Sections 208 and 213 of the Clean Air Act. Ourtesting conformed completely with the requirements of 40 CFR part 1068. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production engines. All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send reports of your testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. We will release information about your sales or production volumes, which is all we will consider confidential.

§ 1068.455 What records must I keep?

(a) We may review your records at any time, so it is important to keep required information readily available. Organize and maintain your records as described in this section.

(b) Keep paper records for testing under this subpart for one full year after you complete all the testing required for the selective enforcement audit. For additional storage, you may use any format or media.

(c) Keep a copy of the written reports described in § 1068.450.

(d) Keep the following additional records:

(1) The names of supervisors involved in each test.

(2) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test engine and the names of all supervisors who oversee this work.

(3) If you shipped the engine for testing, the date you shipped it, the associated storage or port facility, and the date the engine arrived at the testing facility.

(4) Any records related to your audit that are not in the written report.

(5) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(e) If we ask, you must give us projected or actual production for an engine family. Include each assembly plant if you produce engines at more than one plant.

(f) We may ask you to keep or send other information necessary to implement this subpart.

Appendix A to Subpart E of Part 1068—Plans for Selective Enforcement Auditing

The following tables describe sampling plans for selective enforcement audits, as described in § 1068.420:

TABLE A–1.—SAMPLING PLAN CODE LETTER

Projected engine family sales	Code letter [1]	Minimum number of tests		Maximum number of tests
		To pass	To fail	
20 – 50	AA	3	5	20
20 – 99	A	4	6	30
100 – 299	B	5	6	40
300 – 499	C	5	6	50
500 +	D	5	6	60

[1] A manufacturer may optionally use either the sampling plan for code letter ''AA'' or sampling plan for code letter ''A'' for Selective enforcement Audits of engine families with annual sales between 20 and 50 engines. Additionally, the manufacturer may switch between these plans during the audit.

TABLE A–2.—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES

Stage [a]	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
1.										
2.										
3	0									
4			0							
5	1	5	0		0		0		0	
6	1	6	1	6	1	6	0	6	0	6
7	2	6	1	7	1	7	1	7	1	7
8	2	7	2	7	2	7	2	7	2	8
9	3	7	2	8	2	8	2	8	2	8
10	3	8	3	8	3	8	3	9	3	9
11	4	8	3	8	3	9	3	9	3	9
12	4	9	4	9	4	9	4	10	4	10
13	5	9	5	10	4	10	4	10	4	10
14	5	10	5	10	5	10	5	11	5	11
15	6	10	6	11	5	11	5	11	5	11
16	6	10	6	11	6	12	6	12	6	12
17	7	10	7	12	6	12	6	12	6	12
18	8	10	7	12	7	13	7	13	7	13
19	8	10	8	13	8	13	7	13	7	13
20	9	10	8	13	8	14	8	14	8	14
21			9	14	9	14	8	14	8	14
22			10	14	9	15	9	15	9	15
23			10	15	10	15	10	15	9	15
24			11	15	10	16	10	16	10	16
25			11	16	11	16	11	16	11	16
26			12	16	11	17	11	17	11	17
27			12	17	12	17	12	17	12	17
28			13	17	12	18	12	18	12	18
29			14	17	13	18	13	18	13	19
30			16	17	13	19	13	19	13	19
31					14	19	14	19	14	20
32					14	20	14	20	14	20

TABLE A–2.—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES—Continued

Stage [a]	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
33					15	20	15	20	15	21
34					16	21	15	21	15	21
35					16	21	16	21	16	22
36					17	22	16	22	16	22
37					17	22	17	22	17	23
38					18	22	18	23	17	23
39					18	22	18	23	18	24
40					21	22	19	24	18	24
41							19	24	19	25
42							20	25	19	26
43							20	25	20	26
44							21	26	21	27
45							21	27	21	27
46							22	27	22	28
47							22	27	22	28
48							23	27	23	29
49							23	27	23	29
50							26	27	24	30
51									24	30
52									25	31
53									25	31
54									26	32
55									26	32
56									27	33
57									27	33
58									28	33
59									28	33
60									32	33

[a] Stage refers to the cumulative number of engines tested.

Subpart F—Reporting Defects and Recalling Engines

§ 1068.501 How do I report engine defects?

(a) *General provisions.* As an engine manufacturer, you must investigate in certain circumstances whether emission-related components are defective and send us reports as specified by this section.

(1) The term emission-related component includes those components listed in Appendix I of this part. For the purposes of this section, complete engines shall also be considered an emissions-related component. It also includes factory settings of emission-related parameters and specifications listed in Appendix II of this part.

(2) For the purposes of this section, defects do not include damage to emission-related components (or maladjustment of parameters) caused by owners improperly maintaining or abusing their engine.

(3) You must track the information specified in paragraph (b)(1) of this section. You are not required to collect additional information other than that specified in paragraph (b)(1) of this section before reaching the threshold for an investigation specified in paragraph (e) of this section.

(4) You may ask us to allow you to use alternate methods for tracking, investigating, reporting, and correcting emission-related defects. In your request, explain and demonstrate why you believe your alternate system will be at least as effective in tracking, identifying, investigating, evaluating, reporting, and correcting potential and actual emissions-related defects as the requirements in this section.

(5) If we determine that emission-related defects result in a substantial number of properly maintained and used engines not conforming to the regulations of this chapter during their

useful life, we may order you to conduct a recall of your engines (see § 1068.505).

(6) Send the defect reports and status reports required by this section to the Designated Officer.

(b) *Investigation of possible defects.* If the number of engines that possibly have a defect, as defined by paragraph (b)(1) of this section, exceed the thresholds specified in paragraph (e) of this section, you must conduct an investigation to determine if an emission-related component is actually defective.

(1) You must track warranty claims, parts shipments, and the other information specified in paragraph (b)(1)(iii) of this section. You must classify an engine as possibly having a defective component if any of the following is true:

(i) A warranty claim is submitted for the component, whether this is under your emission-related warranty or any other warranty.

(ii) You ship a replacement component other than for normally scheduled maintenance during the useful life of the engine.

(iii) You receive any other information indicating the component may be defective, such as information from dealers or hot line complaints.

(2) Your investigation must be prompt, thorough, consider all relevant information, follow scientific and engineering principles, and be designed to obtain all the information specified in paragraph (d) of this section.

(3) Your investigation only needs to consider defects that occur within the useful life period, or within five years after the end of the model year, whichever is longer.

(4) You must continue your investigation until you are able to obtain all the information specified for a defect report in paragraph (d) of this section. Send us an updated defect report anytime you have significant additional information.

(5) If a component believed to be defective is used in additional engine families or model years, you must investigate whether the component or part is defective when used in these additional engine families or model years, and include these results as part of your defect report.

(6) If your initial investigation concludes that the number of engines with a defect is fewer than the thresholds specified in paragraph (f) of this section, but other information becomes available that may show that the number of engines with a defect exceeds these thresholds, then you must resume your investigation. If you resume an investigation, you must include the information from the earlier investigation to determine whether to send a defect report.

(c) *Reporting defects.* You must send us a defect report in either of the following cases:

(1) Your investigation shows that the number of engines with a defect exceeds the thresholds specified in paragraph (f) of this section. Send the defect report within 15 days after the date you identify this number of defective engines.

(2) You know a defective emission-related component exists in a number of engines that exceeds the thresholds specified in paragraph (f) of this section, regardless of how you obtain this information. Send the defect report within 15 days after you learn that the number of defects exceeds one of these thresholds.

(d) *Contents of a defect report.* Include the following information in a defect report:

(1) Your corporate name and a person to contact regarding this defect.

(2) A description of the defect, including a summary of any engineering analyses and associated data, if available.

(3) A description of the engines that may have the defect, including engine families, models, and range of production dates. Note that you must address all model years for the engines, not just the model year for which you triggered the reporting requirement.

(4) An estimate of the number and percentage of each class or category of affected engines that have or may have the defect, and an explanation of how you determined this number.

(5) An estimate of the defect's impact on emissions, with an explanation of how you calculated this estimate and a summary of any emission data demonstrating the impact of the defect, if available.

(6) A description of your plan for addressing the defect or an explanation of your reasons for not believing the defects must be remedied.

(e) *Thresholds for conducting a defect investigation.* Unless the standard-setting part specifies otherwise, you must begin a defect investigation based on the following threshold values:

(1) For engine with rated power under 560 kW:

(i) When the component is a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that may have the defect exceeds 2 percent of the total number of engines in the engine family or 2,000 engines, whichever is less.

(ii) When the emission-related component is anything but a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that may have the defect exceeds 4 percent of the total number of engines in the engine family or 4,000 engines, whichever is less.

(2) For engine with rated power greater than or equal to 560 kW, if the number of engines in an engine family that may have the defect exceeds 1 percent of the total number of engines in the engine family or 5 engines, whichever is greater.

(f) *Thresholds for filing a defect report.* You must send a defect report based on the following threshold values:

(1) For engine with rated power under 560 kW:

(i) When the component is a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that has the defect exceeds 0.125 percent of the total number of engines in the engine family or 125 engines, whichever is less.

(ii) When the emission-related component is anything but a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that has the defect exceeds 0.250 percent of the total number of engines in the engine family or 250 engines, whichever is less.

(2) For engine with rated power greater than or equal to 560 kW, if the number of engines in an engine family that has the defect exceeds 0.5 percent of the total number of engines in the engine family or 2 engines, whichever is greater.

(g) *How to count defects.* In most cases, you may track defects separately for each model year and engine family. For families with annual U.S.-directed production volumes under 5,000 engines, you may apply the percentage thresholds in paragraphs (e) and (f) of this section on the basis of multiple model years, for engines using the same emission-related components. To determine whether you exceed the investigation threshold in paragraph (e) of this section, count defects that you correct before they reach the ultimate purchaser. Do not count these corrected defects to determine whether you exceed the reporting threshold in paragraph (f) of this section.

(h) *Status reports.* You must send us a mid-year or end-of-year status report if you concluded an investigation during the previous six months without filing a defect report or if you have an unresolved investigation at the end of the six-month period. Include the information specified in paragraph (c) of this section, or explain why the information is not relevant. Send these

status reports no later than June 30 and December 31 of each year.

(i) *Future production.* If you identify a design or manufacturing defect that prevents engines from meeting the requirements of this part, you must correct the defect as soon as possible for any future production for engines in every family affected by the defect. This applies without regard to whether you are required to conduct a defect investigation or submit a defect report under this section.

§ 1068.505 How does the recall program work?

(a) If we make a determination that a substantial number of properly maintained and used engines do not conform to the regulations of this chapter during their useful life, you must submit a plan to remedy the nonconformity of your engines. We will notify you of our determination in writing. Our notice will identify the class or category of engines affected and describe how we reached our conclusion. If this happens, you must meet the requirements and follow the instructions in this subpart. You must remedy at your expense noncompliant engines that have been properly maintained and used. You may not transfer this expense to a dealer or equipment manufacturer through a franchise or other agreement.

(b) You may ask for a hearing if you disagree with our determination (see subpart G of this part).

(c) Unless we withdraw the determination of noncompliance, you must respond to it by sending a remedial plan to the Designated Officer by the later of these two deadlines:

(1) Within 60 days after we notify you.

(2) Within 60 days after a hearing.

(d) Once you have sold an engine to the ultimate purchaser, we may inspect or test the engine only if he or she permits it, or if state or local inspection programs separately provide for it.

(e) You may ask us to allow you to conduct your recall differently than specified in this subpart, consistent with section 207(c) of the Act.

§ 1068.510 How do I prepare and apply my remedial plan?

(a) In your remedial plan, describe all of the following:

(1) The class or category of engines to be recalled, including the number of engines involved and the model year or other information needed to identify the engines.

(2) The modifications, alterations, repairs, corrections, adjustments, or other changes you will make to correct the affected engines.

(3) A brief description of the studies, tests, and data that support the effectiveness of the remedy you propose to use.

(4) The instructions you will send to those who will repair the engines under the remedial plan.

(5) How you will determine the owners' names and addresses.

(6) How you will notify owners; include copies of any notification letters.

(7) The proper maintenance or use you will specify, if any, as a condition to be eligible for repair under the remedial plan. Describe how owners should show they meet your conditions.

(8) The steps owners must take for you to do the repair. You may set a date or a range of dates, specify the amount of time you need, and designate certain facilities to do the repairs.

(9) Which company (or group) you will assign to do or manage the repairs.

(10) If your employees or authorized warranty agents will not be doing the work, state who will and say they can do it.

(11) How you will ensure an adequate and timely supply of parts.

(12) The effect of proposed changes on fuel consumption, driveability, and safety of the engines you will recall; include a brief summary of the information supporting these conclusions.

(13) How you intend to label the engines you repair and where you will place the label on the engine (see § 1068.515).

(b) We may require you to add information to your remedial plan.

(c) We may require you to test the proposed repair to show it will remedy the noncompliance.

(d) Use all reasonable means to locate owners. We may require you to use government or commercial registration lists to get owners' names and addresses, so your notice will be effective.

(e) The maintenance or use that you specify as a condition for eligibility under the remedial plan may include only things you can show would cause noncompliance. Do not require use of a component or service identified by brand, trade, or corporate name, unless we approved this approach with your original certificate of conformity. Also, do not place conditions on who maintained the engine.

(f) We may require you to adjust your repair plan if we determine owners would be without their engines or equipment for an unreasonably long time.

(g) We will tell you in writing within 15 days of receiving your remedial plan whether we have approved or disapproved it. We will explain our reasons for any disapproval.

(h) Begin notifying owners within 15 days after we approve your remedial plan. If we hold a hearing, but do not change our position about the noncompliance, you must begin notifying owners within 60 days after we complete the hearing, unless we specify otherwise.

§ 1068.515 How do I mark or label repaired engines?

(a) Attach a label to each engine you repair under the remedial plan. At your discretion, you may label or mark engines you inspect but do not repair.

(b) Make the label from a durable material suitable for its planned location. Make sure no one can remove the label without destroying or defacing it.

(c) On the label, designate the specific recall campaign and state where you repaired or inspected the engine.

(d) We may waive or modify the labeling requirements if we determine they are overly burdensome.

§ 1068.520 How do I notify affected owners?

(a) Notify owners by first class mail, unless we say otherwise. We may require you to use certified mail. Include the following in your notice:

(1) State: ''The U.S. Environmental Protection Agency has determined that your engine may be emitting pollutants in excess of the Federal emission standards, as defined in Title 40 of the Code of Federal Regulations. These emission standards were established to protect the public health or welfare from air pollution''.

(2) State that you (or someone you designate) will repair these engines at your expense.

(3) If we approved maintenance and use conditions in your remedial plan, state that you will make these repairs only if owners show their engines meet the conditions for proper maintenance and use. Describe these conditions and how owners should prove their engines are eligible for repair.

(4) Describe the components your repair will affect and say generally how you will repair the engines.

(5) State that the engine, if not repaired, may fail an emission inspection test if state or local law requires one.

(6) Describe any adverse effects on its performance or driveability that would be caused by not repairing the engine.

(7) Describe any adverse effects on the functions of other engine components that would be caused by not repairing the engine.

(8) Specify the date you will start the repairs, the amount of time you will need to do them, and where you will do them. Include any other information owners may need to know.

(9) Include a self-addressed card that owners can mail back if they have sold the engine (or equipment in which the engine is installed); include a space for owners to write the name and address of a buyer.

(10) State that owners should call you at a phone number you give to report any difficulty in obtaining repairs.

(11) State: ''To ensure your full protection under the emission warranty on your engine by federal law, and your right to participate in future recalls, we recommend you have your engine serviced as soon as possible. We may consider your not servicing it to be improper maintenance''.

(b) We may require you to add information to your notice or to send more notices.

(c) You may not in any communication with owners or dealers say or imply that your noncompliance does not exist or that it will not degrade air quality.

§ 1068.525 What records must I send to EPA?

(a) Send us a copy of all communications related to the remedial plan you sent to dealers and others doing the repairs. Mail or e-mail us the information at the same time you send it to others.

(b) From the time you begin to notify owners, send us a report within 25 days of the end of each calendar quarter. Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first. In these reports, identify the following:

(1) The range of dates you needed to notify owners.

(2) The total number of notices sent.

(3) The number of engines you estimate fall under the remedial plan (explain how you determined this number).

(4) The cumulative number of engines you inspected under the remedial plan.

(5) The cumulative number of these engines you found needed the specified repair.

(6) The cumulative number of these engines you have repaired.

(7) The cumulative number of engines you determined to be unavailable due to exportation, theft, retirement, or other reasons (specify).

(8) The cumulative number of engines you disqualified for not being properly maintained or used.

(c) If your estimated number of engines falling under the remedial plan changes, change the estimate in your next report and add an explanation for the change.

(d) We may ask for more information.

(e) We may waive reporting requirements or adjust the reporting schedule.

(f) If anyone asks to see the information in your reports, we will follow the provisions of § 1068.10 for handling confidential information.

§ 1068.530 What records must I keep?

We may review your records at any time, so it is important that you keep required information readily available. Keep records associated with your recall campaign for three years after you complete your remedial plan. Organize and maintain your records as described in this section.

(a) Keep a paper copy of the written reports described in § 1068.525.

(b) Keep a record of the names and addresses of owners you notified. For each engine, state whether you did any of the following:

(1) Inspected the engine.

(2) Disqualified the engine for not being properly maintained or used.

(3) Completed the prescribed repairs.

(c) You may keep the records in paragraph (b) of this section in any form we can inspect, including computer databases.

§ 1068.535 How can I do a voluntary recall for emission-related problems?

If we have made a determination that a substantial number of properly maintained and used engines do not conform to the regulations of this chapter during their useful life, you may not use a voluntary recall or other alternate means to meet your obligation to remedy the noncompliance. Thus, this section only applies where you learn that your engine family does not meet the requirements of this chapter and we have not made such a determination.

(a) To do a voluntary recall under this section, first send the Designated Officer a plan, following the guidelines in § 1068.510. Within 15 days, we will send you our comments on your plan.

(b) Once we approve your plan, start notifying owners and carrying out the specified repairs.

(c) From the time you start the recall campaign, send us a report within 25 days of the end of each calendar quarter, following the guidelines in § 1068.525(b). Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first.

(d) Keep your reports and the supporting information as described in § 1068.530.

§ 1068.540 What terms do I need to know for this subpart?

The following terms apply to this subpart:

Days means calendar days.

Owner means someone who owns an engine affected by a remedial plan or someone who owns a piece of equipment that has one of these engines.

Subpart G—Hearings

§ 1068.601 What are the procedures for hearings?

If we agree to hold a hearing related to our decision to order a recall under § 1068.505, we will hold the hearing according to the provisions of 40 CFR 85.1807. For any other issues, you may request an informal hearing, as described in 40 CFR 86.1853–01.

Appendix I to Part 1068—Emission-Related Components

This appendix specifies emission-related components that we refer to for describing such things as emission-related defects or requirements related to rebuilding engines.

I. Emission-related components include any engine parts related to the following systems:
1. Air-induction system.
2. Fuel system.
3. Ignition system.
4. Exhaust gas recirculation systems.

II. The following parts are also considered emission-related components:
1. Aftertreatment devices.
2. Crankcase ventilation valves.
3. Sensors.
4. Electronic control units.

III. Emission-related components also include any other part whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance.

IV. We also consider the emission-control information label to be an emission-related component.

Appendix II to Part 1068—Emission-Related Parameters and Specifications

This appendix specifies emission-related parameters and specifications that we refer to for describing such things as emission-related defects or requirements related to rebuilding engines.

I. Basic Engine Parameters—Reciprocating Engines.
1. Compression ratio.
2. Type of air aspiration (natural, Roots-blown, supercharged, turbocharged).
3. Valves (intake and exhaust).
a. Head diameter dimension.
b. Valve lifter or actuator type and valve lash dimension.
4. Camshaft timing.
a. Valve opening—intake exhaust (degrees from top-dead center or bottom-dead center).
b. Valve closing—intake exhaust (degrees from top-dead center or bottom-dead center).

c. Valve overlap (degrees).
5. Ports—two stroke engines (intake and/or exhaust).
a. Flow area.
b. Opening timing (degrees from top-dead center or bottom-dead center).
c. Closing timing (degrees from top-dead center or bottom-dead center).
II. Intake Air System.
1. Roots blower/supercharger/turbocharger calibration.
2. Charge air cooling.
a. Type (air-to-air; air-to-liquid).
b. Type of liquid cooling (engine coolant, dedicated cooling system).
c. Performance.
3. Temperature control system calibration.
4. Maximum allowable inlet air restriction.
III. Fuel System.
1. General.
a. Engine idle speed.
b. Engine idle mixture.
2. Carburetion.
a. Air-fuel flow calibration.
b. Idle mixture.
c. Transient enrichment system calibration.
d. Starting enrichment system calibration.
e. Altitude compensation system calibration.
f. Hot idle compensation system calibration.
3. Fuel injection for spark-ignition engines.
a. Control parameters and calibrations.
b. Idle mixture.
c. Fuel shutoff system calibration.
d. Starting enrichment system calibration.
e. Transient enrichment system calibration.
f. Air-fuel flow calibration.
g. Altitude compensation system calibration.
h. Operating pressure(s).
i. Injector timing calibration.
4. Fuel injection for compression-ignition engines.
a. Control parameters and calibrations.
b. Transient enrichment system calibration.
c. Air-fuel flow calibration.
d. Altitude compensation system calibration.
e. Operating pressure(s).
f. Injector timing calibration.
IV. Ignition System for Spark-ignition Engines.
1. Control parameters and calibration.
2. Initial timing setting.
3. Dwell setting.
4. Altitude compensation system calibration.
5. Spark plug voltage.
V. Engine Cooling System—thermostat calibration.
VI. Exhaust System—maximum allowable back pressure.
VII. System for Controlling Exhaust Emissions.
1. Air injection system.
a. Control parameters and calibrations.
b. Pump flow rate.
2. EGR system.
a. Control parameters and calibrations.
b. EGR valve flow calibration.
3. Catalytic converter system.
a. Active surface area.
b. Volume of catalyst.
c. Conversion efficiency.
4. Backpressure.
VIII. System for Controlling Crankcase Emissions.
1. Control parameters and calibrations.
2. Valve calibrations.
IX. Auxiliary Emission Control Devices (AECD).
1. Control parameters and calibrations.
2. Component calibration(s).
X. System for Controlling Evaporative Emissions.
1. Control parameters and calibrations.
2. Fuel tank.
a. Volume.
b. Pressure and vacuum relief settings.
XI. Warning Systems Related to Emission Controls.
1. Control parameters and calibrations.
2. Component calibrations.

[FR Doc. 02–23801 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
November 8, 2002

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Establish Thirteen Additional Manatee Protection Areas in Florida; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH80

Endangered and Threatened Wildlife and Plants; Final Rule To Establish Thirteen Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), take action to establish 13 additional manatee protection areas in Florida. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) by reducing the number of takings. In evaluating the need for additional manatee protection areas, we considered the needs of the manatee at an ecosystem level with the goal of ensuring that adequate, protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view toward the manatee's recovery. We are designating manatee protection areas in Brevard, Charlotte, Citrus, De Soto, Hillsborough, Lee, Pinellas, and Sarasota Counties. Four of the sites are manatee sanctuaries, where all waterborne activities are prohibited throughout all or part of the year, with exceptions for adjoining property owners. The remaining nine sites are manatee refuges, in which certain waterborne activities are prohibited or regulated for all or some portion of the year. The previously proposed and emergency-designated South Gandy Navigation Channel Manatee Refuge in Pinellas County has been withdrawn. We also announce the availability of an environmental assessment for this action.

DATES: This rule is effective November 8, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Jim Valade (see **ADDRESSES** section), telephone (904) 232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Florida manatees, a subspecies of the West Indian manatee (Domning and Hayek, 1986), live in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and occasionally are seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Status of the Florida Manatee

Long-term studies, as described below, suggest four relatively distinct regional populations of manatees in Florida—(a) The Northwest Region, consisting of the counties along the Gulf of Mexico from Escambia County east and south to Hernando County, Lafayette and Gilchrist Counties, and Marion County adjacent to the Withlacoochee River; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south; Volusia, Flagler, and Marion Counties adjacent to the St. Johns River or its tributaries; and Lake and Seminole Counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County; the portion of Monroe County adjacent to the Florida Bay and the Florida Keys; Okeechobee County; and counties along the lower portion of the St. Johns River north of Palatka, which includes Putnam, St. Johns, Clay and Duval Counties; and (d) the Southwest Region, consisting of the counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County and DeSoto, Glades, and Hendry Counties.

Despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States (O'Shea 1988, O'Shea *et al.* 1992, Lefebvre *et al.* 1995). Even though many manatees aggregate at warm-water refuges in winter and most if not all such refuges are known, direct counting methods (*i.e.*, by aerial and ground surveys) have been unable to account for uncertainty in the number of animals that may be away from these refuges at any given time, the number of animals which are not seen because of turbid water, and other factors. The use of mark-resighting techniques to estimate manatee population size based on known animals in the manatee photo-identification database also has been impractical, as the proportion of unmarked manatees cannot be estimated.

The only data on population size have been uncalibrated indices based on maximum counts of animals at winter refuges made within one or two days of each other. Based on such information in the late 1980s, the total number of manatees throughout Florida was known to be at least 1,200 animals (Service 2001). Because aerial and ground counts at winter refuges are highly variable depending on the weather, water clarity, manatee behavior, and other factors (Packard *et al.* 1985, Lefebvre *et al.* 1995), interpretation of analyses for short-term trends is difficult (Packard and Mulholland 1983, Garrott *et al.* 1994). Strip-transect aerial surveys are used routinely to estimate dugong (*Dugong dugon*) population size and trends (Service 2001); however, they are difficult to adapt to manatees because of the species' much more linear (*i.e.*, coastal and riverine) distribution. This survey method was tested in the Banana River, Brevard County, and recommended for use in that area to monitor manatee population trends (Miller *et al.* 1998). This approach may also have utility in the Ten Thousand Islands-Everglades area, where manatee population size and distribution is poorly understood.

