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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 354

[Docket No. 98–087–3]

RIN 0579–AB01

Solid Wood Packing Material From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; clarification of effective date.

SUMMARY: This document clarifies the effective date of an interim rule published in the **Federal Register** on September 18, 1998. In the interim rule, we amended the regulations for importing logs, lumber, and other unmanufactured wood articles by adding treatment and documentation requirements for solid wood packing material imported from China. That rule is scheduled to take effect on December 17, 1998. We are clarifying that the requirements of the rule apply to shipments that depart China for the United States on or after December 17, 1998, but do not apply to shipments that depart China prior to that date, even if such shipments arrive in the United States after December 17, 1998.

DATES: The interim rule published at 63 FR 50100 remains effective December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) imposes requirements on the importation of logs, lumber, and other unmanufactured wood articles to prevent the introduction into the United States of dangerous plant pests, including forest pests.

On September 18, 1998, we published in the **Federal Register** (63 FR 50100–50111, Docket No. 98–087–1) an interim rule that amends the regulations by imposing certain requirements on imported solid wood packing material (SWPM) from China, in order to prevent the introduction and establishment of the Asian longhorned beetle and other dangerous plant pests associated with SWPM from China. Under that rule (referred to below as the interim rule), if a commercial shipment from China contains SWPM, then prior to departure from China the SWPM must be heat treated, fumigated, or treated with preservatives, and must be accompanied by a certificate signed by an official of a Chinese government agency that documents the treatment of the SWPM. Commercial shipments from China that do not contain any SWPM must include an exporter statement on or attached to the commercial invoice and as an attachment to the bill of lading stating that the shipment contains no SWPM.

Since the publication date of the interim rule, APHIS has received inquiries concerning the status of shipments from China to the United States that depart China prior to the effective date of the interim rule, but arrive in the United States after the effective date of the interim rule.

The interim rule requires certain actions to occur prior to the departure of shipments from China, i.e., treatment of SWPM, issuance of certificates to accompany the SWPM, and preparation of exporter statements to accompany shipments that do not contain any SWPM. It was not our intention to impose any requirements on shipments that depart China prior to the effective date of the interim rule. Importers, exporters, national governments, and others will need until December 17, 1998, to prepare for the significant changes in operations that will become necessary. Therefore, any shipment that departs China prior to December 17, 1998, is not subject to the requirements of the interim rule. However, we wish to be very clear that a shipment will be subject to the interim rule if it departs one port in China prior to December 17, but subsequently enters and then departs after December 17 another port in China prior to its arrival in the United States. For example, a shipment that departs Shanghai on December 16 for Hong Kong, where the cargo remains on the vessel, is warehoused, or is moved to another vessel, and then departs for the United States on December 20, would be subject to the requirements of the interim rule.

In other words, for commercial shipments moved from China to the United States, it is the date of last departure from China that determines whether the shipment is subject to the requirements of the interim rule. If that date is on or after the effective date of the interim rule (December 17, 1998), then the shipment is subject to the requirements of the interim rule.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2260, 2803, and 2809; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 21st day of October 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–28603 Filed 10–21–98; 1:29 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV99–989–1 IFR]

Raisins Produced From Grapes Grown In California; Relaxations to Substandard and Maturity Dockage Systems

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the substandard and maturity dockage systems for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Under the order, handlers may acquire raisins from producers under a weight dockage system and adjust the

creditable fruit weight acquired according to the percentage of substandard raisins in a lot, or percentage of raisins that fall below certain levels of maturity. Certain marketing order obligations and producer payments are based on the creditable weight of raisins acquired by handlers. Because of unusual crop conditions this year created by the weather phenomenon known as El Nino, the industry predicts that a relatively high percentage of the 1998–99 crop will fall outside the limits of the substandard and maturity dockage systems. Relaxing the limits for the 1998 crop will reduce the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense. This will minimize producers' reconditioning costs and facilitate 1998 crop deliveries.

DATES: Effective on October 24, 1998. Comments which are received by December 22, 1998, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632; or E-mail: moabdocket—clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay____N____Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This 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 the Secretary 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, the Secretary 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 in equity to review the Secretary'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 rule relaxes the substandard and maturity dockage systems for raisins covered under the order. Under the order, handlers may acquire raisins from producers under a weight dockage system and adjust the creditable fruit weight acquired according to the percentage of substandard raisins in a lot, or percentage of raisins that fall below certain levels of maturity. Some marketing order obligations (assessments and volume control) and producer payments are based on the creditable weight of raisins acquired by handlers. Because of unusual crop conditions this year created by the weather phenomenon known as El Nino, the industry predicts that a relatively high percentage of the 1998–99 crop will fall outside the limits of the substandard and maturity dockage systems. Relaxing the limits for the 1998 crop will reduce the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense. This will minimize producers' reconditioning costs and facilitate 1998 crop deliveries. This rule was unanimously recommended by the Committee at a meeting on October 8, 1998.

Section 989.58(a) of the order provides authority for quality control regulations whereby natural condition raisins that are delivered from producers to handlers must meet certain incoming quality requirements. This section also contains authority for handlers to acquire natural condition raisins which fall outside the tolerance established for maturity, which includes substandard raisins, under a weight dockage system. Handler acquisitions of raisins and payments to producers are adjusted according to the percentage of substandard raisins in a lot, or percentage of raisins that fall below certain levels of maturity.

Tolerances for Substandard Raisins

Section 989.701 of the order's regulations specifies incoming quality requirements for natural condition raisins. Lots of raisins may contain a maximum percentage, depending on varietal type, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes). Specifically, lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisin may contain no more than 5 percent, by weight, of substandard raisins. Lots of Muscat, Sultana, and Zante Currant raisins may contain no more than 12 percent, by weight, of substandard raisins.

Dockage System for Substandard Raisins

Section 989.212 provides that handlers may acquire, under an agreement with a producer, raisins that fall outside the tolerance for substandard raisins specified in § 989.701. Specifically, handlers may acquire any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins which contain from 5.1 through 17.0 percent, by weight, of substandard raisins under a weight dockage system. A handler may also acquire, subject to prior agreement, any lot of Muscat (including other raisins with seeds),

Sultana, and Zante Currant raisins containing from 12.1 through 20.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired by handlers under the substandard dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factor in the tables in § 989.212. The dockage factor reduces the weight of the raisin lot by an amount approximating the weight of the raisins needed to be removed in order for the remainder of the lot to meet minimum grade requirements after processing and packing. The weight determined in this manner represents the creditable weight of the raisins which is used as a basis for applicable marketing order obligations and handler payments to producers. Those raisins failing to meet the established substandard tolerance levels (17.0 or 20.0 percent, depending on varietal type) are returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards.

Adverse crop conditions this season created by the weather phenomenon known as El Nino affected the quality of the grapes used to make raisins by not allowing the grapes to properly mature. Temperatures in the production area stayed below average until about mid-June. In addition, due to the lateness of the 1998 crop (at least 3 to 4 weeks), producers had difficulty finding sufficient labor to harvest the crop. Raisin deliveries from producers to handlers have been about 3–4 weeks later than in most crop years. The Committee predicts that a relatively high percentage of the 1998–99 crop will not meet the upper limit (17.0 or 20.0 percent, depending on varietal type) for the amount of substandard raisins permitted in incoming lots of raisins.

Thus, the Committee recommended that the allowable amount of substandard fruit in producer deliveries that can be acquired under the dockage system be increased, for the 1998–99 crop year only, from 17.0 to 25.0 percent for Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins. Likewise, the Committee recommended increasing the substandard dockage limit, for the 1998–99 crop year only, from 20.0 to 35.0 percent for Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins. Lots containing more than 25.0 or 35.0 percent, depending on varietal type, of substandard raisins will be considered off-grade and require reconditioning before they can be acquired by handlers. Appropriate changes incorporating these recommendations are made to § 989.212 and apply for the 1998–99 crop year only.

Increasing the upper limit allowed for substandard raisins will reduce the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense. Handlers will be able to acquire more lots of raisins upon first inspection without experiencing further delay while waiting for failing lots to be reconditioned. The ability to acquire more raisins upon first inspection will help handlers better meet early season market needs.

Tolerance for Maturity

Section 989.701 of the order's regulations specifies that lots of certain varietal types of natural condition raisins must contain a minimum percentage of raisins that are well-matured or reasonably well-matured. Specifically, lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins must contain at least 50 percent, by weight, of raisins that are well-matured or reasonably well-matured, or what is commonly referred to by the industry as the ''B or better'' maturity standard.

Dockage System for Maturity

Section 989.213 provides that handlers may acquire, under an agreement with a producer, raisins falling outside the tolerance for maturity specified in § 989.701. Specifically, handlers may acquire any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins which contain from 35.0 to 49.9 percent, by weight, of well-matured or reasonably well-matured raisins under a weight dockage system. The dockage system is applied similarly to the substandard dockage system previously described. The creditable weight of each lot of raisins acquired by handlers under the maturity dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factor in the tables in § 989.213. The dockage factor reduces the weight of the raisins needed to be removed in order for the remainder of the lot to meet minimum maturity requirements after processing and packing. The weight determined in this manner represents the creditable weight of the raisins which is used as a basis for applicable marketing order obligations and handler payments to producers. Those raisins failing to meet the maturity tolerance level of 35.0 percent are returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards. If a lot of raisins is subject to both a maturity and substandard dockage factor, only the highest of the two dockage factors is applied.

In addition, the maturity dockage system is divided into three categories depending on the percentage of well-matured or reasonably well-matured raisins in a lot. The creditable fruit weight of raisins delivered by producers to handlers in the first category, which includes lots containing between 45.0 to 49.9 percent well-matured or reasonably well-matured raisins, is reduced .05 percent for each 0.1 percent the lot is below 50.0 percent down to 45.0 percent. The creditable fruit weight of raisins delivered by producers to handlers in the second category, which includes lots containing between 40.0 to 44.9 percent well-matured or reasonably well-matured raisins, is reduced 0.1 percent for each 0.1 percent the lot is below 44.9 percent down to 40.0 percent. The creditable fruit weight of raisins delivered by producers to handlers in the third category, which includes lots containing between 35.0 to 39.9 percent well-matured or reasonably well-matured raisins, is reduced 0.15 percent for each 0.1 percent the lot is below 39.9 percent down to 35.0 percent. Applicable marketing order obligations and producer payments are reduced accordingly.

Because of the unusual crop conditions this season created by El Nino, the Committee predicts that a relatively high percentage of the 1998–99 crop will fall below the 35.0 percent tolerance level for maturity. Thus, the Committee recommended that the minimum allowable level for maturity in lots of raisins delivered by producers that can be acquired under the dockage system be reduced, for the 1998–99 crop year only, from 35.0 to 30.0 percent.

The Committee also recommended that the creditable fruit weight of raisin deliveries in this fourth category created for the 1998–99 crop year, or lots containing between 30.0 to 34.9 percent well-matured or reasonably well-matured raisins, be reduced 0.2 percent for each 0.1 percent the lot is below 34.9 percent down to 30.0 percent. Applicable marketing order obligations and producer payments will be reduced accordingly. Lots containing 29.9 percent or less raisins which are well-matured or reasonably well-matured raisins will be considered off-grade and require reconditioning before they can

be acquired by handlers. A new paragraph (e) is added to § 989.213 for this fourth category and applies only to the 1998–99 crop year.

Similar to relaxing the substandard dockage system, reducing the minimum allowable level for maturity for the 1998–99 crop year will reduce the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense. Handlers will be able to acquire more lots of raisins upon first inspection without experiencing further delay while waiting for failing lots to be reconditioned and reinspected. The ability to acquire more raisins upon first inspection will help handlers better meet early season market needs.

Initial 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 initial regulatory flexibility analysis.

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule relaxes the substandard and maturity dockage systems specified in §§ 989.212 and 989.213, respectively, of the order's regulations. These sections allow handlers to acquire raisins from producers under a weight dockage system and adjust their payments and marketing order obligations according to the percentage of substandard raisins in a lot, or percentage of raisins falling below certain levels of maturity. Because of unusual crop conditions this year created by El Nino, the industry predicts that a relatively high percentage of the 1998 crop will fall outside the limits of the dockage systems. Relaxing the limits will reduce the number of lots of raisins returned by handlers to producer or reconditioned by handlers at the producers' expense.

Relaxing the dockage limits for the 1998–99 crop year will allow handlers to acquire more lots of raisins that fall outside specified tolerances for substandard raisins and maturity. Thus, fewer lots will be returned to producers for reconditioning. Transportation costs for hauling raisins to and from the handler's premises (estimated at $5.00 per ton one way) for reconditioning and re-inspection will be eliminated. Producers will also save on reconditioning costs. Producer costs for reconditioning substandard raisins (a ''dry'' vacuuming process) are estimated at $20.00 per ton. Producer costs for reconditioning raisins falling below certain maturity levels (usually a ''wash and dry'' process) are estimated at $140.00 per ton. Producers will also save on re-inspection costs at $8.50 per ton because more of their raisins will meet the relaxed incoming substandard and maturity requirements upon first inspection. In summary, producers whose lots of raisins fall into the extended dockage limits for substandard raisins will not have to incur $38.50 per ton in costs for hauling, ''dry'' reconditioning, and re-inspection. Producers whose lots fall into the revised dockage limits for maturity will not have to incur $158.00 per ton in costs for hauling, ''wet'' reconditioning, and re-inspection.

Relaxing the dockage limits may cause handlers to incur some additional costs because, while the incoming quality requirements are relaxed, outgoing quality requirements will remain unchanged. Thus, the burden of removing substandard raisins or raisins falling below certain levels of maturity will be shifted from producers to handlers. Although handlers will have this additional burden, handlers can more efficiently and economically manage the situation because they already have the processing equipment designed to remove the undesirable fruit.

The Committee considered some alternatives to the recommended action. The Committee has an appointed subcommittee which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on October 6, 1998. There was some deliberation at the subcommittee meeting about revising the order's tolerances for mold for the 1998–99 crop year. However, the majority of subcommittee members did not support any change to the mold tolerances at this time.

Another alternative discussed at the subcommittee and Committee meetings was to reduce the maturity dockage limit from 35.0 to 30.0 percent, as recommended, but revise the dockage factor by 0.15 percent rather than the higher increment of 0.20 percent as recommended by the Committee. However, some handlers believe that the higher incremental dockage is necessary to accommodate a handler's ability to meet the minimum outgoing quality requirements for maturity. Thus, the Committee unanimously recommended that the higher increment of 0.20 percent was appropriate.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large raisin 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. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on October 6, 1998, and the Committee meeting on October 8, 1998, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on relaxing the substandard and maturity dockage systems currently specified under the California raisin order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective

date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 crop year began on August 1, 1998, and this rule should be effective as soon as possible because producers are already delivering 1998–99 crop raisins to handlers; (2) handlers are incurring costs for storing raisins that are tagged as off-grade because they fail to meet the current dockage system limits but would meet the relaxed dockage limits; (3) handlers are in need of raisins to meet their seasonal market needs; (4) this action relaxes requirements currently in effect; (5) producers and handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and need no preparation time to comply; and (6) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.212, paragraph (a) and the notes following paragraphs (b) and (c) are revised to read as follows:

§ 989.212 Substandard dockage.

(a) General. Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins containing from 5.1 through 17.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system: Provided, That, for the 1998–99 crop year, such raisins containing from 5.1 through 25.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler may also, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 through 20.0 percent, by weight, of substandard raisins under a weight dockage system: Provided, That, for the 1998–99 crop year, a handler may acquire such raisins containing from 12.1 through 35.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

(b) * * *

Note to paragraph (b): Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment. Deliveries in excess of 17.0 percent would be off-grade; therefore, the dockage factor does not apply: Provided, That, for the 1998–99 crop year, deliveries in excess of 25.0 percent would be off-grade; therefore, the dockage factor does not apply.

(c) * * *

Note to paragraph (c): Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment. Deliveries in excess of 20.0 percent would be off-grade; therefore, the dockage factor does not apply: Provided, That, for the 1998–99 crop year, deliveries in excess of 35.0 percent would be off-grade; therefore, the dockage factor does not apply.

3. Section 989.213 is amended by revising paragraph (a) and the note following the table in paragraph (d), and adding a new paragraph (e) to read as follows:

§ 989.213 Maturity dockage.

(a) General. Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins containing from 35.0 percent through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system: Provided, That, for the 1998–99 crop year, such raisins containing from 30.0 through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraphs (b), (c), (d), and (e) of this section.

* * * * *

(d) * * *

Note to paragraph (d): Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .0015 less than the dockage factor for the preceding increment. With the exception of the 1998–99 crop year as provided in paragraph (e) of this section, no dockage shall apply to lots of raisins containing 34.9 percent or less of well-matured or reasonably well-matured raisins.

(e) For the 1998–99 crop year, maturity dockage table applicable to lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins which contain 30.0 percent through 34.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured	Dockage factor
34.9	0.8480
34.8	0.8460
34.7	0.8440
34.6	0.8420
34.5	0.8400
34.4	0.8380

Note in paragraph (e): Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .002 less than the dockage factor for the preceding increment. No dockage shall apply to lots of raisins containing 29.9 percent or less of well-matured or reasonably well-matured raisins.

Dated: October 21, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–28557 Filed 10–22–98; 8:45 am]

BILLING CODE 3410–02–U

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: The amendments to part 201 (Regulation A) were effective October 15, 1998. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunications Device for the Deaf (TDD), please contact Diane Jenkins, (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et. al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The ''basic discount rate'' is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In decreasing the basic discount rate, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. Growing caution by lenders and unsettled conditions in financial markets more generally are likely to be restraining aggregate demand in the future. Against this backdrop, further easing of the stance of monetary policy was judged to be warranted to sustain economic growth in the context of contained inflation.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal reserve bank	Rate	Effective
Boston	4.75	October 15, 1998.
New York	4.75	October 15, 1998.
Philadelphia	4.75	October 15, 1998.
Cleveland	4.75	October 16, 1998.
Richmond	4.75	October 16, 1998.
Atlanta	4.75	October 15, 1998.
Chicago	4.75	October 15, 1998.
St. Louis	4.75	October 15, 1998.
Minneapolis	4.75	October 15, 1998.
Kansas City	4.75	October 15, 1998.
Dallas	4.75	October 16, 1998.
San Francisco	4.75	October 15, 1998.

By order of the Board of Governors of the Federal Reserve System, October 19, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–28499 Filed 10–22–98; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

Small Business Size Regulations and Government Contracting Assistance Regulations; Very Small Business Concern

AGENCY: Small Business Administration (SBA).

ACTION: Final rule; notice of compliance date.

SUMMARY: The Small Business Administration published a final rule implementing its Very Small Business Set-Aside Pilot Program in the **Federal Register** of September 2, 1998 (63 FR 46640). In this document the SBA establishes a compliance date of January 4, 1999.

DATES: The compliance date for the Final Rule published at 63 FR 46640 is January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Anthony Robinson, Office of Prime Contracting, at (202) 205–6126.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) published a final rule in the **Federal Register** on September 2, 1998 (63 FR 46640), implementing its Very Small Business (VSB) Set-Aside Pilot Program. The effective date of that rule was September 2, 1998. SBA has determined that it would be in the best interests of those small entities served by the VSB program and those agencies required to implement this program, to establish a compliance date for this rule of January 4, 1999. This will facilitate the promulgation of Government-wide procurement regulations in the Federal Acquisition Regulation (FAR) and, will ensure uniform application and implementation of SBA's VSB program by all Federal agencies. These FAR regulations will be published in the form of an Interim Rule in the **Federal Register** on or before January 4, 1999. Should publication of procurement regulations be delayed in the FAR, the compliance date of this rule will remain as January 4, 1999 and SBA will supply guidance for the implementation of this rule, to those agencies affected, through its Procurement Center Representatives.

Dated: October 15, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–28422 Filed 10–22–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 98F–0433]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyethylene glycol mono-isotridecyl ether sulfate, sodium

salt as a surfactant in adhesives intended for use in contact with food. This action is in response to a petition filed by Servo Delden BV.

DATES: This regulation is effective October 23, 1998; submit written objections and requests for a hearing by November 23, 1998.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 30, 1998 (63 FR 35603), FDA announced that a food additive petition (FAP 8B4600) had been filed by Servo Delden BV, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of polyethylene glycol mono-isotridecyl ether sulfate, sodium salt as a surfactant in adhesives intended for use in contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called ''general safety clause'' of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyethylene glycol mono-isotridecyl ether sulfate, sodium salt as a surfactant in adhesives will result in exposure to no greater than 7 parts per billion (ppb) of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake of 21 microgram per person per day (µg/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive in adhesives to be 0.2 ppb of the daily diet (3 kg) or 0.6 µg/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.6 µg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additive is 2.1×10^{-8} (or 2.1 in 100 million) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the proposed use of the additive.

B. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive in adhesives to be 5 parts per trillion in the daily diet (3 kg) or 15 nanograms (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the proposed use of the additive. The results of the bioassay on ethylene oxide demonstrated that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas of the glandular stomach in female rats.

Based on the agency's exposure estimate to ethylene oxide of 15 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additive is 2.8×10^{-8} (or 2.8 in 100 million)) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additives, the agency would not expect the impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to 1,4-dioxane and ethylene oxide is very low, 2.1 in 100 million and 2.8 in 100 million, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive in adhesives is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 175.105 should be amended as set forth below.

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

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4600 (June 30, 1998, 63 FR 35603). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

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

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 23, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

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

1. Memorandum from the Chemistry Review Team, FDA, to the file concerning FAP 8B4600 (MATS No. 978, M2.0 & 2.1), Servo Delden BV, use of polyethylene glycol mono-isotridecyl ether sulfate sodium salt as a component of adhesives, dated July 16, 1998.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

3. ''Bioassay of 1,4-Dioxane for Possible Carcinogenicity,'' National Cancer Institute, NCI–CG–TR–80, 1978.

4. Memorandum from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning ''Estimation of upper-bound lifetime risk from ethylene oxide and 1,4-dioxane in polyethylene glycol mono-isotridecyl ether sulfate, sodium salt as a surfactant in adhesives: Food Additive petition No. 8B4600 (Servo Delden BV),'' dated July 22, 1998.

5. Dunkelberg, H., ''Carcinogenicity of Ethylene Oxide and 1,2-propylene Oxide Upon Intragastric Administration to Rats,'' *British Journal of Cancer*, 46: pp. 924–933, 1982.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

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

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding an entry under the heading ''Substances'' to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * * * *	
Polyethylene glycol mono-isotridecyl ether sulfate, sodium salt (CAS Reg. No. 150413–26–6).	
* * * * * * *	

Dated: October 15, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–28410 Filed 10–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F–0164]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for the use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food. When the regulation was last amended, the agency inadvertently omitted the limitation on the use level for the additive. This document corrects that inadvertent omission.

EFFECTIVE DATE: October 23, 1998.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 16, 1996 (61 FR 65942), FDA published a document amending the food additive regulations to provide for the expanded safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food. The limitation added by this document was inadvertently omitted from the December 16, 1996, final rule due to an administrative error. Limiting the use level of the additive to no more than 0.30 percent by weight of the olefin polymers is supported by the administrative record of the final rule. Accordingly, FDA is amending the regulation to accord with the record.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

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

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

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

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

2. Section 178.3295 is amended in the table in the entry for ‘‘Sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate’’ by revising entry ‘‘3.’’ under the heading ‘‘Limitations’’ to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* * *	* * * *
Sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl)phosphate (CAS Reg. No. 85209–91–2)	For use only: * * * * * 3. As a clarifying agent at a level not exceeding 0.30 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 2.2, where the finished polymer contacts food only of types I, II, IV–B, VI–A, VI–B, and VII–B as identified in Table 1 of § 176.170(c) of this chapter, and limited to conditions of use B through H described in Table 2 of § 176.170(c) of this chapter, or foods of types III, IV–A, V, VI–C, and VII–A as identified in Table 1 of § 176.170(c) of this chapter and limited to conditions of use C through G described in Table 2 of § 176.170(c) of this chapter.

Dated: October 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–28409 Filed 10–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 77N–094W]

Over-the-Counter Drug Products Containing Analgesic/Antipyretic Active Ingredients for Internal Use; Required Alcohol Warning

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to require an alcohol warning for all over-the-counter (OTC) drug products, labeled for adult use, containing internal analgesic/antipyretic active ingredients. The required warning statements advise consumers with a history of heavy alcohol use to consult a physician for advice about the use of OTC internal analgesic/antipyretic drug products. FDA is issuing this final rule after considering comments on the agency's proposed regulation for OTC internal analgesic, antipyretic, and antirheumatic drug products; a proposed regulation to establish an alcohol warning; recommendations of its Nonprescription Drugs Advisory Committee (NDAC) and Arthritis Drugs Advisory Committee (ADAC); and new data and information that have come to the agency's attention. This final rule is part of the ongoing

review of OTC drug products conducted by FDA.

EFFECTIVE DATE: April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Debbie L. Lumpkins, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2241.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 16, 1988 (53 FR 46204), FDA published a notice of proposed rulemaking, in the form of a tentative final monograph (TFM), that would establish conditions in part 343 (21 CFR part 343) under which OTC internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. In the preamble to the proposed rule of this current rulemaking, the agency addressed concerns raised in the 1988 proceeding about the need for a warning on the increased risk of liver toxicity when acetaminophen is taken with substances or drugs that induce microsomal enzyme activity, i.e., alcohol, barbiturates, or prescription drugs for epilepsy (53 FR 46204 at 46217). The agency found that the available data did not provide a sufficient basis to require such a warning at that time. Interested persons were invited to submit new data or file written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal.

In response to the proposed rule, the agency received a number of comments containing new data addressing the need for an alcohol warning for acetaminophen. Copies of the comments received are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

On June 29, 1993, NDAC met to consider the need for an alcohol warning for acetaminophen. NDAC concluded that heavy drinkers are at increased risk for developing liver toxicity when using acetaminophen and recommended that the labeling of OTC analgesic/antipyretic drug products containing this ingredient bear an alcohol warning. However, NDAC recommended that the agency not implement an alcohol warning for OTC analgesic/antipyretic drug products containing acetaminophen until it had a chance to consider data on the risk of alcohol use with other internal analgesic/antipyretic ingredients.

On September 8, 1993, NDAC and ADAC (the Committees) met jointly to evaluate the available data on the use of aspirin and other OTC analgesics by heavy alcohol users or abusers. The Committees concluded that the use of aspirin, ibuprofen, and naproxen sodium increases the risk of upper gastrointestinal (UGI) bleeding in heavy alcohol users or abusers. Concerning whether the data support an alcohol warning for OTC drug products containing these ingredients, the Committees voted 12 yes, 2 no for aspirin; 12 yes, 2 no for ibuprofen; and 12 yes, 1 no, and 1 abstention for naproxen sodium. The Committees further concluded that a recommendation on the need for an alcohol warning for OTC drug products containing other monograph salicylates (carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate) was outside their advisory scope.

In the **Federal Register** of November 14, 1997 (62 FR 61041), the agency published a proposed amendment of part 201 (21 CFR part 201) that would establish alcohol warnings for all OTC drug products labeled for adult use containing internal analgesic/antipyretic active ingredients. This warning would be required for all OTC internal analgesic/antipyretic drug products whether marketed under an OTC drug monograph or an approved new drug application (NDA).

In the proposal to amend part 201, the agency advised that any final rule based on the proposal will be effective 6 months after the date of publication in the **Federal Register**. Therefore, on or after April 23, 1999, any OTC drug product that is subject to this final rule, that contains nonmonograph labeling may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date that the product was initially introduced or initially delivered for introduction into interstate commerce.

II. The Agency's Response to Comments

A. Comments on Specific Ingredients

1. Two comments argued that the agency's proposed requirement for an alcohol warning for OTC analgesic/antipyretic drug products containing aspirin is not based on sound scientific evidence. One comment asserted that it is necessary for FDA to demonstrate that a significant risk of gastrointestinal (GI) bleeding would result if heavy alcohol users were not specifically warned against the use of aspirin. Both comments suggested that the proposed requirement is contrary to agency statements in the TFM for OTC internal analgesic/antipyretic drug products that warning statements should be ''limited to those that are scientifically documented, clinically significant, and important for the safe and effective use of products by consumers'' (53 FR 46204 at 46213).

In support of this position, one comment included data that purport to show that heavy alcohol use: (1) Does not increase the risk of stomach bleeding (Refs. 1 through 4), (2) alcohol protects against GI problems (Refs. 5 and 6), and (3) GI bleeding in patients who reported prior aspirin and alcohol use is not more severe (Ref. 7). The comment also asserted that its evaluation of the adverse drug reaction data contained in FDA's Spontaneous Reporting System (SRS) failed to demonstrate a correlation between GI bleeding and heavy alcohol use, although the results of this evaluation were not included.

Another comment supporting the need for an alcohol warning for OTC analgesic/antipyretic drug products containing aspirin reviewed the data evaluated by the agency during the development of its proposal. To substantiate the need for an alcohol warning for aspirin, the comment also included data from a recently published study of the relationship between aspirin and nonsteroidal anti-inflammatory drug (NSAID) use and GI perforation (Ref. 8).

The agency continues to believe that warning statements should be limited to those that are scientifically based, clinically relevant, and important for the safe and effective use of these products by consumers. The agency disagrees with the comments asserting that the alcohol warning is not based on solid scientific evidence. An alcohol warning is needed for OTC analgesic/antipyretic drug products containing nonsteroidal anti-inflammatory ingredients, including aspirin. This warning is based on the data and information on the adverse GI effects of aspirin and other NSAID ingredients, the adverse GI effects of alcohol use, and the documented risk of combining them.

Although the previous comments pertain specifically to aspirin-containing OTC analgesic/antipyretic products, the agency's response will provide the scientific reasoning for applying the alcohol warning

requirement to the pharmacologic class of OTC analgesic/antipyretic drug products containing nonsteroidal anti-inflammatory ingredients, which include aspirin, nonaspirin salicylates, ibuprofen, ketoprofen, and naproxen sodium.

These OTC analgesic/antipyretic drug products contain NSAID ingredients, which belong to the carboxylic acid class. Aspirin and other salicylates are salicyclic acids; ibuprofen, ketoprofen, and naproxen sodium are derivatives of propionic acid. All of these ingredients share certain pharmacologic properties, including inhibitory effects on prostaglandin synthesis and platelet function. As with aspirin, propionic acid derivatives produce adverse GI side effects, alter platelet function, and can affect bleeding time (Refs. 9 through 14). Adverse GI effects are caused by aspirin and nonaspirin NSAID ingredients, which can irritate the mucosal epithelium (stomach lining) directly and/or can suppress prostaglandin synthesis. Prostaglandins normally help protect the stomach lining by promoting secretion of mucus and bicarbonate, repair of epithelial (lining) cells, immune cell function, and blood flow. Adverse bleeding effects can occur because NSAID's inhibit platelet aggregation.

Although there are data and information available concerning all of these ingredients, the largest body of data relied upon by the agency pertains to aspirin. Because these NSAID ingredients all share similar pharmacologic properties and can all cause adverse GI effects, including bleeding, it is reasonable for the agency to rely on the data pertaining to individual ingredients and to reason and apply these data to all of these NSAID ingredients. More specific comments concerning other ingredients will be addressed elsewhere in section II of this document.

Drug-related adverse effects can be evaluated through clinical data collected various ways, including randomized controlled trials, cohort studies, case-control studies, surveys, and spontaneous case reports. Prospective, randomized, blinded clinical trials require large patient enrollments to demonstrate a difference between groups when adverse events are infrequent, even if serious. Thus, most studies which examine the adverse GI effects of NSAID's are observational rather than experimental. Observational studies provide important information when investigating an association between a risk and a predisposing event. However, these studies may be subject to specific biases which should be considered. For example, case-control studies examine the prevalence of NSAID (and alcohol) exposure in patients who already have the outcome (GI events or bleeding) with a control population, which is matched for other factors. These studies may suffer from recall bias; that is, individuals in cases may be more likely than controls to remember that they took an NSAID (or alcohol). When reviewing these data from various studies, the agency has taken into account the limitations of each study method. Despite the limitations of individual studies, the data generated by each of these methods collectively provide a sound body of evidence from which it is scientifically reasonable to assess risk. Therefore, the agency believes that the collected body of scientific evidence supports the labeled warning.

As previously discussed in the notice of proposed rulemaking (62 FR 61041 at 61049), the adverse GI effects of aspirin are well known. Medical texts document adverse effects associated with the use of aspirin. These effects include, but are not limited to, gastritis, ulcerations, and colitis (Refs. 15 through 18). In addition, aspirin irreversibly interferes with normal platelet function for the life of the platelet, prolongs the bleeding time, and interferes with clotting whenever bleeding occurs (Ref. 13). Nonsalicylate NSAID ingredients reversibly inhibit platelet aggregation for as long as the drug is in the blood (Refs. 13 and 14). GI mucosal damage caused by aspirin has been widely acknowledged in the medical literature (Ref. 15 through 18), confirmed by endoscopic observational studies (Ref. 19), and taught through medical texts to students of medicine (Ref. 20).

In 1977, the Advisory Review Panel for OTC Analgesic and Antipyretic Drug Products (the Panel) first reviewed relevant data and concluded that aspirin causes adverse GI effects. The Panel concluded that the adverse effects of aspirin on the GI system range from relatively mild effects such as gastric distress (minor stomach pain, heartburn, or nausea), mucosal irritation and occult (not easily seen) bleeding, to less frequent but more serious effects such as mucosal erosion, ulceration, and life-threatening massive bleeding. The Panel further concluded that the acute use of aspirin may activate symptoms of both gastric and duodenal ulcer (42 FR 35346 at 35386 through 35397, July 8, 1977).

In addition to the Panel's conclusions, FDA also evaluated published literature, including studies which demonstrate adverse GI effects even with low-dose aspirin use (Refs. 21 and 22). The agency also reviewed data from controlled, prospective clinical trials on aspirin for cardiovascular and cerebrovascular uses and established that bleeding can occur with long-term aspirin use, even at low doses (62 FR 61041 at 61050).

Just as aspirin is well known to produce adverse GI effects, including bleeding, it is also well known that alcohol is a gastric toxin and that heavy alcohol use may cause a number of adverse GI effects, including bleeding. Routinely heavy alcohol use is associated with a number of medical conditions. These conditions include, but are not limited to, esophagitis, varices, acute gastritis, hemorrhagic lesions of the duodenal villi, and peptic ulcer disease (Refs. 23 through 28). Also, chronic heavy alcohol use can cause bleeding because of increased prothrombin time, decreased circulating platelets, and altered function of platelets (Ref. 13). Early (Ref. 23) and continuing (Refs. 24 through 26) study of the effects of alcohol on the stomach have been widely published in the scientific literature and alcoholic gastritis is a well-recognized cause of acute hemorrhagic gastritis (Ref. 29). These effects of heavy, chronic alcohol use on the GI system and bleeding parameters are explained in many standard medical textbooks (Refs. 25, 27 and 28).

The Panel recognized alcohol as a major factor that may produce acute gastric mucosal lesions, and thus increase the risk of bleeding from the use of aspirin (42 FR 35346 at 35479). Given these observations and the well established and recognized medical acceptance of GI and bleeding problems associated with the use of either aspirin or alcohol, the agency was concerned about the risks present for consumers who routinely and heavily drink alcohol and also use aspirin. This concern led to a review of relevant medical literature and studies (Refs. 8, 30, and 31), which confirmed the increased risk of adverse GI events, including bleeding, when alcohol use and aspirin use are combined.

Published studies which include randomized controlled clinical trials (Refs. 32 through 35), case-control studies (Refs. 8, 36 through 39a), cohort studies (Ref. 40), meta-analyses (Refs. 41 and 42), physician surveys (Ref. 31), and case reports (Ref. 43) have established an association between NSAID's, including aspirin, and adverse GI events, including bleeding. Because chronic alcohol use causes GI disease and bleeding, some studies simply exclude these patients from entry or analysis when assessing the risk of NSAID use on adverse GI outcomes (Ref.

44). However, some studies have examined both NSAID and alcohol use (Refs. 8, 30, 31, and 45) and assessed the risk of developing adverse GI events, including bleeding.

P. J. DeSchepper et al. (Ref. 45) measured fecal blood loss in 10 healthy males in a double-blind, parallel study and in 12 healthy subjects in a double-blind crossover study. Fecal blood loss was demonstrated with aspirin ingestion and concomitant ingestion of alcohol significantly increased (by three times) this blood loss.

D. Aarons et al. (Ref. 30) conducted a double blind prospective study of 27 healthy volunteers with initial normal baseline endoscopies who were given alcohol and either placebo, aspirin, or acetaminophen. Repeat endoscopy showed that alcohol and aspirin together caused significantly greater erythema (redness) due to irritation and hemorrhage in the stomach than alcohol alone.