Beginning in 1991, the former Florida Department of Natural Resources initiated a statewide aerial survey program to count manatees in potential winter habitat during periods of severe cold weather (Ackerman 1995). These surveys are much more comprehensive than those used to estimate a minimum population during the 1980s. The highest two-day minimum count of manatees from these winter synoptic aerial surveys and ground counts is 3,276 manatees in January 2001; the highest count on the east coast of Florida is 1,756 and the highest on the

west coast is 1,520, both in 2001. However, the manatee counts of March 2002, when weather conditions were less favorable, resulted in a total count of 1,796. The Florida Fish and Wildlife Conservation Commission (FWCC) stated in their March 6, 2002, press release that the ''low count merely reflects the poor visibility during the count, not a dramatic change in the manatee population.'' Due to the nearly ideal conditions for the 2001 synoptic survey, the results of that survey are considered the best available estimate of the current minimum population size (*i.e.*, 3,276).

It remains unknown what proportions of the total manatee population were counted in these surveys. No statewide surveys were done during the winters of 1992–93 or 1993–94 because of the lack of strong mid-winter cold fronts. These uncorrected counts do not provide a basis for assessing population trends. However, trend analyses of temperature-adjusted aerial survey counts show promise for providing insight to general patterns of population growth in some regions (Garrott *et al.* 1994, 1995; Craig *et al.* 1997; Eberhardt *et al.* 1999).

It has been possible to monitor the number of manatees using the Blue Spring (Volusia County) and Crystal River (Citrus County) warm-water refuges. At Blue Spring, with its unique combination of clear water and a confined spring area, it has been possible to count the number of resident animals by identifying individual manatees from scar patterns. The data indicate that this group of animals has increased steadily since the early 1970s when it was first studied. During the 1970s the number of manatees using the spring increased from 11 to 25 (Bengtson 1981). In the mid-1980s about 50 manatees used the spring (Service 2001), and by the winter of 1999–2000, the number had increased to 147 (Hartley 2001).

On the northwest coast of Florida, the clear, shallow waters of Kings Bay (Citrus County) have made it possible to monitor the number of manatees using the warm-water refuge in Kings Bay at the head of the Crystal River. Large aggregations of manatees apparently did not exist there until recent times (Service 2001). The first careful counts were made in the late 1960s. Since then manatee numbers have increased significantly. In 1967 to 1968, Hartman (1979) counted 38 animals in Kings Bay. By 1981 to 1982, the maximum winter count had increased to 114 manatees (Powell and Rathbun 1984), and in December 1997, the maximum count was 284 (Buckingham *et al.* 1999). Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River and Blue Spring. Three manatee sanctuaries (areas in which waterborne activities are restricted) in Kings Bay were established in 1980; an additional three were added in 1994, and a seventh in 1998. The increases in counts at Blue Spring and Crystal River are accompanied by estimates of adult survival and population growth that are higher than those determined for the Atlantic coast (Eberhardt and O'Shea 1995, Langtimm *et al.* 1998, Eberhardt *et al.* 1999).

While aircraft synoptic surveys provide a ''best estimate'' of the minimum manatee population size, there are no estimates or confidence intervals for the size of the Florida manatee population that have been derived by reliable, statistically based, population-estimation techniques. A *census* is a complete count of individuals within a specified area and time period. A *survey,* in contrast, is an incomplete count. With the exception of a few places where manatees may aggregate in clear, shallow water, not all manatees can be seen from aircraft because of water turbidity, depth, surface conditions, variable times spent submerged, and other considerations. Thus, results obtained during typical manatee synoptic surveys yield unadjusted partial counts. While these results are of value in providing information on where manatees occur, likely relative abundance in various areas, and seasonal shifts in manatee abundance, they do not provide good population estimates, nor can they reliably measure trends in the manatee population. Consequently, the Florida Manatee Recovery Plan (Third Version) concludes that ''Despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in size of the overall manatee populations in the southeastern United States'' (Service 2001).

Population models employ mathematical relationships based on survival and reproduction rates to estimate population growth and trends in growth. A deterministic model (a model in which there are no random events) using classical mathematical approaches and various computational procedures with data on reproduction and survival of living, identifiable manatees suggests a maximum population growth rate of about 7 percent per year, excluding emigration or immigration (Eberhardt and O'Shea 1995). This maximum was based on studies conducted between the late 1970s and early 1990s in the well protected winter aggregation area at Crystal River and did not require estimates of population size. The analysis showed that the chief factor affecting the potential for population growth is survival of adults.

Estimated adult survival in the Atlantic Region (a larger region with less protection) has suggested a slower rate or no population growth over a similar period. This modeling shows the value of using survival and reproduction data obtained from photo-identification studies of living manatees to compute population growth rates with confidence intervals, providing information which can be used to infer long-term trends in the absence of reliable population size estimates. However, collection of similar data has been initiated only recently for other areas of Florida (notably from Tampa Bay to the Caloosahatchee River beginning in the mid-1990s), and none is available over much of the remaining areas used by manatees in southwestern Florida.

A population viability analysis (PVA) (a model in which random events, such as red tide and extremely cold winters, are incorporated) was carried out for manatees based on age-specific mortality rates estimated from the age distribution of manatees found dead throughout Florida from 1979 through 1992 (Marmontel *et al.* 1997). This method of estimating survival relies on certain assumptions that were not fully testable; yet, results again point out the importance of adult survival to population persistence.

Given population sizes that may reflect current abundance, the PVA showed that if adult mortality as estimated for the study period were reduced by a modest amount (for example, from 11 percent down to 9 percent), the Florida manatee population would likely remain viable for many years. However, the PVA also showed that slight increases in adult mortality would result in extinction of manatees over the long term.

The above review demonstrates that the basis for statewide population size ''estimates'' of any kind is scientifically weak for estimating population trends in manatees. The weight of scientific evidence suggests that the potential for population increases over the last 2 decades is strong for two protected aggregation areas. New population analyses, based on more recent (since 1992) information, are not yet available in the peer-reviewed literature. These analyses will be fundamental to management decisions that are more relevant to the contemporary situation.

In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (Wildlife Trust 2001). The MPSWG stated that for the Northwest and Upper St. Johns River regions, available evidence indicated that there had been a steady increase in animals over the last 25 years. Such growth was consistent with the conditions of these regions—low numbers of human-related deaths, high estimates of adult survival, and good habitat. The statement was less optimistic for the Atlantic Region due to an adult survival rate that was lower than the rate necessary to sustain population growth. The MPSWG believed that this region had likely been growing slowly in the 1980s but may then have leveled off or even possibly declined. They considered the status of the Atlantic Region to be ''too close to call.'' Such finding was consistent with high levels of human-related and, in some years, cold-related deaths in this region. Regarding the Southwest Region, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Region was similar to the Atlantic Region and ''substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions.'' The Southwest Region was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.*, red tide and severe cold).

Recent information suggests that the overall manatee population has grown since the species was listed in 1967 (50 CFR 17.11). Based on data provided at the April 2002 Manatee Population Ecology and Management Workshop, we believe that the Northwest and Upper St. Johns River regions are doing well and are approaching demographic benchmarks (also referred to as population benchmarks) established in the Florida Manatee Recovery Plan for reclassification to threatened. We also believe that the Atlantic Region is close to meeting the downlisting benchmark for adult survival, at a minimum, and is close to meeting or exceeding other demographic criteria. We are less optimistic, however, regarding the Southwest Region. Although data are still insufficient or lacking to compare the Southwest Region's status to the downlisting/delisting criteria, preliminary data for adult survival indicate that this Region is below the benchmarks established in the recovery plan.

Although we are optimistic about the potential for recovery in three out of the four regions, it is important to clarify that in order to downlist or delist the manatee pursuant to the ESA, all four regions must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan (Service 2001). Additionally, either action would be based on a status assessment for the species throughout its range (United States and Carribean) that will consider the factors, as described in section 4(a)(1) of the ESA, that determine whether any species is categorized as endangered or threatened.

In order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While suggestions of increasing population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status. Pursuant to our mission, we continue to assess this information with the goal of meeting our manatee recovery objectives.

Threats to the Species

Human activities, and particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products [section 101(a)] and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The human population of Florida has grown by 124 percent since 1970, from 6.8 million to 15.2 million residents (U.S. Census Bureau), and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waterways. In 2001, 943,611 vessels were registered in the State of Florida (FWCC 2002). This represents an increase of 42 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

Increases in the human population and the concomitant increase in human activities in manatee habitat compound the effect of such activities on manatees. Human activities in manatee habitat include direct and indirect effects. Direct impacts include injuries and deaths from watercraft collisions, deaths

from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect effects include habitat alteration and destruction, and include such activities as the creation of artificial warm water refuges, decreases in the quantity and quality of warm water in natural spring areas, changes in water quality in various parts of the State, the introduction of marine debris, and other, more general disturbances.

Manatee mortality has continued to climb steadily. Average annual total mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2). In 2001, a total of 336 manatee deaths were documented. Total deaths over the past 5 years are about two and a half times greater than they were in the first half of the 1980s. Although a large part of this increase may be due to an increase in manatee abundance, rapid growth in human activities and development may also be significant factors. Over the past 5 years, human-related manatee mortality has accounted for 33 percent of all manatee deaths, with watercraft-related deaths accounting for nearly 27 percent. These rates are about 5 to 6 percent higher than the early 1980s, when about 28 percent of all deaths were human-related and 21 percent were due to watercraft (Marine Mammal Commission Annual Report to Congress 2002).

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (Service 2002). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

Collisions with watercraft are the largest source of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 1,050 manatees (from a total carcass count of 4,240) are confirmed victims of collisions with watercraft (1978 to 2001). This number may underestimate the actual number of watercraft-related mortalities since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (Florida Marine Research Institute Manatee Mortality Database 2002). The last 5 years have been record years for the number of watercraft-related mortalities (Marine Mammal Commission Annual Report to Congress 2002).

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (Florida Marine Research Institute Manatee Mortality Database 2002). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 159 manatee deaths between 1978 and 2001, or approximately 4 percent. While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water. We have been working, through an interagency task force, with various Federal and State agencies to retrofit these structures with reversing mechanisms that prevent manatee crushings.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include death caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 115 manatee deaths since 1978, an average of more than 4 deaths per year. As with watercraft-related mortalities, these deaths also appear to be increasing, with 40 of these deaths occurring between 1997 and 2001. This is an average of 8 deaths per year over the last 5 years attributable to this cause.

Activities affecting manatees at warm water sites include boat operations, recreational fishing, directed interactions between humans and manatees (including pursuit by swimmers and boats), and other disturbances. Specifically, boats operating within manatee aggregations, anglers casting fishing lines into aggregations, boaters and/or swimmers pursuing manatees, and other disruptions cause animals to disperse and become displaced from warm water refuges. Displaced animals may be exposed to cold water temperatures below known physiological thresholds. Exposure to cold may cause hypothermia or cold stress, conditions known to kill manatees (Worthy 1999). In addition, prolonged, nonlethal exposure to cold may affect calving success and fecundity (Rommel 2002).

Tyson (1998) documented boating and fishing activity in warm water discharges. Observations included anglers maneuvering boats within manatee aggregations, boat operators looking for and petting manatees, boaters attempting to swim with manatees, anglers wading and casting into manatee aggregations, manatees being hooked and maneuvered while entangled, a manatee struck with an anchor, manatees being provided with water, etc. These activities resulted in the displacement of animals, manatees hooked or entangled in fishing line, possible boat strikes, and other adverse interactions. Swimmer interactions were further documented by Wooding (1997) at Three Sisters Springs, Citrus County, Florida. Some manatees left the, then unprotected, spring area when boats with swimmers approached at the start of the day. Other manatees left when the first swimmers entered the water. Those that remained either ignored swimmers or turned away and swam out of reach; a small number sought out physical contact with swimmers. Gorzelany observed manatees being ''crowded out'' (displaced) by large numbers of swimmers searching out encounters with wintering manatees (Mote Marine Laboratory, pers. comm. 2001).

Anglers have been observed casting into manatee aggregations at warm water sites, hooking and entangling manatees (Tyson 1998). Discarded fishing line, at times caught on water bottoms, plants, and structures, is also known to entangle manatees and is occasionally ingested by manatees. Entangled monofilament fishing line may cut into the manatees' skin; manatees are frequently scarred by these cuts and flippers are occasionally amputated through the cutting effect of the line (USFWS unpublished data). There are records of manatees having died from entanglements due to infection and septicemia associated with these injuries. Manatees ingesting fishing line and hooks are known to die from intestinal obstructions, tears in the gut, and other complications (Florida Marine Research Institute Manatee Mortality Database 2002).

In 2001, fifteen manatees were rescued from fishing gear, including seven from monofilament line. The number of such incidents has been increasing over time; in the early phases of our manatee rescue, rehabilitation, and release program, no more than one or two incidents were documented per year. Recent annual totals have ranged between ten and fifteen reported incidents. Since 1973, a total of 124 gear-associated manatees have been rescued, including 50 from monofilament entanglement and ingestion (Service, unpubl. data). In addition to these rescues, at least 14 deaths have been attributed to monofilament fishing line and others are suspected (Florida Marine Research Institute Manatee Mortality Database 2002).

Boats operating within and adjacent to warm water aggregations of manatees pose a particularly serious threat to wintering manatees, since manatees are often killed or injured as a result of collisions with watercraft. The likelihood of adverse manatee encounters with watercraft increases in the vicinity of and within unprotected wintering sites because of the greater concentration of manatees and manatee activity in these areas. In 2001, at least 25 percent (82 of 325) of known manatee deaths were caused by watercraft, as was discussed above. This was the second highest year on record (out of more than 27 years of monitoring) for total number of watercraft-related manatee deaths. Nonlethal injuries are also documented by researchers who monitor the accumulation of scars from boat strikes on individual manatees on an annual basis. As documented in the U.S. Geological Survey's (USGS) database, most animals that are known to have been struck are struck multiple times. Such nonlethal injuries may reduce calf production and survival in wounded females (O'Shea *et al.* 2002).

The FWCC's manatee carcass salvage program has documented the presence of watercraft-killed manatees within the vicinity of warm water discharges. While the presence of a carcass does not necessarily indicate that a collision occurred at that site, there are a few cases where collisions have been documented at warm water sites. In one instance, a tug/barge maneuvering within the approach to a warm-water aggregation site ran over a manatee, crushing and killing the animal between the hull and the water bottom (Florida Marine Research Institute Manatee Mortality Database 2002). In Lee County, two manatees using a secondary warm-water site located at the foot of a navigation lock were struck and killed by watercraft operating nearby (Florida Marine Research Institute Manatee Mortality Database 2002). Researchers monitoring winter manatee aggregations have noted the frequent and regular occurrence of nonlethal, fresh cuts on animals using these sites, particularly at the outset of the winter season (Hartley, Florida Division of Parks and Recreation, pers. comm. 2001; Curtin, USGS Contractor, pers. comm. 2001).

Manatee Protection Areas

To minimize disturbance to wintering manatees at both industrial and natural warm water sites during this critical time of year, we and the State of Florida have implemented a series of Federal sanctuaries and State protection areas at and near these sites. To date, the majority of known warm water sites used by manatees in Florida have been protected. Manatee protection areas have also been established at other sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. We are providing additional protection or enhancing existing protection areas by establishing additional manatee sanctuaries and/or manatee refuges at thirteen locations in Florida.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Synopsis of Manatee Lawsuit Settlement

In *Save the Manatee Club, et al.* v. *Ballard, et al.,* Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the ESA, MMPA, National Environmental Policy Act (NEPA), and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001. Under the terms of the settlement, we agreed to the following:

- Submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the FWCC also voted to settle *Save the Manatee* v. *Egbert,* Case No. 90–00–400CIV17–WS (N.D.Fla) (the State case). That settlement, which was entered by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. We also agreed to evaluate the propriety of invocation of our emergency sanctuary/refuge designation authority. We published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000, and held a series of six public workshops in December 2000. We received 1,752 comments in response to the advance notice, and 396 people attended the public workshops. The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). A 60-day comment period followed this publication. In addition, we held four public hearings in September 2001, to provide the public an opportunity to comment. We held these hearings in Crystal River, Clearwater, Venice, and Melbourne, Florida. As a result of both the public hearings and written submissions, we received approximately 3,500 comments. These comments are summarized and responded to in the ''Summary of Comments and Recommendations'' section of this rule.

On January 7, 2002, we published a final rule designating two sites in Brevard County, the Barge Canal and Sykes Creek, as Federal manatee refuges (67 FR 680).

• Revise the Manatee Recovery Plan. We were required, by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate our final revised Recovery Plan for signature no later than February 28, 2001. We published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, we made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan was finalized on October 30, 2001.

• Pursue a rulemaking proceeding to adopt incidental take regulations under the MMPA. By March 6, 2001, we were required to submit to the **Federal Register** an advance notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the **Federal Register** notice and invitation letters to the Plaintiffs and Interveners. The advance notice was published in the **Federal Register** on March 12, 2001, and copies of the advance notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. We will determine if any anticipated take by entities participating in the rulemaking process meets the requirements set forth in section 101(a)(5) of the MMPA, 16 U.S.C. 1371(a)(5). The process should result in—(1) If the requirements set forth in section 101(a)(5) of the MMPA are deemed satisfied, a proposed and final MMPA incidental take regulation; (2) preparation of appropriate NEPA documentation which will identify and assess the direct, indirect, and cumulative effects of the overall MMPA regulation (either an Environmental Assessment or an Environmental Impact Statement (EIS)); (3) detailed assessments of agency programs, including cumulative effects on manatees and their habitat, for any activities covered under the regulation; and (4) consultation pursuant to section 7 of the ESA. We have determined that we will prepare an EIS in association with this action. Draft and final products are due on November 5, 2002, and May 5, 2003, respectively. If the requirements of the MMPA cannot be met, we must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the **Federal Register** with the basis for denying the request. We must publish our negative finding by May 5, 2003. We will conduct public hearings on proposed rules as appropriate.

• By March 6, 2001, furnish Plaintiffs and Interveners with a letter describing how we will spend increased enforcement resources in FY 2001. This letter was sent on March 6, 2001.

• Revise, and make available for public review, our ''interim guidance'' for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. We were required to submit this document by March 6, 2001. The revised document appeared in the **Federal Register** on March 14, 2001 (66 FR 14924–32). We agreed to provide at least thirty (30) days of public comment and actually provided sixty (60) days comment on the revised draft guidance. The final decision on the guidance was released to the public on August 13, 2001, and published in the **Federal Register** on August 21, 2001 (66 FR 43885).

• Provide written progress reports on the status of tasks agreed upon in the Settlement Agreement every 6 months. The first report was provided to the parties on July 5, 2001 and subsequent reports have been provided accordingly.

• Provide copies of concurrence and non-concurrence letters to Plaintiffs and Interveners. Whenever we send a letter to the Corps in response to the Corps' determination that a project ''may affect'' the manatee or ''may affect but is not likely to adversely affect'' the manatee, we are required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These letters have been provided accordingly.

• Provide copies of Biological Opinions (BO). Whenever we issue a final BO regarding the effect of a particular project on manatees or manatee critical habitat, we are required to concurrently make a copy of that opinion available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the opinion by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These biological opinions have been provided accordingly.

• On July 9, 2002, the United States District Court for the District of Columbia ruled that the Federal Government violated the Settlement Agreement by failing to designate a sufficient number of refuges and sanctuaries throughout peninsular Florida. The Court ruled that we must complete the rulemaking with respect to the 16 proposed areas contained in the August 10, 2001, proposal. On July 31, 2002, the Court subsequently determined that this must be completed by November 1, 2002. The Court also determined that the sites in this final rule, in conjunction with the two sites established previously, ''would satisfy the general distribution requirement'' of the Settlement Agreement. On September 20, 2002, we published an emergency rule designating seven sites as manatee refuges and sanctuaries on Florida's west coast for a period of 120 days (67 FR 59408).

Coordination With State Actions

An extensive network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our recent evaluation was to identify gaps in the existing network and to establish appropriate measures for filling those gaps. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area.

We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

The sites contained in this rule were selected based on the criteria described below (see ''Site Selection Process and Criteria'' section), prior to the disclosure of terms of the proposed settlement in the State case, *Save the Manatee* v. *Egbert,* Case No. 90–00–400CIV17–WS (N.D.Fla), entered on November 7, 2001. That settlement contains a list of sites that the FWCC has and will be evaluating for potential State designation of speed zones and sanctuaries. There is considerable overlap in terms of sites identified in that settlement and the sites discussed in our proposed rule. The fact that the

State's list of sites is more expansive than the list in our rule does not indicate a determination on our part that sites on the State's list, and not considered by us, do not warrant protection, but is rather a reflection of our focusing on sites for which we believe we can provide the most effective protection for manatees, given our staffing and funding limitations.

We have been coordinating closely with the FWCC, since the terms of their proposed settlement were disclosed, to determine which sites are most appropriate for State designation and which are better suited for Federal designation. At the time our proposed rule was prepared, final agreement had not been reached on the terms of the proposed State settlement. Pursuant to the terms of our previously described Settlement Agreement, we were required to submit our proposed rule to the **Federal Register** by April 2, 2001, which was prior to the time in which the FWCC made a final decision regarding sites they intend to evaluate. The deadline was extended on several occasions by agreement of the parties in an attempt to negotiate a means to avoid duplication of effort and better serve the public. However, eventually, we were required to proceed with publication in advance of finalization of the State's settlement agreement. Therefore, there are overlaps between our rule and State actions.

We strongly believe that the State should have leadership in establishing additional manatee protection areas. The State has taken a leading role in this initiative. Pursuant to a meeting of the Florida Fish and Wildlife Conservation Commissioners on September 12, 2002, the State established a manatee protection area at Blue Waters and described other sites to be designated as protection areas. Local governments have also enacted protective measures at some of these sites. We, however, must also meet our settlement obligations. In the future, if the State or counties implement measures at these sites that, in our view, provide comparable protection for manatees, we will consider withdrawing or modifying established designations through the rulemaking process. In addition to acknowledging State and county roles in this process and our legal obligations, we recognize the importance of their actions and the role that they play in manatee recovery. These actions are a priority for us and we will continue to promote these and other actions to fulfill our recovery responsibilities. In furtherance of this, we are publishing a **Federal Register** notice seeking public input on additional manatee protection measures. The public's input will be used to help determine the extent of additional protections necessary for manatee recovery.

Site Selection Process and Criteria

In preparation for making a decision on sites to propose as manatee protection areas, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us to develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

We published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39); 28 participants specifically opposed and 8 specifically supported the areas. An additional 36 comments were not specific to the topic or discussed other items. Fifteen commenters provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics.

We selected sites for inclusion in this rule from the list of sites developed through the preliminary meetings and the information gathered at the public workshops and in response to the advance notice. We based site selection on four factors—(1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site or similar sites due to waterborne activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available information, including aerial survey and mortality data and additional information from the Florida Marine Research Institute and the USGS Sirenia Project. These data were supplemented with information from manatee experts, the public, and our best professional judgment. In determining the potential effectiveness of our actions, we considered the costs of managing and enforcing manatee protection areas and the benefits (or lack thereof) to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of manatee sanctuaries in the waters bordered by private property entail additional administrative burdens in terms of identifying and providing access to affected residents. Finally, we evaluated the effectiveness of our actions against the likely effectiveness of anticipated similar actions by State and/or local governments. It was our goal to avoid sites that could be most effectively addressed by State or local government, and, where we felt we must act in addition, we have made every effort to make our designations consistent with the existing State or local designations.

Previous Federal Action

On August 10, 2001, we published in the **Federal Register** a proposed rule to establish 16 additional manatee protection areas (66 FR 42318), including the areas designated in this rule. In the proposed rule, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press, Citrus County Chronicle, Daytona Beach News-Journal, and Naples Daily News,* on August 31, 2001, in the *St. Petersburg Times, Miami Herald, Orlando Sentinel, Charlotte Sun-Herald, and Tallahassee Democrat,* and on September 4, 2001, in *Florida Today.* The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River,

Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11, 2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 of these individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on concerns regarding potential economic effects and inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from the State of Florida. The remaining comments were from individuals or representatives of organizations or groups. The State supported the proposed action. On January 7, 2002, we published a final rule that established two of the 16 proposed areas as manatee protection areas located within the water bodies commonly known as the Barge Canal and Sykes Creek, in Brevard County (67 FR 680). On September 20, 2002, we published an emergency rule designating four of the remaining areas proposed in August, 2001, as manatee sanctuaries and three as manatee refuges in Citrus, Pinellas, and Hillsborough Counties for a period of 120 days (67 FR 59408).

The September 20, 2002, emergency rule stated that the emergency rule would remain in effect through January 20, 2003. However, this final rule replaces the emergency rule. Therefore, the manatee protection areas set forth in the September 20, 2002, rule are no longer in effect. From the emergency rule to this final rule, we have implemented changes, both in the sizes of many of the protection areas and in the timeframes for restrictions. Details of these changes are described later in this document in a section called ''Summary of Changes From the Proposed Rule.''

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**. As discussed in ''Areas Designated as Manatee Sanctuaries and Refuges,'' we need to establish the manatee protection areas in and adjacent to the warm water sites prior to the time when manatees will be seeking warmer waters for the winter and need to ensure that manatees will be protected from waterborne activities at non-winter sites. A 30-day delay in making these sites effective would result in further risks of manatee mortality, injury, and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees at these 13 sites is imminent, we believe good cause exists to make this rule effective upon publication. In a proposed rule of August 10, 2001 (66 FR 42318), we solicited public comment on the 13 manatee protection areas established by this rule as required by 5 U.S.C. 553(c). The 30-day delay would be contrary to the public interest because of the imminent threat to manatees and the need to provide immediate protection.