The agency has reviewed adverse events reported to its SRS data base (Ref. 43). From 1993 to 1995, 37 case reports were submitted for serious UGI bleeding, 36 involving hospitalizations and 1 death. Most bleeds were documented by endoscopy. In these reports, ibuprofen was listed as the suspect drug in patients who reported chronic alcohol use (nearly 80 percent reported alcoholism or more than two drinks/day). Of important note, concomitant use of salicylates, primarily aspirin, was reported in almost 50 percent of these cases, thus associating both ibuprofen and/or salicylates with these reports of bleeding. From 1994 to 1996, five case reports were submitted for serious UGI bleeding with naproxen sodium listed as the suspect drug in patients who reported daily (or binge) alcohol ingestion. Two of these reports also listed salicylate use and two reports listed concomitant ibuprofen use. From 1993 to 1996, 10 case reports were submitted for serious UGI bleeding with aspirin listed as the suspect drug in patients who also reported alcohol ingestion (more than 2 drinks/day or unspecified). All 10 cases were hospitalized. Cases of concomitant NSAID ingredient use were excluded. Thus, the agency's SRS data base provides additional serious adverse events documenting the association between NSAID ingredient use and UGI bleeding in persons with a history of chronic alcohol use.

In a prospective community clinical case study, Lee et al. (Ref. 46) endoscoped 400 consecutive patients hospitalized for UGI hemorrhage to identify factors which predispose patients who bleed from hemorrhagic erosive gastritis. Of the 74 patients with stomach bleeding, salicylate use (31 percent), alcohol use, usually chronic (27 percent), or both (16 percent) were reported. There was no case-matched control and relative risk was not assessed. However, this study demonstrates that patients who have experienced hemorrhagic erosive gastritis (stomach bleeding) commonly report having used alcohol and/or salicylates.

Peura et al. (Ref. 31) surveyed American College of Gastroenterology physicians to assess demographics, management strategies, and outcomes for 1,235 patients who were diagnosed with GI bleeding. OTC doses of NSAID's were associated with a three-fold increased risk for developing GI bleeding and alcohol use increased this risk to four-fold.

Lanas et al. (Ref. 8) conducted a single-center, prospective, case-controlled study, which examined the relationship between NSAID use, including aspirin, and GI perforation. Detailed clinical histories and laboratory tests were obtained in 76 hospital admitted patients with surgically documented GI perforations and in 152 matched case controls. Histories of NSAID use were confirmed by measuring platelet cyclo-oxygenase activity. In the study cohort, 67 percent of the patients used aspirin (90 percent of these were over-the-counter formulations). The calculated odds ratio (OR) for GI perforation in patients who had used an NSAID within a week prior to hospitalization was 6.64 (95 percent confidence interval: 3.6–12.2; $p < 0.0001$) as compared to those who had not. Other independent risk factors for perforation included smoking (OR: 3.88; 95 percent CI: 2.15–7.0; $p<0.0001$), alcohol ingestion (OR: 3.25; 95 percent CI: 1.81–5.82; $p<0.0001$), and peptic ulcer disease (OR: 3.29; 95 percent CI: 1.74–6.21; $p<0.0005$). The combination of NSAID's, smoking, and alcohol increased the risk of GI perforation (OR: 10.69; 95 percent CI: 3.60–29.87). Because the study was conducted in Spain, a small number of patients in both cohorts reported use of NSAID's which are not available in the United States. However, the study conclusions remain valid for the NSAID class and, importantly, for nonprescription aspirin.

Although acute ingestion of aspirin and alcohol causes gastric hemorrhage (Ref. 30) in previously normal gastric mucosa, the increased bleeding risk from NSAID's in chronic heavy alcohol users can be further compounded by coexisting problems such as prolonged prothrombin time due to liver disease, decreased number of circulating platelets, and pre-existing GI disease (e.g., esophageal varices, ulcers, or alcoholic gastritis) (Ref. 13). Alcohol also potentiates the prolongation of bleeding time produced by aspirin and nonaspirin NSAID's, including ibuprofen (Ref. 14). A retrospective cohort study, using a Medicaid data base, was designed to determine the risk and cost of adverse GI effects associated with NSAID use (Ref. 47). Logistic regression analysis showed NSAID use was significantly associated with each defined GI side effect (i.e., ulcers, gastritis, bleeding) ($p<.001$) and alcohol-related diagnoses were a significant independent predictor of increased risk ($p<.05$) for GI bleeding and hemorrhagic gastritis. Therefore, co-existing GI and bleeding problems in chronic heavy alcohol users may pre-dispose to the increased bleeding risk from NSAID ingredients.

The data and studies presented provide sound and convincing evidence to support the conclusion that consumers are at increased risk of adverse GI effects when using OTC analgesic/antipyretic products, including aspirin, in combination with routine heavy alcohol use (Refs. 8 and 31). While the data and studies show that there is an increased risk to consumers who combine these drug products with routine heavy alcohol use, the agency acknowledges that the data differ as to the exact magnitude of this increased risk.

The agency again convened expert advisors in 1993 (Refs. 48 to 50) in three separate advisory committee meetings with NDAC and ADAC, to discuss the question of whether OTC analgesic/antipyretic products containing aspirin should bear an alcohol warning. The advisory committee experts concluded that aspirin increases the risk of UGI bleeding in heavy alcohol users or abusers and overwhelmingly concluded that the data support an alcohol warning for aspirin. A complete discussion of this conclusion can be found in the proposed rulemaking (62 FR 61043 through 61044).

The agency has reviewed the data and information submitted with the comments, which both oppose and support a requirement for an alcohol warning on OTC analgesic/antipyretic drug products containing NSAID ingredients, including aspirin. The agency's analysis of these data follows.

Holvoet et al. (Ref. 1) was reviewed by the Committees which heavily criticized the study design and did not use it as a basis for their recommendation (Ref. 48). Coggon, Langman, and Spiegelhelter (Ref. 2) was a case-control

study in patients with GI bleeding which reported an increased risk (OR of 3.7, 95 percent CI: 2.2–6.4) for patients who had recently used aspirin; but this study did not detect an added risk associated with alcohol use. However, the study groups were not balanced for alcohol-use history ($p<0.02$), compromising the ability of the study to determine the additional risk, if any, in heavy alcohol users. Bartle, Gupta, and Lazor (Ref. 3) failed to detect an increased risk of acute UGI bleeding with weekly alcohol ingestion of 280 milliliters. The investigators noted, and the agency concurs, that more patients would be required to assess whether or not an association exists. Although Schubert et al. (Ref. 6) reported a decreased risk of duodenal ulcer disease with alcohol use, the study lacked a matched case-control comparator arm and failed to quantify alcohol ingestion and other co-factors which may be associated with risks for developing ulcer disease.

Likewise, the Cohen et al. (Ref. 5) study submitted to demonstrate that alcohol is protective against GI bleeding caused by aspirin is not relevant because this study excluded patients without existing GI disease and those who drank more than two alcoholic drinks per day. Thus, the study excluded the very target population required to answer the question addressed by the agency, namely, individuals who consume three or more alcoholic drinks every day and/or have concomitant alcohol associated GI disease. The investigators concluded, and the agency concurs, that it is impossible to determine from this study that alcohol protects patients who take aspirin.

Jensen et al. (Ref. 7) reported that alcohol and aspirin use prior to hospital admission for the treatment of UGI bleeding was not associated with certain surrogate variables which were used to estimate the severity of GI bleeding. All patients were selected because they required medical treatment for severe UGI hemorrhage, and information was collected regarding alcohol and aspirin use. However, the study was not analyzed to evaluate whether reported concomitant aspirin and alcohol use is associated with a higher risk for developing UGI bleeding. Therefore, this study did not address the basic question before the agency, namely, whether there is an increased risk of stomach bleeding in patients who consumed both alcohol and aspirin.

Soll (Ref. 4) is a review article on peptic ulcer disease presented by an expert gastroenterologist. The article reviews the scientific literature and concludes that NSAID's, including aspirin, produce topical irritative effects on the mucosa as well as ulcerations as a consequence of a systemic effect. Therefore, NSAID's, which are rectally delivered or enteric coated may still cause adverse GI effects. Similar reviews have been published elsewhere (Refs. 51 and 52). Thus, while the article was submitted in opposition to a warning, the information in the article supports the scientific rationale for a warning.

A case-controlled study was also submitted which supports the need for an alcohol warning on OTC analgesic/antipyretic drugs containing NSAID ingredients (Ref. 8). This study has been previously summarized earlier in this response to comment 1 of section II.A of this document.

Given the data available at this time, the agency cannot precisely quantify the increased risk of combining routine heavy alcohol use and these OTC drug products. In order to require an alcohol warning, however, it is not necessary that the agency be able to demonstrate precisely how much the risk is increased. The available data demonstrate clearly that the risk to consumers of combining heavy routine alcohol use with these drug products is greater than the risk of using either alcohol or these drug products alone. These data are sufficient to establish the need for an alcohol warning on these OTC products. In light of the clearly demonstrated increased risk to consumers, the agency is requiring an alcohol warning about the risk of stomach bleeding on aspirin and other NSAID-containing OTC drug products.

In summary, OTC analgesic/antipyretic drug products, including aspirin, are known to cause adverse GI effects, including bleeding. Chronic, heavy alcohol use is also associated with adverse GI effects, including bleeding. Based on the agency's review of a large body of scientific information and in concurrence with expert advisors, FDA has determined that routine, heavy (three or more alcoholic drinks every day) alcohol use in combination with use of OTC analgesic/antipyretic drug products containing NSAID ingredients increases the risk of adverse GI events, including stomach bleeding. The agency believes that the most appropriate public health response to this information concerning risk is to warn consumers who drink three or more alcoholic drinks every day to consult their doctor about their use of these OTC drug products. This conclusion is scientifically based, clinically relevant, and important for the safe and effective use by consumers of OTC analgesic/antipyretic drug products containing NSAID ingredients.

2. One comment argued that FDA's conduct of this rulemaking violates the Administrative Procedure Act (APA). The comment stated that the APA requires that a notice of proposed rulemaking include ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' (5 U.S.C. 553(b)). The comment maintained that the agency's proposal fails to adequately describe the basis for the requirement for an alcohol warning for OTC drug products containing aspirin. The comment asserted that FDA denied interested parties adequate notice of the action by failing to expressly state its reliance on a ''switch rationale,'' i.e, the concern that an alcohol warning on one analgesic would cause inappropriate ''switching'' to other OTC analgesic/antipyretic drug products. The comment further argued that the agency's failure to obtain the raw data from unpublished epidemiological studies presented to the Committees that made recommendations also effectively denied interested parties the opportunity to comment fully.

Another comment suggested that the ''switch rationale'' is flawed. The comment asserted that there is no evidence that heavy alcohol users would be persuaded to change their analgesic use based on an alcohol warning. One comment noted that after several years of voluntary alcohol warnings on products other than aspirin, market tracking data for aspirin sales for the years of 1994 to 1997 have demonstrated that ''switching'' does not occur.

The intent of the warning is to advise consumers with a history of heavy alcohol use (three or more alcoholic drinks every day) to consult a physician for advice about the use of all OTC analgesic/antipyretic products and to advise that there is a specific risk associated with use of these products. The agency agrees that it is important not to encourage consumers who consume three or more alcoholic drinks every day to begin to use another OTC analgesic/antipyretic drug product before consulting their physician. In comment 1 of section II.A. of this document, the agency describes the scientific basis for requiring an alcohol warning for OTC analgesic/antipyretic drug products containing NSAID's, including aspirin. This rationale is also present in the agency's proposal (62 FR 61041 at 61049).

As discussed in the proposed rule (62 FR 61041 at 61049), the agency agreed with the assessment of the Advisory

Committees who made recommendations on the unpublished data presented before the committees. Raw data were not evaluated by the agency, do not serve as the agency's basis for this final rule, and are not required to be placed in the administrative record. The agency disagrees that interested parties were given insufficient opportunity to comment fully on the data. Comments on the presentations to the Committees as well as the Committees' recommendations (Ref. 53) were included in the administrative record. Further, the comments' criticisms of the unpublished data presented in September 1993 were sent to the members of the Committees for their specific comment. Of the responses received (Ref. 54), none stated that the comments' criticisms changed their recommendation. The agency has included in the administrative record the relevant data and information that were considered and relied upon regarding the warning statement requirements of the final rule. Therefore, the agency considers the requirements of the APA to be fully satisfied.

3. Three comments asserted that the imposition of an alcohol warning on aspirin could result in a significant adverse impact on public health. The comments said that placing an unnecessary ''stomach bleeding'' warning on aspirin may cause consumers taking it for its cardiovascular and cerebrovascular benefits to avoid using aspirin. The comments suggested that poor compliance with cardiovascular and cerebrovascular aspirin regimens could be detrimental to consumers at risk for these events. One comment noted that consumers on a long-term professional use regimen would be under a doctor's supervision and would presumably be warned about the risks of aspirin use and would be monitored for GI injury. Another comment maintained that the low doses used in long-term professional use aspirin regimens have not been associated with significant GI problems.

In its proposal, the agency evaluated the published literature on aspirin for cardiovascular and cerebrovascular uses and determined that bleeding can occur with long-term aspirin use, even at low aspirin doses. The proposal also discussed the use of alcohol in patients with cardiovascular problems and noted the recommendations of the American Heart Association (AHA) that consumers with these conditions should not consume alcohol heavily (62 FR 61041 at 61050). The proposal further reviewed the increased risk of cardiovascular diseases, such as heart muscle disease, hypertension, disturbances in heart rhythm, and stroke from heavy alcohol use. The intended purpose of this warning is to promote a dialogue between physicians and individuals who consume three or more drinks every day. The agency believes that this dialogue should extend to consumers on long-term aspirin regimens who may be adding to their risk of adverse vascular events by their alcohol consumption. Therefore, the agency concludes that an alcohol warning on OTC analgesic/antipyretic drug products containing aspirin will provide important advice to consumers on long-term, low-dose vascular regimens.

4. Two comments argued that to the limited extent that consumers are at risk from aspirin use, they are already alerted to this risk by warnings included in the TFM for OTC internal analgesic/antipyretic drug products (53 FR 46204). Specifically, the comments asserted that the proposed warning in § 343.50(c)(1)(v)(B) that states: ''Do not take this product if you have stomach problems (such as heartburn, upset stomach, or stomach pain) that persist or recur, or if you have ulcers or bleeding problems, unless directed by a doctor,'' is sufficient to warn consumers with stomach problems, whether due to heavy alcohol use or another condition, about the risk of aspirin.

The warning in § 343.50(c)(1)(v)(B) is intended to warn consumers with diagnosed stomach ulcer or symptoms of stomach distress to avoid the use of aspirin, unless directed to do so by a doctor. However, as noted in the agency's proposal, acute hemorrhagic gastritis accounts for 25 percent of major bleeding in heavy, chronic alcohol users and this condition may be asymptomatic (62 FR 61041 at 61049). For this reason, the agency finds that the currently proposed stomach distress warning does not adequately inform individuals who consume three or more alcoholic drinks every day of their risk.

5. Two comments stated the belief that the agency's proposed rulemaking did not evaluate the totality of the data for nonprescription ibuprofen. One comment argued that ibuprofen, even at prescription doses, has excellent GI tolerability. In support of its position, the comment cited data from a variety of different studies (Ref. 55) assessing the relative GI tolerability of prescription and OTC ibuprofen. The comments continued that the proposed rule does not acknowledge data demonstrating the excellent GI tolerabililty of ibuprofen, even when taken by individuals who regularly consume alcohol. Cited by the comment were: (1) The results of an endoscopic study of the effects of alcohol administration on the GI tolerability of 2,400 milligrams (mg) ibuprofen (twice the maximum daily OTC dose)/day (d) in healthy subjects (Ref. 56), (2) epidemiological studies previously evaluated by the agency (Refs. 57, 58, and 59) , and (3) an assessment of adverse reaction reports for OTC analgesic/antipyretic drug products containing ibuprofen (both prescription and OTC) contained in the agency's SRS data base for 1974 to 1993.

Another comment noted that while OTC drug products containing ketoprofen and naproxen sodium have been required to include an alcohol warning in their label, there are no clinical or meaningful epidemiological data to support the need for a warning on these products. Based on this lack of data, the comment maintained that an alcohol warning should not be required for any of the currently approved OTC NSAID's. To support its position, the comment cited the lack of reports of injury from the use of these products with alcohol and few reports of GI bleeding when these products are used as directed.

The agency concludes that an alcohol warning is needed for OTC analgesic/antipyretic drug products containing ibuprofen. Endoscopic data (Ref. 56) evaluating the GI tolerability in healthy subjects of prescription doses of ibuprofen (2,400 mg/d for 1 day) with 100-proof vodka are not adequate because the study did not assess the safety of ibuprofen use in individuals who consume three or more alcoholic drinks every day. Carson et al. (Ref. 59) reported that subjects with an alcohol-related diagnosis who took prescription ibuprofen had no material increase in bleeding. However, the Committees' evaluated the study by Carson and concluded that the population studied may not be generalizable (Ref. 48). The agency evaluated and discussed other studies (Refs. 57 and 58), which were not convincing as discussed in the proposed rule (62 FR 61041 at 61050).

Data concerning the relative GI tolerability of OTC ibuprofen are not sufficient to support the safety of ibuprofen in heavy alcohol users. Data from case-control studies which looked at the association between NSAID use and GI bleeding by Griffin et al. (Ref. 60), Savage et al. (Ref. 39), and Garcia Rodriguez and Jick (Ref. 61) were presented and publicly discussed at the October 11 and 12, 1995, Arthritis Advisory Committee Meeting (Ref. 62). All three of these studies found the use

of ibuprofen to be associated with a dose-dependent increase in risk for GI bleeding. The study by Somerville et al. (Ref. 38), which also looked at this issue, adds nothing to the discussion. Bradley et al. (Ref. 63) compared the effectiveness of low-dose ibuprofen (1,200 mg/d) to high-dose ibuprofen (2,400 mg/d) and high-dose acetaminophen (4,000 mg/d) in patients with osteoarthritis. This study confirmed the dose-dependent increase in GI symptoms associated with ibuprofen use (1,200 mg/d: 7/62, 11.3 percent; versus 2,400 mg/d: 14/61, 23.0 percent). None of these studies looked at the associated risks for gastrotoxicity and ibuprofen in individuals who consume three or more alcoholic drinks every day. DeArmond et al. (Ref. 64) is an abstract of safety data generated from 48 clinical trials evaluating OTC naproxen sodium versus ibuprofen and acetaminophen.

As previously discussed, study results displaying comparative risks among these analgesic products are difficult to interpret. However, because adverse GI effects, including bleeding, occur with all NSAID ingredients covered by this final rule, the warning is needed for all of these ingredients.

In conclusion, as previously discussed in comment 1 of section II.A. of this document, based on the similar pharmacologic properties of the nonaspirin NSAID ingredients available OTC as antipyretic/ analgesic drug products, the available scientific data for NSAID ingredients, alcohol, and the combination of nonaspirin NSAID's and alcohol, the agency concludes that an alcohol warning is needed for the safe and effective use of OTC drug products containing ibuprofen, ketoprofen, or naproxen sodium.

6. Several comments objected to the agency's requirement for an alcohol warning on OTC drug products containing carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate. These objections were based on the lack of data supporting the risk of the use of these products by individuals with a history of heavy alcohol use. The comments did not include data.

The agency notes that carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate were recognized by the Panel as having similar adverse effects on the GI tract as aspirin (42 FR 35346 at 35417 through 35422). Similar to aspirin, these adverse effects include gastric ulcer, exacerbation of peptic ulcer symptoms (heartburn and dyspepsia), GI hemorrhage and erosive gastritis (Ref. 65). These adverse effects can occur even at low doses. Based on the recognized individual GI toxicities of carbaspirin calcium, choline salicylate, magnesium salicylate, sodium salicylate, and alcohol as well as the Panel's recommendation that these OTC analgesic/antipyretic drug products bear similar labeling, including a warning against use of these OTC products in the presence of stomach distress, the agency concludes that an alcohol warning is necessary for the safe and effective use of OTC drug products containing these ingredients.

B. Comments on Labeling

7. Several comments objected to the inclusion of trade names and brand names in the proposed warning, because it would be confusing to consumers and would use up valuable label space. Two comments suggested using the name of the analgesic/antipyretic ingredient. Two comments suggested using the term ''this product,'' ''the product,'' or ''product'' in place of the trade name or brand name so that the warning would be generic for all OTC analgesic drug products. One comment suggested that even these terms (''this product,'' etc.) are superfluous and unnecessary. A comment contended that for cough/cold and analgesic combination drug products, the trade name could confuse consumers because only the analgesic ingredients pertains to the alcohol warning. Thus, consumers may infer that the warning was directed at each of the ingredients in a combination drug product.

The agency agrees that clear labeling is necessary. Inclusion of the name of the ingredient helps educate and alert the consumer by making the warning more precise. The agency also believes that the name of the specific analgesic/ antipyretic active ingredient would generally be more informative than the term ''this product'' or other similar terms. Therefore, the agency is revising the warning to include the analgesic/ antipyretic ingredient name instead of the brand name.

8. A number of comments were in disagreement as to the relative importance of the warnings for acetaminophen, aspirin, and other NSAID's. A number of comments said the established risks of acetaminophen use by heavy alcohol users far outweigh the risks of aspirin use by the same consumers. One comment submitted data from a comparative risk analysis of aspirin and acetaminophen (Ref. 66). Based on this analysis, the comment maintained that the number of expected deaths from acetaminophen toxicity when used for the short-term treatment of fever and pain is 12 times higher than that expected with aspirin.

Several comments complained that despite the much greater risk for acetaminophen, the proposed alcohol warning conveys the impression that for heavy alcohol users, the hazards of acetaminophen use and aspirin (or NSAID) use is essentially the same. Thus, consumers may be led to believe that they face a comparable risk with either analgesic. The comments said the proposed warning minimizes the essential messages. In support of this position, the comment included the results of a labeling comprehension study (Ref. 67) that it maintained demonstrated that consumers interpreted the warnings as conveying equivalent risks.

The agency has reviewed the analysis submitted by one comment (Ref. 66). There were numerous flaws in the baseline assumptions, some of which were noted by the analysis. The authors assumed that the maximum recommended daily dose of aspirin is 2,600 mg, but the maximum daily dose in OTC aspirin labeling is 4,000 mg. For comparative purposes, alcohol consumption should have been defined in terms of absolute alcohol. Deaths for GI bleeding and hepatotoxicity were based on articles from the literature rather than actual death rates in the United States attributed to either of these conditions. The authors summarized the data from case reports of hepatotoxicity due to ''therapeutic misadventure'' with acetaminophen to estimate the rate of hepatotoxicity associated with the drug. Cases of hepatotoxicity requiring transplantation were discounted in the analysis. It was assumed that the risk of GI bleeding with aspirin use starts at doses of 1,500 mg/d and the risk of hepatotoxicity with acetaminophen starts at about 4,000 mg/d. These data do not support an alcohol warning with comparative rates of risk.

The agency has also reviewed the labeling comprehension study (Ref. 67) and has determined that this study did not assess the risk communication of either warning. In the study, the warnings were not presented in context, as a consumer would be seeing them. Subjects were not allowed to perform comparative assessments of the two labels. In addition, the phrasing of three of the four agree/disagree statements made ''agree'' responses more likely. Finally, the results were not framed in terms of alcohol use, a key element in the relevant population of consumers. However, the study did reveal how few consumers were aware of these potential toxicities associated with aspirin or acetaminophen.

Although the risk of GI bleeding with aspirin is dose dependent, it can occur at any dose, depending on other comorbidity factors (Ref. 68). In addition to dosage, hepatotoxicity due to acetaminophen use is also dependent on factors such as liver glutathione stores, nutritional state, age, and in some cases, chronicity of usage. Thus, the agency concludes that the relative degree of risk between aspirin use and acetaminophen use can not be drawn from this analysis.

Finally, the agency believes there is some degree of risk for all OTC analgesic/antipyretic drug products in subjects that are chronic, heavy alcohol users. This risk is greater than for consumers of these products who are not chronic, heavy alcohol users. However, the degree of risk cannot be precisely calculated for the ''at risk'' population because different risk assessments vary from study to study and may increase with comorbid factors (Refs. 8 and 31) (62 FR 61041 at 61047). Nevertheless, it is likely that the degree of risk is not exactly the same for any two of these drug products or for any two individuals who consume three or more alcoholic drinks every day. The purpose of the alcohol warning in this final rule is to alert heavy alcohol users that serious, specific adverse events can occur with concomitant use of OTC drug products containing analgesic/antipyretic ingredients and to seek advice from their doctor in order to prevent serious adverse events whenever possible.

9. Several comments stated that the proposed alcohol warning for acetaminophen does not describe the severity of potential liver damage. One comment said the problem is not liver damage, but a significant risk of dying. A second comment said the term ''liver damage'' is vague and recommended that the warning include the phrase ''acute liver failure'' or ''sudden liver failure,'' or the term ''severe liver damage.''

In the majority of case reports the agency evaluated, acetaminophen-induced liver damage in heavy alcohol users did not result in liver failure or death. Therefore, the agency concludes that the statement ''Acetaminophen may increase your risk of liver damage'' provides an accurate description to the consumer.

10. One comment argued that the proposed three-drink threshold is not appropriate for the acetaminophen warning because it is far below what is reported in the cases cited by the agency. Therefore, the comment recommended that language be added to the warning to accurately describe the chronic heavy alcohol user. However, suggested language was not provided. One comment said that stating a specific number of drinks (''3 or more alcoholic beverages daily'') would be better than the general term ''excessive,'' because the later is very subjective and each person could define it differently. Another comment suggested that the warning does not adequately protect women. The comment based its contention on the U.S. Departments of Agriculture (USDA) and the Department of Health and Human Services (DHHS) guidelines that recommend only one drink per day for women (two for men) and evidence (Refs. 69 and 70) it believes demonstrates that women are more susceptible to the hepatic effects of alcohol. The comment suggested that the warning should be gender specific or should be changed to ''2 or more drinks a day'' in order to provide adequate protection for women.

The agency acknowledges that the level of alcohol consumption included in the proposed warning was intended as a general guideline to help consumers quantify their level of alcohol consumption (62 FR 61041 at 61052). This threshold is based on the recommendations from the dietary guidelines set by the USDA and DHHS and the standard set by the AHA. The agency notes that while the dietary guidelines for alcohol consumption set by USDA and DHHS differentiate between men and women, the standard set by AHA does not (62 FR 61041 at 61052).

The agency agrees with the comment that suggested a specific number of drinks is better than using the term ''excessive'' as a reference point for consulting a physician because it is more meaningful to many individuals as a specific number. The warning is intended to aid consumers in characterizing heavy alcohol consumption, in view of the inherent variability of individuals in their susceptibility to the toxic effects of both alcohol and OTC analgesic/antipyretic drug products.

11. One comment suggested using the word ''drinks'' instead of ''beverages'' in the proposed warning which states: ''If you drink 3 or more alcoholic beverages daily * * *.'' The comment said ''drinks'' is better understood by consumers, and noted that the agency based its analysis of alcohol consumption on the Dietary Guidelines for Americans, which defines ''drink.'' The comment said number of ''beverages'' could be perceived as the number of different kinds of drinks. For instance, a person could perceive four glasses of wine and four beers as two beverages. Another comment suggested using the term ''every day'' rather than ''daily'' in the warning because ''daily'' is often misunderstood to mean a single day, whereas ''every day'' is clearer in communicating a repetitive pattern of drinking behavior.

The agency agrees with the comments that the terms ''drinks'' and ''every day'' would better convey the intended message to consumers and has revised the warning to state: ''If you consume 3 or more alcoholic drinks every day * * *.''

12. One comment suggested that organ-specific warnings may be more appropriate for professionals than for consumers. The comment questioned whether the proposed warning would leave consumers puzzled as to which product to choose, one that causes liver damage or one that causes stomach bleeding. Thus an organ-specific warning may discourage consumers from consulting their physician, believing they can rely on their ability to self-diagnose liver damage or stomach bleeding. The comment also refuted the agency's evaluation of data relating to consumers' perception of label warnings, cited in the proposed rule (62 FR 61041 at 61051), suggesting that a general alcohol warning is less likely to prompt consumers into appropriate action than an explicit warning. The comment said the study was not designed to determine consumer understanding of the warnings tested and that flaws in that study prevent meaningful conclusions. The comment submitted no data to support its contention.

The agency considers organ specific warnings to be more effective than general warnings. Consumers are better equipped to make a decision on whether to take a medicine or contact their doctor when they know the specific risk involved. The agency believes that consumers with a history of heavy alcohol use need to know the potential risk of OTC analgesic/antipyretic use. If consumers are not advised of what may happen (liver damage or stomach bleeding) or what to do (ask their doctor), the agency believes they would be less likely to take the warning seriously or to consult their doctor.

13. Two comments recommended that the proposed warning be formatted in a style that more closely follows the February 27, 1997 (62 FR 9024), proposed rule on OTC label format. One comment contended that the use of specific headers for specific warnings are unnecessary and redundant. Also, specific warnings take up additional space, disrupt the logical flow of information, and distract from consumer

comprehension. No data were submitted by the comments.

The issue of labeling format for specific warnings is broader than this rulemaking which concerns a single alcohol warning. This issue will be addressed in a future issue of the **Federal Register** when the agency issues a final rule regarding labeling requirements for OTC drug products.

14. Several comments recommended reducing the maximum daily dose of acetaminophen to 2 grams (g) for heavy alcohol users but submitted no new data. Another comment supported the currently recommended maximum daily dose of 4 g acetaminophen.

The agency addressed this issue in the proposed rule (62 FR 61041 at 61044 to 61049) and evaluated a placebo-controlled, double-blind, randomized study of various dosages of acetaminophen in alcoholics (Ref. 71). The agency concludes that there is not sufficient evidence to recommend a specific dosage of acetaminophen which is safe and effective in subjects who use alcohol heavily.

15. One comment suggested that the acetaminophen labeling should warn against the use of more than one acetaminophen-containing product at a time. The comment also recommended that, because of overdose risk and risk of liver injury, acetaminophen preparations intended only for adults should contain warnings against use in children, and pediatric formulations should convey the need to follow instructions very carefully. The comment also noted that the warning does not address the effects of fasting on acetaminophen toxicity.

The issues raised by the comment are outside of this rulemaking which specifically addresses the need for an alcohol warning. However, the issues raised by the comment will be addressed in the final rule for OTC internal analgesic, antipyretic, and antirheumatic drug products in a future issue of the **Federal Register**.

16. One comment supported the agency's proposal and suggested that the warning should be put on the leaflet inside the package.

Information required to appear on the labeling by or under authority of section 502(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(c)) must be placed conspicuously so as to be read and understood by the consumer under customary conditions of purchase and use. Manufacturers may also include package inserts containing the required information, but such inserts are not required.

C. Comments on Product Exemptions

17. One comment maintained that enteric-coated products provide additional safety for aspirin users and urged FDA to recognize the documented health and safety benefits of enteric coatings on aspirin. The comment said that the enteric-coating minimizes gastric irritation because the enteric-coating delays dissolution of aspirin in the acidic environment of the gastric lumen. The comment further argued that this delayed absorption reduces the intracellular accumulation of aspirin in the gastric mucosa that can lead to cellular injury. In support of this position, the comment included data from published clinical research (Refs. 72, 73, and 74) and cited references (Refs. 75 and 76) to demonstrate the safety of enteric-coated aspirin. Based on these arguments, the comment suggested the agency take one of the following actions: (1) Exempt enteric-coated aspirin from the proposed warning, (2) defer action on a warning for this dosage form until the agency can gather data that would challenge the documented benefits of enteric-coated aspirin, or (3) require a separate warning for enteric-coated products.

The agency disagrees with the comment. The data provided by the comments do not demonstrate the safety of enteric-coated dosage forms of aspirin in consumers with a history of heavy alcohol use. Furthermore, as previously discussed, aspirin's adverse GI effects are due both to direct local irritation (the Davenport mechanism) and to systemic effects which result in prostaglandin inhibition and platelet dysfunction (Refs. 10 and 13).

As discussed in comment 1 of section II.A of this document, enteric-coated dosage forms may exert less direct local effect on the gastric mucosa, but they are associated with the same risks (and benefits) of other systemically absorbed aspirin products (Refs. 4 and 51). J. P. Kelly et al. (Ref. 77) examined 550 cases of UGI bleeding confirmed by endoscopy and 1,202 controls in a multicenter case-control study. Multiple logistic regression analysis demonstrated a similar relative risk for plain, enteric-coated, and buffered aspirin at high (RR: 5.8–7.0) and low (RR: 2.6–3.1) doses. C. A. Silagy et al. (Ref. 78) examined the adverse effects of low-dose enteric-coated aspirin (100 mg/d) in 400 subjects 70 years or older for 12 months in a double-blind, randomized, placebo-controlled trial. Clinically evident GI bleeding occurred in the enteric-coated aspirin treated group but not in the controls. Clinically evident bleeding from any site and decreased hemoglobin levels were significantly greater ($p<0.05$) in the aspirin-treated group than in the control group. In summary, clinical trials demonstrate UGI bleeding in patients who also take enteric-coated aspirin products. Therefore, the agency will require an alcohol warning for these products.

18. One comment requested that antacid and aspirin combination products (highly buffered aspirin in solution) that produce sodium acetylsalicylate, sodium citrate, and carbon dioxide when added to water prior to ingestion, not bear an alcohol warning. In support of this request, the comment submitted data documenting the chemical characteristics and safety profile distinguishing these products from plain aspirin. These data were previously reviewed by the Panel (42 FR 35346 at 35417) and are not resummerized in this document.

The agency disagrees with the comment. The Panel believed there is no valid clinical evidence to support the claim that highly buffered aspirin for solution has significantly less potential to induce major GI hemorrhage than other dosage forms of aspirin (42 FR 35346 at 35471). The agency concurred in comment 31 of the proposed rule for OTC internal analgesics drug products that the direct toxic effects from the Davenport mechanism may be reduced, but not eliminated, in highly buffered aspirin-for-solution products (53 FR 46204 at 46220). In addition, the indirect effects on systemic prostaglandin inhibition still play an important role in the toxicity of such products. Therefore, the agency will require an alcohol warning for these products.

19. One comment contended that OTC analgesic/antipyretic drug products differ in their benefits and potential for injury, and that any proposal to change the current labeling on such products should be on a product-by-product basis. The comment argued that alcohol warnings are not appropriate for products intended for relief of mild to moderate symptoms associated with menstrual periods in teenagers, or for OTC highly buffered aspirin solution products indicated for overindulgence of food and drink.

The agency disagrees that these products should be exempt from the alcohol warnings. In comment 18 in section II.C of this document, the agency discusses the need for an alcohol warning for OTC highly buffered aspirin solution products. Concerning the need for warnings on products intended for relief of mild to moderate symptoms associated with menstrual periods in

teenagers, this population is not immune to heavy alcohol use as up to 32 percent of high school students have reported heavy drinking (Ref. 79).

D. Comments on Implementation

20. A number of comments objected to the agency's proposed 6-month implementation date for the final rule because of the potential economic impact of the rule based on that timeframe. One comment requested flexibility in considering the appropriate implementation period for all OTC analgesic/antipyretic drug products or, at minimum, for cough-cold products containing these ingredients. The comment contended that the seasonal nature of cough-cold products requires large inventory stockpiles and shipments prior to the cough-cold season. Therefore, depending on the time of year that the rule becomes final, significant inventory may need to be destroyed if products are not shipped with required labeling by the effective date. The comment stated that industry estimates indicate that the average time to redesign and produce new labeling is 9.25 months. Therefore, it would be impossible to comply with the proposed 6-month implementation period. Trying to force these changes more quickly could lead to labeling errors, resulting in consumer confusion, potential recalls, and unavailability of some products in the marketplace.

Although the agency has suggested stick-on labeling as a means to comply with the 6-month implementation date, one comment believed that this would not be practical or cost-effective for most combination cough-cold products. This comment further argued that current warnings dictated by monographs expend most of the available space on containers and cartons, leaving insufficient room for placement of a sticker containing the additional warnings.

Several comments urged the agency to coordinate the implementation of the alcohol warning with other labeling proposals impacting these products. One comment requested that the agency make the rule effective no sooner than the effective date of the final rule for a standardized OTC labeling format (62 FR 9024). The comment noted that the agency expects that the standardized labeling final rule will result in major format and content changes to current OTC product labeling. If the final rule for the alcohol warning is effective prior to the standardized format final rule, manufacturers will incur significant labeling costs for each of these rules separately. Another comment requested that FDA extend the implementation date to 12 months.