Definitions

Idle speed means the minimum speed needed to maintain watercraft steerage.

Planing means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is: (1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

Slow speed (channel exempt) designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

Slow speed (channel included) means that the slow-speed designation applies to the entire marked area, including within the designated channel.

Wake means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

Exceptions

Existing regulations provide regulatory relief for watercraft access to private residences, boat houses, and boat docks located in manatee sanctuaries (50 CFR 17.108). Sanctuaries described in this final rule are located in areas adjoining property owned by public and other private property owners. Public and private property owners will be permitted to access and maintain property within respective manatee sanctuaries. During the restricted period (either seasonal or year-round) watercraft operations (conducted by appropriately identified vessels) will be restricted to idle speed. Maintenance activities necessary for maintaining property and waterways during this period of time are also allowed, subject to any applicable Federal, State, and/or local government permitting requirements. We believe that these exceptions will ensure that this rule has a minor impact on activities conducted by public and private property owners.

Summary of Comments and Recommendations

Written comments and oral statements presented at the public hearings and received during the comment period are addressed in the following summary. Comments of a similar nature or point are grouped into a number of general issues. Comments and our response to each are discussed below.

Comment 1: The FWCC noted our intention to consider withdrawing Federal designations should State or local governments enact comparable protective measures, and recommended that we define the means by which we will determine if actions by State or local governments provide a comparable level of protection.

Response: The 13 manatee refuges and sanctuaries covered in this rulemaking were originally proposed in our August 10, 2001, proposed rule. While these sites are important for manatee conservation and meet the criteria for Federal protection, when we established the Barge Canal and Sykes Creek manatee refuges on January 7, 2002 (67 FR 680), we believed the remaining sites were of lesser urgency. We were also not convinced at the time of final rule publication that these protection measures were necessary for recovery of the species. Therefore, in our January 7, 2002, final rule, we postponed decision-making on these

sites until December 2002 and stated that we would consider withdrawing our proposals should State or local government implement suitable protection.

However, on July 9, 2002, the Court ruled that this approach did not comply with our Settlement Agreement requiring that we designate additional refuges and sanctuaries throughout peninsular Florida within a certain time frame. On July 31, 2002, the Court further ordered us to complete our rulemaking process on these sites by November 1, 2002.

Subsequent to our August 2001 proposal, State and local governments have adopted and, in some cases, implemented manatee protection measures at several of the manatee refuges and sanctuaries established in this rule. In some cases the State or local measures are more restrictive than our original proposals, while in others they are less restrictive. Based upon new information resulting from these activities and comments received, we have made several modifications to our original proposals in order to ensure, when possible, that Federal, State, and local measures are consistent and clear to the public and can be consistently enforced by all entities (see ''Summary of Changes from the Proposed Rule'' section). We do not believe that any of these changes will result in reduced manatee protection from our original proposal. In cases where we have increased our restrictions beyond those originally proposed, we have concluded that this action will have negligible effects on the regulated public beyond the actions already promulgated by State or local governments.

In the future, we may withdraw or revise our designations if, in our view, State and local government(s) provide a comparable level of protection. Since it is not currently possible to measure the precise level of effectiveness of any particular manatee protection program, we must rely upon the best professional judgment of our biologists to determine whether alternative State or local measures are comparable to ours. We acknowledge that there may be more than one way to provide adequate manatee protection at any given location. In making our determination, we will consider factors such as areal extent of the measures, duration of measures, and types of restrictions (*e.g.*, no entry, motorboat prohibited, idle speed, slow speed, etc.). Our final determination will be based on our judgment of whether a State or local management plan provides comparable protection by reducing or eliminating take to the same or greater extent as our actions.

Comment 2: The FWCC noted that appropriate posting of designated manatee protection areas is a critical element in the success of manatee protection zones, and recommended that we schedule meetings with the FWCC, Navigation Districts, local governments, and others to develop a clear delineation of responsibilities for posting signs for federally designated areas.

Response: We agree that appropriate signage is critical to the safe and effective implementation of manatee protection areas. We will continue to involve the FWCC, Inland Navigation Districts, local governments, and the U.S. Coast Guard, as appropriate, in the development of sign plans for these Federal manatee protection areas. By coordinating with these agencies, we will minimize any discrepancies and/or disparities between signs, sign placement, and legal authorities. These actions will minimize inconsistencies and confusion amongst the boating public.

Comment 3: The FWCC expressed concern regarding enforcement of the new manatee protection areas and recommended that we clarify that we are responsible for enforcement of these areas. They also expressed concern that establishment of Federal manatee protection areas in and adjacent to State speed zones, which carry different penalties for violation, may generate confusion among the boating public.

Response: Manatee protection areas are only effective to the extent that boaters comply with posted regulations. As such, enforcement is an essential component of our effort to establish additional manatee protection areas. FWCC officers are authorized to enforce Federal manatee protection area regulations, just as our law enforcement officers can and do enforce State manatee protection regulations. We welcome any assistance that the FWCC and other enforcement entities can provide in the enforcement of these manatee protection areas, but we have made a commitment to ensure that adequate enforcement is provided for these areas. The ability to adequately post and enforce designated sites was a factor in our site selection process.

Comment 4: The FWCC noted that we delayed action on 14 sites identified in the proposed rule until December 2002 to give State and local governments the opportunity to enact comparable protective measures. The FWCC stated that they have no plans to consider rules in two of the sites in the proposed rule (Little Sarasota Bay and Shell Island) and that no final State action would be taken on sites in Tampa Bay by December 2002.

Response: While we had originally delayed action on these sites until December 2002, to give other agencies an opportunity to enact comparable measures, we are promulgating a rule at this time to ensure compliance with the Court's orders of July 9, 2002, and July 31, 2002, and to ensure compliance with the terms of the Settlement Agreement. Included in our rule are measures to protect Little Sarasota Bay and Shell Island and to designate protection at sites in Tampa Bay.

Comment 5: Several commenters recommended establishing manatee protection areas at several sites in addition to, or in lieu of, the 16 sites identified in the proposed rule. Other sites recommended for consideration included—the downtown Jacksonville portion of the St. John's River, Duval County; Goodby's Creek, Duval County; the Tomoka River, Volusia County; the Canaveral sewer outfall, Brevard County; the Indian River southeast of the railroad bridge causeway, Brevard County; the Haulover Canal observation area, Brevard County; the Riviera Beach power plant outfall, Palm Beach County; the Weeki Wachee River, Hernando County; the Little Manatee River, Hillsborough County; the Manatee and Braden Rivers, Manatee County; Charlotte Harbor, Charlotte County; Bokeelia Point, Lee County; San Carlos Bay, Lee County; the Caloosahatchee River, Lee County; Mullock Creek/Ten Mile Canal, Lee County; Estero Bay, Lee County; Everglades National Park, Collier and Monroe Counties; Faka Union Canal/Port of the Islands, Collier County; and Ten Thousand Islands/Chokoloskee Bay, Collier County.

Response: In designating manatee protection areas throughout peninsular Florida, we considered the needs of the species on an ecosystem level in order to address life requirements of the manatee and to progress toward recovery of the species. All of the above-mentioned sites, and many others, were considered at some point in the evaluation process. Some, such as the Weeki Wachee River, Goodby's Creek, and the Canaveral sewer outfall, did not meet our criteria for further consideration because adequate protective measures are currently in place at these sites and the likelihood of future take at these sites is limited, provided the existing regulations are appropriately enforced. Others, such as Caloosahatchee River, Everglades National Park, and Ten Thousand Islands/Chokoloskee Bay, did not meet our criteria for designation at this time

because it is as yet unclear, based on current information, what additional protective measures could be implemented to effectively reduce on-going watercraft-related manatee mortality in these areas. We note that even the commenter who recommended we take immediate action in the Ten Thousand Islands/Chokoloskee Bay area could offer no specific recommendation as to what to do in this area. We agree that the remaining sites mentioned above (the St. John's River in downtown Jacksonville, the Tomoka River, the Haulover Canal observation area, the Indian River southeast of the railroad bridge causeway, the Riviera Beach power plant outfall, the Little Manatee River, the Manatee and Braden Rivers, Charlotte Harbor, Bokeelia Point, Estero Bay, San Carlos Bay, Mullock Creek/Ten Mile Canal, and Faka Union Canal/Port of the Islands) may warrant further consideration, particularly if manatees do not make satisfactory progress toward recovery. However, we do not agree with the commenters that action at any of these sites is any more appropriate and/or feasible than the actions identified in our August 10, 2001, proposed rule.

We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. We encourage State and local measures to improve manatee protection. Additionally, we are publishing a **Federal Register** notice seeking public input on additional manatee protection needs. This information will be used to help determine the extent of additional protection needed for recovery.

Comment 6: In recommending action at the sites identified in Comment 5, some commenters noted that several of the sites identified in our proposed rule were under consideration for designation by the FWCC and/or local governments, and questioned our decision to include such sites in our proposed rule, given the likelihood that these sites would be appropriately regulated without Federal designation.

Response: Several of the sites in our proposed rule overlapped with recent State or local actions (see our response to ''Comment 1''). We first became aware of this overlap when the Plaintiffs in the State lawsuit made the terms of their draft Settlement Agreement public. Due to our inability to discuss pending legal actions with the FWCC, and our need to meet our settlement obligations, we published the proposed rule. We are publishing this final rule at this time because these actions will reduce the take of manatees and are necessary to fulfill our settlement obligations.

Comment 7: One commenter noted that the sites identified in our proposed rule differed in some respects from the ''areas with inadequate protection'' identified in our ''Final Interim Strategy on Section 7 Consultations for Watercraft Access Projects That May Indirectly Affect the Florida Manatee'' (Final Interim Strategy) (66 FR 14924).

Response: The areas we proposed for designation as Federal manatee protection areas were in some cases different from the waterbodies we identified as ''areas with inadequate protection'' for the purposes of the Final Interim Strategy.

The standard for manatee protection areas is that such establishment is ''necessary to prevent the taking of one or more manatees'' (50 CFR Part 17.103). Because ''take'' is very broadly defined, action of some form could be justified for many coastal waters in the State of Florida. In order to focus our efforts in the current rulemaking, we defined four criteria for selecting sites as follows—(1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site or similar sites due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem. Again, many sites throughout Florida could be argued to satisfy the first three criteria to some extent; however, the vast majority of sites do not satisfy criterion four because of limitations we face because many areas present manatee protection problems due to circumstances that are difficult or impossible to correct within our manatee protection area authority and in terms of personnel and budget.

On the other hand, ''areas with inadequate protection'' were identified in the context of conducting ESA section 7 consultations regarding U.S. Army Corps of Engineers authorization of boat access facilities. In this context, watercraft-related ''take'' of manatees is an indirect effect of the authorization of a boat access facility. In order to be considered an ''area with inadequate protection'' in this context, the existing protection measures on a given waterbody must be such that the likely result of adding additional boat access to the area is a foreseeable increase in watercraft-related take. This could be because current protection measures are either totally lacking or are inadequate in areas with chronic watercraft-related take, because of a lack of adequate law enforcement, or because of issues peculiar to the waterbody such that incidental take of manatees is inevitable regardless of protective measures implemented.

As such, the standard for identifying a waterbody as an ''area with inadequate protection'' is different than that for establishing a manatee protection area. This is why several areas proposed as manatee protection areas are not also ''areas with inadequate protection.''

Comment 8: Some commenters expressed concern that human safety could be compromised by forcing all boaters into narrow channels, bottlenecks, and other confined circumstances.

Response: We were very cognizant of human safety issues when we designed these manatee protection areas. While human safety is the responsibility of all vessel operators, we made sure that zone designations were consistent with accepted safe-designation practices and will ensure that all sign plans and signs meet Federal and State signage requirements to eliminate human safety concerns. Furthermore, most manatee refuge measures described in this final rule require vessels to proceed at slow speed and, as such, should enhance boater safety in these areas.

Comment 9: Some commenters expressed concern that human safety will be compromised by requiring vessel operators to proceed at slow speeds in the face of emergency situations, like rapidly approaching thunderstorms or medical emergencies.

Response: Federal regulations allow for an exemption to manatee protection area regulations in the event of emergency. Specifically, our regulations (50 CFR part 17.105(c)) state that ''any person may engage in any activity otherwise prohibited by this subsection if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property.''

Comment 10: Several commenters noted that the size of the manatee population appears to have increased over time, and questioned the need for additional protective measures.

Response: A discussion of the current status of the manatee population is provided in the ''Background'' section. Two of the criteria for determining whether species are endangered or threatened under section 4(a) of the ESA are ''(D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.'' (16 U.S.C. 1533(a)) There has been no confirmation

that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated. Furthermore, the MMPA sets a general moratorium for the taking of marine mammals. Regardless of the size or status of the manatee population, all takings are prohibited unless authorized under the MMPA.

Minimizing, to the extent practical, the taking of manatees as a result of watercraft collisions is a high priority in manatee recovery and management programs. Currently, the areas addressed in this rule have a significant potential for ''take'' and/or are characterized by limited current protective regulations.

Comment 11: Several commenters stated that we should focus on better enforcement of existing regulations before imposing additional restrictions on boaters.

Response: This issue was identified as one of the alternatives addressed within the Manatee Protection Area Environmental Assessment. While improvements in both the enforcement and education arenas are important to enhancing manatee protection, such improvements may be of little effect when applied to areas without regulations or with inadequate protection to minimize the take of manatees. The State has placed an increased emphasis on enforcement, and we have made a substantial commitment to enforcing manatee protection areas over the past few years. We anticipate that these efforts will continue.

Comment 12: Some commenters recommended that we abstain from designation of Federal manatee protection areas and allow the State and local authorities to provide for manatee protection.

Response: We are the Federal agency responsible for manatee management and protection activities under both the ESA and the MMPA. As such, we must take an active role in regulatory activities involving the manatee, including designating manatee refuges and sanctuaries. Furthermore, we must complete this rulemaking process, pursuant to our settlement agreement. This in no way diminishes the important role that State, local, and other Federal agencies play, or the role of the private sector. Recognition is given to both State and local efforts to establish manatee protection, and we are committed to supporting these efforts. We have stated that the State should have leadership in establishing additional manatee protection areas. With this final rule, we have focused on sites where we determined that Federal action can effectively address the needs in the particular area.

Comment 13: Some commenters stated that the definition of ''slow speed'' is arbitrary and unenforceable, and recommended that we consider using some other standard, such as a ''miles per hour'' limit to regulate vessel speed.

Response: The definition of ''slow speed'' used in this rule is very similar to that used by the State in the Florida Manatee Sanctuary Act (F.A.C. 68C–22). This definition is generally understood by mariners and has proven to be enforceable. It is important to use a definition of ''slow speed'' that complements that used by the State. Ten of the sites included in this final rule are located in direct proximity to areas regulated by the State. The use of a similar definition will ensure consistency and lessen confusion among the boating public.

The establishment of another definition of ''slow speed'' or the use of a ''miles per hour'' speed zone poses many problems. Establishment of a ''miles per hour'' standard would necessitate all boats operating in these zones to be equipped with accurate speedometers. This standard would also require enforcement officers to procure equipment and attend periodic training to enforce these conditions. Of more importance is that boats operating at speeds in excess of what is allowed under the current definition of ''slow speed'' pose increased threats to manatees. Boats proceeding while ''plowing the water'' with elevated bows, such as occurs when a vessel is operating at greater than ''slow speed,'' both obscure the forward vision of the operator and place the propulsion systems of the watercraft lower in the water. Both of these conditions increase the likelihood of a vessel collision with a manatee. With a subsequent increase of speed, the configuration of the vessel changes to one of planing. While this condition places the hull and outdrives of vessels higher in the water, it also decreases the reaction time available for both the operator and the manatee to detect one another and take action to avoid collision.

Comment 14: Many commenters stated that we have not adequately evaluated the economic impact of these designations.

Response: The economic analysis conducted as part of this rulemaking determined that these actions would not have a significant economic impact. Through the regulation promulgation process, including public hearings and comment periods, we sought comments and information on activities known to occur at these sites. Based on these comments and sources of information, it is apparent that some users may be inconvenienced by the need to proceed at slower speeds or the need to use alternative sites. To address the concerns of adjoining property owners, we have provided exceptions to ensure that they are not adversely affected by these designations. As such, we believe that this rule will not result in a significant economic dislocation.

Comment 15: One commenter suggested that our proposed rule was contrary to the spirit and intent of Executive Order 12866, because we did not contact the commenter directly regarding the impact the proposed rule may have upon the individual's operations.

Response: As part of the rulemaking process, we published an advance notice of proposed rulemaking in which we solicited information from the public regarding issues that should be addressed through the rulemaking. We also held six public workshops that provided additional opportunities for the public to provide input and voice concerns. With publication of the proposed rule, we afforded a 60-day period for submitting written comments, and held four public hearings. Through the commenter's participation in this process, we are aware of the commenter's concerns. We have responded to those concerns to the best of our ability with this final rule and our intent to pursue amendments to our regulations. We have also updated the information regarding the economic effects of the rule, as appropriate, to reflect information submitted by the commenter. These actions meet the requirements of Executive Order 12866.

Comment 16: Many commenters suggested that technological advances may now make it possible for boaters and manatees to better detect the presence of one another and, thereby, avoid collisions, and recommended that these technologies be employed instead of restricting boat speeds.

Response: Ongoing research is evaluating the sensory abilities of the manatee and the environmental factors that may affect these abilities. Potential technologies may enable boaters to better detect the presence of manatees. However, no technology is currently available that is proven to be effective in avoiding collisions between manatees and boats. For the foreseeable future, detection and avoidance technology will likely be used to supplement, rather than replace, traditional management strategies.

Comment 17: Some commenters recommended that we selectively regulate watercraft and provide exemptions for those not responsible for take of manatees. These commenters stated that most watercraft-related manatee mortality is caused by large vessels and/or barges, and that boats without propellers do not harm manatees.

Response: The manatee mortality database contains information on the necropsy results of over 4,000 manatees. From this large information source, several interesting aspects of watercraft-related manatee mortality may be surmised. It is impossible to determine, in most cases, the size of the boat which struck a manatee. The exception to this is the very few cases where a responsible boater has reported a collision and researchers are able to compare the actual vessel to the observed injuries. In a few documented cases, manatees were obviously killed by a large vessel, the symptoms of which include massive crushing and or bifurcation (slicing into pieces) of the animal. The vast majority of cases involving watercraft-related mortality involve less dramatic injuries. Investigations comparing blade diameter and pitch indicate that the majority of manatees killed from watercraft-related collision are struck by smaller, fast-moving vessels.

Injuries to manatees from vessel impacts can be characterized as either lacerations or blunt trauma. Percentages generated by the mortality data-base indicate that 55 percent of the watercraft-related mortalities are the result of blunt trauma. Such trauma can result from impacts from vessel hulls, lower units, or other vessel components. Vessels without propellers (*e.g.*, personal watercraft) still have the potential to ''take'' manatees.

Comment 18: Some commenters recommended that we consider factors such as water depth and the presence of aquatic vegetation when deciding the boundaries of manatee protection areas rather than base boundaries on unnatural features such as navigation channels or bank-to-bank designation of waterbodies.

Response: We considered such environmental features in evaluating potential manatee protection sites, because these factors influence manatee use of areas. There have been instances where habitat features (such as water depth) have been used to delineate boundaries of protection areas. The disadvantage of the use of such features for the purpose of this rule is the complexity and costs associated with such designs, and the potential for causing confusion among the regulated public resulting in poor compliance. Protection areas designed around environmental factors tend to be irregular and complex. This, in turn, results in significant increases in costs of implementation in terms of posting and the subsequent costs of maintenance. The limited resources available for this program required a less complex strategy for providing adequate protection for manatees and reasonable use of these areas by the public.

Comment 19: Commenters pointed out that a year-round, slow speed manatee refuge in the area of Pansy Bayou would preclude a local water ski program that practices and performs in the area and urged that we consider measures that would allow them to continue their activities.

Response: We are unable to adopt measures that would allow program participants to continue their activities in the context of this rule. We will address this request in a subsequent rulemaking that will re-describe the restricted activities or propose other means of resolving this issue while providing sufficient protection for manatees.

Summary of Changes From the Proposed Rule

Pursuant to comments from the FWCC, various counties, and the public at large, we have made changes to the individual proposed manatee sanctuary and refuge designations to better coordinate with site-specific seasonal and areal limits, to improve consistency with local regulations, and to improve boater safety. In our proposed and emergency rules, we described the winter season to include that period from October 1 through March 31. Upon re-evaluation, it has become apparent that the modified November 15 through March 31 period better captures the time when manatees first appear and are most abundant at these sites; this period of time is also consistent with State and local regulations. As such, we have adopted this season for consistency, to reduce confusion potentially caused by the different timeframes, and at the same time, provide for adequate protection for manatees. Site-specific changes are described below, and summarized in Table 1. As can be seen in that table, the total of the areas designated as manatee protection areas by this rule is 2,562.84 hectares (6,333.10 acres).

We have also made some editorial changes to the regulations that set forth the Barge Canal and Sykes Creek Manatee Refuges. These two refuges were established by the final rule of January 7, 2002 (67 FR 680). We are making nonsubstantive changes to the text that sets forth these refuges simply to make subparagraphs (c)(1) and (c)(2) of 50 CFR 17.108 consistent with the new subparagraphs being added through this final rule—(c)(3) through (c)(11).

BILLING CODE 4310–55–P

Table 1. Summary of changes from the August 10, 2001, proposed rule and the final rule.

Site	County	Changes	Final Sanctuary Designation	Final Refuge Designation	Final Season	As Proposed Hectares (Acres)	Final Hectares (Acres)	Change in Hectares (Acres)
Blue Waters Manatee Sanctuary	Citrus	Changed from "No Entry, October 1 to March 31" to "No Entry, November 15 to March 31" for consistency with existing measures. (Reduced area, moved boundaries for consistency with existing State measures.)	No Entry	N/A	November 15 to March 31	1.70 (4.10)	0.67 (1.66)	-1.03 (-2.44)
Bartow Electric Generating Plant Manatee Sanctuary	Pinellas	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures. Reduced area; moved boundaries for consistency with existing County ordinance, to ensure ability to post on privately owned water bottoms, and to comply with permitting requirements.)	No Entry	N/A	November 15 through March 31	73.50 (181.50)	12.07 (29.82)	-61.43 (-151.68)
Tampa Electric Company's Big Bend Manatee Sanctuary	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures. (Reduced area; moved boundaries for consistency with existing State and County measures, to ensure ability to post on privately owned water bottoms, and to comply with permitting requirements.)	No Entry	N/A	November 15 through March 31	30.80 (76.20)	12.08 (29.85)	-18.72 (-46.35)
Tampa Electric Company's Port Sutton Manatee Sanctuary	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures.	No Entry	N/A	November 15 through March 31	1.10 (2.70)	1.10 (2.70)	No Change
South Gandy Navigation Channel Manatee Refuge	Pinellas	Withdrawn due to more protective existing County ordinance in area. (Includes year-round coverage, expanded area, good existing signage, and active enforcement. County exemptions parallel FWS exemption process.)				30.30 (74.80)	None	-30.30 (-74.80)
Tampa Electric Company's Big Bend Manatee Refuge	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures. (Modified area; moved boundaries for consistency with existing State and County measures, to ensure ability to post on privately owned water bottoms, and to comply with permitting requirements. Boundary movement included moving a portion of the aforementioned "Tampa Electric Company's Big Bend Manatee Sanctuary" occasionally used by foraging manatees into the refuge to ensure consistency with State regulations. Changing hectares/acreages also reflect a mapping error from the proposed rule which included uplands in the areal assessment.)	N/A	Idle Speed	November 15 through March 31	93.50 [1] (230.90)	89.35 (220.79)	-4.15 (-10.11)
Tampa Electric Company's Port Sutton Manatee Refuge	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures.	N/A	Idle Speed	November 15 through March 31	39.20 (96.90)	39.20 (96.90)	No Change
Pansy Bayou Manatee Refuge	Sarasota	None.	N/A	Slow Speed	Year-round	47.00 (116.10)	47.00 (116.10)	No Change

Little Sarasota Bay Manatee Refuge	Sarasota	Changed from "Channel Exempt' to "25 MPH in Channel" for consistency with existing measures.	N/A	Slow Speed, 25 MPH in Channel	Year-round	214.20 (529.40)	214.20 (529.40)	No Change
Lemon Bay Manatee Refuge	Charlotte	Changed from "Channel Exempt' to "25 MPH in Channel" for consistency with existing measures.	N/A	Slow Speed, 25 MPH in Channel	Year-round	383.61 (948.06)	383.61 (948.06)	No Change
Peace River Manatee Refuge	Charlotte/ De Soto	Reduced shoreline buffers to 1000' from shore between US 41 and I-75 bridges; changed from "Channel Exempt' to "25 MPH in Channel" in open area between US 41 and I-75 bridges; changed from "Channel Exempt' to "25 MPH in Channel" in area from I-75 to Channel Marker "14"; changed from "slow speed" to "25 MPH" in area upstream of Channel Marker "14"; included provision to allow for exemption in channel. These changes were made to promote consistency with State measures where appropriate. (Changes did not result in areal modifications. Area modifications were made though, to account for a mapping error which included uplands within the Peace River flood plains.)	N/A	See "Changes"	Year-round	4,892.00[2] (12,088.10)	1.698.11 (4,196.11)	-3,193.89 (-7,891.99)
Shell Island Manatee Refuge	Lee	None.	N/A	Slow Speed	Year-round	32.60 (80.50)	32.60 (80.50)	No Change
Haulover Canal Manatee Refuge	Brevard	Eliminated protection areas from the approaches in deference to more extensive State measures. (As a result, proposed refuge is reduced in area.)	N/A	Slow Speed	Year-round	276.30 (682.70)	8.95 (22.11)	-267.35 (-660.59)
Cocoa Beach Manatee Refuge	Brevard	None.	N/A	Slow Speed	Year-round	23.90 (59.10)	23.90 (59.10)	No Change
TOTAL:						6,139.71 (15,171.06)	2,562.84 (6,333.10)	-3,576.87 (-8,837.71)

[1]Includes 17.45 hectares (43.11 acres) of uplands.
[2]Includes 3,193.89 hectares (7,891.99 acres) of uplands.