One comment stated that 8 months had already been expended to complete the addition of the voluntary warning on its acetaminophen products. The comment contended that 14 additional months would be required to implement the alcohol warning for all products covered by the final rule. The comment recommended that an effective date of 24 months be established for implementation of the final rule for affected products that have not been updated to include the voluntary warning suggested in the proposed rule, and 36 months for products that already comply with the voluntary warning.

Although the final rule will have an economic impact on some manufacturers, the agency believes that the potential benefits of the rule, including reduced risk of adverse effects, override any economic concerns (see section III.C of this document). In an attempt to minimize the economic impact, the agency has allowed for a 6-month implementation period and the use of supplementary labeling (e.g., stick-on labels) to comply with the final rule. Further, manufacturers that voluntarily included in their labeling the exact warning in the agency's proposed rule will be permitted to exhaust their inventory of labels. The agency believes that these measures will help reduce labeling costs that manufacturers will incur to make the required labeling changes. The agency concludes that a 6-month implementation period for the required warning will ensure that consumers have the most recent information for the safe and effective use of OTC analgesic/antipyretic drug products.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation) in any 1 year.

The agency believes that this rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this rule is to add warning statements to the labeling of OTC drug products labeled for adult use that contain internal analgesic/antipyretic active ingredients. The added statements warn of the increased risk of adverse effects from the use of OTC analgesic/antipyretic drug products by individuals who consume three or more alcoholic drinks every day. This rule is intended to reduce the number of specific adverse events associated with the use of these products by such individuals.

A. Benefits

As described earlier in this document, FDA finds that individuals who routinely drink alcohol heavily (three or more drinks every day) should be specifically warned of risk associated with their use of OTC analgesic/antipyretic drug products. For example, both aspirin and other NSAID's carry a dose-related risk of GI bleeding. Alcoholics are also known to be at increased risk of liver damage and UGI bleeding. However, because UGI bleeding and liver damage are not unexpected in alcohol users, medical personnel may not routinely investigate the use of OTC drug products by patients presenting with these problems. Recently, in a number of cases, use of acetaminophen was found to be associated with pathognomonic hepatotoxic changes among heavy alcohol users and to be a contributing factor in their hospitalization. Many of these patients required an extended hospital stay.

FDA cannot quantify the expected benefits of this rule, because it lacks the data to conduct a quantitative risk assessment. The agency notes, however, that an estimated 11 million Americans, or about 5.5 percent of the U.S. population age 12 and older, are heavy drinkers and, therefore, at risk (Ref. 80). Because alcohol warnings on OTC analgesic/antipyretic drug products could reduce the number of hospitalizations of heavy alcohol users for hepatic damage and UGI bleeding, the potential benefits of the rule are substantial. For example, the cost of a 7-day hospital stay (the average length of stay in 1994 for an alcohol related discharge) is about $10,000 (Ref. 81). (Length of stay was calculated as

weighted average of alcohol first-listed hospital discharges. Cost of stay was estimated from the 1987 National Medical Expenditure Survey; cost was converted to 1995 dollars using the CPI–U (consumer price index--urban areas) for medical services.) If, among the 11 million consumers potentially at risk, this rule prevented even 500 hospital visits annually, the present value of the avoided costs would be about $75 million. (This assumes a 7 percent discount rate and an infinite time horizon.)

B. Costs

OTC drug products containing internal analgesic/antipyretic active ingredients, labeled for adult use, will require new labeling to incorporate the warning statements. The agency's Drug Listing System identifies 5,000 to 6,000 OTC analgesic/antipyretic drug products. Assuming an average of 3 stock keeping units (SKU's)/product, up to 18,000 SKU's will require the alcohol warnings. In its analysis of the proposed rule, FDA estimated the cost of redesigning a label at from $2,000 to $3,000/SKU. No industry comment questioned this estimate. Nevertheless, FDA now believes that the lower end of that range is more likely, because the added warning requires only a straight-forward text change without significant graphics redesign. Alternatively, a private-label manufacturer estimated that the shorter implementation period would add about $700/SKU. On the assumption that lost inventory cost for branded SKU's will be twice as high, or $1,400, and that the market share of branded and private label SKU's is 70 and 30 percent, respectively, the added cost will amount to about $900. Thus, FDA projects the total cost of the new warnings at about $3,000/SKU. Consequently, the estimated one-time cost of this rule is about $54 million. The actual cost may be lower, because the agency is allowing supplementary labeling (e.g., stick-on labeling), which could reduce inventory losses.

C. Small Business Impacts

The agency estimates that fewer than 75 OTC drug manufacturers will incur costs. FDA does not have data on the size distribution of these affected firms, but an analysis of an IMS America, Ltd. listing of OTC drug manufacturers indicates that approximately 70 percent of all identified OTC drug manufacturers employ fewer than 750 employees, which is the Small Business Administration's definition of a small pharmaceutical firm. Consequently, the agency finds that this rule may have a significant impact on some OTC drug manufacturers, including smaller firms and manufacturers of private label products. The effect on individual firms will vary with the number of the firm's SKU's that require relabeling and the size and cost of the firm's labeling inventory. Most small firms will not incur significant regulatory costs because they manufacture few affected SKU's and use less expensive labeling stock. On the other hand, smaller firms tend to keep relatively larger labeling inventories because of the volume price discounts offered by printers. These firms could experience relatively higher costs for lost inventories.

This rule will not require any new reporting or recordkeeping activities. Therefore, no additional professional skills are needed. No small entities commented on the impact of the proposed rule or suggested alternatives that would reduce the economic impact on their establishments.

D. Alternatives

The agency considered but rejected several less costly regulatory alternatives, because they would not provide adequate health and safety benefits. First, the agency considered extending the implementation period from 6 months to 1 year. This alternative would have saved an estimated $18 million due to smaller labeling inventory losses. Nevertheless, as stated in section II.D of this document, in comment 20, the required warnings are necessary to alert consumers to the potential for serious health outcomes. As the warnings provide consumers with the critical information needed for making informed decisions, the longer implementation phase-in would increase the period over which consumers may make inappropriate choices. The agency concluded that the reduced labeling cost associated with the longer phase-in would not justify the increased risk to the public health that would occur over the additional 6-month period.

The agency then considered permitting a 1-year implementation period for those products already labeled with less specific alcohol warnings. This alternative also was rejected, based on the agency's determination that most current warnings are inadequate, because they fail to address the specific nature of the adverse consequence.

E. Conclusion

The above cost estimates demonstrate that this rule is not economically significant under Executive Order 12866. As discussed previously, the agency concludes that this rule is the least burdensome alternative that meets the agency objective of providing the public with important health and safety information in a timely manner. As this rule may have a significant impact on a substantial number of small entities, this analysis, together with other relevant sections of this document, serve as the agency's regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, the Unfunded Mandates Reform Act does not require a cost-benefit analysis of this rule, because the rule will not result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million in any 1 year.

IV. Paperwork Reduction Act of 1995

FDA concludes that the warning statement set forth in this document is not subject to review by the Office of Management and Budget because it does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Rather, the required warning statement is a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

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List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.322 is added to subpart G to read as follows:

§ 201.322 Over-the-counter drug products containing internal analgesic/antipyretic active ingredients; required alcohol warning.

(a) People who regularly consume large quantities of alcohol (three or more drinks every day) have an increased risk of adverse effects (possible liver damage or gastrointestinal bleeding). OTC drug products containing internal analgesic/antipyretic active ingredients may cause similar adverse effects. FDA concludes that the labeling of OTC drug products containing internal analgesic/antipyretic active ingredients should advise consumers with a history of heavy alcohol use to consult a physician. Accordingly, any OTC drug product, labeled for adult use, containing any internal analgesic/antipyretic active ingredients (including, but not limited to, acetaminophen, aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate) alone or in combination shall bear an alcohol warning statement in its labeling as follows:

(1) *Acetaminophen*. ''Alcohol Warning'' [heading in boldface type]: ''If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take acetaminophen or other pain relievers/fever reducers. Acetaminophen may cause liver damage.''

(2) *Nonsteroidal anti-inflammatory analgesic/antipyretic active ingredients—including but not limited to aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate.* ''Alcohol Warning'' [heading in boldface type]: ''If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take [insert one nonsteroidal anti-inflammatory analgesic/antipyretic active ingredient] or other pain relievers/fever reducers. [Insert one nonsteroidal anti-inflammatory analgesic/antipyretic active ingredient] may cause stomach bleeding.''

(3) *Combinations of acetaminophen with nonsteroidal anti-inflammatory analgesic/antipyretic active ingredients—including but not limited to aspirin, carbaspirin calcium, choline*

salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate. ''Alcohol Warning'' [heading in boldface type]: ''If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take [insert acetaminophen and one nonsteroidal anti-inflammatory analgesic/antipyretic active ingredient—including, but not limited to aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate] or other pain relievers/fever reducers. [Acetaminophen and (insert one nonsteroidal anti-inflammatory analgesic/antipyretic ingredient—including, but not limited to aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate] may cause liver damage and stomach bleeding.''

(b) *Requirements to supplement approved application*. Holders of approved applications for OTC drug products that contain internal analgesic/antipyretic active ingredients that are subject to the requirements of paragraph (a) of this section must submit supplements under § 314.70(c) of this chapter to include the required warning in the product's labeling. Such labeling may be put into use without advance approval of FDA provided it includes the exact information included in paragraph (a) of this section.

(c) Any drug product subject to this section that is not labeled as required and that is initially introduced or initially delivered for introduction into interstate commerce after April 23, 1999, is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) and is subject to regulatory action.

Dated: July 22, 1998.

Michael A. Friedman,

Acting Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N–094A]

RIN 0910–AA01

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-The-Counter Human Use; Final Rule for Professional Labeling of Aspirin, Buffered Aspirin, and Aspirin in Combination With Antacid Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing as a final rule professional labeling for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic drug products containing aspirin, buffered aspirin, and aspirin in combination with an antacid. This portion of the final monograph is being issued prior to the entire monograph so that the professional labeling of these products will reflect the latest information on cardiovascular, cerebrovascular, and rheumatologic uses. FDA is issuing this final rule after considering comments on the agency's proposed regulation for OTC internal analgesic, antipyretic, and antirheumatic drug products, a proposed amendment to the regulation, and data and information that have come to the agency's attention.

EFFECTIVE DATE: October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 16, 1988 (53 FR 46204), FDA published, under 21 CFR 330.10(a)(7), a notice of proposed rulemaking, in the form of a tentative final monograph (TFM), that would establish conditions in part 343 (21 CFR part 343) under which OTC internal analgesic, antipyretic, and antirheumatic drug products are generally recognized as safe and effective and not misbranded. In the TFM (53 FR 46204 at 46258 and 46259), the agency proposed professional labeling in § 343.80 for the use of aspirin for rheumatologic diseases, for reducing the risk of recurrent transient ischemic attacks (TIA's) or stroke in men who have had transient ischemia of the brain due to fibrin platelet emboli, and for reducing the risk of death and/or nonfatal myocardial infarction (MI) in patients with a previous infarction or unstable angina pectoris. The agency also proposed professional labeling for the use of carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate for rheumatologic diseases. Interested persons were invited to submit new data or file written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal.

In response to the TFM, the agency received four comments and three citizen petitions related to the professional labeling of aspirin for cardiovascular and cerebrovascular uses (Ref. 1). No comments were received on the professional use of aspirin drug products for rheumatologic diseases. In response to two of the petitions, the agency proposed to amend the professional labeling section of the TFM for OTC internal analgesic, antipyretic, and antirheumatic drug products to include an indication for aspirin for suspected acute MI (61 FR 30002, June 13, 1996). In response to the proposed amendment, the agency received 10 comments (Ref. 2).

In the TFM for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46204 at 46205), and in the proposed amendment to the TFM (61 FR 30002), the agency proposed that any final rule that may issue based on the proposal will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after October 25, 1998, the dissemination of professional labeling that does not comply with this final rule may result in regulatory action against the product, the marketer, or both. Manufacturers are encouraged to comply voluntarily with this final rule at the earliest possible date.

The labeling in this final rule for professional use of aspirin drug products contains complete information on certain professional uses of aspirin, including information for professionals on the treatment of the signs and symptoms of rheumatologic disease. The labeling is organized and presented in a manner similar to that required of prescription drug products under §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57). The labeling in this final rule also includes an optional highlights section that summarizes the professional indications and the recommended dosage and

administration for each professional indication.

II. The Agency's Conclusions on the Comments

A. Comments to the TFM

1. One comment requested that aspirin be approved for use as a prophylaxis for primary (first) MI under a physician's supervision. The comment based its request on the preliminary report of a large, highly statistically significant, reduction (47 percent) in the risk of total (fatal and nonfatal) MI in subjects taking aspirin in the U.S. Physicians' Health Study (Ref. 3). A final report was published later (Ref. 4).

The agency also considered the British Doctors Study, by Peto et al. (Ref. 5), that was similar in many respects to the U.S. Physicians' Health Study. It randomized 5,139 apparently healthy male doctors, to 500 milligrams (mg) aspirin daily, or to no aspirin, to see whether aspirin would reduce the incidence of, and mortality from, stroke, MI, or other vascular conditions. The British Doctors Study, despite its similarity to the U.S. Physicians' Health Study, does not support the use of aspirin to prevent an initial MI. After 6 years of followup, there were 23.5 confirmed nonfatal MI reports per 1,000 participants in the aspirin group and 24 per 1,000 in the no-aspirin group. When possible MI reports were added, the total was 30 per 1,000 for the aspirin group and 26.4 per 1,000 for the no-aspirin group. From a safety viewpoint, disabling stroke was significantly more frequent in the aspirin group than the no-aspirin group (19.1 versus 7.4 per 10,000 man years, $p < 0.05$). In addition, expected gastrointestinal (GI) events (e.g., nonfatal peptic ulcers, bleeding, dyspepsia) occurred in the aspirin group.

On October 6, 1989, FDA's Cardiovascular and Renal Drugs Advisory Committee (the Committee) considered a claim for aspirin for the prevention of primary (first) heart attack based on the findings of the U.S. Physicians' Health Study (Refs. 3 and 4). The Committee was aware of the findings of the British Doctors Study, but only the findings from the U.S. Physicians' Health Study were presented in detail. The Committee recommended (by a 5 to 3 vote) that, although some claim should be considered for some high-risk group of patients, aspirin should not be used routinely in patients without risk factors or in women, until such patients had been studied. The Committee minority was concerned about the toxicity of aspirin and the number of normal individuals at low risk of having a heart attack who would be treated long term. The Committee unanimously agreed that patients should ask their doctor before beginning prophylactic therapy. The agency has considered the Committee's views in conjunction with the additional data that have been subsequently submitted to FDA.

The agency does not consider the results of the aspirin component of the U.S. Physicians' Health Study adequate to support the effectiveness of aspirin in decreasing the risk of MI in healthy individuals without evidence of coronary artery disease because of concerns about the revised primary endpoint, the study population, and the results of the British Doctors Study.

The primary endpoint described in the protocol for the aspirin component of the U.S. Physicians' Health Study was total cardiovascular mortality. On interim evaluations, however, it became clear to the Data Monitoring Board (DMB) for the study that the aspirin arm of the study had little chance of showing a survival effect before the year 2000, if then, because the mortality rate was far lower than expected and the study did not show even a positive trend for this endpoint. There were 81 deaths in the aspirin group and 83 in the placebo group ($p = 0.87$). The DMB also took note of the reductions in total (fatal and nonfatal) MI, a finding they considered persuasive. Because the study had little hope of showing an effect on the primary endpoint and because of the reduction in MI, the DMB recommended early termination of the aspirin component of the trial (Ref. 3). The early stopping rule stated in the grant proposal (but not in the protocol) was that the trial would continue unless chi-square tests comparing treatments reached an extreme value, such as 9.0 (i.e., if $p < 0.0027$). The proposal did not state explicitly which endpoint was the basis for the early stopping rule. It is not clear which endpoint served as the basis for the early stopping rule. Thus, it is not clear how the reported p values should be adjusted retrospectively although some adjustment would be required.

The finding of a reduction in risk of MI in the U.S. Physicians' Health Study is further weakened because some of the study patients had a prior MI, and aspirin is already known to reduce the risk of recurrent MI in such patients. According to the study protocol, subjects should not have had an MI before randomization. However, based on the agency's inspection of the subjects' records, at least 40 (about 8 percent) of the 512 subjects who suffered a nonfatal MI during the study also had evidence of an old MI. The exact number of cases with prior MI in the entire study population at the time of randomization is not known. Therefore, it is not possible to determine with assurance how much of the effect of aspirin attributed to prevention of a primary MI was really prevention of a reinfarction.

The U.S. Physicians' Health Study also found a statistically significant reduction in the risk of fatal acute MI in the aspirin group, but no overall effect on survival. The agency does not consider this finding persuasive. Assessing cause-specific mortality is usually difficult and the finding of benefit is of uncertain meaning in the face of equivalent total cardiovascular mortality (the original primary endpoint). Thus, the decrease in acute MI deaths in the aspirin group were almost matched by an increase in sudden deaths, not an obviously worthwhile effect. Redefinition of endpoints would, in any case, require adjustment for multiplicity, but it is difficult to describe the appropriate adjustment, as the number of possible secondary endpoints is unspecified. The nominally significant decrease of fatal MI ($p = 0.004$) thus needs considerable upward adjustment and would not be close to the significance level needed at an interim point ($p < 0.0027$).

In addition, some of the cause of death assignments are questionable. The agency evaluated the deaths in the study attributed to fatal acute MI (10 in the aspirin group and 28 in the placebo group) and to ''sudden death'' (22 in the aspirin group and 12 in the placebo group) and found that one death in the placebo group attributed to acute MI was due to stroke. Another placebo subject classified as MI had no evidence of MI, but could have been classified as a ''sudden death.'' Thus the number of confirmed MI's in the placebo group decreases from 28 to 26, and the number of ''sudden deaths'' increases from 12 to 13.

On the other hand, the autopsy report of one aspirin subject categorized under ''sudden death'' listed acute MI as the cause of death. Another aspirin subject, in the sudden death category, experienced chest pain and vomiting before collapsing, and the autopsy showed ''moderate to severe 3-vessel atherosclerosis with apparent myocardial ischemia in a patient with right and left myocardial hypertension and extensive old septal scarring.'' It is likely that this patient's death was due to acute MI. Thus, if 2 of the 22 deaths in the aspirin group classified as ''sudden death'' had been classified as confirmed acute MI (increasing that

total from 10 to 12), the ''sudden death'' total would be decreased from 22 to 20. The cause of death could not be established with certainty in most subjects. All subjects in the ''sudden death'' category for whom relevant information was available had a history of atherosclerotic cardiovascular disease, peripheral vascular disease, or hypertension. Therefore, all of the cases of sudden death could have resulted from an acute MI. Thus, there could have been 32 cases (12 identified, 20 possible) of fatal MI in the aspirin group versus 39 (26 identified, 13 possible) in the placebo group. This difference is not statistically significant ($p > 0.50$). This analysis could be considered a ''worst case'' analysis of the fatal MI finding, but it illustrates the difficulty of cause-specific mortality findings.

The agency also does not believe the reported 18 percent reduction in the endpoint of nonfatal MI, nonfatal stroke, and total cardiovascular mortality can be taken as significant. For the combined endpoint, there were 307 subjects in the aspirin group and 370 in the placebo group (relative risk 0.82; $p = 0.01$). The reported p value of 0.01 is well above the stopping rule p value of 0.0027. Therefore, the study did not provide persuasive evidence that aspirin has a beneficial effect on the combined endpoint. In addition, the isolated finding of a statistically significant effect on nonfatal MI is not persuasive. Of note is the fact that the British Doctors Study completely failed to replicate this finding.

The reduction in incidence of fatal and nonfatal MI was also accompanied by an increase in strokes, especially severe, fatal, hemorrhagic stroke, and by a greater incidence of sudden death and ''other'' cardiovascular deaths. Thus, there was no overall benefit or favorable trend on mortality. Cerebral hemorrhage as a cause of stroke was reported more often in the aspirin group than in the placebo group (23 versus 12). The incidence of ulcers, ''other noninfectious diseases of the digestive tract,'' bleeding problems, and the need for transfusion, also was significantly increased, and one aspirin subject died from GI bleeding. Although these side effects would not prevent the use of aspirin if its net benefit on coronary artery and cerebrovascular events were favorable, the effects are not trivial.

It seems probable that the net benefit of aspirin is critically dependent on the underlying risk for coronary and cerebral events, and that use of aspirin requires knowing more about its effects in various populations. In people at low risk for acute MI, the increased risk of stroke may result in a net disadvantage. In at least some people at higher risk (people who have had an acute MI or have TIA's), aspirin is known to provide a net benefit. There may be other populations in whom the net effect of aspirin is favorable, but the U.S. Physicians' Health Study does not define such groups. The investigators did not identify any group in which aspirin could reduce the incidence of fatal and nonfatal heart attack without increasing the incidence of other causes of death or disability.

The Steering Committee of the U.S. Physicians' Health Study Research Group (Ref. 4) suggested that aspirin is beneficial in prevention of the first heart attack (at least in men over 50), but stated: ''Although the short-term benefit of aspirin in these populations appears to outweigh its risks, the long-term advantage and toxicity of the drug remain uncertain.'' In a more recent review article (Ref. 6) by several members of the U.S. Physicians' Health Study Research Group, members of the Steering Committee, and others, concerning primary prevention of MI, the authors concluded the following: ''Any decision to use aspirin prophylaxis should be made on an individual basis and, in general, should be considered only for those whose absolute risk of a first MI is sufficiently high to warrant accepting the potential adverse effects of long-term aspirin use.''

In summary, the U.S. Physicians' Health Study failed to show a significant effect, or even a beneficial trend, on the specified primary study endpoint of total cardiovascular mortality. The study was stopped early and multiple secondary endpoints were evaluated. The effects of aspirin on fatal acute MI and on the combined endpoint of nonfatal MI, nonfatal stroke, and total cardiovascular mortality were not statistically significant when adjustments were made for early stopping. There was an isolated finding of a statistically significant effect on nonfatal MI (a secondary endpoint), but the value of this finding is questionable in the face of adverse trends on stroke and causes of death other than acute MI. Of note is the fact that the British Doctors Study completely failed to replicate this finding on nonfatal MI. Thus, the agency concludes that the available data do not support the professional labeling of aspirin for the prevention of first MI. The U.S. Physicians' Health Study (Refs. 3 and 4), in particular, did not show a statistically significant effect when all deaths as well as nonfatal MI and stroke were combined.

2. One comment asked that the professional labeling in proposed § 343.80(b) for aspirin for TIA include both men and women, not just men. The comment cited results from the Second International Study of Infarct Survival (ISIS–2) (Ref. 7), based on an analysis of a subset of data for men and women separately, to support its request. The absolute decrease in mortality for the aspirin group compared to placebo was 2.4 percent for men and 2.6 percent for women. The comment concluded that this study showed that, up to 5 weeks, mortality was significantly reduced ($p < 0.01$) in both men and women who had suffered acute MI and were treated for 1 month with aspirin. The comment added that this study also showed that aspirin reduced the incidence of nonfatal stroke and nonfatal MI in both men and women.

The comment complained that the study (Ref. 8) supporting the use of aspirin only in men to reduce the risk of recurrent TIA or stroke was only one small trial with a marginally significant overall result. The comment mentioned that the results of this study were subdivided by gender, and a data-dependent subgroup analysis suggested an effect only in men. Such subgroup analysis, the comment contended, is frequently unreliable. The comment suggested that the ISIS–2 study results, which showed reduced mortality in both men and women given aspirin following acute MI, should ''illuminate'' data from trials in a different occlusive vascular disease (TIA).

The agency is in substantial agreement with the comment that there is no reason to distinguish between genders with respect to using aspirin to reduce the risk of recurrent TIA or stroke. Although subset differences are known to occur, in general, results are considered applicable to the whole group unless there is reason not to do so (Ref. 9). In the present case there was, initially, reason to limit the TIA claim to males. The indication in proposed § 343.80(b) was based on results of the Canadian Cooperative Study Group trial (Ref. 8) and the Fields study (Ref. 10). In these studies, there seemed to be a difference in response with gender when subset analyses were done. However, there were very few women in the trials and the number of events reported was small.

Data from subsequent trials do not substantiate a gender difference in the effect of aspirin on cerebrovascular events, and trends in women have been similar to results seen in men. The UK–TIA aspirin trial (Ref. 11), in which 25 percent of the subjects were women, showed favorable trends for the

endpoint of major stroke, MI, or death. The AICLA study (Ref. 12), which reportedly showed an effect of aspirin for secondary cerebral events in a group that included 30 percent women, showed no significant difference between men and women. Although the study was small, subset analysis showed a trend favoring women, with a numerically larger effect on stroke in women than in men. The study by Sivenius et al. (Ref. 13) included a larger proportion of women (42 percent in the intent-to-treat analysis and 44 percent in the explanatory analysis), and the investigators reported a statistically significant effect in women. That study did not include an aspirin-only arm, but there is little evidence that dipyridamole contributes to the effect of the aspirin plus dipyridamole combination (Refs. 12 and 14); thus, this study provides some support for an effect of aspirin in women. The Swedish Cooperative study (Ref. 15) failed to show an effect for aspirin overall, in men or in women.

The agency believes the available data support the conclusion that women with a history of TIA should benefit from aspirin therapy. Early evidence supporting this use of aspirin came from studies that included mostly men, but studies since the Canadian and Fields studies show numerically similar results for men and women. Favorable trends have generally been seen in women as well as men. Therefore, the agency is revising the professional labeling in § 343.80 for cerebrovascular uses so that the indication is for ''patients'' rather than for ''men.''

3. One comment asked that the dosage for aspirin for TIA in proposed § 343.80(b) be reduced from 1,300 mg to 300 mg a day. The comment contended that data from many different trials of antiplatelet treatments in many different occlusive vascular conditions could be viewed together. The comment stated that this approach could be used because, no matter what the prior medical condition may have been, the chief diseases to be prevented (occlusive stroke and coronary artery occlusion) may be much the same. The comment explained that aspirin doses of only 100 to 200 mg daily inhibit cyclo-oxygenase-dependent platelet aggregation so completely that little extra effect would result from higher daily doses. The comment cited the ISIS–2 study (Ref. 7) as showing that 160 mg aspirin daily was highly protective in preventing death ($p < 0.01$) and in reducing nonfatal stroke and nonfatal MI in subjects who suffered an acute MI.

The comment also cited the Trialists' report (Ref. 16), a meta-analysis of the results of 25 randomized clinical trials of the prolonged treatment with drugs that inhibit platelet aggregation. The comment stated that when the trials are viewed together: (1) The benefits of antiplatelet treatment are about the same in cardiac patients (unstable angina and MI) as in cerebral patients (TIA and stroke thought to be occlusive), and (2) the various treatments used, including 300 mg of aspirin daily, were comparable. The comment mentioned that aspirin gastrotoxicity is dose-related, and cited the UK–TIA trial (Ref. 11) in which more GI symptoms (indigestion, nausea, heartburn, or vomiting) occurred with 1,200 mg than 300 mg daily aspirin (a difference of 9.4 percent ($2p < 0.001$)).

Another comment asked the agency to consider lower doses of aspirin for maintenance therapy. The comment described several serious nasal hemorrhages that occurred when taking maintenance therapy of ''one half aspirin tablet (strength not stated) daily.'' The comment also mentioned a number of instances of sustained bleeding from shaving nicks, bleeding after accidents, bleeding ulcers, and complications during surgery based on personal experience or the experiences of friends or neighbors who were taking aspirin for maintenance therapy. The comment concluded that the proposed FDA dosage is several times the dosage needed for most maintenance therapy and that FDA should lower the dosage.

The agency has considered the dosage of aspirin for cardiovascular and cerebrovascular conditions and concludes that specific doses for specific uses of aspirin, supported by appropriate data, are necessary for an optimum benefit to the user, and, in general, that a minimum effective dose established for a given indication should be used to minimize dose-related adverse effects. The agency has determined that the ISIS–2 study (Ref. 7) supports the professional labeling of aspirin in the treatment of suspected acute MI at a dosage of 160 to 162.5 mg daily. However, the ISIS–2 study did not show, nor was it intended to show, the effect of aspirin on subjects with TIA or other cerebrovascular events.

The Trialists' report (Ref. 16) evaluated antiplatelet treatment of subjects with a range of symptoms (e.g., TIA, occlusive stroke, unstable angina, and MI) using a number of antiplatelet agents, not only aspirin. Some of the studies (Refs. 8, 10 through 12, 15, and 17 through 19) used aspirin alone and included cerebrovascular subjects given dosages ranging from 990 to 1,500 mg daily, except one arm of the UK–TIA study that used a dosage of 300 mg daily in parallel with a 1,200 mg dose. The primary endpoints of most of these studies were combined events, including strokes (fatal and nonfatal) and death. In some of the studies, TIA or MI was also included in the primary endpoint. The Trialists' group (Ref. 16) did a meta-analysis suggesting the effectiveness of lower doses of aspirin (less than 160 to 324 mg per day) in reducing combined events (nonfatal stroke, MI, or vascular death), but all studies except the UK–TIA study involved subjects with a history of MI or angina rather than a history of cerebrovascular events.

In a subsequent publication (Ref. 20), the Trialists' group provided some support for the role of antiplatelet therapy in prevention of nonfatal strokes in subjects with prior stroke or TIA. Among the 10 trials that used aspirin alone, dosages ranged from 50 to 1,300 mg per day. Three of these trials (UK–TIA, Danish Very-Low-Dose, and Swedish Aspirin Low-Dose Trial (SALT)) used comparatively low doses of aspirin (Refs. 11, 21, and 22).

The UK–TIA study (Ref. 11) alone showed no difference in effectiveness between the 300 mg and the 1,200 mg aspirin daily dose in a TIA population, but the incidence of side effects, especially GI, was greater for the 1,200 mg dose. The beneficial effect of aspirin on major stroke alone and on the composite events, disabling stroke or vascular death, was not sufficient to show a significant difference between aspirin and placebo, but it did show a trend in favor of aspirin. For the combined endpoint of all death, nonfatal major stroke, and nonfatal MI, the study showed an 18-percent (95 percent confidence interval, 2 to 31 percent) reduction by aspirin (combined 300 and 1,200 mg groups). The Danish Very-Low-Dose Study (Ref. 21) used aspirin doses ranging from 50 to 100 mg per day in subjects with TIA, stroke, or acute MI who had recently undergone carotid endarterectomies. The study showed no significant effect of aspirin and side effects were minimal. In the SALT study (Ref. 22), 75 mg aspirin daily reduced the risk of stroke and death by 18 percent in subjects who previously had TIA, minor ischemic stroke, or retinal artery occlusion. The agency also considered the findings of the second European Stroke Prevention Study (ESPS–2) (Ref. 23) in which 50 mg daily aspirin had a significant beneficial effect on the combined risk of stroke or death in subjects with a prior TIA or ischemic stroke. (See section II.A, comment 4 of this document.)

The proposed indication for aspirin to reduce the risk of recurrent TIA or

stroke in subjects with TIA, at a dosage of 1,300 mg daily, was based primarily on two small studies (Refs. 8 and 10). Other, more recently published studies (Refs. 11, 12, 22, and 23) have shown a significant effect or trend in favor of aspirin in a population with cerebrovascular events. The agency has reevaluated the available studies and the overall outcome of the available studies, looking at the role of aspirin on the endpoint of stroke alone and the broader composite endpoint of stroke and death, both individually and collectively. (See section II.A, comment 4 of this document.)

Although there is more evidence for effectiveness of aspirin for subjects with TIA or cerebral ischemia at higher doses (900 to 1,500 mg daily) than at lower doses (Ref. 24), the ESPS–2 (50 mg daily aspirin) (Ref. 23), the SALT study (75 mg aspirin daily) (Ref. 22), and UK–TIA study (300 mg versus 1,200 mg aspirin daily) (Ref. 11), lend support for a lower dose. Certain adverse reactions, such as excessive bleeding described by one of the comments, occur in some individuals taking aspirin, but there are generally fewer such reactions at lower doses than higher doses. This is supported by the UK–TIA study (Ref. 12). The benefit/risk must be taken into account for each indication. In this regard, the agency proposed a warning in § 343.50(c)(1)(v)(B) of the TFM to alert people who have bleeding problems not to take aspirin unless directed by a doctor (53 FR 46204 at 46256). Also, the professional labeling in this final rule lists GI bleeding in the adverse reactions section and notes that many adverse reactions due to aspirin ingestion are dose related.

In summary, there is clinical trial support for a lower dose of aspirin for subjects with a history of TIA or cerebral ischemia and considerable evidence supporting lower doses in patients with MI. It is also clear that the effect of aspirin on platelet function is complete at lower doses. The positive findings at lower dosages (e.g., 50, 75, and 300 mg daily), along with the higher incidence of side effects expected at the higher dosage (e.g., 1,300 mg daily), are sufficient reason to lower the dosage of aspirin for subjects with TIA and ischemic stroke. The agency believes a dose of 50 to 325 mg is an effective daily dose for subjects with TIA or cerebral ischemia. Therefore, in this final rule, the agency is providing for a dosage of 50 to 325 mg aspirin daily.

4. One comment suggested the following indication for low-dose aspirin: ''For reduction of the risk of MI, stroke, and vascular death among men or women with a history of occlusive cerebral vascular or cardiovascular disease. The optimal dose is not known, but there is no good evidence that doses above 300 mg/day are necessary.''

The agency reviewed a number of published reports (individually and collectively) to further evaluate the effects of aspirin in subjects with premonitory cerebrovascular events. The agency evaluated studies that: (1) Compared aspirin alone to placebo in subjects with a history of cerebrovascular events, and (2) evaluated and adequately presented the endpoint of stroke and the composite endpoint of stroke and death. The agency considered reviews by the Antiplatelet Trialists' group (Refs. 16 and 20) and Matchar et al. (Ref. 24), but did not include combination arms (e.g., aspirin and dipyridamole) and studies of post-endarterectomy subjects (e.g., Danish Very-Low-Dose Study) (Ref. 21). The following studies met the criteria: SALT (Ref. 22), AICLA (Ref. 12), Canadian Cooperative (Ref. 8), AITIA (Ref. 10), Danish Cooperative (Ref. 18), Swedish Cooperative (Ref. 15), and UK–TIA (Ref. 11). The agency evaluated the available data in the published reports, which in some cases differed from the data listing in the Trialists' reports (Refs. 16 and 20), because of their independent review of outcomes.

The SALT study (Ref. 22) compared aspirin (75 mg daily) and placebo in 1,360 subjects with a TIA, minor ischemic stroke, or retinal artery occlusion. Subjects were excluded if they had any of the following: (1) A potential cardiac source of emboli, including an MI, within 3 months prior to entry; (2) planned carotid surgery; (3) contraindications to aspirin; or (4) the need for long-term anticoagulation. The median duration of followup was 32 months. The primary outcome measure was all-cause mortality and stroke of any severity. The following were planned secondary analyses: (1) All strokes (fatal and nonfatal), (2) stroke or two or more TIA's within 1 week necessitating a change in therapy, and (3) all MI's (fatal and nonfatal). The primary and secondary outcome events are listed in Table 1 of this document.

TABLE 1.—PRIMARY AND SECONDARY OUTCOME EVENTS IN THE SALT STUDY

Primary events	Number of Subjects	
	Aspirin	Placebo
	(n=676)	(n=684)
Primary events		
Nonfatal stroke		
Cerebral infarction, minor	55	68
Cerebral infarction, major	17	30
Intracerebral hemorrhage	4	3
Subarachnoid hemorrhage	1	1
Fatal stroke		
Cerebral infarction, major	10	7
Intracerebral hemorrhage	4	0
Subarachnoid hemorrhage	2	0
Unknown	0	3
Nonstroke deaths		
MI	18	28
Other vascular deaths	14	12
Malignant disorders	10	15
Other (infection, diabetes, trauma)	1	3
Unknown	2	1
Total primary outcome events	138	171
Secondary events		
Stroke (fatal and nonfatal)	93	112
Stroke or > 2 TIA's within 1 week, necessitating change in therapy	101	128

TABLE 1.—PRIMARY AND SECONDARY OUTCOME EVENTS IN THE SALT STUDY—Continued

Primary events	Number of Subjects	
	Aspirin	Placebo
	(n=676)	(n=684)
MI (fatal and nonfatal)	54	68

Log-rank analysis of stroke-free survival showed that aspirin was significantly superior to placebo (p = 0.02). Analysis of the same outcomes by ''accumulated number of events''during the followup period showed a significant (p = 0.05) risk reduction of 18 percent (relative risk 0.82, 95 percent confidence interval 0.67 to 0.99) for nonfatal stroke or death. The risk reduction was similar in men and women (19 percent and 17 percent, respectively). More deaths were attributed to nonstroke events than to stroke in both the aspirin and placebo arms. Most of the nonstroke deaths in this study were attributed to MI, other vascular deaths, and malignant disorders. Fatal hemorrhagic stroke occurred in six subjects in the aspirin group and none in the placebo group (p = 0.03). Overall, more adverse effects were reported in the aspirin group than in the placebo group, particularly bleeding events (see Table 2 of this document).