BILLING CODE 4310–55–C

Blue Waters Manatee Sanctuary

In order to minimize confusion with a recently adopted FWCC protection area in Blue Waters and to promote boater safety, we have revised the area of our originally designated sanctuary to conform with the FWCC's designation. This reduction, from 1.7 hectares (ha) (4.1 acres), as originally proposed, to 0.67 ha (1.66 acres), entails removing protection from the spring boil to the northern limit of the newly described protection area and adding a shoreline buffer to the south of the re-configured northern sanctuary. These changes will not compromise manatee protection inasmuch as the public will be precluded in the areas upstream of the site through the site's ''no entry'' designation. We have also changed the period of protection from October 1 through March 31 to November 15 through March 31. This conforms with the period of highest manatee use, known manatee use areas on-site, is consistent with local seasonal measures, and minimizes confusion, thereby improving compliance with this measure.

Bartow Electric Generating Plant Manatee Sanctuary

Our manatee sanctuary has been reduced in size from 73.5 ha (181.5 acres), as originally proposed, to 12.07 ha (29.82 acres), and the boundaries and seasonal limits have been changed to provide consistency with local county measures. That portion of the sanctuary within the gated area of the Bartow outfall, where there is no access for manatees or the boating public, has been removed. Other areas included in our proposed rule were also dropped, in view of broader, existing Pinellas County protections in these areas, specifically, the county ''combustion motor exclusion zone,'' in effect from November 15 through March 31. The manatee sanctuary was further focused to address harassment within the immediate area of the discharge. The boundary lines were re-drawn to promote consistency with the local ordinance and to minimize confusion to the public. Furthermore, the water bottoms are privately owned and we were advised by the property owner that they would have problems allowing us to place signs in the area if the signs did not support local ordinances, ordinances that they have strongly supported. The period of protection was changed from October 1 through March 31 to November 15 through March 31. This conforms to that period when manatees first appear in the area, periods of highest manatee use, is consistent with local seasonal measures, and minimizes confusion, thereby improving compliance with this measure.

South Gandy Navigation Channel Manatee Refuge

Pinellas County adopted a regulatory zone within the South Gandy Navigation Channel that is more restrictive than ours. The county has designated the entire length of the channel as a ''slow speed'' area from its upper most reaches out into Tampa Bay. The measure protects manatees throughout the year from watercraft collisions in this high boat traffic area. The only exemptions to these regulations are for law enforcement officers and county officials who may exceed posted measures when conducting official business or for human safety and property concerns. There are no exemptions to these restrictions for the general public. The county has posted this area and is actively enforcing the zone. We have been advised by the county that their law enforcement officers have issued 43 citations and 82 warnings to violators since posting in March 2002. The county is also conducting a study, in conjunction with the State, to ensure the effectiveness of these conservation measures.

Our manatee refuge designation in this area, as described in the proposed and emergency rules, includes only a portion of the county's protection area and conflicts with the county's year-round designation. We have been advised by the FWCC Division of Law Enforcement that the adoption of a Federal sign plan that is inconsistent with local measures would preclude us from posting a Federal zone in this area and that they will not issue a permit that contradicts or confuses existing measures. Furthermore, the water bottoms are privately owned and we were advised by the property owner that they would have problems allowing us to place signs in the area if they did not support local ordinances, ordinances that they have strongly supported. Because of these issues and because the local ordinance is larger in area, is of longer duration (year-round instead of seasonal), provides the same type of protection (*i.e.*, slow speed), does not allow exceptions, and because we believe that the area will be adequately enforced, we are withdrawing our proposal and emergency designation at this site. We will, however, continue to monitor manatee take in this area. In the event that additional conservation measures are determined to be needed in Pinellas County, we will work with the county to address these needs. If the existing conservation measures or any additional necessary conservation measures are not implemented, the Service will reconsider Federal designation again in the future.

Tampa Electric Company Big Bend Manatee Sanctuary

On Sept. 20th, 2002, we emergency-designated a manatee sanctuary in the Tampa Electric Company's Big Bend power plant discharge, in the approaches to the west, and in an area to the southeast of the discharge. We also emergency-designated a manatee refuge to the south of the discharge simultaneously. These measures were designed to enhance and improve consistency with new and existing protection measures in the area. Specifically, the FWCC designated the eastern end of the discharge canal as a no entry area, the approaches as a slow speed area, and the area to the south as a caution area. The county further designated year-round idle speed zones in the canals adjacent to our manatee refuge, a year-round idle speed zone at the point where the manatee refuge enters Tampa Bay, and year-round slow speed zones to the north and south of the manatee refuge entrance.

To accommodate these measures, we have modified our seasonal no entry zone (manatee sanctuary) to include that area inside the discharge canal. We have modified the manatee sanctuary at its western end because of the conflicting State and local regulations, which designate idle speed and slow speed measures in this area (such designations already minimize the likelihood of boat collisions with manatees using the approaches to these sites) during different times of the year. The manatee sanctuary is further modified at the southeast corner to ensure consistency with the State's actions; this site is occasionally used by foraging manatees and is now included in our manatee refuge designation. We have further been advised by the FWCC Division of Law Enforcement that the adoption of a Federal sign plan that is inconsistent with local measures would preclude us from posting a Federal zone in this area and that they will not issue a permit that contradicts or confuses existing measures.

These modifications have changed the area of this manatee sanctuary as originally proposed. The area of the original site included 30.8 ha (76.2 acres). Subsequent to the changes, the site now includes 12.08 ha (29.85 acres).

Tampa Electric Company Big Bend Manatee Refuge

Our manatee refuge has been modified to include the aforementioned portion of the proposed Tampa Electric Company Big Bend Manatee Sanctuary. While the addition of this portion of the manatee sanctuary will increase the effective area of our manatee refuge, the total area of the refuge appears to be decreasing. The original acreage inadvertently included portions of uplands in the southwest corner of the refuge. The original acreage should have been 76.05 ha (187.89 acres), a decrease of 17.45 ha (or 43.11 acres) from the originally proposed and emergency designated 93.5 ha (230.9 acres). We have added the acreage from the sanctuary and subtracted the upland acreage. As such, the area of this manatee refuge is now 89.35 ha (220.79 acres). We believe this modification provides equal, if not greater, protection for manatees.

Additionally, we have been advised by the FWCC Division of Law Enforcement that the adoption of a Federal sign plan that is inconsistent with local measures would preclude us from posting a Federal zone in this area and that they will not issue a permit that contradicts or confuses existing measures. As such, we have modified this area to conform to State and local measures to promote consistency with signage and regulations and to minimize confusion to the boating public.

Little Sarasota Bay Manatee Refuge

We have modified our original proposal, which designated this area as ''slow speed, channel exempt,'' to require that watercraft not exceed 40 kilometers (km) per hour (25 miles per hour) in the channel so that we are consistent with more restrictive FWCC regulations in adjacent waters, to avoid confusion among boaters, and to promote boater safety. The FWCC designated sites to the north and south as ''slow speed, 25 miles per hour in the channel'' areas. Because this measure is more restrictive than our original ''channel exempt'' designation, we believe this modification will increase manatee protection at this site over our original proposal.

Lemon Bay Refuge

The FWCC has adopted a ''slow speed, 25 miles per hour in the channel'' manatee protection measure at this site. As such, we have modified our original proposal which designated this area as ''slow speed, channel exempt'' to require that watercraft not exceed 40 km per hour (25 miles per hour) in the channel in order to be consistent with the more restrictive FWCC regulations, to avoid confusion among boaters, and to promote boater safety. We believe that this modification, which is more restrictive than our original proposal, will increase manatee protection at this site over our original proposal.

Peace River Manatee Refuge

The FWCC has adopted manatee protection measures that overlap and conflict with our original proposal. We have modified our designation to conform to the FWCC's manatee protection measures where we believe these changes do not reduce manatee protection. However, differences between our regulations and FWCC regulations remain.

The changes from our original proposal are as follows. We have reduced the extent of our slow speed zone between the U.S. Highway 41 and I–75 bridges to conform with the FWCC's 300-meters (1,000-feet) shoreline buffer zones. The area between the buffer zones has been designated to require boat operators to operate watercraft at speeds not to exceed 40 km per hour (25 miles per hour). We are changing the designation upstream of red channel marker 14, in Charlotte County just south of the DeSoto County line, from slow speed channel exempt to 40 km per hour (25 miles per hour) bank to bank; and, should the U.S. Coast Guard or the State mark a navigation channel or approve a marked navigation channel in an area approximately 1.6 km (1 mile) downstream of the railroad trestles in Shell Creek, we will allow watercraft to travel up to 40 km per hour (25 miles per hour) in the channel in this area as well.

We believe our final designation, modified from our original proposal, will provide adequate protection for manatees in the Peace River. This conclusion is based on a combination of manatee carcass recovery sites and sighting locations. This designation is very similar to the plan which was originally proposed for public review by the FWCC in May 2002, and is more protective than the plan which was ultimately approved. For example, the final FWCC action provides for an additional boat travel corridor in the lower portions of the river and reduced manatee protection in portions of Hunter Creek where there is significant manatee use. At this time, we are unable to accommodate all aspects of the FWCC's plan without reducing overall levels of manatee protection or making significant changes from our original proposal, changes that would require additional public reviews. However, we will coordinate signage and posting plans with FWCC personnel to minimize confusion to the regulated public.

We have reduced the size of the original area from 4,892.00 ha (12,088.10 acres) to 1,698.11 ha (4,196.11 acres) because of a mapping error. This error included calculating the area of uplands within the Peace River flood plain and including this area in the size calculation for total area of the manatee refuge.

Haulover Canal Manatee Refuge

In our original proposal, we designated the canal and approaches (out to 0.8 km or 0.5 mile) as a slow speed manatee refuge. Subsequent to the proposal, the FWCC adopted manatee protection measures that overlap the approaches immediately east and west of the canal. We believe that the State measures in the approaches provide adequate protection for manatees. However, the FWCC did not include the canal proper in their rule. The canal proper, located on the Merritt Island National Wildlife Refuge, is currently designated as a slow speed area, pursuant to an existing national wildlife refuge designation, authorized under the National Wildlife Refuge Administration Act. This Act consolidated the authorities for areas administered by us, established the National Fish and Wildlife Refuge System, and provided that all property in the system shall be administered by us for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. We believe that our decision to protect this site through our ESA and MMPA authority increases manatee protection beyond that provided by the State and the National Wildlife Refuge designation, and improves the enforcement of the existing slow speed zones by making the legal restrictions consistent with those in other manatee protection areas (*i.e.*, protected under the ESA and MMPA). We believe the changes will not reduce protection of manatees from the measures originally proposed.

Areas Designated as Manatee Sanctuaries and Refuges

Blue Waters Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, containing approximately 0.67 ha (1.66 acres), at the headwaters of the Homosassa River,

adjacent to the Homosassa Springs State Wildlife Park, commonly referred to as the Blue Waters, in Citrus County. All waterborne activities will be prohibited in this area from November 15 through March 31. Homosassa Springs State Wildlife Park, located directly upstream from the site, is not accessible to the manatees wintering at Blue Waters because the spring head is used to confine and treat distressed manatees.

The headwaters of the Homosassa River are an important wintering site for manatees (Service, unpublished data). The site is in close proximity to the Homosassa Spring, a Class 1 magnitude spring, which provides warm water from the Florida aquifer. This warm water is essential to the survival and well-being of a significant number of manatees during cold weather periods.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. These studies, begun in the late 1960s, have documented historical manatee use of the area (Hartman 1979). Initially, use was primarily associated with the springs during the winter. In recent years, however, manatees have become more common during the summer months, as documented through surveys and field observations (Joyce Kleen, Chassahowitzka National Wildlife Refuge, pers. comm. 2002). During the course of aerial surveys, a peak count of 123 manatees were sighted here on a single winter day (Joyce Kleen, pers. comm. 2002). Manatee deaths have been recorded in the area since 1974. Eight carcasses were recovered within 0.8 km (0.5 mile) of the site, including one from within the manatee sanctuary. Four of these were attributed to watercraft collision, including three watercraft-related deaths in the past five years. These deaths occurred between the months of November and March, that period when manatees are most abundant (Florida Marine Research Institute Manatee Mortality Database).

The presence of manatees, coupled with the shallow clear nature of the water, has attracted an increasingly large number of swimmers and divers to the site. These visitors come to the site to swim with manatees. The waters of the Homosassa River are currently regulated as a State-designated idle speed zone, and the State Park maintains a no-entry zone from a line approximately 61 meters (200 feet) upstream of the confluence of the spring run and the northeast fork of the river. These measures were recently enhanced by the FWCC, which adopted a rule designating this area as a seasonal no entry area. The State will post this area prior to November 15, 2002 (Kipp Frohlich, pers comm. 2002). The number of visitors has grown to the point where manatees are observed leaving the site and swimming downstream into colder waters (Gorzelany, Mote Marine Laboratory, pers. comm. 2001). The establishment of a manatee sanctuary at this location will provide wintering manatees with an undisturbed area free from harassment and will continue to provide the public with opportunities to interact with manatees outside of the protected area.

Bartow Electric Generating Plant Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, containing approximately 12.07 ha (29.82 acres), at the warm water discharge of the Bartow Electric Generating Plant in Tampa Bay, Pinellas County. This seasonal closure will prohibit all waterborne activity at this site from November 15 through March 31, inclusive. We have designated this sanctuary based on observed manatee use patterns documented during cold weather periods (Hartman 1979, Wright *et al.* 2002, Weigle *et al.* 2001) and on observations of takings known to occur at warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant attracts manatees during cold weather periods. The maximum manatee count at this site was 102 manatees on February 25, 1999 (FWCC, unpublished data). Similar to other warm water discharges, large numbers of fish are also attracted to the heated effluent at this site. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment to manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Marine Research Institute Manatee Mortality Database 2002).

Tampa Electric Company's Big Bend Manatee Sanctuary

We are establishing a manatee sanctuary, containing approximately 12.08 ha (29.85 acres), at the Tampa Electric Company's Big Bend Electric Generating Station's discharge canal in Tampa Bay, Hillsborough County. This closure will prohibit all waterborne activity at this site from November 15 through March 31. We are also establishing a manatee refuge in the area south of this sanctuary (*see* ''Tampa Electric Company's Big Bend Manatee Refuge'' below).

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Two types of surveys have been used to document manatee use of this site. Synoptic surveys, conducted during the winter to provide minimum counts, have been conducted here since 1989. Per these surveys, the most manatees counted at this site was 316 on January 6, 2001 (FWCC, unpublished data). Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 2,470 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 510 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Fifteen carcasses were recovered from this area, including three carcasses recovered within the manatee sanctuary and 12 recovered within 0.8 km (0.5 mile) of the manatee sanctuary. These deaths, recorded since 1974, included five watercraft-related deaths, including two that occurred within the past five years. Deaths occurred between November and April (Florida Marine Research Institute Manatee Mortality Database).

We decided to establish this sanctuary based on observed manatee use patterns documented at this site (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at this (FWCC, unpubl. data.) and other similar sites (Tyson 1998, Wooding 1997). Similar to other discharges, large numbers of fish and manatees are attracted to this heated effluent. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment of manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing

manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Marine Research Institute Manatee Mortality Database 2002).

There is currently a State-designated, seasonal, no-entry zone in the immediate vicinity of the Big Bend discharge. We believe that the zone is too small, however, to prevent harassment of manatees by fishermen, who cast into the aggregation area; therefore, we have designated a larger area. A larger manatee sanctuary at this site will improve the protection area and should adequately protect manatees from harassment from fishing and waterborne activities.

Tampa Electric Company's Big Bend Manatee Refuge

We are establishing a manatee refuge, encompassing approximately 89.35 ha (220.79 areas), in the waters adjacent to and south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station on Tampa Bay in Hillsborough County to provide watercraft ingress and egress to the lagoon and canals in North Apollo Beach. Watercraft activity within this refuge will be regulated to idle speed from November 15 through March 31.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 2,516 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 538 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Eighteen manatee carcasses were recovered from this area, including five from within the manatee refuge and 13 within a 0.8 km (0.5 mile) radius of the site. These deaths, recorded since 1974, include six watercraft-related deaths, including two that occurred within the past five years. Deaths occurred throughout the year (Florida Marine Research Institute Manatee Mortality Database).

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of aggregation sites, such as the warm water discharge of the Tampa Electric Company's Big Bend Electric Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

Port Sutton Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, encompassing approximately 1.1 ha (2.7 acres), at the warm water discharge of the Tampa Electric Company's Gannon Electric Generating Station in Tampa Bay, Hillsborough County. This seasonal closure will prohibit all waterborne activity at this site from November 15 through March 31, inclusive. In addition, we are designating a manatee refuge in the area surrounding the sanctuary (see ''Port Sutton Manatee Refuge'' below). We have decided to establish this sanctuary based on observed manatee use patterns documented during cold weather periods when the plant was discharging warm water (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at other warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant has previously attracted manatees during cold weather periods. Similar to other warm water discharges, large numbers of fish are attracted to this heated effluent. As such, both anglers and manatee enthusiasts could be attracted to the site, leading to an increased potential for cases of harm and harassment to manatees. The area is presently closed to public access because of security concerns. However, the sanctuary designation will ensure adequate manatee protection should the area reopen in the future.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Two types of surveys have been used to document manatee use of this site. Synoptic surveys, conducted during the winter to provide minimum counts, have been conducted here since 1989. Per these surveys, between 25 and 50 manatees have been counted in this area (FWCC, unpublished data). Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 106 manatees using the site and its immediate surroundings on a sporadic basis throughout the year. Per these survey parameters, there were 44 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Four manatee carcasses were recovered within a 0.8 km (0.5 mile) radius of the site. These deaths, recorded since 1974, included a single watercraft-related death and a death associated with cold. Deaths occurred in December, January, and May (Florida Marine Research Institute Manatee Mortality Database).

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (FWCC, unpubl. data).

Hillsborough County has adopted a local ordinance designating this site as a seasonal slow speed manatee protection area from November 15 through March 31. The site has yet to be posted (Chuck Coleman, Hillsborough County, pers. comm. 2002).

Port Sutton Manatee Refuge

We are designating the Port Sutton area surrounding the manatee sanctuary at the Tampa Electric Company's Port Sutton (Gannon) Electric Generating Station, on Tampa Bay in Hillsborough County, as a manatee refuge. The refuge area includes approximately 39.2 ha (96.9 acres). Watercraft will be required to proceed at idle speed within this refuge from November 15 through March 31, inclusive.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 148 manatees using the site and its immediate surroundings on a sporadic basis throughout the year. Per these survey parameters, there were 55 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Five manatee carcasses were recovered in

this area, including one within the manatee refuge. These deaths, recorded since 1974, included two watercraft-related deaths and a death associated with cold. Deaths occurred in December, January, March, and May (Florida Marine Research Institute Manatee Mortality Database).

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the warm water outfall of the Tampa Electric Company's Port Sutton (Gannon) Electric Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees. The area is presently closed to public access because of security concerns related to potential terrorist activities. However, the sanctuary designation will ensure adequate manatee protection should the area reopen in the future.

Hillsborough County has adopted a local ordinance designating a small portion of this site as a seasonal slow speed manatee protection area (November 15 through March 31). The site has yet to be posted (Chuck Coleman, Hillsborough County, pers. comm. 2002).

Pansy Bayou Manatee Refuge

We are establishing a manatee refuge, containing approximately 47 ha (116.1 acres) in the northern Pansy Bayou area between City Island and the John Ringling Parkway Bridge on Sarasota Bay in Sarasota County, to regulate vessel traffic to slow speed year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1985 and 1999, have documented 1,211 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 533 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included traveling and resting manatees, followed by observations of feeding animals (Florida Marine Research Institute Aerial Survey Database). Shallow inshore waters in this area are typified by stands of sea grass. Seven manatee carcasses were recovered within a 0.8 km (0.5 mile) radius of the site; no carcasses were recovered on-site. These deaths, recorded since 1974, included a single watercraft-related death. Deaths occurred in January, April, May, June, July, and August (Florida Marine Research Institute Manatee Mortality Database).

Pansy Bayou proper is currently closed under State law to all vessel traffic except residents, and serves as a manatee sanctuary. The site is currently used as a water-ski area, although recent action has been taken by the FWCC to designate the site as a slow speed area. This action has not yet been implemented. The remaining waters around the manatee refuge are currently designated by the State as slow speed (channel included) zones (F.A.C. 62N–22.026(2)(a)(4)). High-speed watercraft operation in this area poses a continuing threat to a substantial number of manatees. Establishment of a slow-speed zone will minimize the risk of manatee take due to disturbance and/or watercraft collisions.

Little Sarasota Bay Manatee Refuge

We are designating a manatee refuge, containing approximately 214.20 ha (529.40 acres), to control vessel speeds in the little Sarasota Bay area between the Blackburn Point Bridge and Intracoastal Waterway Channel Marker ''40'' in Sarasota County. The speed designation for this area will be slow speed, 40 km per hour (25 miles per hour) in the channel, year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between November 1985 and June 1999, have documented 243 manatees using the site and its immediate surroundings on a sporadic basis throughout the year. Per these survey parameters, there were 122 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included traveling manatees, followed by observations of resting animals (Florida Marine Research Institute Aerial Survey Database). Two manatee carcasses were recovered within 0.8 km (0.5 mile) of the site boundaries. These deaths, recorded since 1974, include a watercraft-related death and a death involving a perinatal-class animal. Deaths occurred in July and November (Florida Marine Research Institute Manatee Mortality Database).

There are currently no speed zones in this portion of Sarasota County, although the State regulates the areas to the north and south of the site. The State designations include marked channels that allow for a maximum travel speed of 40 km per hour (25 miles per hour) within the channels. The current unregulated nature of vessel operation at this site has high potential for resulting in manatee take. Establishing a slow-speed zone outside of the main navigation channel will reduce the potential for take by limiting vessel speeds in those waters where manatees are most likely to occur.

Lemon Bay Manatee Refuge

We are establishing a manatee refuge, containing approximately 383.61 ha (948.06 acres), in Lemon Bay, Charlotte County, from the Charlotte County/Sarasota County boundary to a line approximately 1.6 km (1 mile) south of the Bay Road Bridge, for the purpose of regulating vessel speeds. Speeds will be restricted to slow speed, 40 km per hour (25 miles per hour) in the channel, year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1987 and 1999, have documented 626 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 356 sightings (a sighting may include multiple manatees) observed during the survey period. A high count of 13 animals was documented on November 4, 1994. Observed activities primarily included resting and feeding manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Eleven carcasses were recovered from this area; six were recovered within the refuge and the remaining five were recovered within 0.8 km (0.5 mile) of the refuge boundaries. These deaths, recorded since 1974, include five watercraft-related deaths (two of these deaths occurred during the last five years). Deaths occurred between March and October (Florida Marine Research Institute Manatee Mortality Database).

There are currently no speed zones for manatee protection in this portion of Charlotte County, although the FWCC has recently adopted regulations to provide similar protection in this area. The State agency does not believe that the site will be posted until 2003 (Kipp Frohlich, pers. comm. 2002). The unregulated nature of this water body makes the taking of manatees very likely, due to the high speed at which watercraft currently travel through areas frequented by manatees. Establishing a slow-speed zone outside of the main navigation channel will reduce the likelihood of manatee take occurring.

Peace River Manatee Refuge

We are establishing a manatee refuge, containing 1,698.11 ha (4,196.11 acres) more or less, in the Peace River (located on the northeast corner of Charlotte Harbor) in Charlotte and De Soto Counties. This refuge will include the river and specific associated waters northeast of U.S. Highway 41. Waters within described areas will be regulated to allow watercraft to travel at a maximum speed of 40 km per hour (25 miles per hour), while other waters will be regulated to provide for slow-speed vessel operation. These regulations will be in effect year-round.

Described Areas Include

(a) Slow speed 300 meter (1,000 feet) shoreline buffers between the U.S. Highway 41 and I–75 bridges;

(b) slow speed outside of the marked navigation channel, 40 km per hour (25 miles per hour) in the marked channel, between the I–75 bridge and red channel marker ''14'';

(c) 40 km per hour (25 miles per hour), upstream of red channel marker ''14'';

(d) slow speed in Jim Long Lake, Hunter Creek, and Deep Creek; and

(e) slow speed in Shell Creek (if the U.S. Coast Guard or the State of Florida approve and designate a marked channel in this area, the channel may be designated as 40 km per hour (25 miles per hour) within the channel.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1987 and 1999, have documented 1,020 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 504 sightings (a sighting may include multiple manatees) observed during the survey period. A high count of 15 animals was documented on July 2, 1998. Observed activities primarily included traveling and resting manatees, followed by observations of feeding animals. Animals were observed every month of the year (Florida Marine Research Institute Aerial Survey Database). Forty-nine manatee carcasses have been recovered in this area and 47 of these were recovered from within the refuge area. These deaths, recorded since 1974, include eleven watercraft-related deaths; three of these deaths occurred during the last five years. Deaths occurred in all months (Florida Marine Research Institute Manatee Mortality Database).