TABLE 2.—ADVERSE EFFECTS OF ASPIRIN IN THE SALT STUDY

	Number (%) of Subjects	
	Aspirin	Placebo
Gastrointestinal (excluding bleeding)		
Total	85 (12.5)	73 (10.7)
Severe or causing discontinuation of study drug	21 (3.1)	18 (2.6)
Bleeding		
Total	49 (7.2)	22 (3.2)
Gastrointestinal	11 (1.6)	4 (0.6)
Intracranial	10 (1.5)	3 (0.4)
Other	28 (4.1)	15 (2.2)
Severe bleeding, or causing discontinuation of study drug	20 (3.0)	9 (1.3)
Gastrointestinal	9 (1.3)	4 (0.6)
Intracranial	10 (1.5)	3 (0.4)
Other	1 (0.1)	2 (0.3)
Other adverse effects		
Total	31 (4.6)	42 (6.1)
Severe, or causing discontinuation of study drug	9 (1.3)	11 (1.6)
Total number of subjects with adverse effects[1]	147 (21.7)	123 (18.0)

[1] Some subjects had more than one adverse effect.

The SALT study (Ref. 22) is generally a well-controlled and carefully done study that supports the use of low-dose aspirin to reduce the risk of death or stroke in subjects with TIA or minor ischemic stroke (see section II.A, comment 3 of this document).

The six additional studies identified were relatively small, except for the UK–TIA study. The Danish Cooperative study (Ref. 18) studied the effect of aspirin in subjects with reversible cerebral ischemic attack. The primary endpoint was stroke or death. TIA, reversible ischemic neurologic disability, and nonfatal MI were also monitored. The AICLA, Canadian Cooperative, AITIA, Swedish Cooperative, and UK–TIA studies are discussed in section II.A, comments 2 and 3 of this document. The Canadian Cooperative study and the AITIA study were also discussed in comment 49 of the TFM (53 FR 46204 at 46228 to 46230).

FDA performed a statistical analysis and tabulated the endpoints of all strokes and strokes plus death for these seven studies. The agency considered the overall combined results and estimated a common odds ratio for the selected set of available data. The SALT study was considered an independently positive study for the composite endpoint of stroke and death. To see whether that finding was substantiated by other data, the agency did a combined analysis for that endpoint that included all the studies except SALT. A summary of the entry criteria for the seven studies appears in Table 3 of this document.

TABLE 3.—STUDY CRITERIA OF CEREBROVASCULAR TRIALS

Study	Entry Criteria	n	Aspirin	Months
			mg/day	followup
SALT	TIA, retinal artery occlusion, or minor stroke	1,360	75	32
AICLA	Cerebral or retinal ischemic event	402	990	36
Canadian	TIA or partial nonprogressing stroke	283	1,300	26
Fields	TIA	178	1,300	6 to 24
UK–TIA	TIA or minor ischemic stroke	2,435	1,200 or 300	48 (mean)

TABLE 3.—STUDY CRITERIA OF CEREBROVASCULAR TRIALS—Continued

Study	Entry Criteria	n	Aspirin	Months
			mg/day	followup
Danish	Reversible cerebral ischemic attack	203	1,000	43 (mean 24)
Swedish	Minor or major stroke due to cerebral infarction	505	1,500	24

The estimated odds ratios and 95 percent confidence intervals for aspirin versus placebo for the composite endpoint stroke and death (includes vascular and nonvascular) and for all strokes (includes fatal and nonfatal) are summarized in Table 4 of this document.

TABLE 4.—OUTCOME EVENTS OF CEREBROVASCULAR TRIALS

Study	Number of Events		Odds Ratio	95% Confidence Interval
	Aspirin	Placebo		
STROKES AND DEATHS				
AICLA	27/198	36/204	0.74	0.43, 1.26
Canadian	26/144	30/139	0.80	0.45, 1.44
Fields	13/88	19/90	0.65	0.30, 1.40
UK–TIA	382/1,621	220/814	0.83	0.68, 1.01
Danish	21/101	17/102	1.04	0.65, 2.65
Swedish	57/253	55/252	1.04	0.68, 1.58
All Studies	526/2,405	377/1,601	0.86	0.73, 0.999
ALL STROKES				
SALT	93/676	112/684	0.82	0.61, 1.10
AICLA	17/198	31/204	0.53	0.29, 0.98
Canadian	22/144	20/139	1.07	0.56, 2.06
Fields	11/88	14/90	0.78	0.33, 1.81
UK–TIA	163/1,621	98/814	0.81	0.62, 1.07
Danish	17/101	11/102	1.66	0.75, 3.68
Swedish	32/253	32/252	1.00	0.59, 1.68
All Studies	355/3,081	318/2,285	0.84	0.71, 0.99

Four of the seven studies showed trends in favor of aspirin for the endpoint of stroke, and five of seven for the composite endpoint of stroke and death, although most of them did not independently show a statistically significant difference between aspirin and placebo. Of the studies evaluated, only the AICLA study (Ref. 12) independently provides statistically significant results in favor of aspirin for the endpoint of stroke alone. The agency notes that the AICLA study was a small study that, when compared to the other studies, showed an unusually large magnitude of effect on stroke as an endpoint. A detailed report of the study was not submitted to the agency for review. Without a detailed report, the agency cannot draw definitive conclusions on the effect of aspirin on the endpoint of stroke alone based on this small study. However, the collective evaluation of all the studies, including SALT, showed a statistically significant effect in favor of aspirin for the endpoint of stroke alone.

For the composite endpoint of stroke and death, the SALT study independently showed a statistically significant effect of aspirin compared to placebo in subjects with cerebrovascular problems. The collective results of the six other studies (without SALT) confirmed the finding (see Table 4 of this document). The composite endpoint of stroke and death in the studies evaluated includes those deaths attributed to cerebral, MI, and other fatal events.

On January 23, 1997, the Cardiovascular and Renal Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee (the Joint Advisory Committee) met to consider professional labeling for cardiovascular uses of aspirin. The Joint Advisory Committee unanimously recommended an indication for aspirin for subjects with prior occlusive stroke (both major and minor), pending the outcome of the agency's evaluation of the ESPS–2 (Ref. 23). The agency subsequently evaluated data from the aspirin (50 mg daily) and placebo arms of that study (Ref. 25). The study was a randomized, double blind, multicenter trial of about 6,600 subjects to show the effect of antiplatelet agents on subjects that had experienced TIA or completed ischemic stroke. After 2 years of treatment, the risk of stroke and the combined risk of stroke or death were reduced in the aspirin only arm compared to placebo.

Thus, the SALT study and the ESPS–2 study provide primary support for an indication for aspirin to reduce the combined risk of death or nonfatal stroke in subjects with TIA or ischemic stroke. The collective results of the six additional studies lend further support for this indication. Therefore, the agency is revising the indication as follows: ''To reduce the combined risk of death and nonfatal stroke in patients who have had ischemic stroke or transient ischemia of the brain due to fibrin platelet emboli.''

5. One comment recommended that the agency allow consumer-directed OTC labeling for the TIA, MI, unstable angina, and other thromboembolic indications, with complete information on warnings, recommended dosages, and side effects, provided the product is not advertised to the general public. The comment also recommended that such labeling for these uses should be separate from any labeling for the analgesic, antipyretic, and antirheumatic uses of aspirin. The comment stated that aspirin is already widely used in the treatment of these non-analgesic conditions, and that it

would be harmful to the public for the information not to be included in the consumer labeling.

Section 502(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)) states that a drug shall be deemed misbranded: ''Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions * * * where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users * * *.'' The directions for use or the warnings may be inadequate if the labeling refers to uses or conditions for which the drug can be safely used only under the supervision of a practitioner licensed by law (see 21 CFR 201.5). The agency considers the conditions and uses of aspirin that are the subject of this final rule to require the supervision of a physician (or other practitioner licensed to prescribe drugs) to ensure safe use. The agency therefore disagrees with the comment's recommendation.

Consumers are not in a position to determine when they need to take aspirin to prevent vascular events, such as stroke, MI, or cardiovascular death, and other thromboembolic conditions. The need for drug therapy and the safety of indicating it, for this purpose, is dependent on a variety of factors, including a person's medical history, age, gender, lifestyle, and concomitant medications. Medical intervention aimed at reducing the risk of any of these vascular events is both multifaceted and long term. In addition, intervention by a practitioner licensed to prescribe drugs is required for the ongoing management of the medical conditions being treated. Any prolonged use of aspirin has certain possible risks, e.g., increased or prolonged bleeding, GI hemorrhage, and ulceration. An increase in hemorrhagic stroke has also been reported (Refs. 4 and 5). It is not possible, in OTC drug product labeling, to provide adequate directions and warnings to enable the layperson to make a reasonable self assessment of these factors. Therefore, safe and effective use of aspirin to influence the risk of vascular events requires medical supervision by a practitioner licensed to prescribe drugs.

An OTC drug, such as aspirin, may have some uses that can be properly labeled for direct consumer use and other uses that cannot be adequately labeled for direct consumer use. Professional labeling should be provided only to practitioners licensed to prescribe drugs, but not to the general public.

6. The agency also received a citizen petition (CP12) (Ref. 1) that requested an amendment to the professional labeling for aspirin in secondary prevention of cardiovascular morbidity and mortality in men and women at elevated risk for cardiovascular events. The petition's requests for professional labeling for aspirin included indications for: (1) Patients undergoing coronary, cerebral, or peripheral arterial revascularization procedures; (2) patients with chronic nonvalvular atrial fibrillation; (3) patients requiring hemodialysis access with a fistula or shunt; and (4) other patients deemed to be at elevated risk due to some form of vascular disease or other condition implying an increased risk of occlusive vascular disease. The authors of the petition subsequently clarified that they were requesting an aspirin indication, at a maintenance dose of at least 75 to 81 mg per day, only for those patients who have already been diagnosed as having had some occlusive arterial disease and who currently have no special contraindications to low-dose aspirin. The petition also included information on the use of aspirin for subjects with chronic stable angina pectoris. The agency evaluated the petition and presented its review of the petition at a meeting on April 25, 1996. Minutes of that meeting, including the agency's review of the petition, are on file in the Dockets Management Branch (Ref. 26). The petition cited published reports of two studies as support for an indication for chronic stable angina pectoris. The first study was the Swedish Angina Pectoris Aspirin Trial (SAPAT) (Ref. 27), and the second study was an assessment of those male physicians who entered the U.S. Physicians' Health Study with chronic stable angina (Ref. 28).

The SAPAT study was a randomized, multicenter, double-blind, prospective study designed to assess the role of aspirin for prevention of MI in 2,035 subjects with chronic stable angina pectoris. Subjects were randomized to receive daily doses of either 75 mg of aspirin plus sotalol (aspirin group) or placebo plus sotalol (placebo group) daily. The primary endpoint of the study was the combined rates of first fatal or nonfatal MI or sudden death. Secondary endpoints were vascular events (first occurrence of nonfatal MI, nonfatal stroke, or vascular death), vascular death, all-cause mortality, and stroke. Primary and secondary endpoint data appear in Table 5 of this document.

TABLE 5.—PRIMARY AND SECONDARY ENDPOINTS IN THE SAPAT STUDY

Endpoint	Aspirin + Sotalol n=1,009	Placebo + Sotalol n=1,026	Percent Change	p
Primary:	81	124	-34	.003
nonfatal MI	47	78	-3.9	.006
fatal MI	15	15	0	
sudden death	19	31	-38	.097
Secondary:				
vascular events	108	161	-32	<.001
vascular deaths	51	70	-26	.114
all cause mortality	82	106	-22	.103
stroke	28	38	-25	.246
hemorrhagic	5	2		
nonhemorrhagic	23	36		

The SAPAT study supports the use of 75 mg aspirin daily in subjects with chronic stable angina pectoris. The study showed a significant reduction in the primary endpoint of fatal or nonfatal MI and sudden death, and the secondary endpoint of vascular events (first occurrence of MI, stroke, or vascular death). The study also showed a significant overall reduction in a major component of the primary endpoint, nonfatal MI. Although the decreases in vascular deaths and all cause mortality were not statistically significant, there was a favorable trend in the aspirin

group for both of these endpoints and a weakly favorable trend for stroke. There were more reports of serious bleeds in the aspirin group than in the placebo group, but the difference was not significant. As in many other studies, however, there were more hemorrhagic strokes in the aspirin group than the placebo group. All the subjects in the SAPAT study were treated with sotalol. Therefore, the question arises as to whether it can be concluded that aspirin is effective in angina patients not receiving sotalol (or some other beta blocker). Although there are not specific data on this point, the ability of aspirin to decrease the rate of thrombotic vascular events in various settings has not required or, to date, been related to, the presence or absence of beta blockers. Therefore, the agency concludes that the SAPAT study supports the use of aspirin in patients with chronic stable angina, with or without sotalol.

The agency presented a summary of its findings for the SAPAT study at the meeting of the Joint Advisory Committee on January 23, 1997. The Joint Advisory Committee unanimously agreed that the SAPAT study supports the use of aspirin in subjects with chronic stable angina pectoris, and that an indication for low-dose aspirin should be extended to that population.

Ridker et al. (Ref. 28) assessed those subjects with chronic stable angina who entered the U.S. Physicians' Health Study (Ref. 4). The authors concluded that aspirin therapy reduced the risk of first MI among patients with chronic stable angina. However, the agency found that some of the subjects entered into the U.S. Physicians' Health Study had evidence of a previous MI. Thus, it is possible that in the subgroup of subjects with chronic stable angina pectoris, some subjects may also have had a previous MI. Aspirin has already been shown to be effective in subjects with a previous MI and, therefore, some of the positive results found in the Ridker study may in part be due to aspirin's demonstrated effectiveness in patients with previous MI. Nevertheless, the results of the Ridker study are consistent with the findings in the SAPAT study, and lend some additional support for an indication for aspirin for subjects with chronic stable angina pectoris.

The agency is, therefore, extending the indication for aspirin for cardiovascular uses in proposed § 343.80(c) to include reducing the combined risk of MI and sudden death in patients with chronic stable angina pectoris. This conclusion is also supported by substantial additional controlled trials in other populations with coronary artery disease that show reduced risk for similar endpoints, specifically patients with a prior MI. The dosage range is also revised from ''300 to 325 mg daily'' to ''75 to 325 mg daily,'' to include the lower dose used in the SAPAT study, and the ''Clinical Studies'' section of the professional labeling includes information on this study.

The agency has considered the petition's request for an indication for aspirin for subjects who have undergone revascularization procedures including coronary artery bypass graft (CABG), percutaneous transluminal coronary angioplasty (PTCA), carotid endarterectomy, peripheral artery grafts, peripheral arterial fistula or shunt, or peripheral angioplasty. The agency considered the published reports submitted by the petitioner that evaluated aspirin alone in one arm versus a placebo or other active ingredient, and additional information from the report of the Fourth American College of Chest Physicians (ACCP) Consensus Conference on Antithrombotic Therapy (Ref. 29). The agency concluded (Ref. 26) that there was insufficient evidence, based on the published studies, to support the professional labeling of aspirin alone in patients who have undergone revascularization procedures, although some studies have suggested benefit in these patients (Refs. 30 through 34).

The issue of aspirin use in patients who have undergone revascularization procedures was considered by the Joint Advisory Committee on January 23, 1997. The panel members concluded that specific studies have not been presented to show effectiveness of aspirin for this population. However, they noted that almost all patients who undergo coronary revascularization procedures have already had symptomatic coronary disease, such as stable or unstable angina or MI. The Joint Advisory Committee recommended unanimously that aspirin be recommended for subjects who have undergone revascularization procedures such as CABG or PTCA if there is a preexisting condition for which aspirin is already indicated. However, the Joint Advisory Committee made no specific recommendation regarding the use of aspirin in subjects who have undergone carotid endarterectomy.

The agency agrees with the Joint Advisory Committee's recommendation that the professional labeling of aspirin should include subjects who have undergone revascularization procedures for symptomatic coronary artery disease. It is a reasonable assumption that, in general, subjects who have had CABG or PTCA procedures have an underlying condition for which aspirin is indicated. Similarly, the agency believes subjects with lesions of the carotid bifurcation sufficient to require carotid endarterectomy are likely to have had a TIA or stroke, and may also have coexisting coronary artery disease (Ref. 34). Therefore, the agency is adding an indication to the professional labeling for subjects who have had specific arterial revascularization procedures (i.e., CABG, PTCA, or carotid endarterectomy). Likewise, the agency believes it is reasonable to recommend the standard dosages being used in clinical practice (Refs. 35 through 37) during the preoperative period. The following dosages are included in this final rule: CABG, 325 mg daily, starting 6 hours post-procedure and continued 1 year; PTCA, 325 mg 2 hours presurgery, followed by maintenance therapy of 160 to 325 mg daily; and carotid endarterectomy, 80 mg daily to 650 mg twice daily preoperatively and continued indefinitely.

The issue of an indication for aspirin for subjects with peripheral arterial disease was also considered by the Joint Advisory Committee. The Joint Advisory Committee concluded that the trials that used aspirin alone showed no effect on subjects with peripheral arterial disease, despite a sizable data base in which to examine this effect. By a vote of 11 to 4, the members recommended not to label aspirin for the indication. The agency agrees with the Committee and concludes that there is insufficient data to support professional labeling for aspirin alone in subjects with peripheral arterial disease, including subjects with and without peripheral artery grafts or peripheral angioplasty.

The petitioner has withdrawn the request for an indication for aspirin for subjects requiring hemodialysis access with a fistula or shunt, and for subjects with atrial fibrillation (Ref. 38).

B. Comments to the Proposal to Include Acute MI in Professional Labeling of Aspirin

7. The agency received four comments (Ref. 2) that addressed the need for additional warnings relating to the use of aspirin for cardiovascular and cerebrovascular indications. Two comments recommended that additional information about adverse events be included in the professional and consumer labeling. Two comments argued against the need for additional warnings.

One comment recommended that professional aspirin labeling be revised to provide the following: (1) Information

for physicians on the risk of adverse GI effects associated with the long-term use of low-dose aspirin, and (2) advice to physicians concerning appropriate analgesic and antipyretic use in their patients who are taking long-term low-dose aspirin for cardiovascular indications. The comment further recommended that consumer aspirin labeling should be revised to: (1) Alert consumers to the signs and symptoms of adverse events that might occur with therapeutic (labeled) doses of aspirin, and (2) advise patients that they should consult their physician prior to any analgesic use for pain or fever relief if they are taking low-dose aspirin under a physician's care for cardiovascular indications. The comment asserted that adverse GI effects are present with aspirin in doses as low as 30 mg per day and that the risk of adverse GI events increases as the aspirin dose increases. In support of this position, the comment included literature articles (Refs. 4, 11, 22, and 39 through 46).

Another comment acknowledged that adverse events from aspirin use have been carefully studied and characterized, and stated that even at the highest doses studied, 1,500 mg per day, the incidence of serious adverse events is small. The comment noted that the internal analgesic TFM proposes a total daily aspirin dose of 4,000 mg for acute pain management. The comment concluded that none of the studies cited by the first comment demonstrate that a person taking 75 to 325 mg per day of aspirin is at risk of adverse events other than those already labeled if additional aspirin is taken for short-term analgesic or antipyretic use. The comment concluded that labeling should not be proposed which could interfere with a physician's guidance to a patient, and that aspirin should not be singled out for special consideration. One comment noted that professional labeling already includes information concerning adverse reactions and no further changes are necessary.

The agency agrees that physicians should be provided information on potential adverse events from long-term low-dose aspirin use. The agency believes this information should not be limited to potential adverse GI events, but that professional labeling should include complete prescribing information for practitioners licensed to prescribe drugs. Therefore, the agency has developed aspirin professional labeling containing the type of prescribing information included in prescription drug labeling in a format similar to that required for prescription drugs under §§ 201.56 and 201.57. In addition, the agency has consolidated all of the professional uses of aspirin into a single labeling format. The final aspirin professional labeling also includes an optional highlights section that summarizes the professional indications for aspirin and the recommended dosage and administration for each indication. The highlights section, if disseminated, must accompany the required professional labeling as provided in § 343.80(a). Dissemination of the highlights section, however, is not required.

This professional labeling also includes complete information on adverse reactions. The labeling states, ''Many adverse reactions due to aspirin ingestion are dose-related.'' Among the adverse reactions listed are GI bleeding, ulceration, and perforation, as requested by the comment. Also, this labeling warns against concurrent use of aspirin with other analgesics with similar adverse drug event profiles because this may result in an increase in adverse drug reactions, and it includes a warning regarding bleeding risks associated with chronic, heavy use of alcohol. (See the final rule published elsewhere in this issue of the **Federal Register** entitled ''Over-the-Counter Drug Products Containing Analgesic/Antipyretic Active Ingredients for Internal Use; Required Alcohol Warning''.)

The agency does not believe that this labeling will interfere with a physician's guidance to a patient. Rather, both the content and the format of the labeling is expected to enhance appropriate choices.

The agency will address consumer aspirin labeling in the final rule for internal analgesic, antipyretic, and antirheumatic drug products, which will be published in a future issue of the **Federal Register**.

8. One comment asked the agency to include an indication for acute MI in OTC consumer drug labeling. The comment stated that a significant number of people who die of heart attacks do so beyond the reach of health-care providers. The comment argued that by limiting the proposed indication to professional labeling, the agency neglects consumers at risk for heart attack. The comment said that this population needs to know that a half an aspirin can reduce their risk of cardiovascular morbidity and mortality. The comment also recommended a warning stating that patients should seek immediate diagnosis and treatment by a doctor.

The issue of whether consumer labeling is appropriate for an indication such as acute MI is addressed generally in section II.A, comment 5 of this document. The agency will address consumer aspirin labeling in the final rule for internal analgesic, antipyretic, and antirheumatic drug products, which will be published in a future issue of the **Federal Register**.

9. One comment asked the agency to consider several proposed wording changes. The comment suggested changing the proposed sentence ''a dose of 162.5 mg/day, started as soon as possible after a suspected infarction'' to ''a dose of 162.5 mg/day, started as soon as possible during' a suspected infarction.'' The comment suggested that the current wording is misleading and implies that treatment not be initiated until a diagnosis of infarction is established.

The agency agrees that the dosing information for suspected acute MI should be revised to emphasize the immediate use of aspirin for suspected acute MI. However, the agency believes that instructions for the initial dose of aspirin to be administered ''as soon as an MI is suspected'' better conveys the need for immediate action and has included this information in the professional labeling for suspected acute MI.

10. One comment recommended a dosage range of 162.5 to 325 mg aspirin per day for suspected acute MI. In support of its request, the comment cited the results of the ISIS–2 and ISIS pilot studies. The comment suggested that this dosage range for suspected acute MI is more consistent with agency dosing recommendations for other professional labeling indications for aspirin, e.g., 300 to 325 mg aspirin for the prevention of a second heart attack.

In the preamble to the proposed rule for the use of aspirin, buffered aspirin, and aspirin/antacid combinations to reduce the risk of vascular mortality in people with suspected acute MI (61 FR 30002), the agency discussed the basis for its conclusions on the effective dose of aspirin for this use. The results of the ISIS–2 study (162.5 mg aspirin per day) (Ref. 7) were accepted by the agency as the primary support for the indication. Concerning the ISIS pilot study (Ref. 47), the agency noted that a 325 mg aspirin dose every other day produced: (1) A nonsignificant reduction in nonfatal reinfarction, (2) a significantly lower rate of in-hospital deaths (all causes), and (3) similar rates of post-hospital deaths (61 FR 30005). Therefore, the ISIS pilot study does not provide a basis to support a 325 mg aspirin dose for suspected acute MI and this dose is not included in this final rule.

III. Summary of Changes

1. The TFM for OTC analgesic, antipyretic, and antirheumatic drug products included an indication for the professional use of aspirin, carbaspirin calcium, magnesium salicylate, or sodium salicylate for rheumatologic diseases (53 FR 46204 at 46244). The indication was based on the recommendations of the Panel made in 1977. No comments were received in response to the TFM concerning this indication. The indication for the use of aspirin in rheumatologic diseases has been updated. For completeness, the agency has included full prescribing information for the professional uses of aspirin, including full information for the treatment of the signs and symptoms of rheumatologic disease. However, professional labeling on the use of other Category I salicylates for rheumatologic diseases has not been included and will be addressed in the final rule for OTC internal analgesic, antipyretic, and antirheumatic drug products to be published in a future issue of the **Federal Register**.

2. To allow for the codification of the professional labeling, the agency is: (1) Finalizing certain sections of the proposed rule pertaining to scope, definitions, and testing procedures that apply to both OTC and professional labeling; (2) adding definitions in § 343.3; and (3) adding §§ 343.12, 343.13 and 343.22 which include cardiovascular and rheumatologic active ingredients and permitted combinations of active ingredients.

3. The heading for § 343.90 under ''Testing Procedures'' has been changed from ''Dissolution testing'' to ''Dissolution and drug release testing'' to include the current United States Pharmacopeia (USP) terminology for testing delayed-release products. The agency has updated the dissolution tests in § 343.90 from those contained in USP XXI, which were in effect when the TFM was published, to those currently in effect in USP 23. The dissolution testing procedures have been added for aspirin, alumina, and magnesium oxide tablets and aspirin effervescent tablets for oral solution in § 343.90(f) and (g), respectively. (A monograph for these products were included in the USP after publication of the TFM.) Proposed § 343.90(f) for buffered aspirin tablets is now § 343.90(h).

4. The minimum dosages for the vascular indications in this final rule are lower than those proposed in the TFM. The agency is concerned about the impact of formulation on the effectiveness of the lower-dose aspirin. Therefore, this final rule allows professional labeling only for those products that meet USP dissolution and drug release standards in § 343.90.

5. In the TFM, the agency proposed professional labeling indications for TIA and rheumatologic diseases for aspirin and buffered aspirin drug products identified in § 343.10(b), except those buffered with sodium. The TFM did not include these indications for aspirin in combination with antacids identified in § 343.20(b)(3). The agency is expanding the professional labeling indications for TIA and rheumatologic diseases in this final rule to include aspirin drug products buffered with sodium and aspirin in combination with antacid. The agency has taken this action based on: (1) The additional prescribing information included in this final rule on the use of sodium-containing products in patients who need to restrict their sodium intake; (2) data that show there is no significant difference between the plasma aspirin levels obtained with aspirin, buffered aspirin, and aspirin in combination with antacids (Refs. 48 and 49); (3) the lower dosage of aspirin for TIA; and (4) the physician's routine practice of titrating the dosage of aspirin to an effective blood level for rheumatologic diseases.

6. Portions of the proposed rule would have amended 21 CFR 310.201, 369.20, and 369.21. This final rule is one segment of the proposed rule and does not affect these sections. The other portions of the proposed rule will be discussed in a future issue of the **Federal Register**.

IV. References

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

(1) Comment Nos. C146, C153, C154, C155, CP9, CP10, and CP12, Docket No. 77N–0094, Dockets Management Branch.

(2) Comment Nos. C1–C10, Docket No. 77N–0094A, Dockets Management Branch.

(3) Steering Committee of the Physicians' Health Study Research Group, ''Preliminary Report: Findings from the Aspirin Component of the Ongoing Physicians' Health Study,'' *New England Journal of Medicine*, 318:262–264, 1988.

(4) Steering Committee of the Physicians' Health Study Research Group, ''Final Report on the Aspirin Component of the Ongoing Physicians' Health Study,'' *New England Journal of Medicine*, 321:129–135, 1989.

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(6) Manson, J. E. et al., ''Medical Progress: The Primary Prevention of Myocardial Infarction,'' *New England Journal of Medicine*, 326:1406–1416, 1992.

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(11) UK–TIA Study Group, ''United Kingdom Transient Ischaemic Attack (UK–TIA) Aspirin Trial: Interim Results,'' *British Medical Journal*, 296:316–320, 1988.

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(15) A Swedish Cooperative Study, ''High-Dose Acetylsalicylic Acid after Cerebral Infarction,'' *Stroke*, 18:325–334, 1987.

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(17) Fields, W. S. et al., ''Controlled Trial of Aspirin in Cerebral Ischemia. Part II: Surgical Group,'' *Stroke*, 9:309–318, 1978.

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(19) Reuther, R., and W. Dorndorf, ''Aspirin in Patients with Cerebral Ischemia and Normal Angiograms. The Results of a Double Blind Trial,'' in *Acetylsalicylic Acid in Cerebral Ischaemic and Coronary Artery Disease*, edited by Breddin, K. et al., Schatauer Verlag, Stuttgart Germany, pp. 97–106, 1978.

(20) Antiplatelet Trialists' Collaboration, ''Collaborative Overview of Randomized Trials of Antiplatelet Therapy—I: Prevention of Death, Myocardial Infarction, and Stroke by Prolonged Antiplatelet Therapy in Various Categories of Patients,'' *British Medical Journal*, 308:81–106, 1994.

(21) Boysen, G. et al., ''Danish Very-Low-Dose Aspirin after Carotid Endarterectomy Trial,'' *Stroke*, 19:1211–1215, 1988.

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Acetylsalicylic Acid in the Secondary Prevention of Stroke,'' *Journal of Neurological Sciences*, 143:1–13, 1996.

(24) Matchar, D. B. et al., ''Medical Treatment for Stroke Prevention,'' *Annals of Internal Medicine*, 121:41–53, 1994.

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(26) Minutes of Meeting between representatives of FDA and The Aspirin Strategy Group, on April 25, 1996, Coded MM21, Docket No. 77N–0094, Dockets Management Branch.

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(38) Letter from C. H. Hennekens, Chairman Aspirin Strategy Group, to W. E. Gilbertson, FDA, coded LET134, Docket No. 77N–0094, Dockets Management Branch.

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(48) Itthipanichpong, C. et al., ''The Effect of Antacid on Aspirin Pharmacokinetics in Healthy Thai Volunteers,'' *Drug Metabolism and Drug Interaction*, 10:213–228, 1992.

(49) Vigano, G. et al., ''Pharmacokinetic Study of a New Oral Buffered Acetylsalicylic Acid (ASA) Formulation in Comparison with Plain ASA in Healthy Volunteers,'' *International Journal for Clinical Pharmacological Research*, 11:129–135, 1991.

V. Analysis of Impacts

An analysis of the costs and benefits of this regulation conducted under Executive Order 12291 was discussed in the TFM for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46204 at 46254). No comments on the economic impact related to professional labeling for aspirin were received in response to the agency's request for specific comment on the economic impact of this rulemaking. Executive Order 12291 has been superseded by Executive Order 12866.

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

If a rule would have a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the impact of the rule on small entities. This final rule will impose direct one-time costs associated with changing professional labeling to reflect current information. In the June 13, 1996 (61 FR 30002 at 30007), amendment to the TFM, the agency certified that the rule would not have a significant economic impact on a substantial number of small entities, based on the fact that few manufacturers of aspirin products appear to distribute professional labeling for their products and that manufacturers who do distribute such professional labeling will have 1 year after publication of this final rule to implement this relabeling. The economic impact of this final rule on manufacturers appears to be minimal. The agency did not receive any comments challenging the basis for its initial proposed certification. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 343

Labeling, Over-the-counter drugs.

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

1. Part 343 is added to read as follows:

PART 343—INTERNAL ANALGESIC, ANTIPYRETIC, AND ANTIRHEUMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

Subpart A—General Provisions

Sec.

343.1 Scope.
343.3 Definitions.

Subpart B—Active Ingredients

343.10 [Reserved]
343.12 Cardiovascular active ingredients.
343.13 Rheumatologic active ingredients.
343.20 [Reserved]
343.22 Permitted combinations of active ingredients for cardiovascular-rheumatologic use.

Subpart C—Labeling

343.50 [Reserved]
343.60 [Reserved]
343.80 Professional labeling.

Subpart D—Testing Procedures

343.90 Dissolution and drug release testing.

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Subpart A—General Provisions

§ 343.1 Scope.

(a) An over-the-counter analgesic-antipyretic drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part in addition to each of the general conditions established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 343.3 Definitions.

As used in this part:

Analgesic-antipyretic drug. An agent used to alleviate pain and to reduce fever.

Cardiovascular drug. An agent used to prevent ischemic events.

Rheumatologic drug. An agent used for the treatment of rheumatologic disorders.

Subpart B—Active Ingredients

§ 343.10 [Reserved]

§ 343.12 Cardiovascular active ingredients.

(a) Aspirin.

(b) Buffered aspirin. Aspirin identified in paragraph (a) of this section may be buffered with any antacid ingredient(s) identified in § 331.11 of this chapter provided that the finished product contains at least 1.9 milliequivalents of acid-neutralizing capacity per 325 milligrams of aspirin as measured by the procedure provided in the United States Pharmacopeia 23/ National Formulary 18.

§ 343.13 Rheumatologic active ingredients.

(a) Aspirin.

(b) Buffered aspirin. Aspirin identified in paragraph (a) of this section may be buffered with any antacid ingredient(s) identified in § 331.11 of this chapter provided that the finished product contains at least 1.9 milliequivalents of acid-neutralizing capacity per 325 milligrams of aspirin as measured by the procedure provided in the United States Pharmacopeia 23/ National Formulary 18.

§ 343.20 [Reserved]

§ 343.22 Permitted combinations of active ingredients for cardiovascular-rheumatologic use.

Combinations containing aspirin must meet the standards of an acceptable dissolution test, as set forth in § 343.90. The following combinations are permitted: Aspirin identified in §§ 343.12 and 343.13 may be combined with any antacid ingredient identified in § 331.11 of this chapter or any combination of antacids permitted in accordance with § 331.10(a) of this chapter provided that the finished product meets the requirements of § 331.10 of this chapter and is marketed in a form intended for ingestion as a solution.

Subpart C—Labeling

§ 343.50 [Reserved]

§ 343.60 [Reserved]

§ 343.80 Professional labeling.

The labeling of an over-the-counter drug product written for health professionals (but not for the general public) shall consist of the following:

(a) *For products containing aspirin identified in §§ 343.12 and 343.13 or permitted combinations identified in § 343.22.* (These products must meet United States Pharmacopeia (USP) standards for dissolution or drug release in § 343.90.)

(1) The labeling contains the following prescribing information under the heading ''Comprehensive Prescribing Information'' and the subheadings ''Description,'' ''Clinical Pharmacology,'' ''Clinical Studies,'' ''Animal Toxicology,'' ''Indications and Usage,'' ''Contraindications,'' ''Warnings,'' ''Precautions,'' ''Adverse Reactions,'' ''Drug Abuse and Dependence,'' ''Overdosage,'' ''Dosage and Administration,'' and ''How Supplied'' in the exact language and the exact order provided as follows:

COMPREHENSIVE PRESCRIBING INFORMATION

DESCRIPTION

(*Insert the proprietary name and the established name (if any) of the drug, type of dosage form (followed by the phrase ''for oral administration''), the established name(s) and quantity of the active ingredient(s) per dosage unit, the total sodium content in milligrams per dosage unit if the sodium content of a single recommended dose is 5 milligrams or more, the established name(s) (in alphabetical order) of any inactive ingredient(s) which may cause an allergic hypersensitivity reaction, the pharmacological or therapeutic class of the drug, and the chemical name(s) and structural formula(s) of the drug.*) Aspirin is an odorless white, needle-like crystalline or powdery substance. When exposed to moisture, aspirin hydrolyzes into salicylic and acetic acids, and gives off a vinegary-odor. It is highly lipid soluble and slightly soluble in water.

CLINICAL PHARMACOLOGY

Mechanism of Action: Aspirin is a more potent inhibitor of both prostaglandin synthesis and platelet aggregation than other salicylic acid derivatives. The differences in activity between aspirin and salicylic acid are thought to be due to the acetyl group on the aspirin molecule. This acetyl group is responsible for the inactivation of cyclo-oxygenase via acetylation.

PHARMACOKINETICS

Absorption: In general, immediate release aspirin is well and completely absorbed from the gastrointestinal (GI) tract. Following absorption, aspirin is hydrolyzed to salicylic acid with peak plasma levels of salicylic acid occurring within 1–2 hours of dosing (see **Pharmacokinetics**—*Metabolism*). The rate of absorption from the GI tract is dependent upon the dosage form, the presence or absence of food, gastric pH (the presence or absence of GI antacids or buffering agents), and other physiologic factors. Enteric coated aspirin products are erratically absorbed from the GI tract.

Distribution: Salicylic acid is widely distributed to all tissues and fluids in the body including the central nervous system (CNS), breast milk, and fetal tissues. The highest concentrations are found in the plasma, liver, renal cortex, heart, and lungs.

The protein binding of salicylate is concentration-dependent, i.e., non-linear. At low concentrations (< 100 micrograms/milliliter (µg/mL)), approximately 90 percent of plasma salicylate is bound to albumin while at higher concentrations (> 400 µg/mL), only about 75 percent is bound. The early signs of salicylic overdose (salicylism), including tinnitus (ringing in the ears), occur at plasma concentrations approximating 200 µg/mL. Severe toxic effects are associated with levels > 400 µg/mL. (See **Adverse Reactions** and **Overdosage**.)

Metabolism: Aspirin is rapidly hydrolyzed in the plasma to salicylic acid such that plasma levels of aspirin are essentially undetectable 1–2 hours after dosing. Salicylic acid is primarily conjugated in the liver to form salicyluric acid, a phenolic glucuronide, an acyl glucuronide, and a number of minor metabolites. Salicylic acid has a plasma half-life of approximately 6 hours. Salicylate metabolism is saturable and total body clearance decreases at higher serum concentrations due to the limited ability of the liver to form both salicyluric acid and phenolic glucuronide. Following toxic doses (10–20 grams (g)), the plasma half-life may be increased to over 20 hours.

Elimination: The elimination of salicylic acid follows zero order pharmacokinetics; (i.e., the rate of drug elimination is constant in relation to plasma concentration). Renal excretion of unchanged drug depends upon urine pH. As urinary pH rises above 6.5, the renal clearance of free salicylate increases from < 5 percent to > 80 percent. Alkalinization of the urine is a key concept in the management of salicylate overdose. (See **Overdosage**.) Following therapeutic doses, approximately 10 percent is found excreted in the urine as salicylic acid, 75 percent as salicyluric acid, as the phenolic and acyl glucuronides, respectively.

Pharmacodynamics: Aspirin affects platelet aggregation by irreversibly inhibiting prostaglandin cyclo-oxygenase. This effect lasts for the life of the platelet and prevents the formation of the platelet aggregating factor thromboxane A2. Non-acetylated salicylates do not inhibit this enzyme and have no effect on platelet aggregation. At somewhat higher doses, aspirin reversibly inhibits the formation of prostaglandin I_2 (prostacyclin), which is an arterial vasodilator and inhibits platelet aggregation.

At higher doses aspirin is an effective anti-inflammatory agent, partially due to inhibition of inflammatory mediators via cyclo-oxygenase inhibition in peripheral tissues. In vitro studies suggest that other mediators of inflammation may also be suppressed by aspirin administration, although the precise mechanism of action has not been elucidated. It is this non-specific suppression of cyclo-oxygenase activity in peripheral tissues following large doses that leads to its primary side effect of gastric irritation. (See **Adverse Reactions**.)

CLINICAL STUDIES

Ischemic Stroke and Transient Ischemic Attack (TIA): In clinical trials of subjects with TIA's due to fibrin platelet emboli or ischemic stroke, aspirin has been shown to significantly reduce the risk of the combined endpoint of stroke or death and the combined endpoint of TIA, stroke, or death by about 13–18 percent.

Suspected Acute Myocardial Infarction (MI): In a large, multi-center study of aspirin, streptokinase, and the combination of aspirin and streptokinase in 17,187 patients with suspected acute MI, aspirin treatment produced a 23-percent reduction in the risk of vascular mortality. Aspirin was also shown to have an additional benefit in patients given a thrombolytic agent.

Prevention of Recurrent MI and Unstable Angina Pectoris: These indications are supported by the results of six large, randomized, multi-center, placebo-controlled trials of predominantly male post-MI subjects and one randomized placebo-controlled study of men with unstable angina pectoris. Aspirin therapy in MI subjects was associated with a significant reduction (about 20 percent) in the risk of the combined endpoint of subsequent death and/or nonfatal reinfarction in these patients. In aspirin-treated unstable angina patients the event rate was reduced to 5 percent from the 10 percent rate in the placebo group.

Chronic Stable Angina Pectoris: In a randomized, multi-center, double-blind trial designed to assess the role of aspirin for prevention of MI in patients with chronic stable angina pectoris, aspirin significantly reduced the primary combined endpoint of nonfatal MI, fatal MI, and sudden death by 34 percent. The secondary endpoint for vascular events (first occurrence of MI, stroke, or vascular death) was also significantly reduced (32 percent).

Revascularization Procedures: Most patients who undergo coronary artery revascularization procedures have already had symptomatic coronary artery disease for which aspirin is indicated. Similarly, patients with lesions of the carotid bifurcation sufficient to require carotid endarterectomy are likely to have had a precedent event. Aspirin is recommended for patients who undergo revascularization procedures if there is a preexisting condition for which aspirin is already indicated.

Rheumatologic Diseases: In clinical studies in patients with rheumatoid arthritis, juvenile rheumatoid arthritis, ankylosing spondylitis and osteoarthritis, aspirin has been shown to be effective in controlling various indices of clinical disease activity.

ANIMAL TOXICOLOGY

The acute oral 50 percent lethal dose in rats is about 1.5 g/kilogram (kg) and in mice 1.1 g/kg. Renal papillary necrosis and decreased urinary concentrating ability occur in rodents chronically administered high doses. Dose-dependent gastric mucosal injury occurs in rats and humans. Mammals may develop aspirin toxicosis associated with GI symptoms, circulatory effects, and central nervous system depression. (See **Overdosage**.)

INDICATIONS AND USAGE

Vascular Indications (Ischemic Stroke, TIA, Acute MI, Prevention of Recurrent MI, Unstable Angina Pectoris, and Chronic Stable Angina Pectoris): Aspirin is indicated to: (1) Reduce the combined risk of death and nonfatal stroke in patients who have had ischemic stroke or transient ischemia of the brain due to fibrin platelet emboli, (2) reduce the risk of vascular mortality in patients with a suspected acute MI, (3) reduce the combined risk of death and nonfatal MI in patients with a previous MI or unstable angina pectoris, and (4) reduce the combined risk of MI and sudden death in patients with chronic stable angina pectoris.

Revascularization Procedures (Coronary Artery Bypass Graft (CABG), Percutaneous Transluminal Coronary Angioplasty (PTCA), and Carotid Endarterectomy): Aspirin is indicated in patients who have undergone revascularization procedures (i.e., CABG, PTCA, or carotid endarterectomy) when there is a preexisting condition for which aspirin is already indicated.

Rheumatologic Disease Indications (Rheumatoid Arthritis, Juvenile Rheumatoid Arthritis, Spondyloarthropathies, Osteoarthritis, and the Arthritis and Pleurisy of Systemic Lupus Erythematosus (SLE)): Aspirin is indicated for the relief of the signs and symptoms of rheumatoid arthritis, juvenile rheumatoid arthritis, osteoarthritis, spondyloarthropathies, and arthritis and pleurisy associated with SLE.

CONTRAINDICATIONS

Allergy: Aspirin is contraindicated in patients with known allergy to nonsteroidal anti-inflammatory drug products and in patients with the syndrome of asthma, rhinitis, and nasal polyps. Aspirin may cause severe urticaria, angioedema, or bronchospasm (asthma).

Reye's Syndrome: Aspirin should not be used in children or teenagers for viral infections, with or without fever, because of the risk of Reye's syndrome with concomitant use of aspirin in certain viral illnesses.

WARNINGS

Alcohol Warning: Patients who consume three or more alcoholic drinks every day should be counseled about the bleeding risks involved with chronic, heavy alcohol use while taking aspirin.

Coagulation Abnormalities: Even low doses of aspirin can inhibit platelet function leading to an increase in bleeding time. This can adversely affect patients with inherited (hemophilia) or acquired (liver disease or vitamin K deficiency) bleeding disorders.

GI Side Effects: GI side effects include stomach pain, heartburn, nausea, vomiting, and gross GI bleeding. Although minor upper GI symptoms, such as dyspepsia, are common and can occur anytime during therapy, physicians should remain alert for signs of ulceration and bleeding, even in the absence of previous GI symptoms. Physicians should inform patients about the signs and symptoms of GI side effects and what steps to take if they occur.

Peptic Ulcer Disease: Patients with a history of active peptic ulcer disease should avoid using aspirin, which can cause gastric mucosal irritation and bleeding.

PRECAUTIONS

General

Renal Failure: Avoid aspirin in patients with severe renal failure (glomerular filtration rate less than 10 mL/minute).

Hepatic Insufficiency: Avoid aspirin in patients with severe hepatic insufficiency.

Sodium Restricted Diets: Patients with sodium-retaining states, such as congestive heart failure or renal failure, should avoid sodium-containing buffered aspirin preparations because of their high sodium content.

Laboratory Tests: Aspirin has been associated with elevated hepatic enzymes, blood urea nitrogen and serum creatinine, hyperkalemia, proteinuria, and prolonged bleeding time.

Drug Interactions

Angiotensin Converting Enzyme (ACE) Inhibitors: The hyponatremic and hypotensive effects of ACE inhibitors may be diminished by the concomitant administration of aspirin due to its indirect effect on the renin-angiotensin conversion pathway.

Acetazolamide: Concurrent use of aspirin and acetazolamide can lead to high serum concentrations of acetazolamide (and toxicity) due to competition at the renal tubule for secretion.

Anticoagulant Therapy (Heparin and Warfarin): Patients on anticoagulation therapy are at increased risk for bleeding because of drug-drug interactions and the effect on platelets. Aspirin can displace warfarin from protein binding sites, leading to prolongation of both the prothrombin time and the bleeding time. Aspirin can increase the anticoagulant activity of heparin, increasing bleeding risk.

Anticonvulsants: Salicylate can displace protein-bound phenytoin and valproic acid, leading to a decrease in the total concentration of phenytoin and an increase in serum valproic acid levels.

Beta Blockers: The hypotensive effects of beta blockers may be diminished by the concomitant administration of aspirin due to inhibition of renal prostaglandins, leading to decreased renal blood flow, and salt and fluid retention.

Diuretics: The effectiveness of diuretics in patients with underlying renal or cardiovascular disease may be diminished by the concomitant administration of aspirin due to inhibition of renal prostaglandins, leading to decreased renal blood flow and salt and fluid retention.

Methotrexate: Salicylate can inhibit renal clearance of methotrexate, leading to bone marrow toxicity, especially in the elderly or renal impaired.

Nonsteroidal Anti-inflammatory Drugs (NSAID's): The concurrent use of aspirin with other NSAID's should be avoided because this may increase bleeding or lead to decreased renal function.

Oral Hypoglycemics: Moderate doses of aspirin may increase the effectiveness of oral hypoglycemic drugs, leading to hypoglycemia.

Uricosuric Agents (Probenecid and Sulfinpyrazone): Salicylates antagonize the uricosuric action of uricosuric agents.

Carcinogenesis, Mutagenesis, Impairment of Fertility: Administration of aspirin for 68 weeks at 0.5 percent in the feed of rats was not carcinogenic. In the Ames Salmonella assay, aspirin was not mutagenic; however, aspirin did induce chromosome aberrations in cultured human fibroblasts. Aspirin inhibits ovulation in rats. (See *Pregnancy*.)

Pregnancy: Pregnant women should only take aspirin if clearly needed. Because of the known effects of NSAID's on the fetal cardiovascular system (closure of the ductus arteriosus), use during the third trimester of pregnancy should be avoided. Salicylate products have also been associated with alterations in maternal and neonatal hemostasis mechanisms, decreased birth weight, and with perinatal mortality.

Labor and Delivery: Aspirin should be avoided 1 week prior to and during labor and delivery because it can result in excessive blood loss at delivery. Prolonged gestation and prolonged labor due to prostaglandin inhibition have been reported.

Nursing Mothers: Nursing mothers should avoid using aspirin because salicylate is excreted in breast milk. Use of high doses may lead to rashes, platelet abnormalities, and bleeding in nursing infants.

Pediatric Use: Pediatric dosing recommendations for juvenile rheumatoid arthritis are based on well-controlled clinical studies. An initial dose of 90–130 mg/kg/day in divided doses, with an increase as needed for anti-inflammatory efficacy (target plasma salicylate levels of 150–300 µg/mL) are effective. At high doses (i.e., plasma levels of greater than 200 mg/mL), the incidence of toxicity increases.

ADVERSE REACTIONS

Many adverse reactions due to aspirin ingestion are dose-related. The following is a list of adverse reactions that have been reported in the literature. (See **Warnings**.)

Body as a Whole: Fever, hypothermia, thirst.

Cardiovascular: Dysrhythmias, hypotension, tachycardia.

Central Nervous System: Agitation, cerebral edema, coma, confusion, dizziness, headache, subdural or intracranial hemorrhage, lethargy, seizures.

Fluid and Electrolyte: Dehydration, hyperkalemia, metabolic acidosis, respiratory alkalosis.

Gastrointestinal: Dyspepsia, GI bleeding, ulceration and perforation, nausea, vomiting, transient elevations of hepatic enzymes, hepatitis, Reye's Syndrome, pancreatitis.

Hematologic: Prolongation of the prothrombin time, disseminated intravascular coagulation, coagulopathy, thrombocytopenia.

Hypersensitivity: Acute anaphylaxis, angioedema, asthma, bronchospasm, laryngeal edema, urticaria.

Musculoskeletal: Rhabdomyolysis.

Metabolism: Hypoglycemia (in children), hyperglycemia.

Reproductive: Prolonged pregnancy and labor, stillbirths, lower birth weight infants, antepartum and postpartum bleeding.

Respiratory: Hyperpnea, pulmonary edema, tachypnea.

Special Senses: Hearing loss, tinnitus. Patients with high frequency hearing loss may have difficulty perceiving tinnitus. In these patients, tinnitus cannot be used as a clinical indicator of salicylism.

Urogenital: Interstitial nephritis, papillary necrosis, proteinuria, renal insufficiency and failure.

DRUG ABUSE AND DEPENDENCE

Aspirin is non-narcotic. There is no known potential for addiction associated with the use of aspirin.

OVERDOSAGE

Salicylate toxicity may result from acute ingestion (overdose) or chronic intoxication. The early signs of salicylic overdose (salicylism), including tinnitus (ringing in the ears), occur at plasma concentrations approaching 200 µg/mL. Plasma concentrations of aspirin above 300 µg/mL are clearly toxic. Severe toxic effects are associated with levels above 400 µg/mL. (See **Clinical Pharmacology**.) A single lethal dose of aspirin in adults is not known with certainty but death may be expected at 30 g. For real or suspected overdose, a Poison Control Center should be contacted immediately. Careful medical management is essential.

Signs and Symptoms: In acute overdose, severe acid-base and electrolyte disturbances may occur and are complicated by hyperthermia and dehydration. Respiratory alkalosis occurs early while hyperventilation is present, but is quickly followed by metabolic acidosis.

Treatment: Treatment consists primarily of supporting vital functions, increasing salicylate elimination, and correcting the acid-base disturbance. Gastric emptying and/or lavage is recommended as soon as possible after ingestion, even if the patient has vomited spontaneously. After lavage and/or emesis, administration of activated charcoal, as a slurry, is beneficial, if less than 3 hours have passed since ingestion. Charcoal adsorption should not be employed prior to emesis and lavage.

Severity of aspirin intoxication is determined by measuring the blood salicylate level. Acid-base status should be closely followed with serial blood gas and serum pH measurements. Fluid and electrolyte balance should also be maintained.

In severe cases, hyperthermia and hypovolemia are the major immediate threats to life. Children should be sponged with tepid water. Replacement fluid should be administered intravenously and augmented with correction of acidosis. Plasma electrolytes and pH should be monitored to promote alkaline diuresis of salicylate if renal function is normal. Infusion of glucose may be required to control hypoglycemia.

Hemodialysis and peritoneal dialysis can be performed to reduce the body drug content. In patients with renal insufficiency or in cases of life-threatening intoxication, dialysis is usually required. Exchange transfusion may be indicated in infants and young children.

DOSAGE AND ADMINISTRATION

Each dose of aspirin should be taken with a full glass of water unless patient is fluid restricted. Anti-inflammatory and analgesic dosages should be individualized. When

aspirin is used in high doses, the development of tinnitus may be used as a clinical sign of elevated plasma salicylate levels except in patients with high frequency hearing loss.

Ischemic Stroke and TIA: 50–325 mg once a day. Continue therapy indefinitely.

Suspected Acute MI: The initial dose of 160–162.5 mg is administered as soon as an MI is suspected. The maintenance dose of 160–162.5 mg a day is continued for 30 days post-infarction. After 30 days, consider further therapy based on dosage and administration for prevention of recurrent MI.

Prevention of Recurrent MI: 75–325 mg once a day. Continue therapy indefinitely.

Unstable Angina Pectoris: 75–325 mg once a day. Continue therapy indefinitely.

Chronic Stable Angina Pectoris: 75–325 mg once a day. Continue therapy indefinitely.

CABG: 325 mg daily starting 6 hours post-procedure. Continue therapy for 1 year post-procedure.

PTCA: The initial dose of 325 mg should be given 2 hours pre-surgery. Maintenance dose is 160–325 mg daily. Continue therapy indefinitely.

Carotid Endarterectomy: Doses of 80 mg once daily to 650 mg twice daily, started presurgery, are recommended. Continue therapy indefinitely.

Rheumatoid Arthritis: The initial dose is 3 g a day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 μg/mL. At high doses (i.e., plasma levels of greater than 200 mg/mL), the incidence of toxicity increases.

Juvenile Rheumatoid Arthritis: Initial dose is 90–130 mg/kg/day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 μg/mL. At high doses (i.e., plasma levels of greater than 200 mg/mL), the incidence of toxicity increases.

Spondyloarthropathies: Up to 4 g per day in divided doses.

Osteoarthritis: Up to 3 g per day in divided doses.

Arthritis and Pleurisy of SLE: The initial dose is 3 g a day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 μg/mL. At high doses (i.e., plasma levels of greater than 200 mg/mL), the incidence of toxicity increases.

HOW SUPPLIED

(*Insert specific information regarding, strength of dosage form, units in which the dosage form is generally available, and information to facilitate identification of the dosage form as required under § 201.57(k)(1), (k)(2), and (k)(3).) Store in a tight container at 25* °C (77 °F); excursions permitted to 15–30 °C (59–86 °F).

REV: (*insert date of publication in the* **Federal Register**.)

(2) In addition to, and immediately preceding, the labeling required under paragraph (a)(1) of this section, the professional labeling may contain the following highlights of prescribing information in the exact language and exact format provided, but only when accompanied by the comprehensive prescribing information required in paragraph (a)(1) of this section.

BILLING CODE 4160–01–F

HIGHLIGHTS OF PRESCRIBING INFORMATION
ASPIRIN (FORMULATION)
(acetylsalicylic acid)

PROFESSIONAL INDICATIONS AND USAGE
Vascular Indications:
· Ischemic Strokes and Transient Ischemic Attacks (TIA)
· Suspected Acute Myocardial Infarction (MI)
· Prevention of Recurrent MI
· Unstable Angina Pectoris
· Chronic Stable Angina Pectoris
Revascularization Procedures in Select Patients:[1]
· Coronary Artery Bypass Graft (CABG)
· Percutaneous Transluminal Coronary Angioplasty (PTCA)
· Carotid Endarterectomy
Rheumatologic Disease Indications:
· Rheumatoid Arthritis
· Juvenile Rheumatoid Arthritis
· Spondyloarthropathies
· Osteoarthritis
· Arthritis and Pleurisy of Systemic Lupus Erythematosus (SLE)

Warnings Regarding Use In Pregnancy
Pregnant women should only take aspirin if clearly needed. Because of the known effects of nonsteroidal anti-inflammatory drugs on the fetal cardiovascular system (closure of the ductus arteriosus), use during the third trimester of pregnancy should be avoided. Salicylate products have also been associated with alterations in maternal and neonatal hemostasis mechanisms, decreased birth weight, and with perinatal mortality. Salicylate is excreted in breast milk. (See "Pregnancy," "Labor and Delivery" and "Nursing Mothers" in the "Precautions" section of the Comprehensive Prescribing Information.)

[1]Patients with a pre-existing condition for which aspirin is already indicated. See "Revascularization Procedures" under the "Indications and Usage" and "Clinical Studies" sections in the Comprehensive Prescribing Information.

Dosage and Administration
General: Each dose should be taken with a full glass of water unless contraindicated. Doses may need to be individualized depending on indication.

Indications	Recommended Daily Dose	Duration of Therapy
Vascular Indications:		
Ischemic Strokes and TIA	50-325 milligrams (mg) daily	Indefinitely
Suspected Acute MI	160-162.5 mg taken as soon as infarction is suspected; then once daily	For 30 days post infarction (after 30 days consider further treatment based on indication for previous MI)
Prevention of Recurrent MI	75-325 mg daily	Indefinitely
Unstable Angina Pectoris	75-325 mg daily	Indefinitely
Chronic Stable Angina Pectoris	75-325 mg daily	Indefinitely
Revascularization Procedures in Select Patients:		
CABG	325 mg daily starting 6 hrs. postprocedure	1 year
PTCA	325 mg 2 hours presurgery Maintenance therapy: 160-325 mg daily	Indefinitely
Carotid Endarterectomy	80 mg daily to 650 mg twice a day started presurgery	Indefinitely
Rheumatologic Disease Indications:		
Rheumatoid Arthritis	Initial dose 3 g daily. Target plasma salicylate levels 150-300 micrograms/milliliter (μg/mL)	As indicated
Juvenile Rheumatoid Arthritis	Initial dose 90-130 mg/kilograms/day. Target plasma salicylate levels 150-300 μg/mL	As indicated
Spondyloarthropathies	Up to 4 grams (g) daily	As indicated
Osteoarthritis	Up to 3 g daily	As indicated
Arthritis and Pleurisy of SLE	Initial dose 3 g daily. Target plasma salicylate levels 150-300 μg/mL	As indicated

CONTRAINDICATIONS
Aspirin is contraindicated in patients with known allergy to nonsteroidal anti-inflammatory drugs and in patients with the syndrome of asthma, rhinitis, and nasal polyps. Aspirin should not be used in children or teenagers for viral infections, with or without fever, because of the risk of Reye's syndrome with concomitant use of aspirin in certain viral illnesses.
PRECAUTIONS
General
· Renal Failure
· Hepatic Insufficiency
· Sodium Restricted Diets
Laboratory Tests
Drug Interactions:
· Angiotensin Converting Enzyme (ACE) Inhibitors
· Acetazolamide
· Anticoagulant Therapy
· Anticonvulsants
· Beta Blockers
· Diuretics
· Methotrexate
· Nonsteroidal Anti-inflammatory Drugs (NSAID's)
· Oral Hypoglycemics
· Uricosuric Agents
Carcinogenesis, Mutagenesis, Impairment of Fertility
Pregnancy, Labor and Delivery, Nursing Mothers
Pediatric Use

WARNINGS
· Alcohol Warning
· Coagulation Abnormalities
· Gastrointestinal Side Effects
· Peptic Ulcer Disease
ADVERSE REACTIONS (Most common)
· Gastrointestinal (Abdominal Pain, Ulceration, Bleeding)
· Inhibition of Platelet Aggregation (Bleeding)
· Tinnitus
· Dizziness
· Hearing Loss
To report SERIOUS adverse drug reactions, call (manufacturer) at (phone number) or MEDWATCH at 1-800-FDA-1088
HOW SUPPLIED
(Insert specific information regarding, strength of dosage form, units in which the dosage form is generally available, and information to facilitate identification of the dosage form.) Store in a tight container at 25 °C (77 °F); excursions permitted to 15-30 °C (59-86 °F).

These highlights do not include all the information needed to prescribe aspirin safely and effectively. See aspirin's comprehensive prescribing information.

(b) [Reserved]

Subpart D—Testing Procedures

§ 343.90 Dissolution and drug release testing.

(a) [Reserved]

(b) *Aspirin capsules.* Aspirin capsules must meet the dissolution standard for aspirin capsules as contained in the United States Pharmacopeia (USP) 23 at page 132.

(c) *Aspirin delayed-release capsules and aspirin delayed-release tablets.* Aspirin delayed-release capsules and aspirin delayed-release tablets must meet the drug release standard for aspirin delayed-release capsules and aspirin delayed-release tablets as contained in USP 23 at pages 133 and 136 respectively.

(d) *Aspirin tablets.* Aspirin tablets must meet the dissolution standard for aspirin tablets as contained in USP 23 at page 134.

(e) *Aspirin, alumina, and magnesia tablets.* Aspirin in combination with alumina and magnesia in a tablet dosage form must meet the dissolution standard for aspirin, alumina, and magnesia tablets as contained in USP 23 at page 138.

(f) *Aspirin, alumina, and magnesium oxide tablets.* Aspirin in combination with alumina, and magnesium oxide in a tablet dosage form must meet the dissolution standard for aspirin, alumina, and magnesium tablets as contained in USP 23 at page 139.

(g) *Aspirin effervescent tablets for oral solution.* Aspirin effervescent tablets for oral solution must meet the dissolution standard for aspirin effervescent tablets for oral solution as contained in USP 23 at page 137.

(h) *Buffered aspirin tablets.* Buffered aspirin tablets must meet the dissolution standard for buffered aspirin tablets as contained in USP 23 at page 135.

Dated: October 19, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–28519 Filed 10–21–98; 10:59 am]

BILLING CODE 4160–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

RIN 0790–AG42

Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense promulgates the rule addressing military recruiting and Reserve Officer Training Corps program access at institutions of higher education. This rule implements the National Defense Authorization Act for Fiscal Year 1995, the National Defense Authorization Act for Fiscal Year 1996, and the Omnibus Consolidated Appropriations Act, 1997 (the Acts).

The Acts state that no funds available under appropriations acts for any fiscal year for the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human Services, Education, and Related Agencies may be provided by contract or grant (including a grant of funds to be available for student aid) to a covered school that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students, or that has an anti-ROTC policy.

EFFECTIVE DATE: March 29, 1997.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On April 8, 1997 the Department of Defense published an interim rule to implement the Acts, and invited public comments by July 7, 1997 (62 FR 16691). Consistent with the Acts, the interim rule took effect on March 29, 1997. Public comments were received and appropriate adjustments were made as reflected in this final rule.

The Secretary is committed to establishing sound procedures to implement current statutes, while keeping the regulatory burden to the minimum necessary to carry out the congressional intent. To that end, the Department has finalized this rule in consultation with other Federal agencies, including the Departments of Education, Labor, Transportation, and Health and Human Services. Agencies affected by this rule will continue to coordinate as they implement its provisions.

This rule defines the criteria for determining whether an institution of higher education has a policy or practice prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit; or has a policy of denying military recruiting personnel entry to campuses, access to students on campuses, or access to directory information on students. The Acts establish that institutions of higher education having such policies or practices are ineligible for certain Federal funding.

The criterion of ''efficiently operating a Senior ROTC unit'' refers generally to an expectation that the ROTC Department would be treated on a par with other academic departments; as such, it would not be singled out for unreasonable actions that would impede access to students (and vice versa) or restrict its operations.

This rule also defines the procedures that would be followed in evaluating reports that a covered school has not met requirements defined in this rule. When a component of the Department of Defense (DOD Component) believes that policies or practices of an institution of higher education might require such an evaluation, that component is required to confirm the institution's policy in consultation with the institution. If that exchange suggests that the policy or practice could trigger a denial of funding, as required by the Acts, the supporting facts would be forwarded through Department of Defense channels to the decision authority, who is the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)).

The Department of Defense received and considered comments relating to this rule. Those comments frequently related to the interplay between the Acts and Family Educational Rights and Privacy Act of 1974, as amended (FERPA), 20 U.S.C. 1232g. Commenters have inquired whether release of student information in response to a request from a military recruiter would violate FERPA. Commenters pointed out that ''directory information'' is a term of art under FERPA that triggers particular responsibilities of the institution regarding the confidentiality of student information. Depending on the policy of a particular institution, that term may not necessarily refer to the same information that may be requested by a military recruiter. Commenters also pointed out that FERPA provides a mandatory opportunity for a student to object to release of ''directory information'' designated by an

institution, and questioned whether the same opportunity to object must be provided to a student if a request is received from a military recruiter.

In response to the basic question of whether providing information in response to a request from a military recruiter would violate FERPA, the Department of Education has informed the Department of Defense that it will not consider provision of responsive student information as required under the Acts and this rule to violate FERPA. Institutions must take care, however, to release only that information specifically required under the Acts and this rule.

The Department of Defense appreciates the comments received regarding possible confusion from the use of the term ''directory information'' in the interim rule. Because the term is not synonymous under FERPA or the Acts, and to avoid possible conflict or confusion, the final rule substitutes the term ''student recruiting information'' for ''directory information'' as that term was used in the interim rule.

Regarding the opportunity for a student to ''opt-out'' of or object to release of ''directory information'' under FERPA, the Department of Defense provides the following clarification. If an institution receives a request for student recruiting information, and that request seeks information that the institution has included in its definition of ''directory information'' that is releasable under FERPA, and a student has previously requested that the ''directory information'' not be disclosed to any third party, the Department of Defense agrees that information for that student will not be provided to the Department of Defense. If an institution declines to provide student recruiting information because a student has ''opted-out'' from the institution's policy of disclosing ''directory information'' under FERPA, the Department of Defense will not consider that institution to have denied access under the Acts. The Department of Defense will honor only those student ''opt-outs'' from the disclosure of directory information that are even-handedly applied to all prospective employers seeking information for recruiting purposes. The Department of Defense will also honor the ''opt-out'' in cases where the institution's ''directory information'' definition does not include all of the student recruiting information requested by the recruiter.

If an institution does not release all of the requested student recruiting information as part of its ''directory information'' policy under FERPA (or has a policy of disclosing no ''directory information''), the institution must nevertheless honor the request from a military recruiter for student recruiting information on students who have not ''opted-out'', even if that information would not be available to the public under FERPA. Because this information is requested exclusively for military recruiting, a special opportunity for a student to decline the release of student recruiting information is not necessary or appropriate.

In carrying out their customary activities, DOD components must identify any institutions of higher education that, by policy or practice, denies military recruiting personnel entry to the campus(es) of those schools, access to their students, or access to student recruiting information. When repeated requests to schedule recruiting visits or to obtain student recruiting information are unsuccessful, the DOD component concerned must seek written confirmation of the school's present policy from the head of the covered school through a letter of inquiry, allowing 30 days for response. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments to accompany the DOD component's submission to the ASD(FMP), and shall be provided 30 day to offer such clarifying comments. When that 30-day period has elapsed, the DOD component will forward the case for disposition.

Similarly, in carrying out their customary activities, DOD components also must identify any institutions of higher education that, by policy or practice, deny establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or deny students permission to participate, or effectively prevent students from participating in a unit of the Senior ROTC at another institution of higher education. The DOD component concerned must seek written confirmation of the school's policy from the head of the covered school through a letter of inquiry, allowing 30 days for response. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments to accompany the DOD component's submission to the ASD(FMP), and shall be provided 30 days to offer such clarifying comments. When that 30-day period has elapsed, the DOD component will forward the case for disposition.

The recommendation of the DOD component then must be reviewed by the Secretary of the Military Department concerned, or designee, who shall evaluate responses to the letter of inquiry and other such information obtained in accordance with this part, and submit to the ASD(FMP) the names and addresses of covered schools that are believed to be in violation of current law. Full documentation must be furnished to the ASD(FMP) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies.

Following any determination by the ASD(FMP) that policies or practices of an institution of higher education require ineligibility for certain Federal funding, as required by the Acts, the ASD(FMP) shall:

- Disseminate to Federal entities affected by the decision, including the DoD components and the General Services Administration (GSA), the names of the affected institutions. The ASD(FMP) also shall notify the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives;
- Publish in the **Federal Register** each such determination, and publish in the **Federal Register** at least once every six months a list of all institutions currently determined to be ineligible for contracts and grants by reason of such determinations; and
- Inform the affected institution that its funding eligibility may be restored if the school provides sufficient new information to establish that the basis for the determination no longer exists.

This rule contains procedures under which funding may be restored. Not later than 45 days after receipt of a school's request to restore funding eligibility, the ASD(FMP) must determine whether the funding status of the covered school should be changed and notify the applicable school of that determination. Pursuant to that determination, entities of the Federal government affected by the decision, including the DoD components and the GSA, shall be notified of any change in funding status.

Other Matters

In the event of any determination of ineligibility by the ASD(FMP), the affected Federal agencies shall determine what funds provided by grant or contract to the covered school are affected and take appropriate action. As a result of this division of responsibility and the large number of Federal agencies affected, this rule does not detail what specific funds are affected by any determination of ineligibility.

The Department of Education has provided information on the impact of the Acts on the programs of student financial assistance under Title IV of the Higher Education Act of 1965, as amended, in a January 1998 ''Dear Colleague Letter'' (No. GEN–98–3). That letter is available by request by calling 800–4FEDAID, or through the Department of Education's website at ''http://www.ed.gov/offices/OPE/announce/dcl/1998/''.

The Secretary of Education has determined that funds under the Federal Pell Grant Program (Title IV, Part A, Subpart 1), the Federal Family Education Loan Program (Title IV, Part B), the Federal Direct Student Loan Program (Title IV, Part D), the William D. Ford Federal Direct Loan Program (Title IV, Part D), the State Student Incentive Grant Program (Title IV, Part A, Subpart 4), the Robert C. Byrd Honor Scholarship Program (Title IV, Part A, Subpart 6), and the National Early Intervention Scholarship ad Partnership (NEISP) Program (Title IV, Part A, Subpart 2) are not affected. States that receive NEISP Program grants may continue to award student scholarships to be utilized at institutions that have been determined to be ineligible by the DoD. States may not, however, award sub-grants or contracts for NEISP services to such institutions.

The Secretary of Education has determined that funds under the following programs are affected: the Federal Supplemental Educational Opportunity Grant Program (Title IV, Part A, Subpart 3), the Federal Work-Study Program (Title IV, Part C), and the Federal Perkins Loan Program (Title IV, Part E). Collectively referred to as the campus-based programs, these three programs depend on institutional applications for funding. Once funds are received, the institution determines which students will receive allotted funds, within statutory and regulatory guidelines. Thus, for the purposes of this rule, these funds are considered to be grants to the institution.

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

It has been determined that this final rule is not a significant regulatory action for OMB review since the consequences outlined in Executive Order 12866 are not likely to occur, given the historically infrequent occurrence of denial of funding to institutions of higher education under this rule.

Pub. L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities since recent history indicates that its provisions are not applicable to the vast majority of institutions of higher education.

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

This final rule will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 216

Armed forces, Colleges and universities.

Accordingly, 32 CFR part 216 is revised to read as follows:

PART 216—MILITARY RECRUITING AND RESERVE OFFICER TRAINING CORPS PROGRAM ACCESS TO INSTITUTIONS OF HIGHER EDUCATION

Sec.

216.1 Purpose.
216.2 Applicability.
216.3 Definitions.
216.4 Policy.
216.5 Responsibilities.
216.6 Information requirements.
Appendix A of part 216—Military Recruiting Sample Letter of Inquiry
Appendix B of part 216—ROTC Sample Letter of Inquiry.

Authority: 10 U.S.C. 983.

§ 216.1 Purpose.

This part:

(a) Implements the National Defense Authorization Act of 1995 (108 Stat. 2663),

(b) Implements 10 U.S.C. 983, and

(c) Implements the Omnibus Consolidated Appropriations Act, 1997 (110 Stat. 3009).

(d) Updates policy and responsibilities relating to the management of covered schools that have a policy of either denying, or effectively preventing military recruiting personnel entry to their campuses, access to their students, or access to student recruiting information.

(e) Updates policy and responsibilities relating to the management of covered schools that have an anti-ROTC policy.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD components''). The policies herein also affect the Departments of Transportation, Labor, Health and Human Services, Education, and Related Agencies. The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard, including their Reserve or National Guard components. The term ''Related Agencies,'' as used herein, refers to the Armed Forces Retirement Home, the Corporation for National and Community Service, the Corporation for Public Broadcasting, the Federal Mediation and Conciliation Service, the Federal Mine Safety and Health Review Commission, the National Commission on Libraries and Information Science, the National Council on Disability, the National Education Goals Panel, the National Labor Relations Board, the National Mediation Board, the Occupational Safety and Health Review Commission, the Physician Payment Review Commission, the Prospective payment Assessment Commission, the Social Security Administration, the Railroad Retirement Board and the United States Institute of Peace.