Manatee protection areas have recently been adopted by the FWCC throughout much of this area. There are also local ordinances in effect in a small portion of this area. The State protection areas have yet to be posted and enforced. As a result, watercraft continue to travel at high speeds throughout many areas of the Peace River frequented by manatees. This refuge will slow vessel traffic in those portions of the Peace River where watercraft are most likely to encounter manatees, thereby reducing the likelihood of take.

Shell Island Manatee Refuge

We are establishing a manatee refuge, containing approximately 32.60 ha (80.50 acres), for the purpose of regulating vessel speeds at slow speed within the navigation channel that is located just north of Shell Island at the mouth of the Caloosahatchee River, Lee County. This regulation will be in effect year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1984 and 1999, have documented 65 manatees using the site and its immediate surroundings. Per these survey parameters, there were 31 sightings (a sighting may include multiple manatees) observed during the survey period. A high count of 9 animals was documented on June 25, 1997. Observed activities primarily included traveling and resting manatees. Animals were observed sporadically throughout the year (Florida Marine Research Institute Aerial Survey Database). Sixteen manatee carcasses have been recovered in this area; three were recovered in the refuge and remaining 13 were recovered within 0.8 km (0.5 mile) of the refuge. These deaths, recorded since 1974, include five watercraft-related deaths. Two of these deaths occurred during the last five years. Deaths occurred in January, February, March, April, July, September, and November (Florida Marine Research Institute Manatee Mortality Database).

The site is located at the mouth of the Caloosahatchee River, which supports a large number of manatees. The Florida Power and Light electrical generating station, located on this river, is a major wintering refuge for manatees. On January 6, 2001, 434 manatees were observed there (Florida Marine Research Institute Aerial Survey Database). Most manatees using the Caloosahatchee River must pass through the Intracoastal Waterway navigation channel north of Shell Island when entering or exiting the river. Similarly, the Shell Island channel is a significant travel corridor for vessels entering and leaving the Gulf and nearshore waters. This funneling of both watercraft traveling at high speed and manatees through a narrow channel has a high probability for take of manatees. A slow-speed zone will minimize the likelihood of manatee take occurring at this site.

The FWCC is currently promulgating a boating safety rule for this site. This rule would require boat operators to operate a slow speeds during the day time on week ends for boating safety purposes. Dates for completion of rule promulgation and sign posting are unknown at this time (Kipp Frohlich, pers. comm. 2002).

Haulover Canal Manatee Refuge

We are establishing a manatee refuge, containing approximately 8.95 ha (22.11 acres), within the confines of Haulover Canal, located at the north end of Merritt Island between the Indian River and Mosquito Lagoon, in Brevard County. Waters will be designated as slow speed, channel included, year-round.

Manatees moving between Mosquito Lagoon and the Indian River travel through Haulover Canal. These animals include a portion of the Atlantic coast sub population that uses northeast Florida and coastal Georgia, a sub population estimated to include as many as 300 individuals (Valade, Service, unpubl. data). Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1986 and 1999, have documented 209 manatees using the site and its immediate surroundings. Per these survey parameters, there were 73 sightings (a sighting may include multiple manatees) during the survey period. A high count of 13 animals was documented on October 16, 1997. Observed activities primarily included traveling and resting manatees, followed by observations of animals cavorting. Animals were observed throughout the year (Florida Marine Research Institute Aerial Survey Database). Nine carcasses were recovered in this area, including three from within the manatee refuge. The remaining six carcasses were collected within 0.8 km (0.5 mile) of the site. These deaths, recorded since 1974, include six watercraft-related deaths, including one that occurred this year. Deaths occurred in January, February, March, May, September, and December

(Florida Marine Research Institute Manatee Mortality Database).

The canal proper, located on the Merritt Island National Wildlife Refuge, is currently designated as a slow speed area, pursuant to an existing national wildlife refuge designation, authorized under the National Wildlife Refuge Administration Act. This Act consolidated the authorities for areas administered by us, established the National Fish and Wildlife Refuge System, and provided that all property in the System shall be administered by us for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The canal approaches were recently designated as slow speed areas by the FWCC. The approaches have yet to be posted. Our adoption of the canal zone as a manatee refuge, pursuant to the ESA and MMPA, will improve enforcement capabilities and enhance the Merritt Island National Wildlife Refuge's efforts to protect manatees in this area. This final rule eliminates the protection areas from the approaches in deference to more extensive State measures. As a result, the proposed refuge has been reduced in size from 276.30 ha (682.70 acres) to 8.95 ha (22.11 acres).

Cocoa Beach Manatee Refuge

We are establishing a manatee refuge, containing approximately 23.9 ha (59.1 acres), to regulate vessel operation at slow speed year-round in the area adjacent to Municipal Park, just west of Cocoa Beach in the Banana River, in Brevard County.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1986 and 1999, have documented 99 manatees using the site and its immediate surroundings. Per these survey parameters, there were 47 sightings (a sighting may include multiple manatees) during the survey period. A high count of nine animals was documented on May 22, 1998. Observed activities primarily included traveling and feeding manatees, followed by observations of animals resting. The area contains significant sea grass beds and is consistently used as a foraging area by manatees. Animals were observed throughout the year (Florida Marine Research Institute Aerial Survey Database). Three carcasses were recovered from this area, including one from the refuge proper. These deaths, recorded since 1974, include one watercraft-related death. Deaths occurred in April, July, and November (Florida Marine Research Institute Manatee Mortality Database).

The site was recently designated as a slow speed zone by the State; however, the site has yet to be posted. Given the use of the area by manatees, current high-speed vessel operation at this location has a high probability of resulting in the take of manatees. Requiring vessels to proceed at slow speed will minimize potential manatee takings.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. It is not expected that any significant economic impacts would result from the establishment of four manatee sanctuaries (64.03 acres) and nine manatee refuges (6,269.07 acres) in eight counties in the State of Florida.

The purpose of this rule is to establish 13 additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in four areas designated as manatee sanctuaries and nine areas designated as manatee refuges. Affected waterborne activities include swimming, diving, snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities. For the four areas designated as manatee sanctuaries, all waterborne activities will be prohibited from November 15 to March 31. For the nine areas designated as manatee refuges, the areas will be slow or idle speed zones with certain site-specific exceptions, including 40 km per hour (25 miles per hour) in some channels. The economic effect of these designations will be measured by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida has 12,000 miles of rivers and 3 million acres of lakes so the designation of less than seven thousand acres, most of which is for lower speed zones, is unlikely to curtail any waterborne activity.

For boating recreationists, the inconvenience and extra time required to cross a slow speed zone will reduce the quality of the waterborne activity for some participants. The extra time required for commercial charter boats to reach fishing grounds could reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has 943,611 registered boats but only those boats and recreationists using the designated sites will potentially be affected. However, since Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds it is likely that only a small percentage of boat users will be affected by this rule. The current designation will cause some inconvenience in travel time over these areas but alternative sites within the proximity of the sanctuaries and refuges are available for all waterborne activities. Furthermore, none of the areas designated is the entire surface area of a water body. The un-designated parts of the water bodies are available for waterborne activities. Recreationists and commercial boaters may be inconvenienced by having to travel to an un-designated area but they are not prohibited from participating in any of the waterborne activities. Currently, there are no data sources identified that estimate the amount of recreational activity in and around the areas to be designated as either manatee sanctuaries or refuges. However, the majority (6,269.07 acres) of the areas being designated are for manatee refuges, which only require reduced speed. The 64.03 acres designated as manatee sanctuaries are part of larger water bodies where unrestricted waterborne recreational activity can take place. For these reasons, we believe that, although some inconvenience to the public may occur because of reduced travel speeds, the economic impact will not be significant.

b. This rule will not create inconsistencies with other agencies' actions. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating areas where State and local governments have been unable to implement what we consider to be adequate measures. We have also focused the designation on those sites in which we have determined that Federal

action can effectively address the needs in the particular area, recognizing that we face certain resource limitations. We are eager to work with State and local agencies to develop and implement their own measures in the areas described in this final rule that would be equally protective of manatees and equally consistent with other measures, and thus would allow us to remove Federal designations and protections.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are minimal restrictions to existing human uses of the proposed sites as a result of this rule, but the restriction is believed to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur.

d. This rule will not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Selected economic characteristics of the affected counties are shown in Table 2. As can be seen in the table, the growth rate in per capita income is slower than the State average in Citrus, Brevard, Charlotte, and Lee Counties but the rate of growth in total personal income exceeds the State average except in Brevard, De Soto, and Pinellas Counties where it is lower. Larger households account for the lower per capita income estimates in these counties. The proportion of total industry earnings coming from the amusements and recreation sector ranges from 0.5 percent in Brevard County to 2.7 percent in Sarasota County. All of these counties had the service sector as the largest economic contributor followed by retail trade and the real estate sectors, with the exception of De Soto County where retail trade is the largest economic contributor. Overall, the affected counties had only a small proportion of earnings coming from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 2.—ECONOMIC CHARACTERISTICS OF THE EIGHT AFFECTED COUNTIES IN FLORIDA—1997

Affected Florida counties	Employment	Per capita personal income (dollars)	10 year rate of growth (dollars)	Personal income ($000)	10 year rate of growth (dollars)	Total industry earnings ($000)	Services industry earnings for amusements and recreation ($000)	Percent of total
Sanctuaries:								
Citrus	35,663	$18,493	3.9	$2,060,167	6.9	$793,347	$6,650	0.8
Hillsborough	644,694	23,719	5.2	1,558,783	6.6	18,847,236	67,676	1.4
Pinellas	506,946	28,367	4.9	24,770,929	5.5	13,876,518	114,826	0.8
Refuges:								
Brevard	223,815	$22,205	3.7	$10,342,080	6.3	$6,225.354	$34,237	0.5
Charlotte	47,091	21,861	3.7	2,894,781	7.6	995,159	10,336	1.0
De Soto	11,977	18,968	5.2	469,998	6.3	251,421	1,644	0.7
Lee	196,448	25,568	4.4	9,862,900	7.3	4,848,936	61,103	1.3
Sarasota	169,984	35,654	5.2	10,706,931	6.8	4,239,034	114,742	2.7
State of Florida	8,032,538	$24,799	4.5	$363,979,647	6.6	220,985,959	4,255,304	1.9

Source: http://govinfo.library.orst.edu/cgi-bin/reis-list.

The employment characteristics of the eight affected counties are shown on Table 3. The latest available published data for the total number of establishments in SIC (Standard Industrial Classification) codes 09, 44, 59, 79, services, and not classified is 1997. These SIC codes represent establishments providing products associated with fishing, hunting, trapping, water transportation, miscellaneous retail, services, amusement and recreation services and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 3, of the total number of establishments in these SIC codes, a large proportion employ less than nine employees with the largest number of establishments employing less than four employees. If there are any economic impacts associated with this rule, they will affect some proportion of these small entities. Since the bulk of the acreage designated (6,269.07 acres) by this rule is for manatee refuges, which only require a reduction in speed, we do not believe the minor inconvenience caused by going slower in designated areas will cause more than an insignificant economic effect. The inconvenience may cause some recreationists to go to alternative sites which may cause some loss of income to some small businesses. However, the inconvenience is small so we believe that this will not be a significant economic dislocation. For the four areas designated as manatee sanctuaries (64.03 acres), the restriction on human activity from November 15 to March 31 may cause some recreationists to go to alternative sites. The designated areas are relatively small and are part of large water bodies where there are large areas which do not restrict human activity. Recreationists can pursue waterborne activities in close proximity to the manatee sanctuaries without entering the sanctuaries. For this reason, we believe that there will be an insignificant economic effect from the designation of the areas as manatee sanctuaries. Without a significant change in recreationist use patterns there should be an equally insignificant change in business activity.

TABLE 3.—EMPLOYMENT CHARACTERISTICS OF THE EIGHT AFFECTED COUNTIES IN FLORIDA—1997 (INCLUDES SIC CODES 09, 44,59,79, SERVICES, AND NCE) [1]

Affected Florida counties	Mid-March employment	Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20 and over employees)
Sanctuaries:						
Citrus	8,926	1,281	807	244	120	110
Pinellas	197,842	12,852	7,954	2,344	1,226	1,328
Hillsborough	232,128	12,363	7,316	2,261	1,308	1,478
Refuges:						
Brevard	65,049	5,292	3,145	1,075	581	491
Charlotte	13,759	1,044	655	214	95	80
De Soto	4,648	186	121	38	18	10
Lee	63,411	4,977	3,061	930	494	492
Sarasota	73,819	5,125	3,231	936	473	485

Source: http://govinfo.library.orst.edu/cgi-bin/reis-list.

[1] SIC 09—Fishing, hunting, and trapping.
SIC 44—Water transportation.
SIC 59—Miscellaneous retail service divisions.
SIC 79—Amusement and recreation services.
NCE=non-classifiable establishments division.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience to recreationists because of speed restrictions in manatee refuge areas and seasonal or year-round closures in manatee sanctuaries, but this should not translate into any significant business reductions for the many small businesses in the eight affected counties. An unknown portion of the establishments shown on Table 3 could be affected by this rule. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The charter boat industry may be affected with lower speed limits for some areas when traveling to and from fishing grounds. Based on an analysis of public comment, further refinement of the impact on this industry may be possible. We believe that it is unlikely that reduced speed limits and seasonal closures will result in a significant economic effect.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists because of speed limits and seasonal closures, but it is believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

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. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over State- or privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access to and the wherewithal to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, we coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review

upon request by writing to the Field Supervisor (see **ADDRESSES** section).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects of this rule on Federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to either seasonally or completely avoid four areas (64.03 acres) or proceed at slow or idle speeds in 6,269.07 acres of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Jim Valade (see **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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. Amend § 17.108 as follows:

a. Revise the introductory text of paragraph (a);

b. Permanently designate the Kings Bay map at its current location following paragraph (a)(7) and revise the note to precede the map;

c. Revise paragraphs (a)(8) through (a)(11);

d. Revise paragraphs (b) and (c)(1) through (c)(5);

e. Add paragraphs (c)(6) through (c)(11).

The revised and added text reads as follows:

§ 17.108 List of designated manatee protection areas.

(a) *Manatee sanctuaries.* The following areas are designated as manatee sanctuaries. All waterborne activities are prohibited in these areas during the period November 15–March 31 of each year. The areas which will be posted are described as follows:

* * * * *

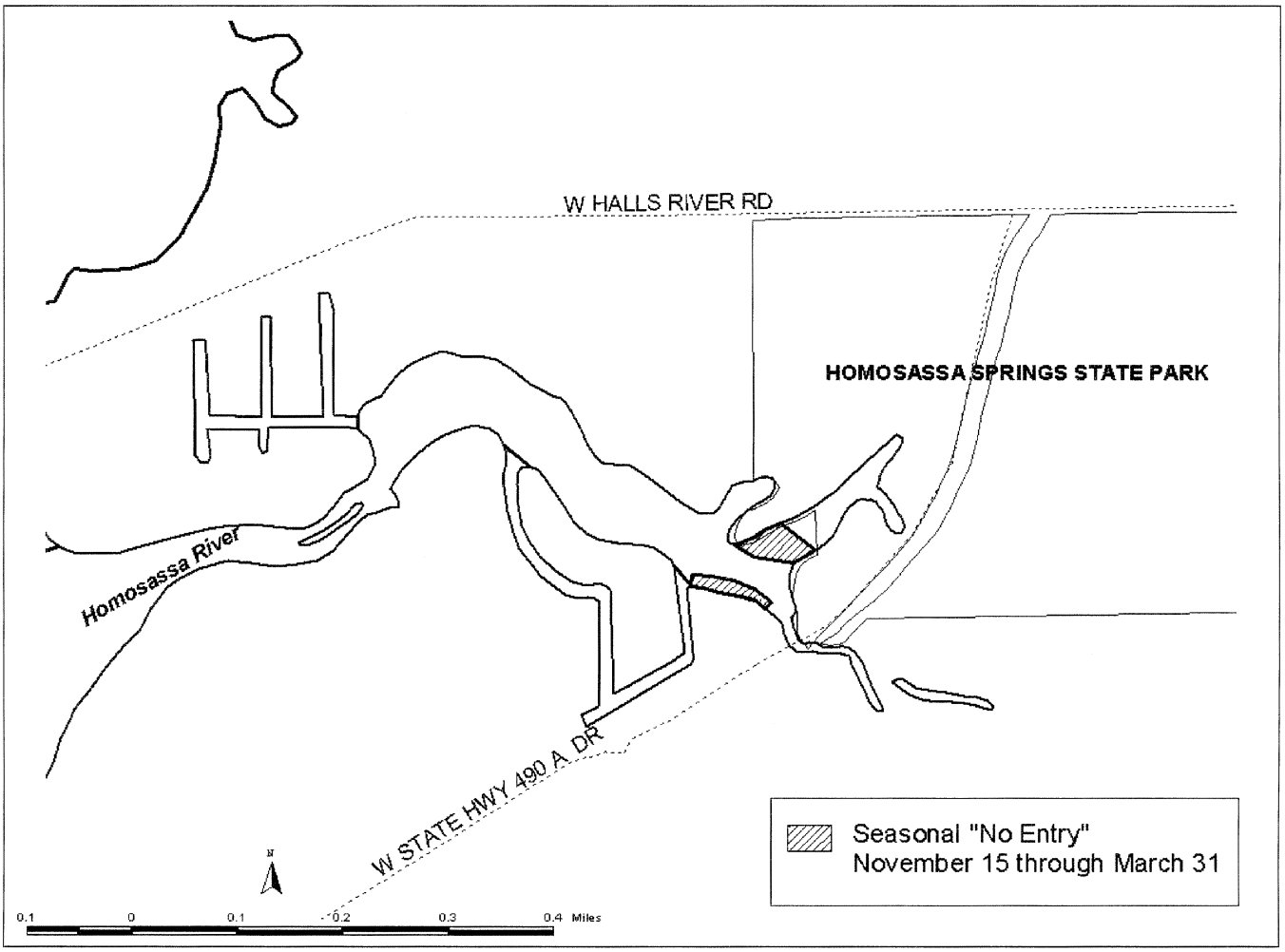
(7) * * *

Note: Map for paragraphs (a)(1) through (a)(7) follows:

* * * * *

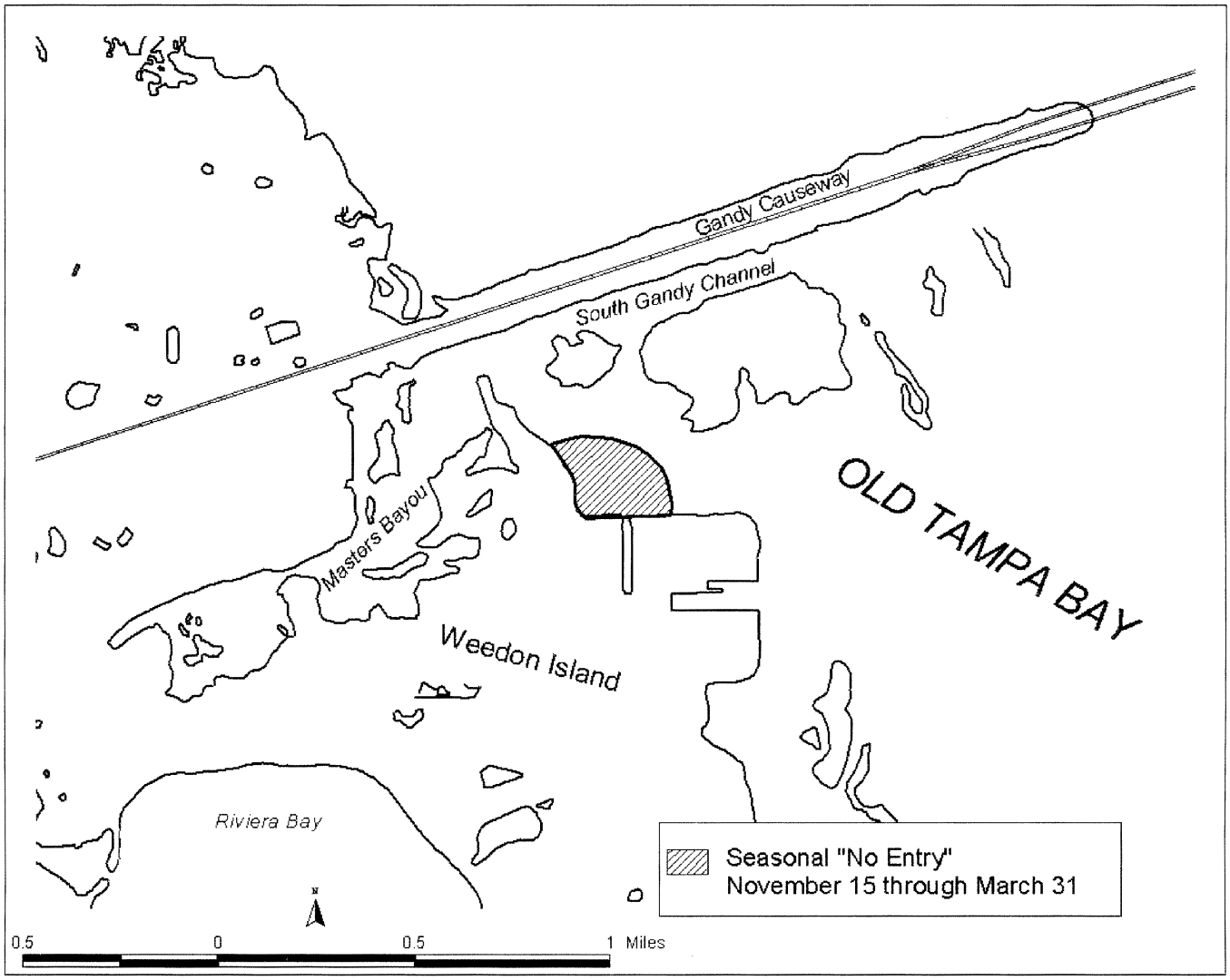
(8) That part of the Homosassa River, Homosassa, Citrus County, Florida, within Section 28, Township 19 South, Range 17 East, described as the headwaters of the Homosassa River (adjacent to the Homosassa Springs State Wildlife Park), including the spring run at the point where the run enters the northeast fork of the river along the southeastern shore and an area opposite this site along the southern shoreline; containing approximately 0.67 ha (1.66 acres). Map follows (see Blue Waters Manatee Sanctuary):

BILLING CODE 4310–55–P



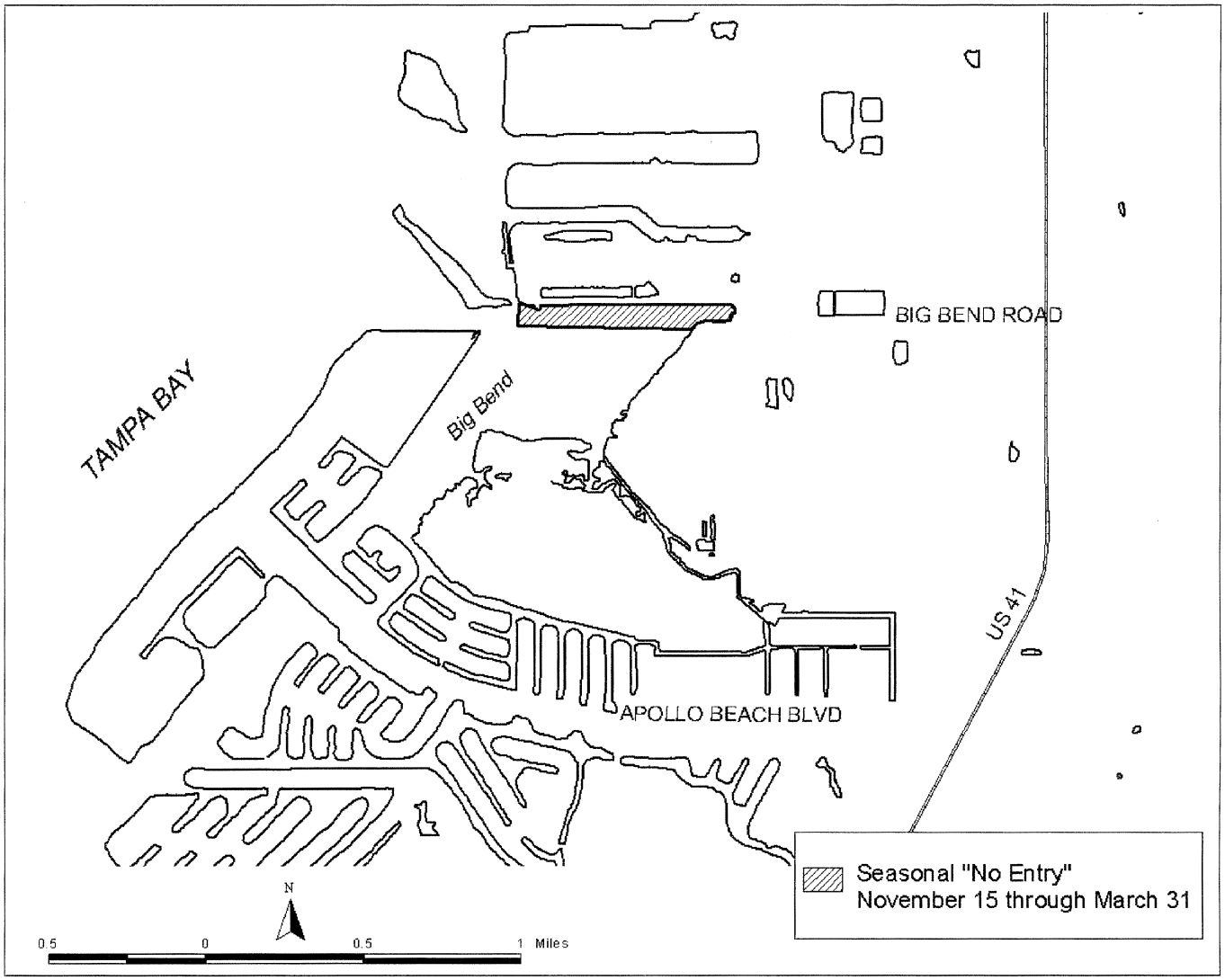
Blue Waters Manatee Sanctuary

(9) That part of Tampa Bay, St. Petersburg, Pinellas County, Florida, within Sections 16 and 21, Township 30 South, Range 17 East, described as the warm-water outflow of the Bartow Electric Generating Plant located on the northern shore of Weedon Island, encircling that point where the discharge enters receiving waters along the western shore of Old Tampa Bay; to be known as the Bartow Electric Generating Plant Manatee Sanctuary, containing approximately 12.07 ha (29.82 acres). Map follows (see Bartow Electric Generating Plant Manatee Sanctuary):