§ 216.3 Definitions.

(a) *Anti-ROTC policy.* A policy or practice whereby a covered school prohibits or in effect prevents the Secretary of Defense from maintaining, establishing, or efficiently operating a unit of the Senior ROTC at the covered school, or prohibits or in effect prevents a student at the covered school from enrolling in a Senior ROTC unit at another institution of higher education.

(b) *Covered school.* An institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications:

(1) In the event of a determination (§ 216.5) affecting only a subelement of a parent institution (see § 216.3(d)), the limitations on the use of funds (§ 216.4(a) and (b)) shall apply only to the subelement and not to the parent institution as a whole.

(2) The limitations on the use of funds (§ 216.4(a) and (b)) shall not apply to any individual institution of higher

education that is part of a single university system if that individual institution does not prevent entry to campus, access to students, or access to student recruiting information by military recruiters, or have an anti-ROTC policy, even though another campus of the same system is affected by a determination under § 216.5(a).

(c) *Student recruiting information*. For those currently enrolled, the student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major.

(d) *Institution of higher education*. A domestic college, university, or other institution (or subelement thereof) providing postsecondary school courses of study, including foreign campuses of such domestic institutions. The term includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term does not include entities that operate exclusively outside the United States, its territories, and possessions. A *subelement* of an institution of higher education is a discrete (although not necessarily autonomous) organizational entity that may establish policies or practices affecting military recruiting and related actions (e.g., an undergraduate school, a law school, a medical school, or other graduate schools). For example, the School of Law of XYZ University is a subelement of its *parent* institution (XYZ University).

(e) *Student*. An individual who is 17 years of age or older and is enrolled at a covered school.

(f) *Enrolled*. Registered for a least one credit hour of academic credit at the covered school during the most-recent, current, or next term.

(g) *Military recruiters*. Personnel of DoD whose current assignment or detail is to a recruiting activity of the DoD.

(h) *Pacifism*. Opposition to war or violence, demonstrated by refusal to participate in military service.

§ 216.4 Policy.

It is policy that:

(a) Under 108 Stat. 2663 and 110 Stat. 3009, no funds available under appropriations acts for any fiscal year for the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human and Human Services, Education, and Related Agencies may be provided by contract or by grant (including a grant of funds to be available for student aid) to a covered school if the Secretary of Defense determines that the covered school has a policy or practice (regardless of when implemented) that either prohibits or in effect prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, or access to directory information on students (student recruiting information).

(b) Under 110 Stat. 3009, no funds available under appropriations acts for any fiscal year for the Departments of Labor, Health and Human Services, Education, and Related Agencies may be provided by contract or grant (including a grant of funds to be available for student aid) to a covered school that has an anti-ROTC policy or practice (regardless of when implemented). Additionally, under 10 U.S.C. 983, no funds appropriated or otherwise available to the Department of Defense may be made obligated by contract or by grant to a covered school that has such a policy or practice.

(c) The limitations established in paragraph (a) of this section, shall not apply to a covered school if the Secretary of Defense determines that the covered school:

(1) Has ceased the policies or practices defined in paragraph (a) of this section;

(2) Has a long-standing policy of pacifism based on historical religious affiliation;

(3) When not providing requested access to campuses or to students on campus, certifies that all employers are similarly excluded from recruiting on the premises of the covered school, or presents evidence that the degree of access by military recruiters is at least equal in quality and scope to that afforded to other employers;

(4) When not providing any student recruiting information, certifies that such information is not maintained by the covered school; or that such information already has been provided to the Military Service concerned for that current semester, trimester, quarter, or other academic term, or within the past four months (for institutions without academic terms);

(5) When not providing student recruiting information for specific students, certifies that each student concerned has formally requested the covered school to withhold this information from third parties;

(6) Permits employers to recruit on the premises of the covered school only in response to an expression of student interest, and the covered school;

(i) Provides the Military Services with the same opportunities to inform the students of military recruiting activities as are available to other employers; or

(ii) Certifies that too few students have expressed an interest to warrant accommodating military recruiters, applying the same criteria that are applicable to other employers; or

(7) Is prohibited by the law of any State, or by the order of any State court, from allowing Federal military recruiting on campus. Such exemption does not apply to funds available to the Department of Defense, in accordance with 108 Stat. 2663.

Note: This exemption terminated effective March 29, 1998, in accordance with 110 Stat. 3009.

(d) The limitations established in paragraph (b) of this section, shall not apply to a covered school if the Secretary of Defense determines that the covered school:

(1) Has ceased the policies or practices defined in paragraph (b) of this section;

(2) Has a long-standing policy of pacifism based on historical religious affiliation;

(3) Is prohibited by the law of any State, or by the order of any State court, from allowing Senior Reserve Officer Training Corps activities on campus. Such exemption does not apply to funds available to the Department of Defense, in accordance with 10 U.S.C. 983.

Note: This exemption terminated effective March 29, 1998, in accordance with 110 Stat. 3009.

(e) A covered school may charge for actual costs incurred in providing military recruiters access to student recruiting information, provided such charges are reasonable and customary; in this case, the school must explain to the military recruiter, within 15 days of a request by the recruiter, its method for determining costs, and its basis for concluding that such charges are reasonable and customary.

(f) An evaluation to determine whether a covered school maintains a policy or practice covered by paragraph (a) of this section shall be undertaken when:

(1) Military recruiting personnel cannot gain entry to campus, cannot obtain access to students on campus, or are denied access to student recruiting information (however, military recruiting personnel shall accommodate a covered school's reasonable preferences as to times and places for scheduling on-campus recruiting, to the same extent such preferences are applicable to employers, generally);

(2) The costs being charged by the school for providing student recruiting information are believed by the military recruiter to be excessive, and the school does not provide information sufficient

to support a conclusion that such charges are reasonable and customary; or

(3) The covered school is unwilling to declare in writing, in response to an inquiry from a DoD component, that the covered school does not have a policy or practice of denying, and that it does not effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student recruiting information.

(g) An evaluation to determine whether a covered school has an anti-ROTC policy covered by paragraph (b) of this section shall be undertaken when:

(1) A Secretary of a Military Department of designee cannot obtain permission to establish, maintain, or efficiently operate a unit of the Senior ROTC; or

(2) Absent a Senior ROTC unit at the covered school, students cannot obtain permission from a covered school to participate, or are effectively prevented from participating, in a unit of the Senior ROTC at another institution of higher education.

§ 216.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 45 days after receipt of the information described in paragraph (b)(3) of this section:

(i) Make a final determination under 108 Stat. 2663, 10 U.S.C., section 983; and 110 Stat. 3009 and/or this part, and notify any affected school of that determination along with the basis, and that it is therefore ineligible to receive prescribed funds as a result of that determination.

(ii) Disseminate to Federal agencies affected by 110 Stat. 3009, to the DoD components, and to the General Services Administration (GSA) the names of covered schools identified under paragraph (a)(1)(i) of this section, and the basis of the determination.

(iii) Disseminate the names of covered schools identified under paragraph (a)(1)(i) of this section, to the Secretary of Education and to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.

(iv) Inform the applicable school identified under paragraph (a)(1)(i) of this section, that its funding eligibility may be restored if the school provides sufficient new information that the basis for the determination under paragraph (a)(1)(i) of this section no longer exists.

(2) Not later than 45 days after receipt of a covered school's request to restore its eligibility:

(i) Determine whether the funding status of the covered school should be changed, and notify the applicable school of that determination.

(ii) Notify the parties reflected in paragraphs (a)(1)(ii) and (iii) of this section when a determination of funding ineligibility (paragraph (a)(1)(i) of this section) has been rescinded.

(3) Publish in the **Federal Register** each determination of the Assistant Secretary of Defense for Force Management Policy that a covered school is ineligible for contracts and grants made under 108 Stat. 2663, 10 U.S.C., section 983, and 110 Stat. 3009 and/or this part.

(4) Publish in the **Federal Register** at least once every six months a list of covered schools that are ineligible for contracts and grants by reason of a determination of the Secretary of Defense under 108 Stat. 2663, 10 U.S.C., section 983, and 110 Stat. 3009 and/or this part.

(b) The Secretaries of the Military Departments shall:

(1) Identify covered schools that, by policy or practice, deny military recruiting personnel entry to the campus(es) of those schools, access to their students, or access to student recruiting information.

(i) When requests by military recruiters to schedule recruiting visits or to obtain student recruiting information are unsuccessful, the Military Service concerned shall seek written confirmation of the school's present policy from the head of the school through a letter of inquiry. A letter similar to that shown in appendix A of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments to accompany the submission to the ASD(FMP), and shall be provided 30 days to offer such clarifying comments.

(ii) When a request for student recruiting information is not fulfilled within a reasonable period, normally 30 days, a letter similar to that shown in appendix A of this part shall be used to communicate the problem to the school, and the inquiry shall be managed as described in § 216.5.(b)(1)(i). Schools may stipulate that requests for student recruiting information shall be in writing.

(2) Identify covered schools that, by policy or practice, deny establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or deny students permission to participate, or effectively prevent students from participating in a unit of the Senior ROTC at another institution of higher education. The Military Service concerned shall seek written confirmation of the school's policy from the head of the school through a letter of inquiry. A letter similar to that shown in appendix B of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments to accompany the submission to the ASD(FMP), and shall be provided 30 days to offer such clarifying comments.

(3) Evaluate responses to the letter of inquiry, and other such evidence obtained in accordance with this part, and submit to the ASD(FMP) the names and addresses of covered schools that are believed to be in violation of policies established in § 216.4. Full documentation shall be furnished to the ASD(FMP) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies.

(c) The Heads of the DoD components shall:

(1) Provide the ASD(FMP) with the names and addresses of covered schools identified as a result of evaluation(s) required under §§ 216.4(f) and (g).

(2) Take immediate action to deny obligations of DoD Funds to covered schools identified under paragraph (a)(1)(i) of this section, and to restore eligibility of covered schools identified under paragraph (a)(2) of this section.

§ 216.6 Information requirements.

The information requirements identified at §§ 216.5 (b) and (c)(1) have been assigned Report Control Symbol P&R–(AR)–2038 in accordance with DoD 8910.1–M.[1]

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Appendix A of Part 216—Military Recruiting Sample Letter of Inquiry

(Tailor letter to situation presented)

Dr. John Doe
President
ABC College
Anywhere, USA 12345–9876

Dear Dr. Doe: I understand that military recruiting personnel (are unable to recruit on the campus of ABC College) (have been refused student recruiting information [1] on ABC College students for the purpose of military recruiting) by a policy or practice of the College. Current law [2] prohibits funds by grant or contract (includng a grant of funds to be available for student aid) from appropriations of the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human Services, Education, and Related Agencies to schools that have a policy or practice of denying military recruiting personnel entry to campuses, access to students on campuses, or access to student recruiting information. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding military recruiting on the campus of ABC College. In that regard, I request, within the next 30 days, a written policy statement of the institution with respect to access to campus and students, and to student recruiting information by military recruiting personnel.

Your response should highlight any difference between access for military recruiters and access for recruiting by other potential employers.

Based on this information, Department of Defense officials will make a determination as to your institution's eligiblity to receive funds by grant or contract. That decision may affect eligiblity for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and Related Agencies. Should it be determined that ABC College is in violation of the aforementioned statutes, such funding would be stopped, and the school would be ineligible to receive such funds in the future.

I regret that this action may have to be taken. Successful recruiting requires that Department of Defense recruiters have reasonable access to students on the campuses of colleges and universities, and at the same time have effective relationships with the officials and student bodies of those institutions. I hope it will be possible to (define the correction to the aforementioned problem area(s). I am available to answer any questions.

Sincerely,

[1] Student recruiting information refers to a student's name, address, telephone listing, age (or year or birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major.

[2] 108 Stat. 2663 and 110 Stat. 3009.

Appendix B of Part 216—ROTC Sample Letter of Inquiry

(Tailor Letter to Situation Presented)

Dr. Jane Smith
President
ABC College
Anywhere, USA 12345–9876

Dear Dr. Smith: I understand that ABC College has (refused a request from a Military Department to establish a Senior ROTC unit at your institution) (refused to continue existing ROTC programs at your institution) (prevented students from participation at a Senior ROTC program at another institution) by a policy or practice of the College. Current law [1] prohibits funds by grant or contract (including a grant of funds to be available for student aid) from appropriations of the Departments of Defense, Labor, Health and Human Services, Education, and Related Agencies to schools that have a policy or practice prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit. Those statutes also bar agency funds for schools that prohibit or prevent a student from enrolling in an ROTC unit at another institution of higher education. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding ROTC access on the campus of ABC College. In that regard, I request, within the next 30 days, a written statement of the institution with respect to (define the problem area(s)).

Based on this information, Department of Defense officials will make a determination as to your institution's eligibility to receive funds by grant or contract. The decision may affect eligibility for funding from appropriations of the Departments of Defense, Labor, Health and Human Services, Education, and Related Agencies. Should it be determined that ABC College is in violation of the aforementioned statutes, such funding would be stopped, and the school would be ineligible to receive such funds in the future.

I regret that this action may have to be taken. Successful officer procurement requires that the Department of Defense maintain a strong ROTC program. I hope it will be possible to (define the correction to the aforementioned problem area(s)). I am available to answer any questions.

Sincerely,

Dated: October 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–28413 Filed 10–22–98; 8:45 am]

BILLING CODE 5000–04–M

[1] 10 U.S.C. 983 and 110 Stat. 3009.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ARK–6–1–7364; FRL–6176–9]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The EPA is revising the format of 40 Code of Federal Regulations (CFR) part 52, Subpart E for materials submitted by Arkansas that are incorporated by reference (IBR) into the State Implementation Plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA. This format revision will primarily affect the ''Identification of plan'' sections of 40 CFR 52.170, as well as the format of the SIP materials that will be available for public inspection at the EPA Region 6 office, the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC., and the Office of the Federal Register. The sections of 40 CFR 52.170 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review and 40 CFR 52.171 through 52.183 remain unchanged. The EPA has determined that good cause exists for issuing this rule without public comment.

EFFECTIVE DATE: This action is effective October 23, 1998.

ADDRESSES: The SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L) at the above Region 6 address or at (214) 665–7354.

SUPPLEMENTARY INFORMATION:

Background

Each State is required by section 110(a)(1) of the Clean Air Act (ACT), to

have a SIP that contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards. The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA pursuant to 110(k) of the Act, after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), 40 CFR. The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference,'' which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the State is enforcing the regulations. It also allows EPA to take enforcement action or the public to bring citizen suits, should a State not enforce its SIP-approved regulations.

The SIP is an active or changing document which can be revised by the State, as necessary, to address the unique air pollution problems in the State as long as changes are not contrary to Federal law. Therefore, EPA, from time to time, must take action to incorporate into the SIP, revisions of the State program which may contain new and/or revised regulations. Regulations approved into the SIP are then incorporated by reference into part 52. As a result of consultations between EPA and the Office of Federal Register, EPA revised the procedures on May 22, 1997 (62 FR 27968), for incorporating by reference federally-approved SIPs and began the process of developing, pursuant to 110(h)(1) of the Act: 1), a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; 2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and 3) a revised format of the ''Identification of plan'' sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of State regulations and source specific permits submitted by each State agency. These regulations and source-specific permits have all been approved by EPA through previous rulemaking actions in the **Federal Register**. The SIP compilations are stored in 3-ring binders and will be updated on an annual basis.

If no significant changes are made for any State to the SIP during the year, an update will not be made during that year. If significant changes occur during the year, an update could be done on a more frequent basis, as applicable. Typically, only the revised sections of the compilation will be updated. Complete resubmittals of a State SIP compilation will be done on an as-needed basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source-specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these States. The regional EPA offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 6 EPA Office developed and will maintain the compilations for Arkansas. A copy of the full text of the State's current compilation will also be maintained at the Office of **Federal Register** and EPA's Air Docket and Information Center.

The EPA is beginning the phasing in of SIP compilations for individual States, and expects to complete the conversion of the revised ''Identification of plan'' format and IBR documentation for all states by May 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Act.

Revised Format of the ''Identification of Plan'' Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the ''Identification of plan'' section of 40 CFR section 52.170. The EPA is including additional information which will more clearly identify the provisions that constitute the enforceable elements of the SIP.

The revised ''Identification of plan'' section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source-specific permits, and (e) EPA approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. As of the effective date of the final rule approving a SIP revision, all provisions identified in the **Federal Register** document announcing the SIP approval will be federally enforceable, both by EPA under section 113 of the Act and by citizens under section 304 of the Act, where applicable. All revisions to the applicable SIP are federally enforceable as of the effective date of EPA approval even if they have not yet been incorporated by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original ''Identification of Plan'' section, previously appearing in the CFR as the first or second section of part 52 for each State subpart.

Notice of Administrative Change

Today's action constitutes a ''housekeeping'' exercise to ensure that federally approved State plans are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA Regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the ''Good Cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding good cause, authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is unnecessary since the codification only reflects existing law. Immediate revision to the CFR benefits the public by removing outdated citations.

Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

E. Regulatory Flexibility Act

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

The regulations affected by this format change to 40 CFR part 52 have all been previously submitted by the respective State agency and approved by EPA. Therefore, the Regional Administrator certifies that there is no significant impact on any small entities affected.

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of 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 its published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Judicial Review

The EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions approving each individual component of Arkansas SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to provide an additional opportunity for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by

reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record-keeping requirements, Sulfur oxides.

Dated: September 30, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart E—Arkansas

2. In subpart E § 52.170 is redesignated as § 52.200 and the heading and paragraph (a) are revised to read as follows:

§ 52.200 Original Identification of plan section.

(a) This section identifies the original ''Arkansas Plan for Implementation for Air Pollution Control'' and all revisions submitted by Arkansas that were federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.170 is added to read as follows:

§ 52.170 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State Implementation Plan (SIP) for Arkansas under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c), (d) and (e) of this section with an EPA approval date prior to July 1 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d) and (e) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 6 EPA Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460; or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) EPA approved regulations.

EPA APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/effective date	EPA approval date	Comments
Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
Section 1	Title	06/30/75	10/05/76, 41 FR 43904	Ref 52.200(c)(04).
Section 2	Purpose	06/30/75	10/05/76, 41 FR 43904	Ref 52.200(c)(04).
Section 3	Definitions	03/25/88	05/01/89, 54 FR 18494	Ref 52.200(C)(27).
Section 4	Permits	03/25/88	05/01/89, 54 FR 18494	Ref 52.200(c)(27).
Section 5	Emission Limitations Applicable to New or Modified Equipment.	05/22/87	02/23/89, 54 FR 07764	Ref 52.200(c)(26) Dispersion techniques for Federal stack height requirements.
Section 6	Upset Conditions, Revised Emission Limitations.	07/11/79	08/27/81, 46 FR 43145	Ref 52.200(c)(11).
Section 7	Sampling and Monitoring Requirements.	07/11/79	08/27/81, 46 FR 43145	Ref 52.200(c)(11).
Section 8	Compliance Schedules and Emission Limitations Applicable to Existing Equipment.	06/29/81	01/12/82, 47 FR 01291 and.	Ref 52.200(c)(16).
		09/11/81	01/14/82, 47 FR 02113	Ref 52.200(c)(14). Variance for a specific facility.
Section 8.1	Designated Facilities			Section 8.1 is NOT in the SIP, but is part of the Federally approved Arkansas 111(d) Plan. See 40 CFR Part 62, Subpart E, for status of Arkansas 111(d) Plans.
Section 9	Severability	06/30/75	10/05/76, 41 FR 43904	Ref 52.200(c)(04).
Section 10	Effective date (June 30, 1975).	06/30/75	10/05/76, 41 FR 43904	Ref 52.200(c)(04).
Arkansas Regulation No. 9: Permit Fees				
Section 1	Purpose	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 2	Short Title	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 3	Definitions	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 4	Applicability	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 5	Maximum Fees	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 6	Retroactivity	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 7	Permit Fee Payment	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 8	Refunds	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).

EPA APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/effective date	EPA approval date	Comments
Section 9	Solid Waste Fee			NOT IN SIP.
Section 10	Fee Schedule	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 11	Review of Fees	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 12	Severability	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 13	Appeals	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Section 14	Effective Date	12/16/85	11/26/86, 51 FR 40975	Ref 52.200(c)(24).
Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control				
Section 1	Title	06/19/90	05/02/91, 56 FR 20137	Ref 52.200(c)(28). See 40 CFR 52.181 for status of Arkansas PSD regulations in Arkansas SIP.
Section 2	Purpose	06/19/90	05/02/91, 56 FR 20137	Ref 52.200(c)(28).
Section 3	Definitions	06/19/90	05/02/91, 56 FR 20137	Ref 52.200(c)(28).
Section 4	Adoption of Regulations	06/19/90	05/02/91, 56 FR 20137	Ref 52.200(c)(28).
Section 5	Severability	06/19/90	05/02/91, 56 FR 20137	Ref 52.200(c)(28).
Section 6	Effective Date	06/19/90	05/02/91, 56 FR 20137	Ref 52.200(c)(28).
Regulations for the Control of Volatile Organic Compounds				
Section 1	Title	04/04/79	01/29/80, 45 FR 06569	Ref 52.200(c)(7).
Section 2	Purpose	04/04/79	01/29/80, 45 FR 06569	Ref 52.200(c)(7).
Section 3	Definitions	04/23/81	10/13/81, 46 FR 50370	Ref 52.200(c)(13).
Section 4	General Provisions	04/23/81	10/13/81, 46 FR 50370	Ref 52.200(c)(13).
Section 5	Provisions for Specific Processes.	12/19/79	02/08/83, 48 FR 05722	Ref 52.200(c)(21).
Section 6	Severability	04/04/79	01/29/80, 45 FR 06569	Ref 52.200(c)(7).

(d) EPA-approved State Source-specific requirements.

EPA-APPROVED ARKANSAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State approval/effective date	EPA approval date	Comments
None.				

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA APPROVED STATUTES IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/effective date	EPA approval date	Comments
Arkansas Water and Air Pollution Control Act—Part I				
82–1901	Title of Act	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a)&(b).
82–1902	Definitions	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a)&(b).
82–1903	Pollution Control Commission.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a)&(b).
82–1904	Powers and Duties of Commission.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1905	Persons Operating Disposal System—Furnishing Information and Permitting Examinations and Surveys.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1906	Hearing Before Commission or Member—Appeal Procedure.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1907	Co-operation with Agency of Another State or United States.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).

EPA APPROVED STATUTES IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/effective date	EPA approval date	Comments
82–1908	Actions Declared Public Nuisance—Permit to Construct, Make Changes in or Operate Disposal System—Submission of Plans.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1909	Violation of Act a Misdemeanor—Pollution a Nuisance—Abatement.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
Arkansas Environmental Permit Fees Act (Act 817 of 1983)				
82–1916 thru 82–1921	Permit Fees Act	12/16/85	11/12/86, 51 FR 40975	Ref 52.200(c)(24).
Arkansas Water and Air Pollution Control Act—Part II				
82–1931	Air Pollution—State Policy	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1932	Purpose of Act	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1933	Definitions	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1934	Exemptions	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1935	Powers of Commission	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1936	Factors in Exercise of Commission Powers.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1937	Industrial Secrets Confidential—Revealing a Misdemeanor.	11/25/85	08/04/86, 51 FR 27804	Ref 52.200(c)(23).
82–1938	Unlawful Acts	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1939	Variance From Regulations	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1940	Application of Water Pollution Provisions.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1941	Political Subdivision Forbidden to Legislate on Air Pollution.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1942	Radiation Control Law not Amended or Repealed—No authority to Commission Over Employer-Employee Relationships.	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
82–1943	Private Rights Unchanged	01/28/72	05/31/72, 37 FR 10850	Ref 52.200(a) & (b).
Small Business Assistance Program Act (Act 251 of 1993)				
Act 251	SBAP Act	02/26/93	03/08/95 60 FR 12691	Ref 52.200(c)(31).

EPA APPROVED CONTROL MEASURES IN THE ARKANSAS SIP

Control measures	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
Air Quality Surveillance Network.	Statewide	02/15/77	04/11/79, 44 FR 21645	Ref 52.200(c)(6).
Lead SIP	Statewide	12/10/79	04/16/82, 47 FR 16330	Ref 52.200(c)(17).
Air Quality Surveillance Data Reporting.	Statewide	04/24/80	08/06/81, 46 FR 40006	Ref 52.200(c)(20).
Protection of Visibility in Mandatory Class I Federal Areas.	Statewide	06/12/85	02/10/86, 51 FR 04912	Ref 52.200(c)(22).
Part II of the Visibility Protection Plan.	Statewide	10/09/87	07/21/88, 53 FR 27517	Ref 52.200(c)(25)
Stack Height Negative Declaration.	Statewide	09/12/86	04/10/89, 54 FR 14222	Ref 52.200(c)(26).
Small Business Stationary Source Technical and Environmental Compliance Assistance Program.	Statewide	11/06/92	03/08/95, 60 FR 12691	Ref 52.200(c)(31).

[FR Doc. 98–28489 Filed 10–22–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6176–1]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Louisiana's application and determined that its Hazardous Waste Program revision satisfies all the requirements necessary to qualify for final authorization. Unless adverse written comments are received on this action during the review and comment period EPA's decision to approve Louisiana's Hazardous Waste Program revision will take effect as provided below in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: This immediate final rule is effective on December 22, 1998 without further notice, unless the EPA receives adverse comment by November 23, 1998. Should the EPA receive such comments, it will publish a timely document withdrawing this rule.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765–0617 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–6444. Written comments, referring to Docket Number LA–98–1, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States authorized under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. Revisions to State Hazardous Waste Programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 273, 270, and 279.

B. Louisiana

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management program. Louisiana received authorization for revisions to its program on January 29, 1990 (54 FR 48889), October 25, 1991 (56 FR 41958), and technical corrections at (56 FR 51762), effective January 23, 1995 and another technical corrections was made at (59 FR 55368–55371), (60 FR 18360), March 8, 1995 (59 FR 66200), October 17, 1995,(60 FR 53707) effective January 2, 1996, March 28, (61 FR 13777–13782) effective June 11, 1996 and December 29, 1997,(62 FR 67572–67577) effective March 16, 1998. On January 6, 1998 and April 17, 1998, Louisiana submitted a final complete program revision applications for additional program approval. The State of Louisiana has also adopted the regulations for Import and Export of Hazardous Waste which is not delegable to the State. However, the requirements of the Import and Export regulations will be administered by the EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the United States constitution. Today, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 *et seq.*, the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality, which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State. Also, the LDEQ is designated to facilitate communication between the EPA and the State.

The EPA reviewed Louisiana's application and is today making an immediate final decision, subject to review and comment, that Louisiana's Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant authorization for the additional program modifications to Louisiana. The public may submit written comments on EPA's final decision until November 23, 1998. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of Louisiana's program revision shall become effective 60 days from the date this document is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, the EPA will publish either, (1) a withdrawal of the immediate final decision, or (2) a document containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

The Louisiana's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–266, 268, 273, 270 and 279, that were published in the FR from July 1, 1994, through June 30, 1996. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Recovered Oil Exclusion, [59 FR 38536–38545]; July 28, 1994. (Checklist 135).	Louisiana Revised Statutes (LRS) 30: § 2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§ ,105.D.33.b, 105.D.43.g, as amended September 20, 1996, effective September 20, 1996; 3001.B.3, 4105.B.8–9, and 4105.B.12, as amended September 20, 1996; effective September 20, 1996.
2. Removal of the Conditional Exemption for Certain Slag Residues, [59 FR 43496–43500]; as amended August 24, 1994. (Checklist 136).	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR Chapter 22. Table 2, as amended January 20, 1996; effective January 20, 1996 and § 4139.A.5, as amended May 20, 1997; effective May 20, 1997.
3. Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes, [59 FR 47982–48110]; September 19, 1994, as amended at 60 FR 242–302, January 3, 1995. (Checklist 137).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.28–31,105 K, 105.K.1, as amended September 20, 1996; effective September 20, 1996, 105.K.2, as amended June 20, 1998, effective June 20, 1998, 109.Solid waste.5.a.iii, and 1501.C.6 as amended May 20, 1997, effective May 20, 1997, 3001.C.1, 3001.C.3–C.3.a.i, 3001.C.3.b, Chapter 30. Appendix. M, as amended September 20, 1996, effective September 20, 1996, 4139.B.3, as amended May 20, 1997, effective May 20, 1997, 4307, as amended September 20, 1995, effective September 20, 1995, 2201.G.4.b–c, 2201.I.3–4,2203.A. Debris, 2203.A underlying Hazardous Constituent, 2221.E.I–E.5,2223.A–A.3, 2223.B, 2223.C, 2225.B, 2225.C, 2227.A, 2227.C.2, 2227.D, 2229.C–C.3, 2233, 2245.A–J,2246.A,2246.D.1.a–b, 2246.D.3, 2246.E.–E1, 2247.B.2,2247.C.4, Chapter. 22.table 2,3,6,7, and 11, as amended January 20, 1996, 2230.B.2, as amended May 20, 1997, effective May 20, 1997.
4. Testing and Monitoring Activities Amendment I, [60 FR 3089–3095]; January 13, 1995. (Checklist 139).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR § 110, as amended September 20, 1996, 1996, effective September 20, 1996.
5. Carbamate Production Identification and Listing of Hazardous Waste; [60 FR 7824–7859] February 9, 1995, as amended at [60 FR 19165], April 17, 1995 and [60 FR 25619], May 12, 1995. (Checklist 140).	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991. LHWR §§ 4905.A.5–6, 4905.A.7,105.D.33.d, and 4901 C, Table 2, 4901.E, and F, 4901.G. Table .6, 3105. Table .1, as amended February 20, 1998, effective February 20, 1998.
6. Testing and Monitoring Activities Amendment II, [60 FR 17001–17004], April 4, 1995. (Checklist 141).	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991. LHWR § 110, as amended September 20, 1996, effective September 20, 1996.
7. Universal Waste: General Provisions; [60 FR 25492–25551]; May 11, 1995. (Checklist 142 A).	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.48, as amended May 20, 1997, effective May 20, 1997; 109, as amended September 20, 1995; effective September 20, 1995; 305.C.11, as amended May 20, 1997; effective May 20, 1997; 1101.A–E; as amended January 20, 1996; effective January 20, 1996; 1103.C, amended September 20, 1996; effective September 20, 1996; 1501.C.11, as amended May 20, 1997; effective May 20, 1997; 2201.I.5, 3801.A, 3801.B. 3801.C, 3813, 3813.H 3815,3817,3817.A–B, 3819,3823,3825.A–C.6,3827,3829.A–B,3831.A–H,3833,3835–3835.C, 3837, 3839–3839.B, 3841.A.1, 3841.B, 3841.B.1–5, 3845, 3847.A–C.6, 3849, 3851.A–B, 3853.A–H, 3855.A–C.2,3857–3857.C, 3859, 3861–3861.B,3863.A–B, 3865.A–B, 3867.A–B,3869.A–B, 3871–3871.B, 3873.A–B, 3875.A–D, 3877.A–B, 3879–3879.C, 3915.B, 3915.B–B.5, as amended May 20, 1997, effective May 20, 1997; 3911, as amended October 20, 1994, effective October 20, 1994; and 4307, as amended September 20, 1995, effective September 20, 1995.LAC 33:V.3903 is more stringent than 40 CFR 261.5(c)–(c)(6), 3911 and 3915.B.1–5, are more stringent than 40 CFR 261.5(f)(3)(i–vi) and (g)(3)(i–iv), 1101.A–E are more stringent than 40 CFR 262.10(b)–(g), and 3801.D, are more stringent than 40 CFR 261.5(f)(3)(i–vi),and (g)(3)(i–iv), because the State of Louisiana does not recognize the exemption of conditionally exempt small quantity generators. Louisiana generators of 0–100 kg/month must comply with more stringent small quantity generator requirements. Generators who generate more than 1 kg acutely hazardous waste are subject to full regulations. The 40 CFR 261.5(f)(3)(iv) and (g)(3)(iv) equivalent Louisiana citation, LAC 33:VII.301.B.1 (LAC 33:VII.315.N and LAC 33:VII.521.H), is more stringent because solid waste landfills are prohibited from accepting hazardous waste, with the exception of household hazardous waste.
8. Universal Waste Rule: Specific Provisions for Batteries;[60 FR 25492–25551], May 11, 1995. (Checklist 142 B).	LRS 30:2180 *et seq*; as amended June 14,1991, effective June 14, 1991, LHWR §§ 105.D.48.a, 305.C.11.a, 1501.C.11.a, 2201.I.5.a, 3801, 3803.A.1–C.2,3813, 3821.A–A.3.b, 3823.A, 3843.A–A.3.B,3845.A, 4105.B.2, 4145.A–B, as amended May 20, 1997, effective May 20, 1997;4105.B.8–12, as amended December 20, 1997, effective December 20, 1997, and 4307, as amended September 20, 1995, effective September 20, 1995.
9. Universal Waste Rule: Specific Provisions for Batteries; [60 FR 25492–25551]; May 11, 1995. (Checklist 142 C)	LRS:30:2180 *et seq*; as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.48.b, 1501.C.11.b, 2201.I.5.b,305.C.11.B, 3801,3805.A–D.2,3813, 3821.B–B.4, 3823.B–C.2,3841.A, 3841.A.2, 3843.B–B.4, 3845.B–C.2, as amended May 20, 1997, effective May 20, 1997 and 4307, as amended September 20, 1995, effective September 20, 1995.
10. Universal Waste Rule: Specific Provisions for Thermostats, [60 FR 25492–25551]; May 11, 1995. (Checklist 142 D)..	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.D.48.c, 305.C.11.c, 1501.C.11.c, 2201.I.5.c, 3801, 3807.A–C.2, 3813, 3821.C–C.3.b, 3823.D, 3843.C–C.3.b,3845.D, as amended May 20, 1997, effective May 20, 1997 and 4307, as amended September 20, 1995, effective September 20, 1995.
11. Universal Waste Rule: Petition Provisions to Add a New Universal Waste; [60 FR 25492–25551]; May 11, 1995. (Checklist 142 E)..	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 105.H, 105.N.1–4, 3881.A–C, and 3883.A–H, as amended February 20, 1998, effective February 20, 1998.

Federal citation	State analog
12. Removal of Legally Obsolete Rules; [60 FR 33912–33915]; June 29, 1995. (Checklist 144).	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 303.H.1–2,303.K, as amended June 20, 1995, effective June 20, 1995; 501.C.2,as amended February 20, 1998, effective February 20, 1998, 3007.C.5 and 3009.G–I, as amended September 20, 1996, effective September 20, 1996. LAC 501.C.2 is more stringent than 40 CFR 270.10(e) because Louisiana allows applicants to submit a Part II of the application at least 120 days from the date of request while the equivalent Federal citation allows for six months.
13. Liquids in Landfills III, [60 FR 35703–35706]; July 11, 1995. (Checklist 145)..	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2515F.2.b, 2515.F.2.c, 4507.F.2.b and 4507.F.2.c, as amended April 20, 1998, effective April 20, 1998.
14. RCRA Expanded Public Participation, [60 FR 63417–63434]; December 11, 1995. (Checklist 148).	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR §§ 309.M, 517.W, 537.B.2.g.i–ii, 537.B.g.ii(a)–(d), 537.B.2.h, 537.B.2.i–k, 537.C, 701.E, 708.A.1–4, 708.A.b.i–vi, 708.B.3, 708.C.1–6, 3115.B.12, 3115.B.12.a, 3115.B.12.b, 3115.b.12.BI–IV, 3115.B.13, 3115.B.14–17,and 3115.D, as amended April 20, 1998.
15. Amendments to the Definition of Solid Waste; Amendment II, [61 FR 13103–131061]; March 26, 1996. (Checklist 150).	LRS 30:2180 *et seq*, as amended June 14, 1991, effective June 14, 1991; LHWR § 105.D.43.g, as amended April 20, 1998, effective April 20, 1998.

Louisiana is not authorized to operate the Federal program on Indian lands, This authority remains with EPA.

C. Decision

I conclude that Louisiana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted final authorization to operate its hazardous waste program as revised, assuming no adverse comments are received as discussed above. Upon effective final approval Louisiana will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also will have primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Louisiana's program and for incorporation by reference of those provisions of Louisiana's statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart T until a later date.

E. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

F. Compliance Executive Order 13045—Protection of Children From Environmental Health Risk and Safety Risks

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

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 and 205 of the UMRA, the EPA must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. The EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Louisiana's program, and today's action does not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before the EPA establishes any

regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires the EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate, hazardous waste treatments, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

I. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1966), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if any agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule therefore, does not require a regulatory flexibility analysis.

J. Submission to Congress and the Comptroller General

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

K. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

L. Executive Order 12875 Enhancing Intergovernmental Partnerships

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

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

M. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

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

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Louisiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that the EPA implements in the Indian country within the State.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 30, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 98–27704 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6166–5]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for Final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). North Carolina's revision consists of provisions promulgated between July 1, 1994 and June 30 1995. The EPA has reviewed North Carolina's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Unless adverse written comments are received during the review and comment period provided, EPA's decision to authorize North Carolina's hazardous waste program revision will take effect as provided below.

DATES: This Final authorization for North Carolina will become effective without further notice on December 22, 1998, if EPA receives no adverse comment on this document.

Should EPA receive such comments EPA will withdraw this rule before its effective date by publishing a withdrawal in the **Federal Register**. Any comments on North Carolina's program revision application must be filed by November 23, 1998.

ADDRESSES: Copies of the North Carolina program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying during normal business hours at the following addresses: North Carolina Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 29201, (919) 733–2178; and EPA Region 4, Library, U.S. EPA Region 4, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303; (404) 347–4216. Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104; (404) 562–8440.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA 30303–3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

B. North Carolina

North Carolina initially received final authorization for its base RCRA program effective on December 31, 1984. North Carolina most recently received authorization for revisions to its program on June 24, 1996, (61 FR 18284).

On August 7, 1997, North Carolina submitted a final, complete program revision application for RCRA Cluster V, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed North Carolina's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Final Authorization for the program modifications contained in North Carolina's program revision application.

The public may submit written comments on EPA's final decision until November 23, 1998. Copies of North Carolina's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

If EPA does not receive adverse written comment pertaining to North Carolina's program revision by the end of the comment period, the authorization of North Carolina's revision will become effective on December 22, 1998. If the Agency does receive adverse written comment, it will publish a document withdrawing this immediate final rule before its effective date. EPA will then address the comments in a later final rule based on the companion document appearing in the Proposed Rules section of today's **Federal Register**. EPA may not provide additional opportunity for comment. Any parties interested in commenting should do so at this time.

North Carolina is today seeking authority to administer the following Federal requirements promulgated between July 1, 1994, through June 30, 1995.

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
135	Recovered Oil Exclusion	7/28/94	59 FR 38536	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(15). NCGS § 150B–21.6. 15A NCAC 13A .0106(a). 15A NCAC 13A .0111(e).
136	Removal of Conditional Exemption	8/24/94	59 FR 43396	NCGS § 130A–294(c)(7). NCGS § 130A–294(c)(15). NCGS § 130A–294(h)(2). NCGS § 150B–21.6. 15A NCAC 13A .0111(a). 15A NCAC 13A .0112(c).

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
137	Universal Treatment Standards and Treatment Standards for Organic Characteristic Wastes and Newly Listed Wastes.	9/19/94 1/3/94	59 FR 47982 60 FR 242	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(7). NCGS § 130A–294(c)(15). NCGS § 130A–294(h)(2). NCGS § 150B–21.6. 15A NCAC 13A .0103(b). 15A NCAC 13A .0106(a). 15A NCAC 13A .0111(a). 15A NCAC 13A .0111(e). 15A NCAC 13A .0111(f). 15A NCAC 13A .0109(b). 15A NCAC 13A .0110(a). 15A NCAC 13A .0112(a). 15A NCAC 13A .0112(b). 15A NCAC 13A .0112(c). 15A NCAC 13A .0112(e).
139	Testing and Monitoring Activities Amendment I	1/13/95	60 FR 3089	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(1)(a). NCGS § 130A–294(c)(15). NCGS § 150B–21.6. 15A NCAC 13A .0106(a). 15A NCAC 13A .0111(e).
140	Carbamate Production Identification and Listing of Hazardous Waste.	2/9/95 4/17/95 5/12/95	60 FR 7824 60 FR 19165 60 FR 25619	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(1)(a). NCGS § 130A–294(c)(15). NCGS § 150B–21.6/ 15A NCAC 13A .0106(a). 15A NCAC 13A .0106(e). 15A NCAC 13A .0106(d).
141	Testing and Monitoring Activities Amendment II	4/4/95	60 FR 17001	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(1)(a). NCGS § 130A–294(c)(15). NCGS § 150B–21.6. 15A NCAC 13A .0101(e).
142A	Universal Waste Rule: General Provisions	5/11/95	60 FR 25492	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(2)–(7). NCGS § 130A–294(c)(11)–(12). NCGS § 130A–294(c)(14)–(15). NCGS § 130A–294(d). NCGS § 130A–294(h)(2). NCGS § 130A–18. NCGS § 130A–19. NCGS § 130A–20. NCGS § 130A–303. NCGS § 150B–21.6. 15A NCAC 13A .0102(b). 15A NCAC 13A .0106(a). 15A NCAC 13A .0107(a). 15A NCAC 13A .0109(b). 15A NCAC 13A .0110(a). 15A NCAC 13A .0112(a). 15A NCAC 13A .0113(a). 15A NCAC 13A .0119(a)–(f).

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
142B	Universal Waste Rule: Specific Provisions for Batteries.	5/11/95	60 FR 25492	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(2)–(7). NCGS § 130A–294(c)(11)–(12). NCGS § 130A–294(c)(14)–(15). NCGS § 130A–294(d). NCGS § 130A–294(h)(2). NCGS § 130A–18. NCGS § 130A–19. NCGS § 130A–20. NCGS § 130A–303. NCGS § 150B–21.6. 15A NCAC 13A .0102(b). 15A NCAC 13A .0106(a). 15A NCAC 13A .0109(b). 15A NCAC 13A .0110(a). 15A NCAC 13A .0111(d). 15A NCAC 13A .0112(a). 15A NCAC 13A .0113(a). 15A NCAC 13A .0119(a). 15A NCAC 13A .0119(b). 15A NCAC 13A .0119(c).
142C	Universal Waste Rule: Specific Provisions for Pesticides.	5/11/95	60 FR 25492	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(2)–(7). NCGS § 130A–294(c)(11)–(12). NCGS § 130A–294(c)(14)–(15). NCGS § 130A–294(d). NCGS § 130A–294(h)(2). NCGS § 130A–18. NCGS § 130A–19. NCGS § 130A–20. NCGS § 130A–303. NCGS § 150B–21.6. NCGS § 143–441. 15A NCAC 13A .0102(b). 15A NCAC 13A .0106(a). 15A NCAC 13A .0109(b). 15A NCAC 13A .0110(a). 15A NCAC 13A .0112(a). 15A NCAC 13A .0113(a). 15A NCAC 13A .0119(a). 15A NCAC 13A .0119(b). 15A NCAC 13A .0119(c). 2 NCAC 9L .0600.
142D	Universal Waste Rule: Specific Provisions for Thermostats.	5/11/95	60 FR 25492	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(2)–(7). NCGS § 130A–294(c)(11)–(12). NCGS § 130A–294(c)(14)–(15). NCGS § 130A–294(d). NCGS § 130A–294(h)(2). NCGS § 130A–18. NCGS § 130A–19. NCGS § 130A–20. NCGS § 130A–303. NCGS § 150B–21.6. 15A NCAC 13A .0102(b). 15A NCAC 13A .0106(a). 15A NCAC 13A .0109(b). 15A NCAC 13A .0110(a). 15A NCAC 13A .0112(a). 15A NCAC 13A .0113(a). 15A NCAC 13A .0119(a). 15A NCAC 13A .0119(b). 15A NCAC 13A .0119(c).

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
142E	Universal Waste Rule: Petition Provisions to Add a New Universal Waste.	5/11/95	60 FR 25492	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(2)–(7). NCGS § 130A–294(c)(11)–(12). NCGS § 130A–294(c)(14)–(15). NCGS § 130A–294(d). NCGS § 130A–18. NCGS § 130A–19. NCGS § 130A–20. NCGS § 130A–303. NCGS § 150B–21.6. NCGS § 150B–20. 15A NCAC 13A .0103(a). 15A NCAC 13A .0103(b). 15A NCAC 13A .0119(g) 15A NCAC 13A .0101.
144	Removal of Legally Obsolete Rules	6/29/95	60 FR 33915	NCGS § 130A–294(c)(1). NCGS § 130A–294(c)(1a). NCGS § 130A–294(c)(7). NCGS § 130A–294(c)(14)–(15). NCGS § 130A–294(h)(2). NCGS § 130A–17. NCGS § 130A–18. NCGS § 130A–19. NCGS § 130A–20. NCGS § 130A–23. NCGS § 130A–303. NCGS § 130A–304. NCGS § 150B–21.6. 15A NCAC 13A .0106(d). 15A NCAC 13A .0111(e). 15A NCAC 13A .0113(a). 15A NCAC 13A .0113(b).

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

The State of North Carolina's Hazardous Waste Management Program is not being authorized to operate in Indian Country.

C. Decision

I conclude that North Carolina's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants North Carolina Final Authorization to operate its hazardous waste program as revised. North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the North Carolina's program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

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

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

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

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this today's action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is economically significant as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the final rule is not subject to the requirements of Executive Order 13045.

Compliance With Executive Order 13084

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

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. North Carolina is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 27, 1998.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 98–28490 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–60

RIN 3090–AG78

Public Availability of Agency Records and Informational Materials

AGENCY: Office of Management and Workplace Programs, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising its regulations which implement the Freedom of Information Act (FOIA), to incorporate the requirements of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. 552, as amended by Pub. L. 104–231.

DATES: This rule is effective October 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Cunningham, GSA Freedom of Information Act (FOIA) Officer (202–501–3415); or Helen C. Maus, Office of General Counsel (202–501–1460).

SUPPLEMENTARY INFORMATION: A proposal to revise GSA's regulations that implement FOIA was published in the **Federal Register** on June 17, 1998, 63 FR 33023. This rule was not submitted to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, because it is not a significant regulatory action as defined in Executive Order 12866. The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

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

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

The principles of Executive Order 12988 of February 5, 1996, Civil Justice Reform, have been incorporated where applicable.

The Administrator certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Interested persons have been afforded an opportunity to participate in the making of this rule. No comments are received.

Comprehensive Summary

I. Implementation of the FOIA. These regulations implement the FOIA which codified Pub. L. 89–487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.). These regulations also implement Pub. L. 93–502, popularly known as the Freedom of Information Act Amendments of 1974, as amended by Pub. L. 99–570, the Freedom of Information Reform Act of 1986; the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. 552, as amended by Pub. L. 104–231; and Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 23, 1987.

The revisions also update organizational references.

List of Subjects in 41 CFR Part 105–60

Freedom of information.

For the reasons set out in the preamble, 41 CFR part 105–60 is revised to read as follows:

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.
105–60.000 Scope of part.

Subpart 105–60.1—General Provisions

105–60.101 Purpose.
105–60.102 Application.
105–60.103 Policy.
105–60.103–1 Availability of records.
105–60.103–2 Applying exemptions.
105–60.104 Records of other agencies.

Subpart 105–60.2—Publication of General Agency Information and Rules in the Federal Register

105–60.201 Published information and rules.
105–60.202 Published materials available for sale to the public.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

105–60.301 General.
105–60.302 Available materials.
105–60.303 Rules for public inspection and copying.
105–60.304 Index.
105–60.305 Fees.
105–60.305–1 Definitions.
105–60.305–2 Scope of this subpart.
105–60.305–3 GSA records available without charge.
105–60.305–4 GSA records available at a fee.
105–60.305–5 Searches.
105–60.305–6 Reviews.
105–60.305–7 Assurance of payment.
105–60.305–8 Prepayment of fees.
105–60.305–9 Form of payment.
105–60.305–10 Fee schedule.

105–60.305–11 Fees for authenticated and attested copies.
105–60.305–12 Administrative actions to improve assessment and collection of fees.
105–60.305–13 Waiver of fee.

Subpart 105–60.4—Described Records

105–60.401 General.
105–60.402 Procedures for making records available.
105–60.402–1 Submission of requests.
105–60.402–2 Response to initial requests.
105–60.403 Appeal within GSA.
105–60.404 Extension of time limits.
105–60.405 Processing requests for confidential commercial information.

Subpart 105–60.5—Exemptions

105–60.501 Categories of records exempt from disclosure under the FOIA.

Subpart 105–60.6—Production or Disclosure by Present or Former General Services Administration Employees in Response to Subpoenas or Similar Demands in Judicial or Administrative Proceedings

105–60.601 Purpose and scope of subpart.
105–60.602 Definitions.
105–60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.
105–60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.
105–60.605 Procedure in the event of a demand for production or disclosure.
105–60.606 Procedure where response to demand is required prior to receiving instructions.
105–60.607 Procedure in the event of an adverse ruling.
105–60.608 Fees, expenses, and costs.

Authority: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

§ 105–60.000 Scope of part.

(a) This part sets forth policies and procedures of the General Services Administration (GSA) regarding public access to records documenting:

(1) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability;

(2) Agency final opinions and orders, including policy statements and staff manuals;

(3) Operational and other appropriate agency records; and

(4) Agency proceedings.

(b) This part also covers exemptions from disclosure of these records; procedures for the public to inspect or obtain copies of GSA records; and instructions to current and former GSA employees on the response to a subpoena or other legal demand for material or information received or generated in the performance of official duty or because of the person's official status.

(c) Any policies and procedures in any GSA internal or external directive inconsistent with the policies and procedures set forth in this part are superseded to the extent of that inconsistency.

Subpart 105–60.1—General Provisions

§ 105–60.101 Purpose.

This part 105–60 implements the provisions of the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552. The regulations in this part also implement Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 23, 1987 (3 CFR, 1987 Comp., p. 235). This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA, including administrative procedures which must be exhausted before a requester invokes the jurisdiction of an appropriate United States District Court for GSA's failure to respond to a proper request within the statutory time limits, for a denial of agency records or challenge to the adequacy of a search, or for a denial of a fee waiver.

§ 105–60.102 Application.

This part applies to all records and informational materials generated, maintained, and controlled by GSA that come within the scope of 5 U.S.C. 552.

§ 105–60.103 Policy.

§ 105–60.103–1 Availability of records.

The policies of GSA with regard to the availability of records to the public are:

(a) GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will disclose information in any existing GSA record, with noted exceptions, regardless of the form or format of the record. GSA will provide the record in the form or format requested if the record is reproducible by the agency in that form or format without significant expenditure of resources. GSA will make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(b) The person making the request does not need to demonstrate an interest in the records or justify the request.

(c) The FOIA does not give the public the right to demand that GSA compile a record that does not already exist. For example, FOIA does not require GSA to collect and compile information from multiple sources to create a new record. GSA may compile records or perform minor reprogramming to extract records from a database or system when doing so will not significantly interfere with the operation of the automated system in question or involve a significant expenditure of resources.

(d) Similarly, FOIA does not require GSA to reconstruct records that have been destroyed in compliance with disposition schedules approved by the Archivist of the United States. However, GSA will not destroy records after a member of the public has requested access to them and will process the request even if destruction would otherwise be authorized.

(e) If the record requested is not complete at the time of the request, GSA may, at its discretion, inform the requester that the complete record will be provided when it is available, with no additional request required, if the record is not exempt from disclosure.

(f) Requests must be addressed to the office identified in § 105–60.402–1.

(g) Fees for locating and duplicating records are listed in § 105–60,305–10.

§ 105–60.103–2 Applying exemptions.

GSA may deny a request for a GSA record if it falls within an exemption under the FOIA outlined in subpart 105–60.5 of this part. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. GSA will not withhold a record unless there is a compelling reason to do so; i.e., disclosure will likely cause harm to a Governmental or private interest. In the absence of a compelling reason, GSA will disclose a record even if it otherwise is subject to exemption. GSA will cite the compelling reason(s) to requesters when any record is denied under FOIA.

§ 105–60.104 Records of other agencies.

If GSA receives a request for access to records that are known to be the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. For example, GSA will refer requests to the appropriate agency in cases in which GSA does not have sufficient knowledge of the action or matter that is the subject of the requested records to determine whether the records must be released or may be withheld under one of the exemptions listed in Subpart 105–60.5 of this part. If GSA does not have the requested records, the agency will attempt to determine whether the requested records exist at another agency and, if possible, will forward the request to that agency. GSA will inform the requester that GSA has forwarded the request to another agency.

Subpart 105–60.2—Publication of General Agency Information and Rules in the Federal Register

§ 105–60.201 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), GSA publishes in the **Federal Register**, for the guidance of the public, the following general information concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by GSA; and

(e) Each amendment, revision, or repeal of the materials described in this section.

§ 105–60.202 Published materials available for sale to the public.

(a) Substantive rules of general applicability adopted by GSA as authorized by law that this agency publishes in the **Federal Register** and which are available for sale to the public by the Superintendent of Documents at pre-established prices are: The General Services Administration Acquisition Regulation (48 CFR Ch. 5), the Federal Acquisition Regulation (48 CFR Ch. 1), the Federal Property Management Regulations (41 CFR Ch. 101), and the Federal Travel Regulation (41 CFR Ch. 301–304).

(b) GSA provides technical information, including manuals and handbooks, to other Federal entities, e.g., the National Technical Information Service, with separate statutory authority to make information available to the public at pre-established fees.

(c) Requests for information available through the sources in paragraphs (a) and (b) of this section will be referred to those sources.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§ 105–60.301 General.

GSA makes available to the public the materials described under 5 U.S.C. 552(a)(2), which are listed in § 105–60.302 through an extensive electronic home page, http://www.gsa.gov/. A public handbook listing those materials as described in § 105–60.304 is available at GSA's Central Office in Washington, DC, and at the website at http://www.gsa.gov/staff/c/ca/pub1.htm. Members of the public who do not have the means to access this information electronically, and who are not located in the Washington, DC area, may contact the Freedom of Information Act office in any of the regional offices listed in this regulation. These offices will make arrangements for members of the public to access the information at a computer located at the FOIA office. Reasonable copying services are provided at the fees specified in § 105–60.305.

§ 105–60.302 Available materials.

GSA materials available under this subpart 105–60.3 are as follows:

(a) Final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases.

(b) Those statements and policy and interpretations that have been adopted by GSA and are not published in the **Federal Register**.

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 105–60.303 Rules for public inspection and copying.

(a) *Locations.* Selected areas containing the materials available for public inspection and copying, described in this § 105–60.302, are located in the following places:

Central Office (GSA Headquarters),
General Services Administration, Washington, DC.
Telephone: 202–501–2262
FAX: 202–501–2727,
Email: gsa.foia@gsa.gov
1800 F Street, NW. (CAI), Washington, DC 20405

Office of the Inspector General
FOIA Officer, Office of Inspector General (J)
General Services Administration
1800 F Street NW., Room 5324
Washington, DC 20405

New England Region
General Services Administration (1AB)
(Comprised of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222
Telephone: 617–565–8100
FAX: 617–565–8101

Northeast and Caribbean Region
(Comprised of the States of New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands)
General Services Administration (2AR)
26 Federal Plaza, New York, NY 10278
Telephone: 212–264–1234
FAX: 212–264–2760

Mid-Atlantic Region
(Comprised of the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, excluding the Washington, DC metropolitan area)
General Services Administration (3ADS), 100 Penn Square East, Philadelphia, PA 19107
Telephone: 215–656–5530
FAX: 215–656–5590

Southeast Sunbelt Region
(Comprised of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)
General Services Administration (4E), 401 West Peachtree Street, Atlanta, GA 30365
Telephone: 404–331–5103
FAX: 404–331–1813

Great Lakes Region
(Comprised of the States of Illinois, Indiana, Ohio, Minnesota, Michigan, and Wisconsin)
General Services Administration (5ADB), 230 South Dearborn Street, Chicago, IL 60604
Telephone: 312–353–5383
FAX: 312–353–5385

Heartland Region
(Comprised of the States of Iowa, Kansas, Missouri, and Nebraska)
General Services Administration (6ADB), 1500 East Bannister Road, Kansas City, MO 64131
Telephone: 816–926–7203
FAX: 816–823–1167

Greater Southwest Region
(Comprised of the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma)
General Services Administration (7ADQ), 819 Taylor Street, Fort Worth, TX 76102
Telephone: 817–978–3902
FAX: 817–978–4867

Rocky Mountain Region
(Comprised of the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming)
Business Service Center, General Services Administration (8PB–B), Building 41, Denver Federal Center, Denver, CO 80225
Telephone: 303–236–7408
FAX: 303–236–7403

Pacific Rim Region
(Comprised of the States of Hawaii, California, Nevada, Arizona, Guam, and Trust Territory of the Pacific)
Business Service Center, General Services Administration (9ADB), 525 Market Street, San Francisco, CA 941105

Telephone: 415–522–2715
FAX: 415–522–2705
Northwest/Arctic Region
(Comprised of the States of Alaska, Idaho, Oregon, and Washington)
General Services Administration (10L), GSA Center, 15th and C Streets, SW., Auburn, WA 98002
Telephone: 206–931–7007
FAX: 206–931–7195
National Capital Region
(Comprised of the District of Columbia and the surrounding metropolitan area)
General Services Administration (WPFA–L), 7th and D Streets SW., Washington, DC 20407
Telephone: 202–708–5854
FAX: 202–708–4655.

(b) *Time.* The offices listed above will be open to the public during the business hours of the GSA office where they are located.

(c) *Reproduction services and fees.* The GSA Central Office or the Regional Business Service Centers will furnish reasonable copying and reproduction services for available materials at the fees specified in § 105–60.305.

§ 105–60.304 Public information handbook and index.

GSA publishes a handbook for the public that identifies information regarding any matter described in § 105–60.302. This handbook also lists published information available from GSA and describes the procedures the public may use to obtain information using the Freedom of Information Act (FOIA). This handbook may be obtained without charge from any of the GSA FOIA offices listed in § 105–60.303(a), or at the GSA Internet Homepage (http://www.gsa.gov/staff/c/ca/cai/links.htm).

§ 105–60.305 Fees.

§ 105–60.305–1 Definitions.

For the purpose of this part:

(a) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vii)) means any statute that specifically requires a Government agency to set the level of fees for particular types of records, as opposed to a statute that generally discusses such fees. Fees are required by statute to:

(1) Make Government information conveniently available to the public and to private sector organizations;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating Government information.

(b) The term *direct costs* means those expenditures which GSA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing and redacting) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the cost of operating duplicating machinery. Overhead expenses such as costs of space, and heating or lighting the facility where the records are stored are not included in direct costs.

(c) The term *search* includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Searches will be performed in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Line-by-line searches will not be undertaken when it would be more efficient to duplicate the entire document. *Search* for responsive material is not the same as *review* of a record to determine whether it is exempt from disclosure in whole or in part (see paragraph (e) of this section. Searches may be done manually or by computer using existing programming or new programming when this would not significantly interfere with the operation of the automated system in question.

(d) The term *duplication* means the process of making a copy of a document in response to a FOIA request. Copies can take the form of paper, microform audiovisual materials, or magnetic types or disks. To the extent practicable, GSA will provide a copy of the material in the form specified by the requester.

(e) The term *review* means the process of examining documents located in response to a request to determine if any portion of that document is permitted to be withheld and processing any documents for disclosure. See § 105–60.305–6.

(f) The term *commercial-use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. GSA will determine whether a requester properly belongs in this category by determining how the requester will use the documents.

(g) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(h) The term *noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis as that term is used in paragraph (f) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. ''Freelance'' journalists will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by it.

§ 105–60.305–2 Scope of this subpart.

This subpart sets forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of GSA records.

§ 105–60.305–3 GSA records available without charge.

GSA records available to the public are displayed in the Business Service Center for each GSA region. The address and phone number of the Business Service Centers are listed in § 105–60.303. Certain material related to bids (excluding construction plans and specifications) and any material displayed are available without charge upon request.

§ 105–60.305–4 GSA records available at a fee.

(a) GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester at fees shown in § 105–60.305–10. Waivers of these fees are available under the conditions described in § 105–60.305–13. GSA will agree to:

(1) Show the originals to the requester;

(2) Make one copy available at a fee; or

(3) A combination of these alternatives.

(b) GSA will make copies of voluminous records as quickly as possible. GSA may, in its discretion, make a reasonable number of additional copies for a fee when commercial reproduction services are not available to the requester.

§ 105–60.305–5 Searches.

(a) GSA may charge for the time spent in the following activities in determining ''search time'' subject to applicable fees as provided in § 105–60.305–10:

(1) Time spent in trying to locate GSA records which come within the scope of the request;

(2) Time spent in either transporting a necessary agency searcher to a place of record storage, or in transporting records to the locations of a necessary agency searcher; and

(3) Direct costs of the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spent in monitoring a requester's inspection of disclosed agency records.

(c) GSA may assess fees for search time even if the search proves unsuccessful or if the records located are exempt from disclosure.

§ 105–60.305–6 Reviews.

(a) GSA will charge only commercial-use requesters for review time.

(b) GSA will charge for the time spent in the following activities in determining ''review time'' subject to applicable fees as provided in § 105–60.305–10:

(1) Time spent in examining a requested record to determine whether any or all of the record is exempt from disclosure, including time spent consulting with submitters of requested information; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

(c) GSA will not charge for:

(1) Time spent in resolving issues of law or policy regarding the application of exemptions; or

(2) Review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. GSA will charge for such subsequent review.

§ 105–60.305–7 Assurance of payment.

If fees for search, review, and reproduction will exceed $25 but will be less than $250, the requester must provide written assurance of payment before GSA will process the request. If this assurance is not included in the initial request, GSA will notify the requester that assurance of payment is required before the request is processed. GSA will offer requesters an opportunity to modify the request to reduce the fee.

§ 105–60.305–8 Prepayment of fees.

(a) *Fees over $250.* GSA will require prepayment of fees for search, review, and reproduction which are likely to exceed $250. When the anticipated total fee exceeds $250, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. When fees will exceed $250, GSA will notify the requester that it will not start processing a request until payment is received.

(b) *Delinquent payments.* As noted in § 105–6.305–12(d), requesters who are delinquent in paying for previous requests will be required to repay the old debt and to prepay for any subsequent request. GSA will inform the requester that it will process no additional requests until all fees are paid.

§ 105–60.305–9 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence. Payment may also be made by means of Mastercard or Visa. For information concerning payment by credit cards, call 816–926–7551.

§ 105–60.305–10 Fee schedule.

(a) When GSA is aware that documents responsive to a request are maintained for distribution by an agency operating a statutory fee based program, GSA will inform the requester of the procedures for obtaining records from those sources.

(b) GSA will consider only the following costs in fees charged to requesters of GSA records:

(1) Review and search fees.

Manual searches by clerical staff: $13 per hour or fraction of an hour.

Manual searches and reviews by professional staff in cases in which clerical staff would be unable to locate the requested records: $29 per hour or fraction of an hour.

Computer searches: Direct cost to GSA.

Transportation or special handling of records: Direct cost to GSA.

(2) Reproduction fees.

Pages no larger than 8½ by 14 inches, when reproduced by routine electrostatic copying: 10¢ per page.

Pages over 8½ by 14 inches: Direct cost of reproduction to GSA.

Pages requiring reduction, enlargement, or other special services: Direct cost of reproduction to GSA.

Reproduction by other than routine electrostatic copying: Direct cost of reproduction to GSA.

(c) Any fees not provided for under paragraph (b) of this section, shall be calculated as direct costs, in accordance with § 105–60.305–1(b).

(d) GSA will assess fees based on the category of the requester as defined in § 105–60.305–1(f)–(1); i.e., commercial-use, educational and noncommercial scientific institutions, news media, and all other. The fees listed in paragraph (b) of this section apply with the following exceptions:

(1) GSA will not charge the requester if the fee is $25 or less as the cost of collection is greater than the fee.

(2) Educational and noncommercial scientific institutions and the news media will be charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies) of duplication at no cost. The following are examples of how these fees are calculated:

(i) A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be $5.00. This amount would not be billed under the preceding section.

(ii) A request that results in 450 pages of material. The requester in this case would be charged $35.00. The reason is that the requester is entitled to the first 100 pages at no charge. The charge for the remaining 350 pages would be $35.

(3) Noncommercial requesters who are not included under paragraph (d)(2) of this section will be entitled to the first 100 pages (page copies) of duplication at not cost and two hours of search without charge. The term *search time* generally refers to manual search. To apply this term to searches made by computer, GSA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) reaches the equivalent dollar amount of two hours of the salary of the person performing a manual search, i.e., the operator, GSA will begin assessing charges for computer search.

(4) GSA will charge commercial-use requesters fees which recover the full

direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial-use requesters are not entitled to two hours of free search time.

(e) Determining category of requester. GSA may ask any requester to provide additional information at any time to determine what fee category he or she falls under.

§ 105–60.305–11 Fees for authenticated and attested copies.

The fees set forth in § 105–60.305–10 apply to requests for authenticated and attested copies of GSA records.

§ 105–60.305–12 Administrative actions to improve assessment and collection of fees.

(a) *Charging interest.* GSA may charge requesters who fail to pay fees interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(b) *Effect of the Debt Collection Act of 1982.* GSA will take any action authorized by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), including disclosure to consumer reporting agencies, use of collection agencies, and assessment of penalties and administrative costs, where appropriate, to encourage payment.

(c) *Aggregating requests.* When GSA reasonably believes that a requester, or group of requesters acting in concert, is attempting to break down a request into a series of requests related to the same subject for the purpose of evading the assessment of fees, GSA will combine any such requests and charge accordingly, including fees for previous requests where charges were not assessed. GSA will presume that multiple requests of this type within a 30-day period are made to avoid fees.

(d) *Advanced payments.* Whenever a requester is delinquent in paying the fee for a previous request (i.e., within 30 days of the date of the billing), GSA will require the requester to pay the full amount owed plus any applicable interest penalties and administrative costs as provided in paragraph (a) of this section or to demonstrate that he or she has, in fact, paid the fee. In such cases, GSA will also require advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When advance payment is required under this selection, the administrative time limits in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of appeals from initial denial plus permissible time extensions) will begin only after GSA has received the fee payments described in § 105–60.305–8.

§ 105–60.305–13 Waiver of fee.

(a) Any request for a waiver or the reduction of a fee should be included in the initial letter requesting access to GSA records under § 105–60.402–1. The waiver request should explain how disclosure of the information would contribute significantly to public's understanding of the operations or activities of the Government and would not be primarily in the commercial interest of the requester. In responding to a requester, GSA will consider the following factors:

(1) Whether the subject of the requested records concerns ''the operations or activities of the Government.'' The subject matter of the requested records must specifically concern identifiable operations or activities of the Federal Government. The connection between the records and the operations or activities must be direct and clear, not remote or attenuated.

(2) Whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities. In this connection, GSA will consider whether the requested information is already in the public domain. If it is, then disclosure of the information would not be likely to contribute to an understanding of Government operations or activities, as nothing new would be added to the public record.

(3) Whether disclosure of the requested information will contribute to ''public's understanding.'' The focus here must be on the contribution to public's understanding rather than personal benefit to be derived by the requester. For purposes of this analysis, the identity and qualifications of the requester should be considered to determine whether the requester is in a position to contribute to public's understanding through the requested disclosure.

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so: whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public's interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(b) GSA will ask the requester to furnish additional information if the initial request is insufficient to evaluate the merits of the request. GSA will not start processing a request until the fee waiver issue has been resolved unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

Subpart 105–60.4—Described Records

§ 105–60.401 General.

(a) Except for records made available in accordance with subparts 105–60.2 and 105–60.3 of this part, GSA will make records available to a requester promptly when the request reasonably describes the records unless GSA invokes an exemption in accordance with subpart 105–60.5 of this part. Although the burden of reasonable description of the records rests with the requester, whenever practical GSA will assist requesters to describe records more specifically.

(b) Whenever a request does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 20-workday time limit set forth in § 105–60.402–2 will not start until the official identified in § 105–60.402–1 or other responding official receives a request reasonably describing the records.

§ 105–60.402 Procedures for making records available.

This subpart sets forth initial procedures for making records available when they are requested, including administrative procedures to be exhausted prior to seeking judicial review by an appropriate United States District Court.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAI), Washington, DC 20405. Requesters may FAX requests to (202) 501–2727, or submit a request by electronic mail to gsa.foi@gsa.gov. For records located in the Office of Inspector General, the requester must submit a request to the FOIA Officer, Office of Inspector General, General Services Administration, 1800 F Street NW., Room 5324, Washington, DC 20405. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words ''Freedom of Information Act Request'' prominently marked on both the face of the request letter and the envelope. The 20-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105–60.305–8 and 105–60.305–12(d) apply. Failure to

include the words ''Freedom of Information Act Request'' or to submit a request to the official identified in this section will result in processing delays. A requester with questions concerning a FOIA request should contact the GSA FOIA Office, General Services Administration (CAI), 18th and F Streets, NW., Washington, DC 20405, (202) 501–2262.

§ 105–60.402–2 Response to initial requests.

(a) GSA will respond to an initial FOIA request that reasonably describes requested records, including a fee waiver request, within 20 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter will provide the agency's decision with respect to disclosure or nondisclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter.

(b) In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency's need to take an extension of time, not to exceed an additional 10 workdays. This notice will afford requesters an opportunity to limit the scope of the request so that it may be processed within prescribed time limits or an opportunity to arrange an alternative time frame for processing the request or a modified request. Such mutually agreed time frames will supersede the 10 day limit for extensions.

(c) GSA will consider requests for expedited processing from requesters who submit a statement describing a compelling need and certifying that this need is true and correct to the best of such person's knowledge and belief. A *compelling need means:*

(1) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in dissmeninating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. ''Urgently needed'' information has a particular value that will be lost if not disseminated quickly, such as a breaking news story or general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the newsbreaking nature of the information.

(d) GSA will decide whether to grant expedited processing within five working days of receipt of the request. If the request is granted, GSA will process the request ahead of non-expedited requests, as soon as practicable. If the request is not granted, GSA will give expeditious consideration to administrative appeals of this denial.

(e) GSA may, at its discretion, establish three processing queues based on whether any requests have been granted expedited status and on the difficulty and complexity of preparing a response. Within each queue, responses will be prepared on a ''first in, first out'' basis. One queue will be made up of expedited requests; the second, of simple responses that clearly can be prepared without requesting an extension of time; the third, of responses that will require an extension of time.

§ 105–60.403 Appeal within GSA.

(a) A requester who receives a denial of a request, in whole or in part, a denial of a request for expedited processing or of a fee waiver request may appeal that decision within GSA. A requester may also appeal the adequacy of the search if GSA determines that it has searched for but has not requested records. The requester must send the appeal to the GSA FOIA Officer, General Services Administration (CAI), Washington, DC 20405, regardless of whether the denial being appealed was made in the Central Office or in a regional office. For denials which originate in the Office of Inspector General, the requester must send the appeal to the Inspector General, General Services Administration, 1800 F Street NW., Washington, DC 20405.

(b) The GSA FOIA Officer must receive an appeal no later than 120 calendar days after receipt by the requester of the initial denial of access or fee waiver.

(c) An appeal must be in writing and include a brief statement of the reasons he or she thinks GSA should release the records or provide expedited processing and enclose copies of the initial request and denial. The appeal letter must include the words ''Freedom of Information Act Appeal'' on both the face of the appeal letter and on the envelope. Failure to follow these procedures will delay processing of the appeal. GSA has 20 workdays after receipt of a proper appeal of denial of records to issue a determination with respect to the appeal. The 20-workday time limit shall not begin until the GSA FOIA Officer receives the appeal. As noted in § 105–60.404, the GSA FOIA Officer may extend this time limit in unusual circumstances. GSA will process appeals of denials of expedited processing as soon as possible after receiving them.

(d) A requester who receives a denial of an appeal, or who has not received a response to an appeal or initial request within the statutory time frame may seek judicial review in the United States District Court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the United States District Court for the District of Columbia.

§ 105–60.404 Extension of time limits.

(a) In unusual circumstances, the GSA FOIA Officer or the regional FOIA Officer may extend the time limits prescribed in §§ 105–60.402 and 105–60.403. For purposes of this section, the term *unusual circumstances* means:

(1) The need to search for an collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are described in a single request;

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of GSA having substantial subject-matter interest therein; or

(4) The need to consult with the submitter of the requested information.

(b) If necessary, GSA may take more than one extension of time. However, the total extension of time to respond to any single request shall not exceed 10 workdays. The extension may be divided between the initial and appeal stages or within a single stage. GSA will provide written notice to the requester of any extension of time limits.

§ 105–60.405 Processing requests for confidential commercial information.

(a) *General.* The following additional procedures apply when processing requests for confidential commercial information.

(b) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records provided to

the Government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means a person or entity which provides to the Government information which may constitute confidential commercial information. The term *submitter* includes, but is not limited to, individuals, partnerships, corporations, State governments, and foreign governments.