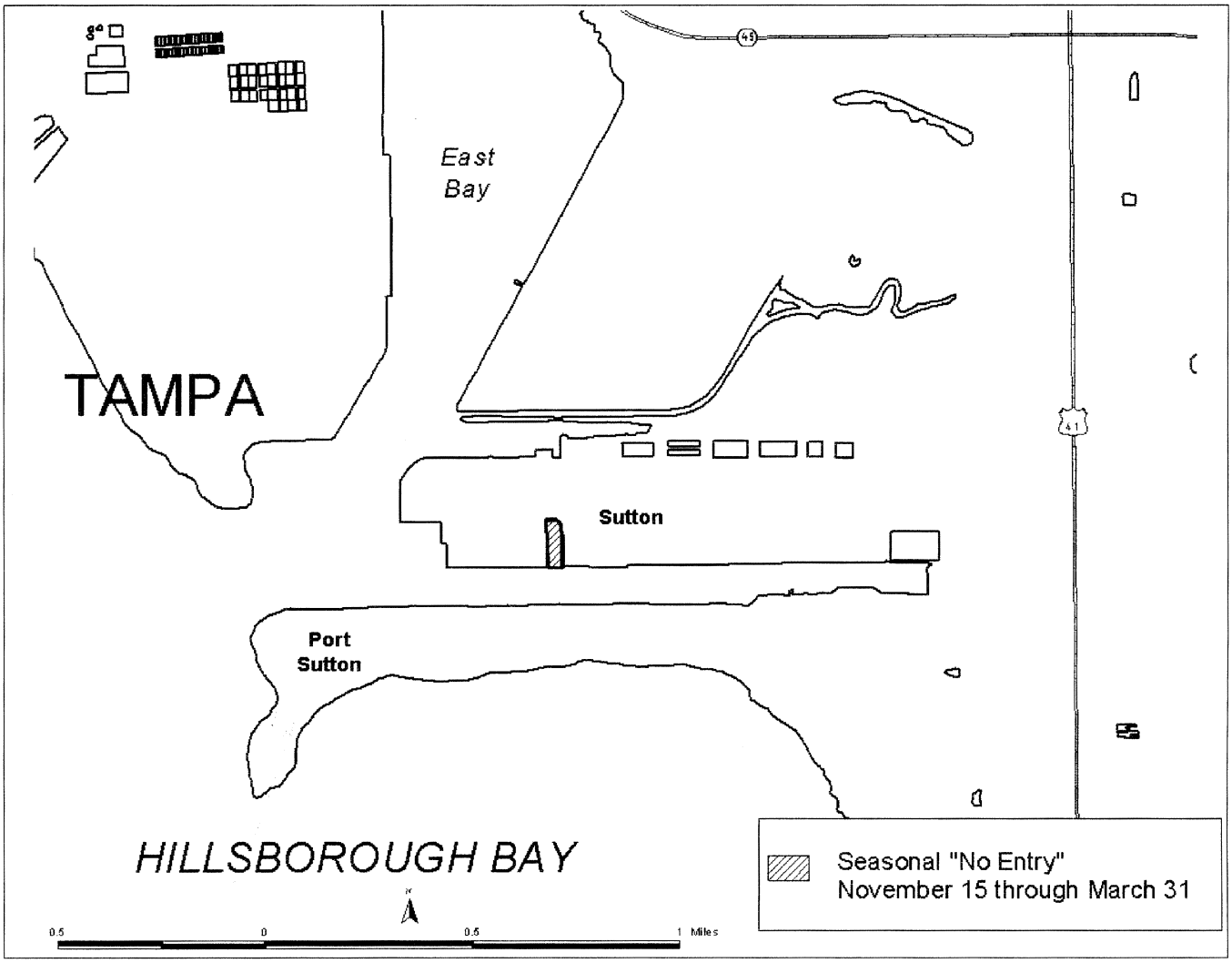
Bartow Electric Generating Plant Manatee Sanctuary

(10) That part of Tampa Bay, Tampa, Hillsborough County, Florida, within Sections 10 and 15, Township 31 South, Range 19 East, described as the waters in and around the warm-water outflow of the Tampa Electric Company Big Bend Electric Generating Station located west of Jackson Branch and including the Big Bend area of eastern Tampa Bay, to be known as the Tampa Electric Company Big Bend Manatee Sanctuary, containing approximately 12.08 ha (29.85 acres). Map follows (See TECO Big Bend Manatee Sanctuary):



TECO Big Bend Manatee Sanctuary

(11) That part of Tampa Bay, Tampa, Hillsborough County, Florida, lying within Section 4, Township 30 South, Range 19 East, described as the warm-water outflow of the Tampa Electric Company Gannon Electric Generating Station, to be known as the Port Sutton Manatee Sanctuary, containing approximately 1.1 ha (2.7 acres). Map follows (see Port Sutton Manatee Sanctuary):



Port Sutton Manatee Sanctuary

(b) *Exceptions—(1) Exception for residents adjoining the areas described in paragraphs (a)(1) through (a)(7) of this section.* Watercraft access to private residences, boat houses, and boat docks through these sanctuaries by the residents and their authorized guests is permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed/no wake. Residents' watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each vessel. Use of the waters within the sanctuaries by watercraft will be only for the purpose of access to residences and the storage of such watercraft in waters adjacent to residences.

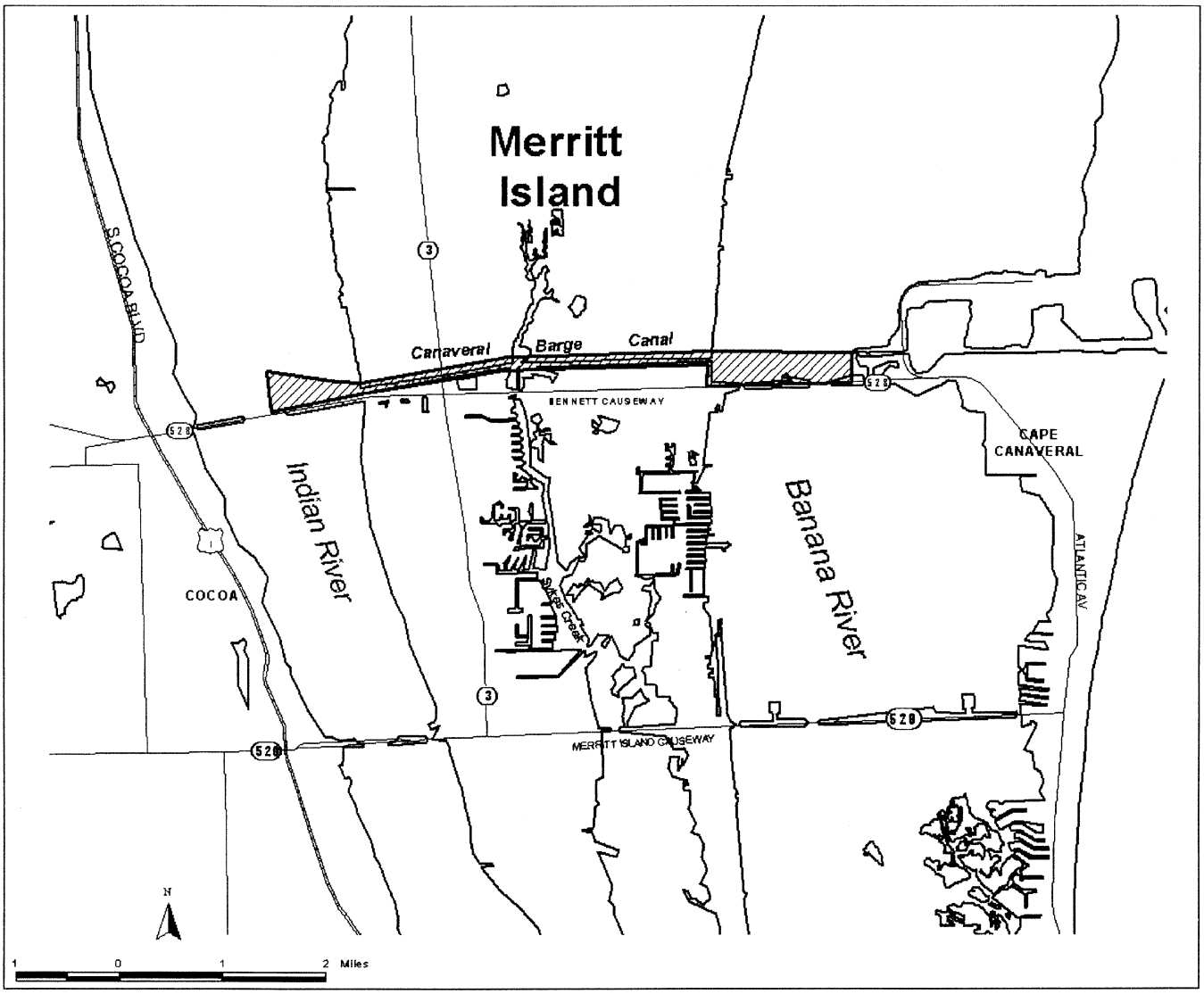
(2) *Exception for publicly and privately owned property adjoining the areas described in paragraphs (a)(8) through (a)(11) of this section.* Watercraft access and property maintenance activities within sanctuaries by property owners, their employees, and designees are permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed. Watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each boat or by other means. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(c) * * *

(1) *The Barge Canal Manatee Refuge.* (i) The Barge Canal Manatee Refuge is described as all waters lying within the banks of the Barge Canal, Brevard County, Florida, including all waters lying within the marked channel in the Banana River that lie between the east entrance of the Barge Canal and the Canaveral Locks; containing approximately 276.3 ha (682.7 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Barge Canal Manatee Refuge.

(iii) Map of the Barge Canal Manatee Refuge follows:

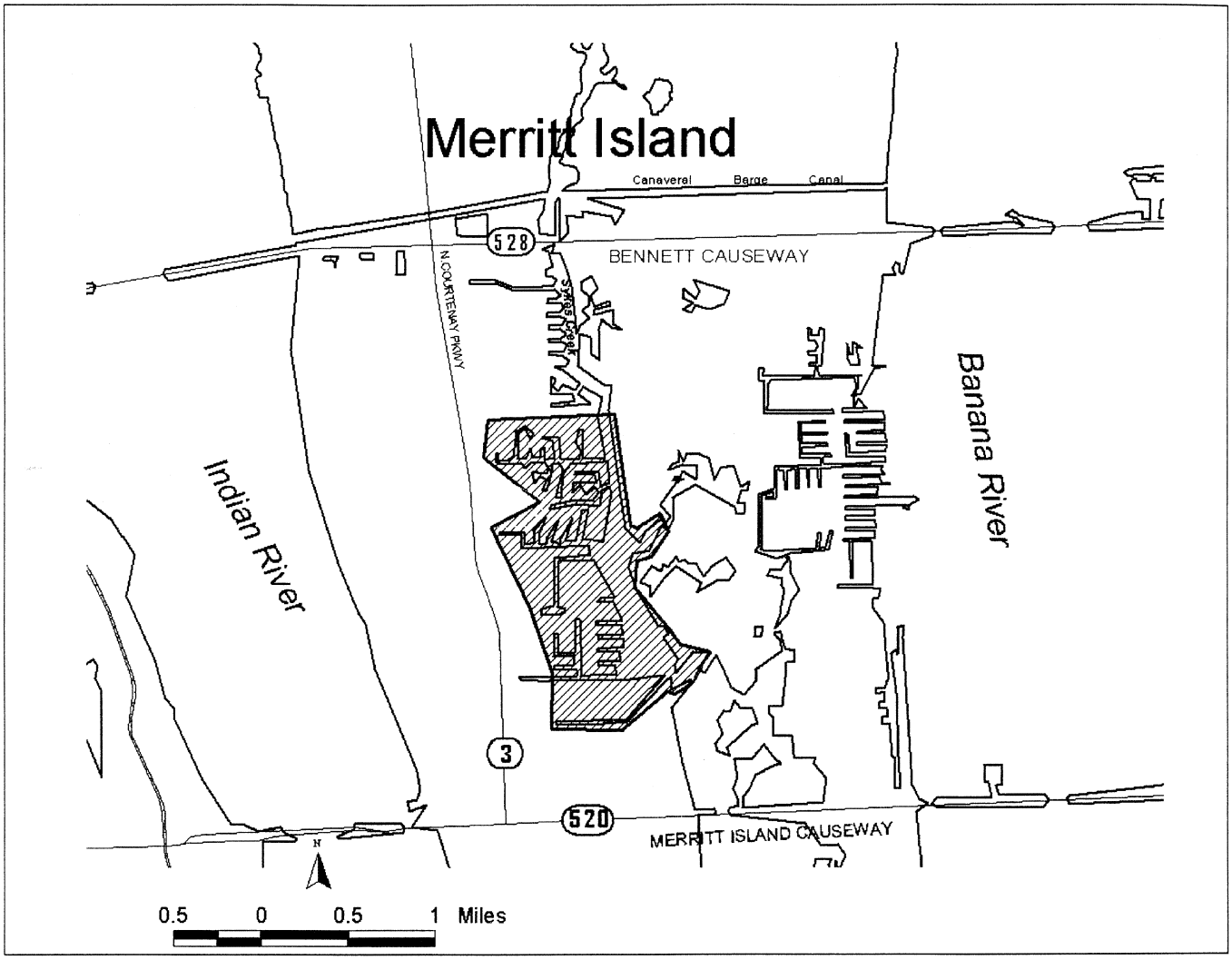


Barge Canal Manatee Refuge

(2) *The Sykes Creek Manatee Refuge.* (i) The Sykes Creek Manatee Refuge is described as all waters, including the marked channel in Sykes Creek, Brevard County, Florida. In particular, the portion of Sykes Creek southerly of the southern boundary of that portion of the creek commonly known as the ''S'' curve (said boundary being a line bearing east from a point on the western shoreline of Sykes Creek at approximate latitude 28 degrees 23′24″ N, approximate longitude 80 degrees 41′27″ W) and northerly of the Sykes Creek Parkway; containing approximately 342.3 ha (845.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Sykes Creek Manatee Refuge.

(iii) Map of the Sykes Creek Manatee Refuge follows:

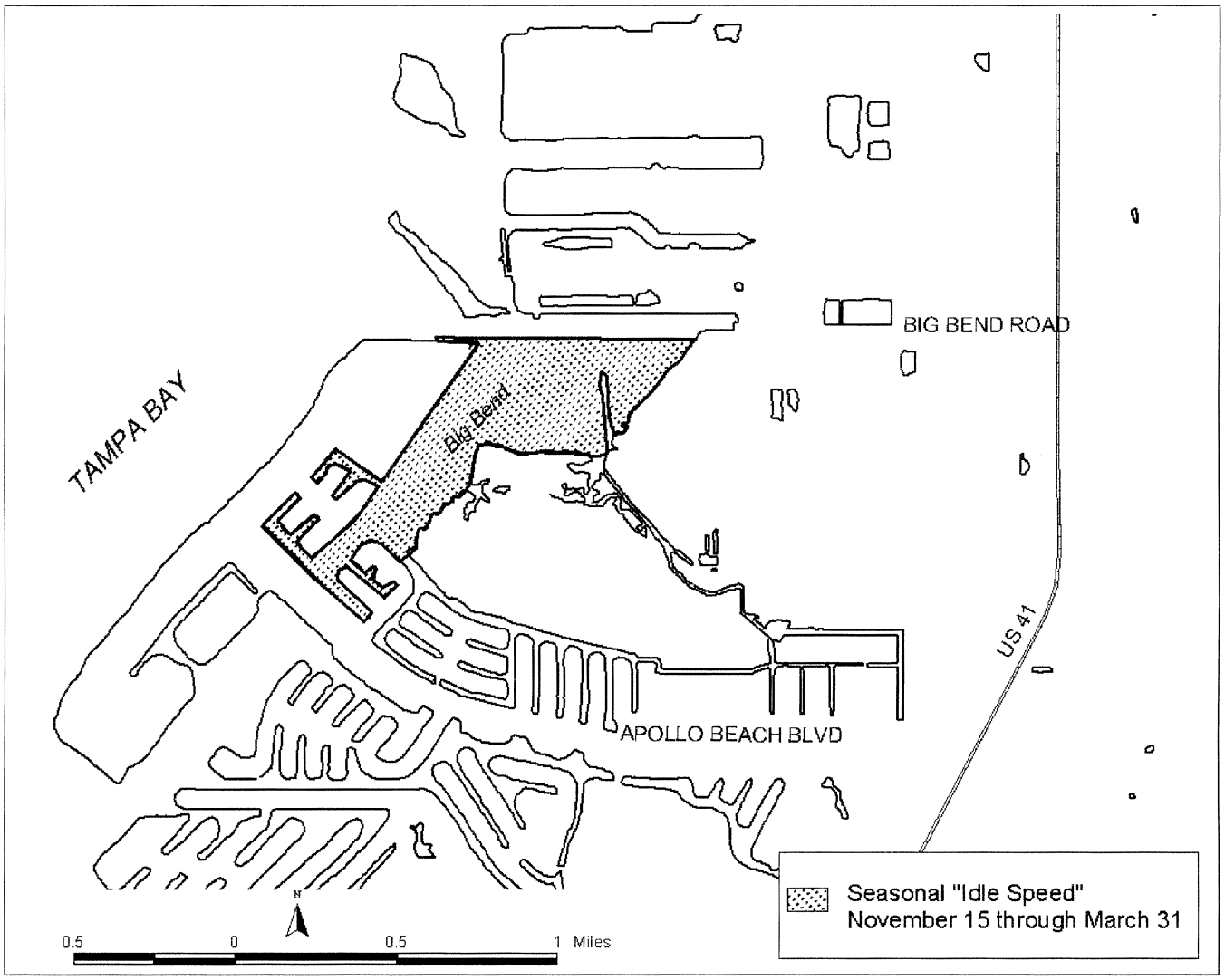


Sykes Creek Manatee Refuge

(3) *The Tampa Electric Company's Big Bend Manatee Refuge.* (i) The Tampa Electric Company's Big Bend Manatee Refuge is described as the entrance channel and those waters south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station within Hillsborough County, Florida; containing approximately 89.35 ha (220.79 acres).

(ii) Watercraft are required to operate at idle speed from November 15 through March 31. Watercraft are prohibited from operating at speeds greater than idle speed from November 15 through March 31, inclusive.

(iii) Map of the Tampa Electric Company's Big Bend Manatee Refuge follows (see TECO Big Bend Manatee Refuge):

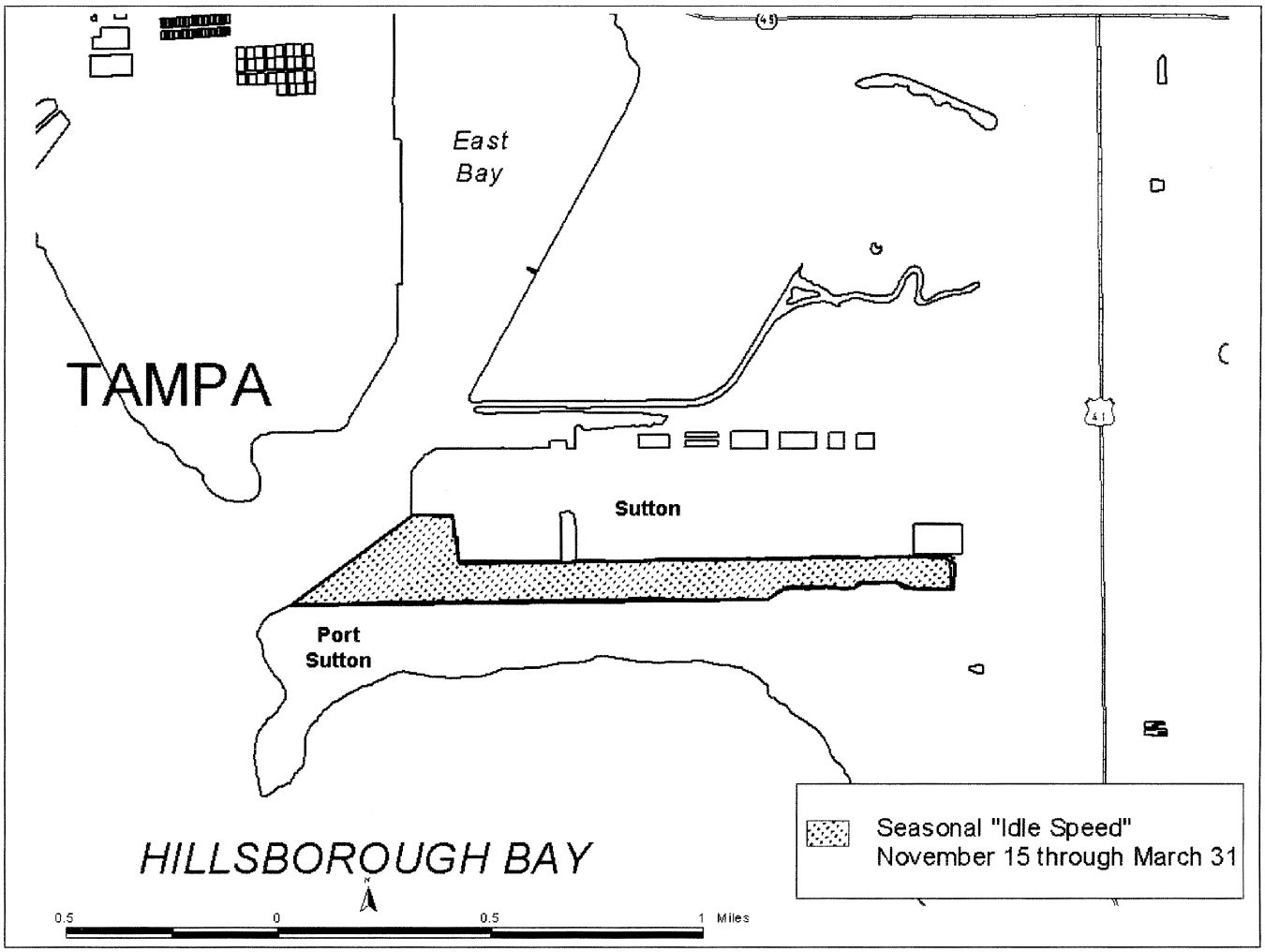


TECO Big Bend Manatee Refuge

(4) *The Port Sutton Manatee Refuge.* (i) The Port Sutton Manatee Refuge is described as those waters surrounding the Port Sutton Manatee Sanctuary, including all waters within Port Sutton, Hillsborough County, Florida; containing approximately 39.2 ha (96.9 acres).

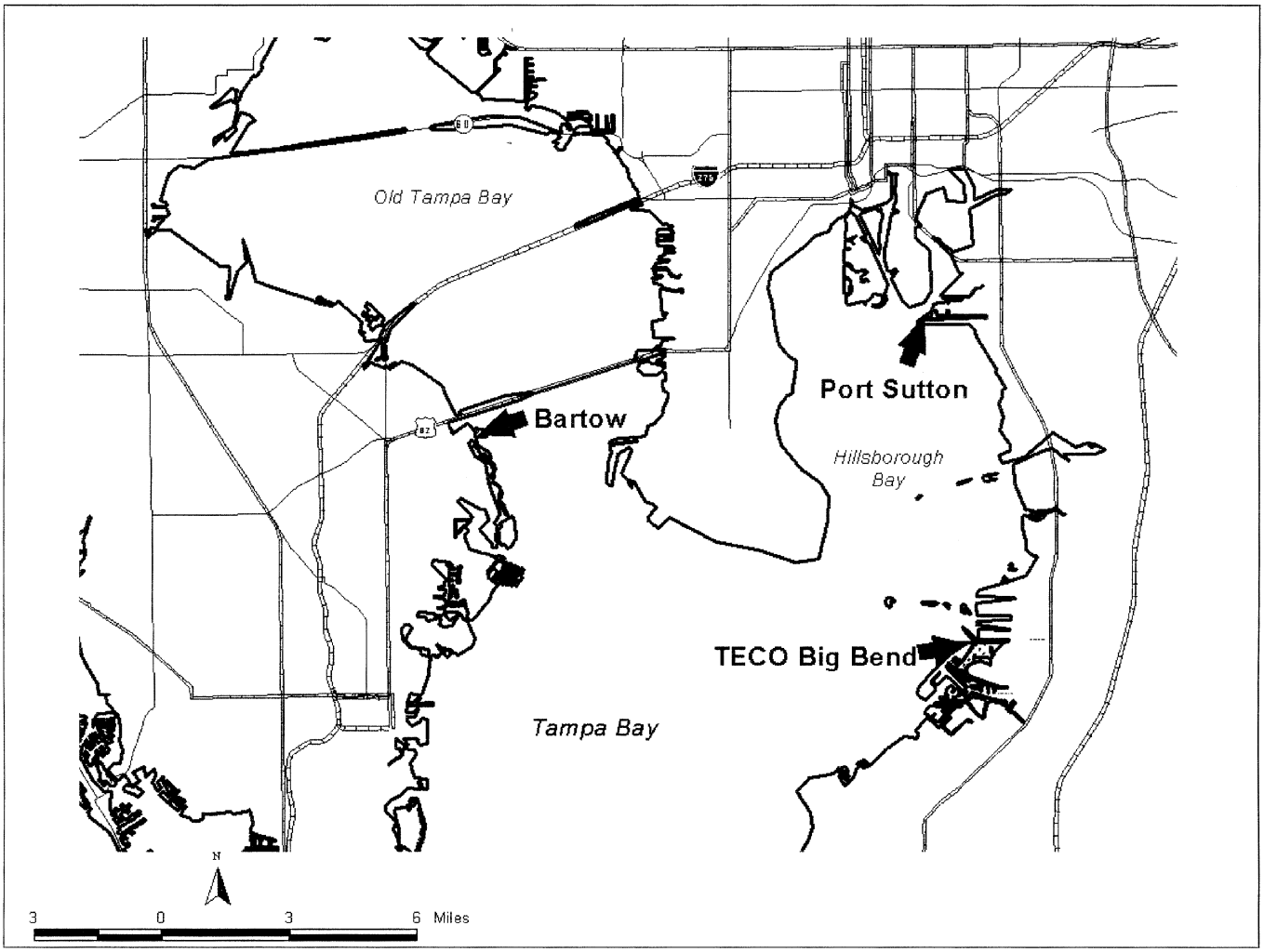
(ii) Watercraft are required to operate at idle speed from November 15 through March 31, inclusive. Watercraft are prohibited from operating at speeds greater than idle speed from November 15 through March 31, inclusive.

(iii) Map of Port Sutton Manatee Refuge follows (see Port Sutton Manatee Refuge):



Port Sutton Manatee Refuge

(iv) Map showing the relative locations of the Bartow, TECO Big Bend, and Port Sutton areas of Tampa Bay follows (see Tampa Bay Manatee Sanctuaries and Refuges):

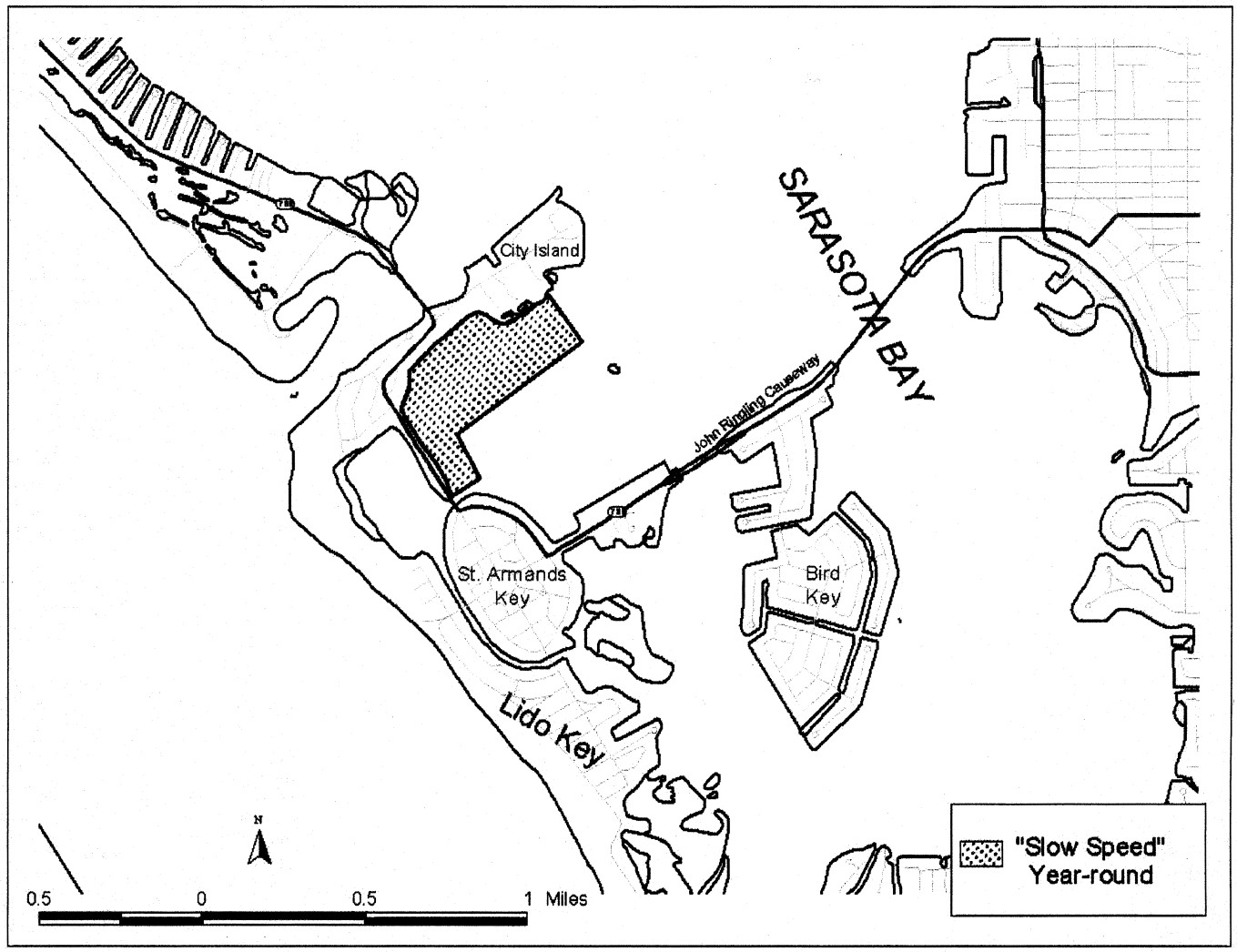


Tampa Bay Manatee Sanctuaries and Refuges

(5) The Pansy Bayou Manatee Refuge. (i) The Pansy Bayou Manatee Refuge is described as that portion of Sarasota Bay, Sarasota County, Florida, lying northwesterly of a line 45.7 meters (150 feet) northwesterly of and parallel with a line perpendicular to the John Ringling Parkway Bridge connecting St. Armands Key to City Island from the northwesterly end of said bridge, southwesterly of a line 228.6 meters (750 feet) northeasterly of and parallel with the centerline of the John Ringling Parkway (running northwesterly from St. Armands Key), northwesterly of a line 320 meters (1,050 feet) northwesterly of and parallel with a line perpendicular to the aforementioned John Ringling Parkway Bridge connecting St. Armands Key to City Island from the northwesterly end of said bridge, and southwesterly of a line 990.6 meters (3,250 feet) northeasterly of and parallel with the centerline of the aforementioned John Ringling Parkway (running Northwesterly from St. Armands Key); containing approximately 47 ha (116.1 acres).

(ii) Watercraft are required to proceed at slow speed year-round. Watercraft are prohibited from operating in excess of slow speed throughout the year in this area.

(iii) Map of the Pansy Bayou Manatee Refuge follows (See Pansy Bayou Manatee Refuge):

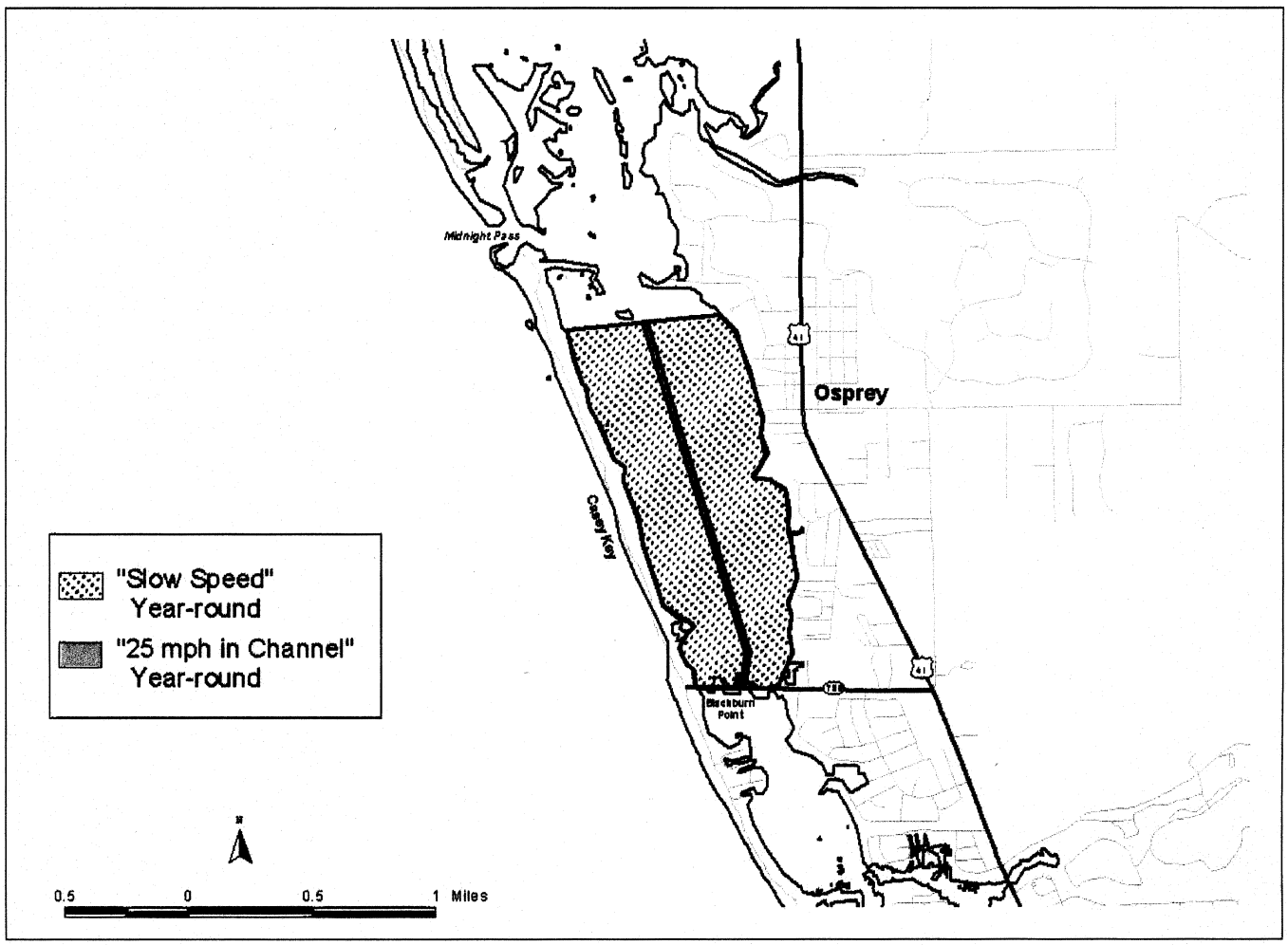


Pansy Bayou Manatee Refuge

(6) *The Little Sarasota Bay Manatee Refuge.* (i) The Little Sarasota Bay Manatee Refuge is described as those waters lying southerly of a line that bears north 90 degrees 00′00″ E (true) and runs through the southerly tip of the first unnamed island south of Red Intracoastal Waterway Channel Marker ''40'' (latitude 27 degrees 10′ 07″ N, longitude 82 degrees 30′ 05″ W) and those waters lying northerly of the Blackburn Point Bridge, Sarasota County, Florida; containing approximately 214.2 ha (529.40 acres).

(ii) Watercraft are required to proceed at slow speed, 40 kilometers per hour (25 miles per hour) within the channel, year-round. Watercraft are prohibited from operating in excess of slow speed outside of the channel and operating at speeds in excess of 40 kilometers per hour (25 miles per hour) within the channel, year-round.

(iii) Map of the Little Sarasota Bay Manatee Refuge follows (see Little Sarasota Bay Manatee Refuge):

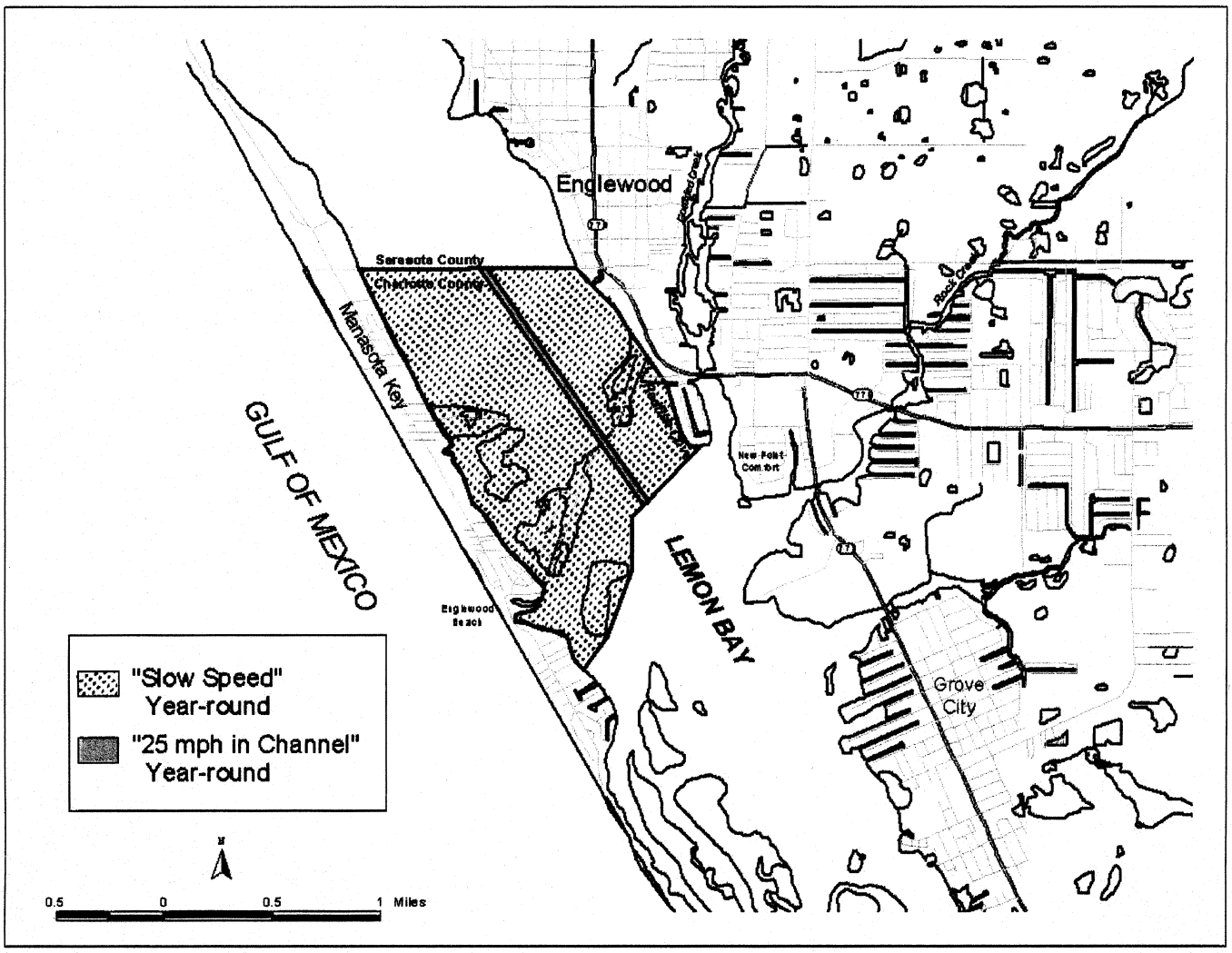


Little Sarasota Bay Manatee Refuge

(7) *The Lemon Bay Manatee Refuge.* (i) The Lemon Bay Manatee Refuge is described as those waters of Lemon Bay lying south of the Sarasota/Charlotte County, Florida, boundary and north of a line north 60 degrees 14′00″ E (true) parallel with a series of small islands approximately 1.6 kilometer (1 mile) south of the Bay Road Bridge; containing approximately 383.61 ha (948.06 acres).

(ii) Watercraft are required to proceed at slow speed, 40 kilometers per hour (25 miles per hour) within the channel, year-round. Watercraft are prohibited from operating in excess of slow speed outside of the channel and operating at speeds in excess of 40 kilometers per hour (25 miles per hour) within the channel, year-round.

(iii) Map of the Lemon Bay Manatee Refuge follows (see Lemon Bay Manatee Refuge):



Lemon Bay Manatee Refuge

(8) *The Peace River Manatee Refuge.* (i) The Peace River Manatee Refuge is described as all waters of the Peace River and certain associated water bodies north and east of the U.S. Highway 41, Charlotte and De Soto Counties, Florida; containing approximately 1.698.11 ha (4,196.11 acres).

(ii) In the Peace River in Charlotte County, watercraft are required to travel at slow speed within a posted shoreline buffer between the US Highway 41 and I–75 bridges. The buffer is approximately 300 meters (1,000 feet) from shore except in a slightly larger area north and west of I–75 to be consistent with recently adopted Florida Fish and Wildlife Conservation Commission's regulations. Watercraft are allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) year-round outside the buffer. Watercraft are prohibited from traveling in excess of slow speed within the posted shoreline buffer between the U.S. Highway 41 and I–75 bridges and are further prohibited from operating in excess of 40 kilometers per hour (25 miles per hour) outside the buffer throughout the year.

(iii) In the Peace River within Charlotte County and upstream of I–75 to red channel marker ''14,'' watercraft are required to travel at slow speed outside of the marked navigation channel. Watercraft are allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) year-round inside the marked navigation channel. Watercraft are prohibited from traveling in excess of slow speed in areas outside of the navigation channel and are further prohibited from traveling in excess of 40 kilometers per hour (25 miles per hour) inside the marked navigation channel, year-round.

(iv) In the waters of the Peace River in Charlotte and De Soto Counties upstream of red channel marker ''14,'' watercraft are allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) year-round. Watercraft are prohibited from traveling in excess of 40 kilometers per hour (25 miles per hour), year-round, in this area.

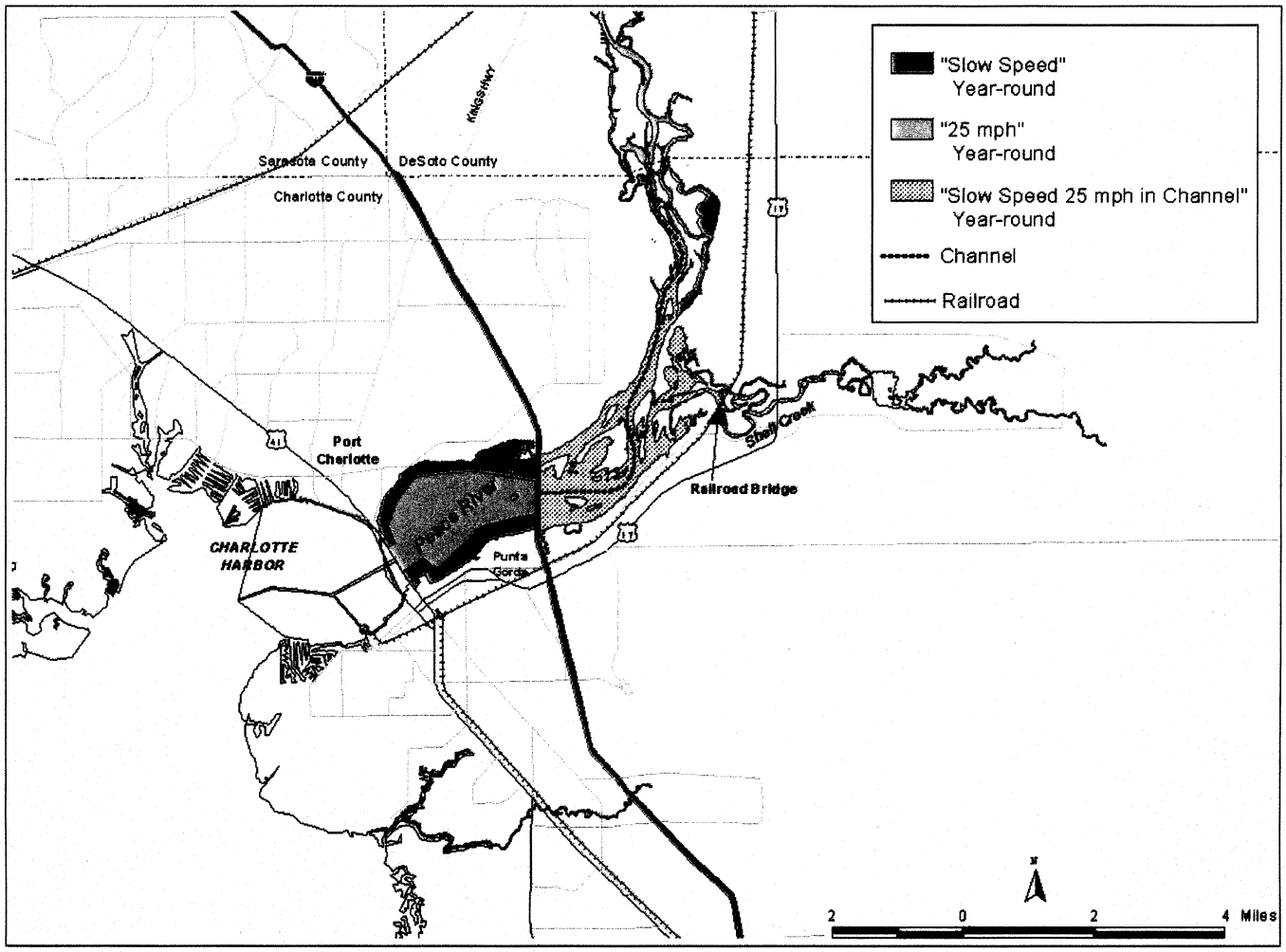
(v) Within the waters of Jim Long Lake and Hunter Creek in Charlotte and De Soto Counties, watercraft are required to travel at slow speed year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(vi) Within the waters of Deep Creek in Charlotte and De Soto Counties, watercraft are required to travel at slow speed year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(vii) Within the waters of Shell Creek in Charlotte County, watercraft are

required to travel at slow speed year-round with the following exception. Should a U.S. Coast Guard or State of Florida approved marked navigation channel be established in that portion of Shell Creek approximately 1.6 kilometers (1 mile) downstream of the Seaboard Railroad trestles, watercraft will be allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) in this section of Shell Creek upon posting by the Fish and Wildlife Service or the Florida Fish and Wildlife Conservation Commission. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(viii) Map of the Peace River Manatee Refuge follows (see Peace River Manatee Refuge):

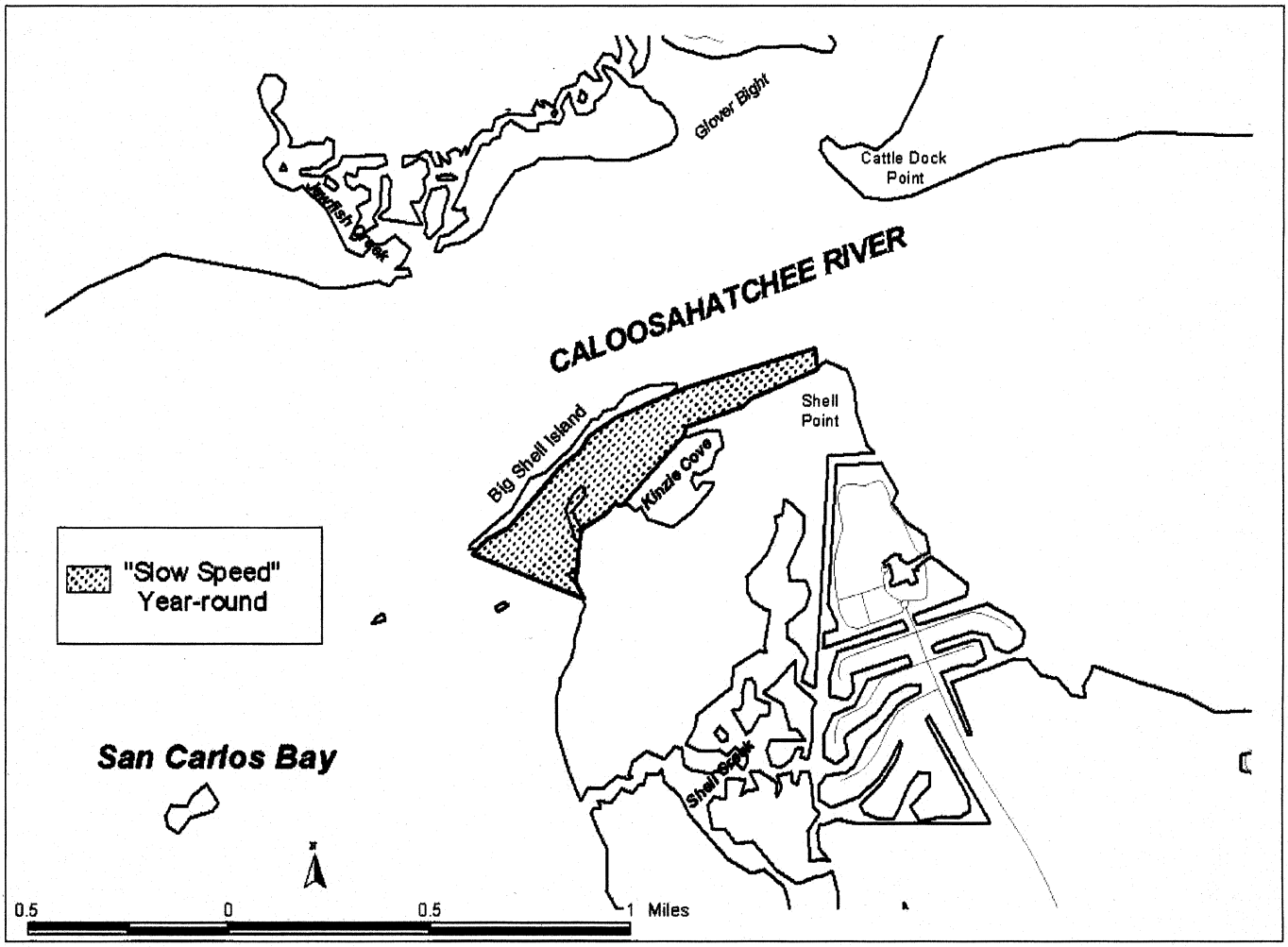


Peace River Manatee Refuge

(9) The Shell Island Manatee Refuge. (i) The Shell Island Manatee Refuge is described as all waters within the marked Intracoastal Waterway channel between Green Marker ''99'' (approximate latitude 26 degrees 31′00″ N, approximate longitude 82 degrees 00′52″ W) and Green Marker ''93'' (approximate latitude 26 degrees 31′37″ N, approximate longitude 81 degrees 59′46″ W), Lee County, Florida; containing approximately 32.6 ha (80.5 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(iii) Map of the Shell Island Manatee Refuge follows (see Shell Island Manatee Refuge):

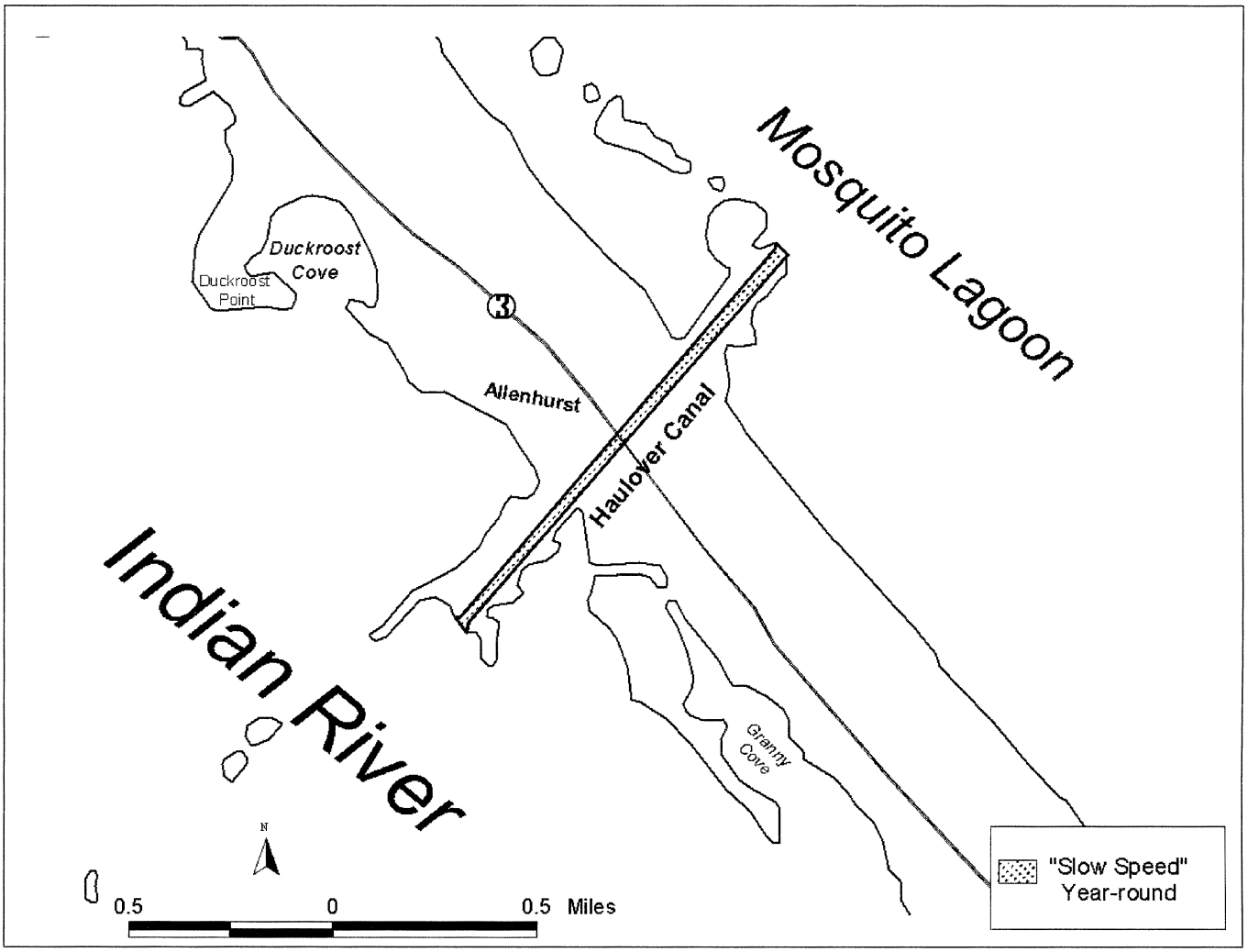


Shell Island Manatee Refuge

(10) *The Haulover Canal Manatee Refuge.* (i) The Haulover Canal Manatee Refuge is described as all waters lying within Haulover Canal in Brevard County, Florida; containing approximately 8.95 ha (22.11 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(iii) Map of the Haulover Canal Manatee Refuge follows (see Haulover Canal Manatee Refuge):

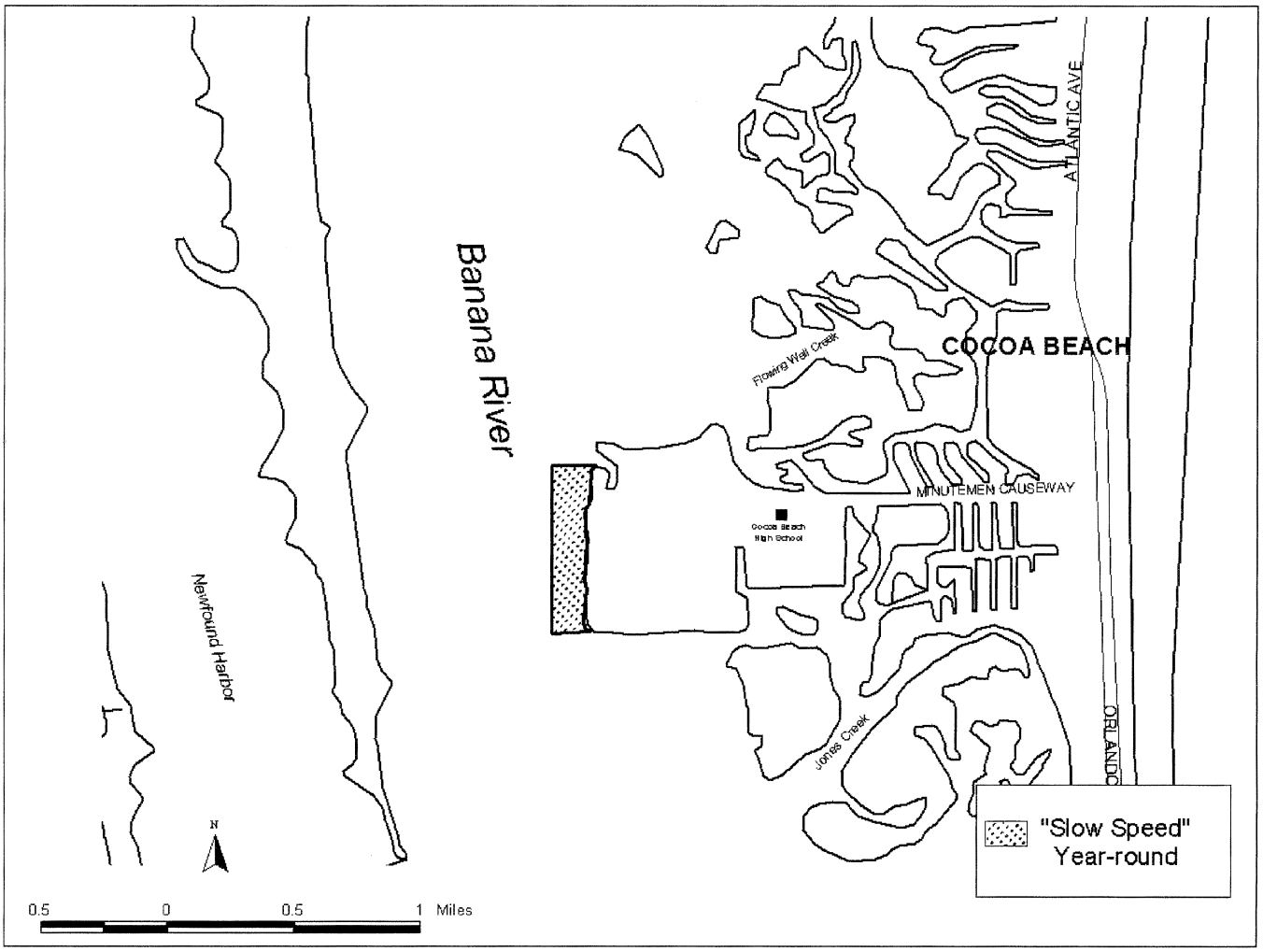


Haulover Canal Manatee Refuge

(11) *The Cocoa Beach Manatee Refuge.* (i) The Cocoa Beach Manatee Refuge is described as the waterbody west of Municipal Park within the City of Cocoa Beach, Florida, commencing at a point 45.7 meters (150 feet) west of the southwest corner of the canal running between Willow Green and Country Club Roads, thence southerly (and parallel to the golf course shoreline) to a point 45.7 meters (150 feet) west of the southwest corner of the Municipal Golf Course shoreline, thence south to marker ''502,'' thence westerly (inclusive of the area known as the ''400 Channel'') to Red marker ''500,'' thence northerly to Red marker ''309,'' inclusive of the ''400 Channel,'' thence southeasterly to the southwest corner of the canal referenced as the point of origin, all these waters being within the eastern half of Sections 8 and 17, Township 25 South, Range 37 East; containing approximately 23.9 ha (59.1 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(iii) Map of the Cocoa Beach Manatee Refuge follows (see Cocoa Beach Manatee Refuge):



Cocoa Beach Manatee Refuge

Dated: October 31, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–28278 Filed 11–5–02; 9:57 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Input on Additional Manatee Protection Measures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for input on additional measures to protect manatees and further recovery of the species.

SUMMARY: We, the Fish and Wildlife Service, are seeking input and soliciting comments on additional measures to protect the endangered West Indian manatee *(Trichechus manatus)* in Florida and further recovery of the species. Specifically, as part of this request, we are seeking information or suggestions that would help us identify additional protection areas; locations that would be appropriate for increased law enforcement efforts; locations where the existing speed zone signage can be improved; how we can effectively increase boater education and outreach; where and when this education and outreach should be directed; factors that should or should not be considered to improve our boating facility site reviews; and other activities that we should undertake or modify or cease to protect the manatee in Florida.

DATES: We must receive your comments regarding this request for information on or before February 6, 2003.

ADDRESSES: Submit written comments to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216 or via electronic mail to *manatee@fws.gov.*

Comments and materials received in response to this request will be available for public inspection at this address during normal working hours from 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter Benjamin (see **ADDRESSES** section) at telephone 904/232–2580, extension 106; facsimile 904/232–2404; or electronic mail *manatee@fws.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting comments for additional measures to protect manatees. The designation of manatee protection areas is just one of the tools available to us to protect manatees and further manatee recovery to meet our responsibilities under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361–1407). With respect to waterborne activities, the tools we currently use include: designation of manatee protection areas; increased law enforcement efforts; improvement of current speed zone signage; boater education and outreach; and boating facility site reviews. We are also working with our Manatee Recovery Team (Recovery Team) and our Habitat Working Group (HWG) to identify and implement manatee conservation activities that will protect manatees and enhance their recovery. We hope that information and suggestions received in response to this request, together with the work generated by the Recovery Team and the HWG, will allow us to more effectively focus our limited resources to protect manatees and further recovery of the species.

During this comment period, we may also conduct public meetings, if requested, to ensure full public participation to develop additional measures to protect manatees. Once the comment period is closed, we will host a meeting of the Recovery Team so it can review the information submitted pursuant to this notice, and to discuss, evaluate and recommend to the Service additional protection measures and habitat protection needs to help ensure the recovery of the manatee.

We propose to hold additional Recovery Team meetings to assist us in identifying additional manatee protection measures, and developing an implementation plan and schedule to carry out these measures. The Recovery Team will be asked to consider the public comments and suggestions obtained through this notice, as well as the recovery needs of the species identified in the final recovery plan, the assessment of the habitat recovery criteria developed by the HWG, the final determinations by the Florida Fish and Wildlife Conservation Commission (FWCC) and us in establishing additional protection areas, the FWCC's Caloosahatchee River study, the species status reviews conducted by both the FWCC and us, and the most up-to-date manatee population model outputs. The benefits of the Recovery Team's assessment of these data and the Team's recommendation will aid us in formulating additional protection measures for possible implementation by State, Federal, county and private conservation entities. It will also ensure that the best science is being utilized to determine manatee protection needs.

In addition, the Service is also publishing in the **Federal Register** proposed incidental take regulations pursuant to the Marine Mammal Protection Act for public comment in November 2002. As a part of the MMPA regulatory process, we will request comments on the proposed mitigating measures we have identified that would be required in order for the Service to make a finding pursuant to the MMPA that the incidental take of manatees will have a negligible impact on the population. Many of the current measures being implemented to protect and recover manatees under the Endangered Species Act (*e.g.*, increased law enforcement efforts, improvement of current speed zone signage, and boater education and outreach), may be the same or comparable to those that may be proposed under the MMPA incidental take regulations, and may be similar to comments or suggestions received from the public through this notice.

The public is encouraged to provide individual comments to both Service actions (this notice requesting input on additional protective measures that the Service could consider and the proposed MMPA incidental take regulations).

Public Comments Solicited

Persons wishing to provide relevant information and comments regarding this request for input on additional measures to protect manatees, should submit such comments in writing to the Jacksonville Field Office (*see* **ADDRESSES** section).

Our practice is to make comments we receive on this process, 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 process, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from the process, 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 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.

Author

The primary author of this document is Peter Benjamin (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

Dated: October 31, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–28279 Filed 11–5–02; 9:57 am]

BILLING CODE 4310–55–P

Reader Aids

Federal Register

Vol. 67, No. 217

Friday, November 8, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

66527–67088 1
67089–67282 4
67283–67508 5
67509–67776 6
67777–68016 7
68017–68492 8

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7615 67087
7616 67283
7617 67293
7618 67295
7619 67771
7620 67773
7621 67775
7622 68017

5 CFR

8301 67089

7 CFR

301 ..... 67509, 67777
905 66527
945 66529
948 68019
980 66529
Proposed Rules:
54 66576
300 67799
319 67799
956 66578
1000 67906
1001 67906
1005 67906
1006 67906
1007 67906
1030 67906
1032 67906
1033 67906
1124 67906
1126 67906
1131 67906
1135 67906

8 CFR

100 66532
103 66532
236 66532
245a 66532
274a 66532
299 66532

9 CFR

53 67089
93 68021
94 66533
98 68021

10 CFR

Proposed Rules:
1 67096
2 67096
7 67096
9 67096
19 67096
20 67096
26 67096
30 67096
31 67096
33 67096
39 67096
50 ..... 66578, 66588, 67096, 67800
51 67096
52 67096
54 67096
55 67096
71 67096
75 67096
100 67096
110 67096

12 CFR

201 67777
204 67777
722 67102
1750 66533

13 CFR

121 ..... 67102, 67253

14 CFR

39 ..... 66540, 66541, 66544, 66547, 66548, 67104, 67297, 67510, 67513, 67516, 67518, 68022, 68024, 68026
71 67253
73 ..... 67787, 67788
97 ..... 67106, 67299
Proposed Rules:
39 ..... 67131, 68047, 68052
71 ..... 66592, 67800, 67801

16 CFR

1700 66550

17 CFR

1 67445
41 67445
190 67445
240 67445
Proposed Rules:
228 68054
229 68054
240 67496
249 68054

18 CFR

101 67692
201 67692
352 67692
Proposed Rules:
35 67339

19 CFR

4 68027
19 68027
122 68027
123 68027
127 68027

141 68027
142 68027
178 68027
201 68036

21 CFR

510 ....67520, 67521
520 67521
522 67521
524 67521
874 67789

Proposed Rules:

314 66593
589 67572

22 CFR

41 67108

24 CFR

982 67522

26 CFR

Proposed Rules:

1 67132
31 67802
300 67573
301 67132

27 CFR

Proposed Rules:

40 67340
275 67340

28 CFR

2 67790

29 CFR

1910 67950

30 CFR

915 67522
917 67524
938 67528
943 67531
944 67534
950 67540

Proposed Rules:

948 67576

31 CFR

103 67547

33 CFR

117 ....66552, 66553, 67108, 67549, 67551
165 ....67110, 67301
401 67112

Proposed Rules:

165 ....66595, 67342

34 CFR

2600 67048
2668 67048
2673 67048
2674 67048
2675 67048
2682 67048
2685 67048
2690 67048
2694 67048

38 CFR

3 67792
217 66554

39 CFR

3001 67552

40 CFR

2 67303
52 ....66555, 67113, 67313, 67563
62 67316
63 68038
80 67317
81 66555
89 68242
90 68242
91 68242
94 68242
131 68039
180 ....66561, 67566
1048 68242
1051 68242
1065 68242
1068 68242

Proposed Rules:

52 ....66598, 67345, 67580
62 67348
81 66598
82 67581
131 68079

41 CFR

101–37 67742
102–33 67742

42 CFR

405 66718
410 67318
414 67318
419 66718

44 CFR

64 67117
65 ....67119, 67123
67 ....67125, 67126, 67128

Proposed Rules:

67 ....67132, 67133, 67135

47 CFR

1 ....67318, 67567
27 68079
73 67568

Proposed Rules:

90 ....67348, 68079

48 CFR

Proposed Rules:

1 67762
5 67762
9 67282
14 67762
19 67762
22 67762
36 67762
52 67762
53 67762

49 CFR

172 66571
174 66571
175 66571
176 66571
177 66571
244 68041
575 67491

Proposed Rules:

171 66598
571 67373
1520 67382
1540 67382
1542 67382
1544 67382
1546 67382
1548 67382

50 CFR

17 ....67968, 68004, 68450
20 67256
222 ....67793, 67795
223 ....67793, 67795
635 68045
648 67568
679 ....66575, 67798

Proposed Rules:

17 ....66599, 67586, 67803, 68490
300 67139
600 67140

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 8, 2002

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Modernization Act; implementation:
- Trading facilities and clearing organizations; new regulatory framework; amendments; published 10-9-02

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Secondary aluminum production
  - Correction; published 11-8-02

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Massachusetts; published 10-9-02

Air quality implementation plans; approval and promulgation; various States:
- Maine; published 9-9-02
- Pennsylvania; published 9-9-02
- Utah; published 10-9-02

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Kneeland Prairie penny-cress; published 10-9-02
- Florida manatee; protection areas; published 11-8-02

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Massachusetts; published 10-28-02
- New Jersey; published 11-6-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Cirrus Design Corp.; published 10-16-02
- McDonnell Douglas; published 10-24-02
- Vulcanair S.p.A.; published 9-25-02

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad consolidations, mergers, and acquisitions of control:
- Safety integration plans
  - Reconsideration petitions; response; published 11-8-02

VETERANS AFFAIRS DEPARTMENT

Medical benefits:
- Hospital and outpatient care provision to veterans; national enrollment system; published 10-9-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Crop insurance fraud; disqualification for benefits; comments due by 11-12-02; published 9-12-02 [FR 02-23234]

Technical Assistance for Specialty Crops program; implementation; comments due by 11-12-02; published 9-10-02 [FR 02-23056]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- General administrative regulations, group risk plan of insurance regulations for 2003 and succeeding crop years, and common crop insurance regulations; comments due by 11-12-02; published 10-28-02 [FR 02-27367]

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:
- Foreign direct investments in U.S.—
  - BE-12; benchmark survey of foreign direct investment in U.S.; comments due by 11-12-02; published 9-12-02 [FR 02-23099]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Western Alaska Community Development Quota Program; halibut; comments due by 11-14-02; published 10-15-02 [FR 02-26136]
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permit applications; comments due by 11-13-02; published 10-29-02 [FR 02-27511]
- West Coast States and Western Pacific fisheries—
  - West Coast salmon; comments due by 11-12-02; published 10-28-02 [FR 02-27362]
  - West Coast salmon; comments due by 11-12-02; published 10-28-02 [FR 02-27361]
  - West Coast Salmon; comments due by 11-12-02; published 10-28-02 [FR 02-27359]

CONSUMER PRODUCT SAFETY COMMISSION

Flammable Fabrics Act:
- Clothing textiles; flammability standard; risk of injury; comments due by 11-12-02; published 9-12-02 [FR 02-23273]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Undue discrimination; remedying through open access transmission service and standard electricity market design
  - Conferences and comment period extended; comments due by 11-15-02; published 10-11-02 [FR 02-25736]
  - Technical conferences; comments due by 11-15-02; published 9-18-02 [FR 02-23694]

Practice and procedure:
- Critical energy infrastructure information; public availability restriction; comments due by 11-14-02; published 10-22-02 [FR 02-26489]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Arizona; comments due by 11-12-02; published 10-11-02 [FR 02-25856]
- Indiana; comments due by 11-12-02; published 10-11-02 [FR 02-25854]
- Massachusetts; comments due by 11-14-02; published 10-15-02 [FR 02-26173]
- West Virginia; comments due by 11-12-02; published 10-11-02 [FR 02-25852]

Solid wastes:
- National Environmental Performance Track Program—
  - Hazardous waste generator facilities; reporting requirements; comments due by 11-12-02; published 8-13-02 [FR 02-20347]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:
- Georgia; comments due by 11-14-02; published 10-1-02 [FR 02-24898]
- North Dakota; comments due by 11-14-02; published 10-1-02 [FR 02-24897]

Radio stations; table of assignments:
- Various States; comments due by 11-12-02; published 10-16-02 [FR 02-26234]

Television stations; table of assignments:
- Texas; comments due by 11-12-02; published 9-25-02 [FR 02-24355]

FEDERAL RESERVE SYSTEM

Credit by brokers and dealers (Regulation T):
- Treatment of stock futures held by customers at security futures intermediary; comments due by 11-15-02; published 10-4-02 [FR 02-25227]

GENERAL ACCOUNTING OFFICE

Administrative practice and procedure:
- Bid protest regulations; revision; comments due by 11-12-02; published 10-1-02 [FR 02-24803]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Dental devices—
Dental sonography and jaw tracking devices; classification; comments due by 11-12-02; published 8-14-02 [FR 02-20499]

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
Visa waiver pilot program—
Passenger data elements; comments due by 11-12-02; published 10-11-02 [FR 02-26027]

LEGAL SERVICES CORPORATION

Outside practice of law by full-time legal services attorneys; comments due by 11-12-02; published 9-11-02 [FR 02-23089]

NUCLEAR REGULATORY COMMISSION

Source material; domestic licensing:
Transfers approval; comments due by 11-12-02; published 8-28-02 [FR 02-21887]

POSTAL SERVICE

Domestic Mail Manual:
Refunds of unused meter stamps and returned business reply mail mailpieces with postage affixed; administrative charges; comments due by 11-14-02; published 10-15-02 [FR 02-26161]

SMALL BUSINESS ADMINISTRATION

Freedom of Information Act; implementation; comments due by 11-12-02; published 9-11-02 [FR 02-22932]

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
New Jersey; comments due by 11-12-02; published 9-12-02 [FR 02-23115]

Ports and waterways safety:
Lower Mississippi River, Greenville, MS; regulated navigation area; comments due by 11-12-02; published 9-13-02 [FR 02-23404]

Practice and procedure:
Territorial seas, navigable waters, and jurisdiction; definitions; comments due by 11-12-02; published 8-14-02 [FR 02-20481]
Correction; comments due by 11-12-02; published 9-18-02 [FR 02-23754]

TRANSPORTATION DEPARTMENT

Workplace drug and alcohol testing programs:
Drug and alcohol management information system reporting forms; comments due by 11-14-02; published 9-30-02 [FR 02-24718]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 11-12-02; published 9-25-02 [FR 02-24281]
McDonnell Douglas; comments due by 11-15-02; published 10-1-02 [FR 02-24689]
Pratt & Whitney; comments due by 11-12-02; published 9-13-02 [FR 02-23290]
Raytheon; comments due by 11-12-02; published 9-25-02 [FR 02-24308]
Robinson Helicopter Co.; comments due by 11-12-02; published 9-10-02 [FR 02-22898]

Airworthiness standards:
Special conditions—
Boeing Model 777-200 series airplanes; comments due by 11-12-02; published 10-11-02 [FR 02-25929]

Class E airspace; comments due by 11-12-02; published 9-27-02 [FR 02-24452]

Class E5 airspace; comments due by 11-15-02; published 10-16-02 [FR 02-26277]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Hazardous materials:
Hazardous materials transportation—
Motor carriers transporting hazardous materials; security requirements; comments due by 11-15-02; published 10-8-02 [FR 02-25463]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
Motor carriers transporting hazardous materials; security requirements; comments due by 11-15-02; published 10-8-02 [FR 02-25463]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Deposit interest paid to nonresident aliens; reporting guidance; comments due by 11-14-02; published 8-2-02 [FR 02-19348]

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:
Montgomery GI Bill-Active Duty program; accelerated payments; comments due by 11-12-02; published 9-11-02 [FR 02-22439]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2733/P.L. 107–277

Enterprise Integration Act of 2002 (Nov. 5, 2002; 116 Stat. 1936)

H.R. 3656/P.L. 107–278

To amend the International Organizations Immunities Act to provide for the applicability of that Act to the European Central Bank. (Nov. 5, 2002; 116 Stat. 1939)

H.R. 3801/P.L. 107–279

To provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes. (Nov. 5, 2002; 116 Stat. 1940)

Last List November 6, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.