(c) *Designating confidential commercial information.* Since January 1, 1988, submitters have been required to designate confidential commercial information as such when it is submitted to GSA or at a reasonable time thereafter. For information submitted in connection with negotiated procurements, the requirements of Federal Acquisition Regulation 48 CFR 15.407(c)(8) and 52.215–12 also apply.

(d) *Procedural requirements—consultation with the submitter.* (1) If GSA receives a FOIA request for potentially confidential commercial information, it will notify the submitter immediately by telephone and invite an opinion whether disclosure will or will not cause substantial competitive harm.

(2) GSA will follow up the telephonic notice promptly in writing before releasing any records unless paragraph (f) of this section applies.

(3) If the submitter indicates an objection to disclosure GSA will give the submitter seven workdays from receipt of the letter to provide GSA with a detailed written explanation of how disclosure of any specified portion of the records would be competitively harmful.

(4) If the submitter verbally states that there is no objection to disclosure, GSA will confirm this fact in writing before disclosing any records.

(5) At the same time GSA notifies the submitter, it will also advise the requester that there will be a delay in responding to the request due to the need to consult with the submitter.

(6) GSA will review the reasons for nondisclosure before independently deciding whether the information must be released or should be withheld. If GSA decides to release the requested information, it will provide the submitter with a written statement explaining why his or her objections are not sustained. The letter to the submitter will contain a copy of the material to be disclosed or will offer the submitter an opportunity to review the material in none of GSA's offices. If GSA decides not to release the material, it will notify the submitter orally or in writing.

(7) If GSA determines to disclose information over a submitter's objections, it will inform the submitter the GSA will delay disclosure for 5 workdays from the estimated date the submitter receives GSA's decision before it releases the information. The decision letter to the requester shall state that GSA will delay disclosure of material it has determined to disclose to allow for the notification of the submitter.

(e) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, GSA will notify a submitter whenever it receives a FOIA request for such information:

(i) If the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) If GSA has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted on or after January 1, 1988, GSA will notify a submitter whenever it determines that the agency may be required to disclose records:

(i) That the submitter has previously designated as privileged or confidential; or

(ii) That GSA believes could reasonably be expected to cause substantial competitive harm if disclosed.

(3) GSA will provide notice to a submitter for a period of up to 10 years after the date of submission.

(f) *When notice is not required.* The notice requirements of this section will not apply if:

(1) GSA determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law other than the FOIA;

(4) Disclosure is required by an agency rule that

(i) Was adopted pursuant to notice and public comment;

(ii) specifies narrow classes of records submitted to the agency that are to be released under FOIA; and

(iii) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted for a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information is not designated by the submitter as exempt from disclosure under paragraph (c) of this section, unless GSA has substantial reason to believe that disclosure of the information would be competitively harmful; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such cases, the agency must provide the submitter with written notice of any final administrative decision five workdays prior to disclosing the information.

(g) *Lawsuits.* If a FOIA requester sues the agency to compel disclosure of confidential commercial information, GSA will notify the submitter as soon as possible. If the submitter sues GSA to enjoin disclosure of the records, GSA will notify the requester.

Subpart 105–60.5—Exemptions

§ 105–60.501 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(i) could reasonably be expected to interfere with enforcement proceedings;

(ii) would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section. If GSA must delete information from a record before disclosing it, this information, and the reasons for withholding it, will be clearly described in the cover letter to the requester or in an attachment. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In the case of electronic deletion, the amount of redacted information shall be indicated at the place in the record where such deletion was made, unless including the indication would harm an interest protected by the exemption under which the exemption was made.

(c) GSA will invoke no exemption under this section to deny access to records that would be available pursuant to a request made under the Privacy Act of 1974 (5 U.S.C. 552a) and implementing regulations, 41 CFR part 105–64, or if disclosure would cause no demonstrable harm to any governmental or private interest.

(d) Pursuant to National Defense Authorization Act of Fiscal Year 1997, Pub. L. No. 104–201, section 821, 110 Stat. 2422, GSA will invoke Exemption 3 to deny access to any proposal submitted by a vendor in response to the requirements of a solicitation for a competitive proposal unless the proposal is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

(e) Whenever a request is made which involves access to records described in § 105–60.501(a)(7)(i) and the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe that the subject of the investigation or proceeding is not aware of it, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(f) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(g) Whenever a request is made that involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (a)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records are not subject to the requirements of this section.

Subpart 105–60.6—Production or Disclosure by Present or Former General Services Administration Employees in Response to Subpoenas or Similar Demands in Judicial or Administrative Proceedings

§ 105—60.601 Purpose and scope of subpart.

(a) By virtue of the authority vested in the Administrator of General Services by 5 U.S.C. 301 and 40 U.S.C. 486(c) this subpart establishes instructions and procedures to be followed by current and former employees of the General Services Administration in response to subpoenas or similar demands issued in judicial or administrative proceedings for production or disclosure of material or information obtained as part of the performance of a person's official duties or because of the person's official status. Nothing in these instructions applies to responses to subpoenas or demands issued by the Congress or in Federal grand jury proceedings.

(b) This subpart provides instructions regarding the internal operations of GSA and the conduct of its employees, and is not intended and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against GSA.

§ 105—60.602 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Material* means any document, record, file or data, regardless of the physical form or the media by or through which it is maintained or recorded, which was generated or acquired by a current or former GSA employee by reason of the performance of that person's official duties or because of the person's official status, or any other tangible item, e.g., personal property possessed or controlled by GSA.

(b) *Information* means any knowledge or facts contained in material, and any knowledge or facts acquired by current or former GSA employee as part of the performance of that person's official duties or because of that person's official status.

(c) *Demand* means any subpoena, order, or similar demand for the production or disclosure of material, information or testimony regarding such material or information, issued by a court or other authority in a judicial or administrative proceeding, excluding congressional subpoenas or demands in Federal grand jury proceedings, and served upon a present or former GSA employee.

(d) *Appropriate Authority* means the following officials who are delegated authority to approve or deny responses to demands for material, information or testimony:

(1) The Counsel to the Inspector General for material and information which is the responsibility of the GSA Office of Inspector General or testimony of current or former employees of the Office of the Inspector General;

(2) The Counsel to the GSA Board of Contract Appeals for material and information which is the responsibility of the Board of Contract Appeals or

testimony of current or former Board of Contract Appeals employees;

(3) The GSA General Counsel, Associate General Counsel(s) or Regional Counsel for all material, information, or testimony not covered by paragraphs (d)(1) and (2) of this section.

§ 105–60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.

(a) The Administrator of General Services and the following officials are the only GSA personnel authorized to accept service of a subpoena or other legal demand on behalf of GSA: The GSA General Counsel and Associate General Counsel(s) and, with respect to material or information which is the responsibility of a regional office, the Regional Administrator and Regional Counsel. The Inspector General and Counsel to the Inspector General, as well as the Chairman and Vice Chairman of the Board of Contract Appeals, are authorized to accept service for material or information which are the responsibility of their respective organizations.

(b) A present or former GSA employee not authorized to accept service of a subpoena or other demand for material, information or testimony obtained in an official capacity shall respectfully inform the process server that he or she is not authorized to accept service on behalf of GSA and refer the process server to an appropriate official listed in paragraph (a) of this section.

(c) A Regional Administrator or Regional Counsel shall notify the General Counsel of a demand which may raise policy concerns or affect multiple regions.

§ 105–60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.

No current or former GSA employee shall, in response to a demand, produce any material or disclose, through testimony or other means, any information covered by this subpart, without prior approval of the Appropriate Authority.

§ 105–60.605 Procedure in the event of a demand for production or disclosure.

(a) Whenever service of a demand is attempted in person or via mail upon a current or former GSA employee for the production of material or the disclosure of information covered by this subpart, the employee or former employee shall immediately notify the Appropriate Authority through his or her supervisor or his or her former service, staff office, or regional office. The supervisor shall notify the Appropriate Authority. For current or former employees of the Office of Inspector General located in regional offices, Counsel to the Inspector General shall be notified through the immediate supervisor or former employing field office.

(b) The Appropriate Authority shall require that the party seeking material or testimony provide the Appropriate Authority with an affidavit, declaration, statement, and/or a plan as described in paragraphs (c) (1), (2), and (3) of this section if not included with or described in the demand. The Appropriate Authority may waive this requirement for a demand arising out of proceedings to which GSA or the United States is a party. Any waiver will be coordinated with the United States Department of Justice (DOJ) in proceedings in which GSA, its current or former employees, or the United States are represented by DOJ.

(c)(1) Oral testimony. If oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking the testimony or the party's attorney to provide, by affidavit or other statement, a detailed summary of the testimony sought and its relevance to the proceedings. Any authorization for the testimony of a current or former GSA employee shall be limited to the scope of the demand as summarized in such statement or affidavit.

(2) Production of material. When information other than oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking production or the party's attorney to provide a detailed summary, by affidavit or other statement, of the information sought and its relevance to the proceeding.

(3) The Appropriate Authority may require a plan or other information from the party seeking testimony or production of material of all demands reasonably foreseeable, including, but not limited to, names of all current and former GSA employees from whom testimony or production is or will likely be sought, areas of inquiry, for current employees the length of time away from duty anticipated, and identification of documents to be used in each deposition or other testimony, where appropriate.

(d) The Appropriate Authority will notify the current or former employee, the appropriate supervisor, and such other persons as circumstances may warrant, whether disclosure or production is authorized, and of any conditions or limitations to disclosure or production.

(e) Factors to be considered by the Appropriate Authority in responding to demands:

(1) Whether disclosure or production is appropriate under rules of procedure governing the proceeding out of which the demand arose;

(2) The relevance of the testimony or documents to the proceedings;

(3) The impact of the relevant substantive law concerning applicable privileges recognized by statute, common law, judicial interpretation or similar authority;

(4) The information provided by the issuer of the demand in response to requests by the Appropriate Authority pursuant to paragraphs (b) and (c) of this section;

(5) The steps taken by the issuer of the demand to minimize the burden of disclosure or production on GSA, including but not limited to willingness to accept authenticated copies of material in lieu of personal appearance by GSA employees;

(6) The impact on pending or potential litigation involving GSA or the United States as a party;

(7) In consultation with the head of the GSA organizational component affected, the burden on GSA which disclosure or production would entail; and

(8) Any additional factors unique to a particular demand or proceeding.

(f) The Appropriate Authority shall not approve a disclosure or production which would:

(1) Violate a statute or a specific regulation;

(2) Reveal classified information, unless appropriately declassified by the originating agency;

(3) Reveal a confidential source or informant, unless the investigative agency and the source or informant consent;

(4) Reveal records or information compiled for law enforcement purposes which would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would be impaired;

(5) Reveal trade secrets or commercial or financial information which is privileged or confidential without prior consultation with the person from whom it was obtained; or

(6) Be contrary to a recognized privilege.

(g) The Appropriate Authority's determination, including any reasons for denial or limitations on disclosure or production, shall be made as expeditiously as possible and shall be communicated in writing to the issuer of the demand and appropriate current

or former GSA employee(s). In proceedings in which GSA, its current or former employees, or the United States are represented by DOJ, the determination shall be coordinated with DOJ which may respond to the issuer of the subpoenas or demand in lieu of the Appropriate Authority.

§ 105–60.606 Procedure where response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the Appropriate Authority's decision is issued, a GSA attorney designated by the Appropriate Authority for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the judicial or other authority with a copy of the instructions contained in this subpart. The attorney shall inform the court or other authority that the demand has been or is being referred for the prompt consideration by the Appropriate Authority. The attorney shall respectfully request the judicial or administrative authority to stay the demand pending receipt of the requested instructions.

(b) The designated GSA attorney shall coordinate GSA's response with DOJ's Civil Division or the relevant Office of the United States Attorney and may request that a DOJ or Assistant United States Attorney appear with the employee in addition to or in lieu of a designated GSA attorney.

(c) If an immediate demand for production or disclosure is made in circumstances which preclude the appearance of a GSA or DOJ attorney on the behalf of the employee or the former employee, the employee or former employee shall respectfully make a request to the demanding authority for sufficient time to obtain advice of counsel.

§ 105–60.607 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 105–60.606 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions by the Appropriate Authority not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply, citing these instructions and the decision of the United States Supreme Court in United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

§ 105–60.608 Fees, expenses, and costs.

(a) In consultation with the Appropriate Authority, a current employee who appears as a witness pursuant to a demand shall ensure that he or she receives all fees and expenses, including travel expenses, to which witnesses are entitled pursuant to rules applicable to the judicial or administrative proceedings out of which the demand arose.

(b) Witness fees and reimbursement for expenses received by a GSA employee shall be disposed of in accordance with rules applicable to Federal employees in effect at the time.

(c) Reimbursement to the GSA for costs associated with producing material pursuant to a demand shall be determined in accordance with rules applicable to the proceedings out of which the demand arose.

Dated: October 13, 1998.

David J. Barram,

Administrator.

[FR Doc. 98–28180 Filed 10–22–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

48 CFR Parts 903, 915, 916, 919, 935, and 970

RIN 1991–AB40

Acquisition Regulation; Technical and Administrative Amendments

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to make technical and administrative changes to the regulation. These changes include: adding definitions to identify those Department personnel subject to certain Procurement Integrity restrictions; renumbering and updating certain parts of the regulation to conform with recent Federal Acquisition Regulation (FAR) changes; correcting typographical errors; and, removing obsolete coverage. These changes are technical and administrative in nature and have no significant impact on non-agency persons such as contractors or offerors.

EFFECTIVE DATE: This final rule will be effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, Office of Procurement and Assistance Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–8189.

SUPPLEMENTARY INFORMATION:

I. Explanation of Revisions
II. Procedural Requirements
A. Review Under Executive Order 12612
B. Review Under Executive Order 12866
C. Review Under Executive Order 12988
D. Review Under the National Environmental Policy Act
E. Review Under the Paperwork Reduction Act
F. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Office of Federal Procurement Policy Act

I. Explanation of Revisions

1. Definitions are added to subsection 903.104–3 to implement the Federal Acquisition Regulation (FAR) at section 3.104–1, which provides for the use of agency specific definitions to identify government individuals who occupy positions subject to the post-employment restrictions under the Procurement Integrity Act (41 U.S.C. 423). After the Procurement Integrity Act was revised in January 1997, the Department issued interim administrative guidance for identifying its personnel who were subject to the post-employment restrictions. Those definitions are now being incorporated into the acquisition regulation.

Definitions are added for Departmental personnel who are Program Managers and Deputy Program Managers for certain systems acquired through the acquisition process. The definition for Deputy Program Manager makes a distinction between individuals who normally act for the Program Manager and individuals who occasionally act for the Program Manager (e.g., a Deputy Program Manager is the person who makes program decisions for the Program Manager on a regular basis during the Program Manager's absence. A person who is acting for the Program Manager or the Deputy Program Manager on an intermittent basis, and does not make program decisions, is not a Program Manager or Deputy Program Manager.) Each program will have only one Program Manager and one Deputy Program Manager.

The Department is developing internal guidance to assist its personnel in determining whether they are covered by the definitions. That guidance will provide for specific identification for individuals who are affected, and for their notification. However, individuals who perform the functions described in this regulation are subject to the post-employment restrictions even if they do not receive

the specific notification. The notification supplements the constructive notice given by this regulation. In addition, the head of an organization may be deemed to be a Program Manager for programs under his or her purview in the event of failure to name an employee to fill a position which meets the definition of Program Manager.

2. Part 915 and associated sections in Subpart 970.15 are revised to conform with the recent FAR Part 15 rewrite which addressed contracting by negotiation. The FAR rewrite simplified the acquisition process, made changes in pricing and unsolicited proposal policy, facilitated the acquisition of best value products and services, and revised the sequence in which the information was presented to facilitate use of the regulation. The following crosswalk reflects the DEAR numbering changes made within Part 915 and Subpart 970.15 to conform with the FAR revisions:

Former DEAR cite	New DEAR cite
915.4	915.2.
915.401	915.200.
915.405–1	915.201.
915.413	deleted.
915.413–2	deleted.
915.5	915.6.
915.502	915.602.
915.503	915.603.
915.505	915.605.
915.506	915.606.
915.507	915.607.
915.509	deleted.
915.8	915.4.
915.804–1	deleted.
915.804–6	deleted.
915.805–5	915.404–2.
915.805–70	915.404–2–70.
915.806–2	deleted.
915.9	915.404–4.
915.903	915.404–4(c).
915.905	915.404–4(d).
915.970	915.404–4–70.
915.970–1	915.404–4–70–1.
915.970–2	915.404–4–70–2.
915.970–3	915.404–4–70–3.
915.970–4	915.404–4–70–4.
915.970–5	915.404–4–70–5.
915.970–6	915.404–4–70–6.
915.970–7	915.404–4–70–7.
915.970–8	915.404–4–70–8.
915.971	915.404–4–71.
915.971–1	915.404–4–71–1.
915.971–2	915.404–4–71–2.
915.971–3	915.404–4–71–3.
915.971–4	915.404–4–71–4.
915.971–5	915.404–4–71–5.
915.971–6	915.404–4–71–6.
915.972	915.404–4–72.
970.1507	970.15407–2.
970.1507–1	970.15407–2–1.
970.1507–2	970.15407–2–2.
970.1507–3	970.15407–2–3.
970.1508	970.15405.
970.1508–1	970.15406–2.
970.1509	970.15404–4.
970.1509–1	970.15404–4–1.
970.1509–2	970.15404–4–2.
970.1509–3	970.15404–4–3.
970.1509–4	970.15404–4–4.
970.1509–5	970.15404–4–5.
970.1509–6	970.15404–4–6.
970.1509–7	970.15404–4–7.
970.1509–8	970.15404–4–8.

3. The heading, Indefinite-Delivery Contracts, which was previously omitted, is added to Subpart 916.5.

4. Part 919 is amended to conform to a previous change made to the regulation that eliminated DEAR subpart 915.6, and to correct a typographical error in a Code of Federal Regulation citation.

5. Section 935.016, Research opportunity announcements, is removed. This policy, which supplemented FAR coverage for broad agency announcements, is no longer used by the Department. The broad agency announcement policies and procedures of the FAR are being used by DOE.

6. Other sections of Part 970 also are revised to conform to recent FAR numbering changes. In addition, section 970.5202, Deviations, is revised to conform to a previous change made to the regulation that eliminated DEAR Subpart 901.4.

7. Subsection 970.5204–22 has been updated to conform bonding requirements to those at FAR 28.102–1.

II. Procedural Requirements

A. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

B. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect , if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

D. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

F. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

H. Review Under the Office of Federal Procurement Policy Act

The Office of Federal Procurement Policy Act authorizes publication of a final rule without prior opportunity for public comment if there are no significant impacts on non-agency persons such as contractors or offerors (41 U.S.C. 418b). This rule will not have significant impacts on non-agency persons, and accordingly DOE decided not to issue it as a proposal for public comment.

List of Subjects in 48 CFR Parts 903, 915, 916, 919, 935 and 970

Government procurement.

Issued in Washington, D.C., on October 14, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 903, 916, 919, and 935 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST [AMENDED]

2. Subsection 903.104–3 is added as follows:

903.104–3 Definitions.

As used in this section and for the purposes of the post-employment restrictions at 48 CFR (FAR) 3.104–4(d)—

Deputy program manager means the individual within DOE who normally acts as the program manager in the absence of the program manager, and does not mean an individual who occasionally acts for the program manager or the deputy program manager.

Program manager means the individual within DOE who:

(1) Exercises authority on a day-to-day basis to manage an acquisition program—

(i) For a system attained through the acquisition process; and

(ii) With one or more contracts, at least one of which has a value exceeding $10,000,000; and

(2) Is generally the person at the lowest organizational level who has authority to make technical and budgetary decisions on behalf of DOE.

System means a combination of elements that function together to produce the capabilities required to fulfill a mission need, including, but not limited to hardware, equipment, software, or any combination thereof.

PART 915—CONTRACTING BY NEGOTIATION [REVISED]

3. Part 915 is revised to read as follows:

PART 915—CONTRACTING BY NEGOTIATION

Subpart 915.2—Solicitation and Receipt of Proposals and Information

915.200 Scope of subpart.
915.201 Exchanges with industry before receipt of proposals.
915.207–70 Handling of proposals during evaluation.

Subpart 915.3—Source Selection

915.305 Proposal evaluation.

Subpart 915.4—Contract Pricing

915.404–2 Information to support proposal analysis.
915.404–2–70 Audit as an aid in proposal analysis.
915.404–4 Profit.
915.404–4–70 DOE structured profit and fee system.
915.404–4–70–1 General.
915.404–70–2 Weighted guidelines system.
915.404–4–70–3 Documentation.
915.404–4–70–4 Exceptions.
915.404–4–70–5 Special considerations—contracts with nonprofit organizations (other than educational institutions).
915.404–4–70–6 Contracts with educational institutions.
915.404–4–70–7 Alternative techniques.
915.404–4–70–8 Weighted guidelines application considerations.
915.404–4–71 Profit and fee-system for construction and construction management contracts.
915.404–4–71–1 General.
915.404–4–71–2 Limitations.
915.404–4–71–3 Factors for determining fees.
915.404–4–71–4 Considerations affecting fee amounts.
915.404–4–71–5 Fee schedules.
915.404–4–71–6 Fee base.
915.404–4–72 Special considerations for cost-plus-award-fee contracts.

Subpart 915.6—Unsolicited Proposals

915.602 Policy.
915.603 General.
915.605 Content of unsolicited proposals.
915.606 Agency procedures.
915.607 Criteria for acceptance of an unsolicited proposal.

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 915.2—Solicitation and Receipt of Proposals and Information

915.200 Scope of subpart.

FAR 15.2 is not applicable to Program Opportunity Notices (See 48 CFR 917.72) or Program Research and Development Announcements (See 48 CFR 917.73).

915.201 Exchanges with industry before receipt of proposals. (DOE coverage-paragraph (e)).

(e) Approval for the use of solicitations for information or planning purposes shall be obtained from the Head of the Contracting Activity.

915.207–70 Handling of proposals during evaluation

(a) Proposals furnished to the Government are to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with, the procedures in this subsection.

(b) While the Government's limited use of proposals does not require that the proposal bear a restrictive notice, proposers should, if they desire to maximize protection of their trade secrets or confidential or privileged commercial and financial information contained in them, apply the restrictive notice prescribed in paragraph (e) of the provision at 48 CFR 52.215–1 to such information. In any event, information contained in proposals will be protected to the extent permitted by law, but the Government assumes no liability for the use or disclosure of information (data)

not made subject to such notice in accordance with paragraph (e) of the provision at 48 CFR 52.215–1.

(c) If proposals are received with more restrictive conditions than those in paragraph (e) of the provision at 48 CFR 52.215–1, the contracting officer or coordinating officer shall inquire whether the submitter is willing to accept the conditions of paragraph (e). If the submitter does not, the contracting officer or coordinating officer shall, after consultation with counsel, either return the proposal or accept it as marked. Contracting officers shall not exclude from consideration any proposals merely because they contain an authorized or agreed to notice, nor shall they be prejudiced by such notice.

(d) Release of proposal information (data) before decision as to the award of a contract, or the transfer of valuable and sensitive information between competing offerors during the competitive phase of the acquisition process, would seriously disrupt the Government's decision-making process and undermine the integrity of the competitive acquisition process, thus adversely affecting the Government's ability to solicit competitive proposals and award a contract which would best meet the Government's needs and serve the public interest. Therefore, to the extent permitted by law, none of the information (data) contained in proposals, except as authorized in this subsection, is to be disclosed outside the Government before the Government's decision as to the award of a contract. In the event an outside evaluation is to be obtained, it shall be only to the extent authorized by, and in accordance with the procedures of, this subsection.

(e)(1) In order to maintain the integrity of the procurement process and to assure that the propriety of proposals will be respected, contracting officers shall assure that the following notice is affixed to each solicited proposal prior to distribution for evaluation:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures in DEAR subsection 915.207–70.

(End of Notice)

(2) The notice at FAR 15.609(d) for unsolicited proposals shall be affixed to a cover sheet attached to each such proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

(f)(1) Normally, evaluations of proposals shall be performed only by employees of the Department of Energy. As used in this section, ''proposals'' includes the offers in response to requests for proposals, sealed bids, program opportunity announcements, program research and development announcements, or any other method of solicitation where the review of proposals or bids is to be performed by other than peer review. In certain cases, in order to gain necessary expertise, employees of other agencies may be used in instances in which they will be available and committed during the period of evaluation. Evaluators or advisors who are not Federal employees, including employees of DOE management and operating contractors, may be used where necessary. Where such non-Federal employees are used as evaluators, they may only participate as members of technical evaluation committees. They may not serve as members of the Source Evaluation Board or equivalent board or committee.

(2)(i) Pursuant to section 6002 of Pub. L. 103–355, a determination is required for every competitive procurement as to whether sufficient DOE personnel with the necessary training and capabilities are available to evaluate the proposals that will be received. This determination, discussed at FAR 37.204, shall be made in the memorandum appointing the technical evaluation committee by the Source Selection Official, in the case of Source Evaluation Board procurements, or by the Contracting Officer in all other procurements.

(ii) Where it is determined such qualified personnel are not available within DOE but are available from other Federal agencies, a determination to that effect shall be made by the same officials in the same memorandum. Should such qualified personnel not be available, a determination to use non-Federal evaluators or advisors must be made in accordance with paragraph (f)(3) of this subsection.

(3) The decision to employ non-Federal evaluators or advisors, including employees of DOE management and operating contractors, in Source Evaluation Board procurements must be made by the Source Selection Official with the concurrence of the Head of the Contracting Activity. In all other procurements, the decision shall be made by the senior program official or designee with the concurrence of the Head of the Contracting Activity. In a case where multiple solicitations are part of a single program and would call for the same resources for evaluation, a class determination to use non-Federal evaluators may be made by the DOE Procurement Executive.

(4) Where such non-Federal evaluators or advisors are to be used, the solicitation shall contain a provision informing prospective offerors that non-Federal personnel may be used in the evaluation of proposals.

(5) The nondisclosure agreement as it appears in paragraph (f)(6) of this subsection shall be signed before DOE furnishes a copy of the proposal to non-Federal evaluators or advisors, and care should be taken that the required handling notice described in paragraph (e) of this subsection is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator or advisor. In all instances, such persons will be required to comply with nondisclosure of information requirements and requirements involving Procurement Integrity, see FAR 3.104; with requirements to prevent the potential for personal conflicts of interest; or, where a non-Federal evaluator or advisor is acquired under a contract with an entity other than the individual, with requirements to prevent the potential for organizational conflicts of interest.

(6) Non-Federal evaluators or advisors shall be required to sign the following agreement prior to having access to any proposal:

Nondisclosure Agreement

Whenever DOE furnishes a proposal for evaluation, I, the recipient, agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement for confidential treatment does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the Contracting Officer, I agree that I shall not contact the originator of the proposal concerning any aspect of its elements.

Recipient: _____

Date: _____

(End of Agreement)

(g) The submitter of any proposal shall be provided notice adequate to afford an opportunity to take

appropriate action before release of any information (data) contained therein pursuant to a request under the Freedom of Information Act (5 U.S.C. 552); and, time permitting, the submitter should be consulted to obtain assistance in determining the eligibility of the information (data) in question as an exemption under the Act. (See also 48 CFR 24.2, Freedom of Information Act.)

Subpart 915.3—Source Selection

915.305 Proposal evaluation. (DOE coverage—paragraph (d))

(d) Personnel from DOE, other Government agencies, consultants, and contractors, including those who manage or operate Government-owned facilities, may be used in the evaluation process as evaluators or advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are to be used as evaluators or advisors, approval and nondisclosure procedures as required by 48 CFR (DEAR) 915.207–70 shall be followed and a notice of the use of non-Federal evaluators shall be included in the solicitation. In all instances, such personnel will be required to comply with DOE conflict of interest and nondisclosure requirements.

Subpart 915.4—Contract Pricing

915.404–2 Information to support proposal analysis. (DOE coverage—paragraphs (a), (c) and (e))

(a)(1) Field pricing assistance as discussed in FAR 15.404–2(a) is not required for the negotiation of DOE contract prices or modifications thereof. The term ''field pricing assistance'' refers to the Department of Defense (DOD) system for obtaining a price and/or cost analysis report from a cognizant DOD field level contract management office wherein requests for the review of a proposal submitted by an offeror are initiated and the recommendations made by the various specialists of the management office are consolidated into a single report that is forwarded to the office making the contract award for use in conducting negotiations. In the DOE, such review activities, except for reviews performed by professional auditors, are expected to be accomplished by pricing support personnel located in DOE Contracting Activities. The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds $500,000, unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price. Such pricing support may be requested for proposals below $500,000, if considered necessary for the establishment of a reasonable pricing arrangement. Contracting officers, however, are not precluded by this section from requesting pricing assistance from a cognizant DOD contract management office, provided an appropriate cross-servicing arrangement for pricing support services exists between the DOE and the servicing agency.

(c)(1) When an audit is required pursuant to 48 CFR 915.404–2–70, ''Audit as an aid in proposal analysis,'' the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate interagency agreement has not been established, the need for audit assistance shall be coordinated with the Office of Policy, within the Headquarters procurement organization.

(2) The request for audit shall establish the due date for receipt of the auditor's report and in so doing shall allow as much time as possible for the auditor's review.

(e)(6) Copies of technical analysis reports prepared by DOE technical or other pricing support personnel shall not normally be provided to the auditor. The contracting officer or the supporting price, cost, or financial analyst at the contracting activity shall determine the monetary impact of the technical findings.

915.404–2–70 Audit as an aid in proposal analysis.

(a) When a contract price will be based on cost or pricing data submitted by the offerors, the DOE contracting officer or authorized representative shall request a review by the cognizant Federal audit activity prior to the negotiation of any contract or modification including modifications under advertised contracts in excess of:

(1) $500,000 for a firm fixed-price contract or a fixed-price contract with economic price adjustment provisions; or adjustment provisions; or

(2) $1,000,000 for all other contract types, including initial prices, estimated costs of cost-reimbursement contracts, interim and final price redeterminations, and target and settlement of incentive contracts.

(b) The requirement for auditor reviews of proposals which exceed the thresholds specified in paragraph (a) of this section may be waived at a level above the contracting officer when the reasonableness of the negotiated contract price can be determined from information already available. The contract file shall be documented to reflect the reason for any such waiver, provided, however, that independent Government estimates of cost or price shall not be used as the sole justification for any such waiver.

§ 915.404–4 Profit. (DOE coverage—paragraphs (c) and (d))

(c)(4)(i) *Contracting officer responsibilities.* The statutory limitations on profit and fees as set forth in FAR 15.404–4(c)(4)(i) shall be followed, except as exempted for DOE architect-engineer contracts covering Atomic Energy Commission (AEC) and Bonneville Power Administration (BPA) functions. Pursuant to section 602(d)(13) and (20) of the Federal Property and Administration Services Act of 1949, as amended, those former AEC functions, as well as those of the BPA, now being performed by DOE are exempt from the 6 percent of cost restriction on contracts for architect-engineer services. The estimated costs on which the maximum fee is computed shall include facilities capital cost of money when this cost is included in cost estimates.

(c)(6) In cases where a change or modification calls for substantially different work than the basic contract, the contractor's effort may be radically changed and a detailed analysis of the profit factors would be a necessity. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis should be made.

(d) *Profit-analysis factors.* A profit/fee analysis technique designed for a systematic application of the profit factors in FAR 15.404–4(d) provides contracting officers with an approach that will ensure consistent consideration of the relative value of the various factors in the establishment of a profit objective and the conduct of negotiations for a contract award. It also provides a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these prescribed factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like.

915.404–4–70 DOE structured profit and fee system.

This section implements FAR 15.404–4(b) and (d).

915.404–4–70–1 General.

(a) *Objective.* It is the intent of DOE to remunerate contractors for financial and other risks which they may assume, resources they use, and organization, performance and management capabilities they employ. Profit or fee shall be negotiated for this purpose; however, when profit or fee is determined as a separate element of the contract price, the aim of negotiation should be to fit it to the acquisition, giving due weight to effort, risk, facilities investment, and special factors as set forth in this subpart.

(b) *Commercial (profit) organization.* Profit or fee prenegotiation objectives for contracts with commercial (profit) organizations shall be determined as provided in this subpart.

(c) *Nonprofit organizations.* It is DOE's general policy to pay fees in contracts with nonprofit organizations other than educational institutions and governmental bodies; however, it is a matter of negotiation whether a fee will be paid in a given case. In making this decision, the DOE negotiating official should consider whether the contractor is ordinarily paid fees for the type of work involved. The profit objective should be reasonable in relation to the task to be performed and the requirements placed on the contractor.

(d) *Educational institutions.* It is DOE policy not to pay fees under contracts with educational institutions.

(e) *State, local and Indian tribal governments.* Profit or fee shall not be paid under contracts with State, local, and Indian tribal Governments.

915.404–70–2 Weighted guidelines system.

(a) To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.404–4(d) and paragraph (d) of this section. This is a structured system, referred to as weighted guidelines. Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort. The range of weights to be applied to each profit factor is also set forth in paragraph (d) of this section. Guidance on how to apply the weighted guidelines is set forth in 48 CFR 915.404–4–70–8.

(b) Except as set forth in 48 CFR 915.404–4–70–4, the weighted guidelines shall be used in establishing the profit objective for negotiation of contracts where cost analysis is performed.

(c) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements. Accordingly, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation process in order to develop a mutual understanding of the logic of the respective positions, specific agreement on the exact weights of values of the individual profit factors is not required and need not be attempted.

(d) The factors set forth in the following table are to be used in determining DOE profit objectives. The factors and weight ranges for each factor shall be used in all instances where the weighted guidelines are applied.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
A. Material acquisitions:	
1. Purchased parts	1 to 3.
2. Subcontracted items	1 to 4.
3. Other materials	1 to 3.
B. Labor skills:	
1. Technical and managerial:.	
a. Scientific	10 to 20.
b. Project management/administration	8 to 20.
c. Engineering	8 to 14.
2. Manufacturing	4 to 8.
3. Support services	4 to 14.
C. Overhead:	
1. Technical and managerial	5 to 8.
2. Manufacturing	3 to 6.
3. Support services	3 to 7.
D. Other direct costs	3 to 8.
E. G&A (General Management) expenses	5 to 7.
II. Contract Risk (type of contract-weights applied to total cost of items IA thru E)	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities)	5 to 20.
IV. Independent Research and Development:	
A. Investment in IR&D program (Weights applied to allocable IR&D costs)	5 to 7.
B. Developed items employed (Weights applied to total of profit $ for items IA thru E)	0 to 20.
V. Special Program Participation (Weights applied to total of Profit $ for items IA thru E)	−5 to +5.
VI. Other Considerations (Weights applied to total of Profits $ for items 1A thru E)	−5 to +5.
VII. Productivity/Performance (special computation)	(N/A).

915.404–4–70–3 Documentation.

Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. Since the profit objective is the contracting officer's pre-negotiation evaluation of a total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated amounts will probably vary from the objective and from the pre-negotiation detailed application of the weighted guidelines technique to each element of the contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its

component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes to the contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the price negotiation memorandum prepared in accordance with FAR 15.406–3.

915.404–4–70–4 Exceptions.

(a) For contracts not expected to exceed $500,000, the weighted guidelines need not be used; however, the contracting officer may use the weighted guidelines for contracts below this amount if he or she elects to do so.

(b) For the following classes of contracts, the weighted guidelines shall not be used:

(1) Commercialization and demonstration type contracts;

(2) Management and operating contracts;

(3) Construction contracts;

(4) Construction management contracts;

(5) Contracts primarily requiring delivery of material supplied by subcontractors;

(6) Termination settlements; and

(7) Contracts with educational institutions.

(c) In addition to paragraphs (a) and (b) of this section, the contracting officer need not use the weighted guidelines in unusual pricing situations where the weighted guidelines method has been determined by the DOE negotiating official to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the Head of the Contracting Activity. The contract file shall include this documentation and any other information that may support the exception.

(d) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth in this section, other methods for establishing the profit objective may be used. For contracts other than those subject to 48 CFR 917.6, the selected method shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

915.404–4–70–5 Special considerations-contracts with nonprofit organizations (other than educational institutions).

(a) For purposes of identification, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(b) In computing the amount of profit or fee to be paid, the DOE negotiating official shall take into account the tax benefits received by a nonprofit organization. While it is difficult to establish the degree to which a remuneration under any given contract contributes to an organization's overall net profit, the DOE negotiating official should assume that there is an element of profit in any amount to be paid.

(c) In order to assure consideration of the tax posture of nonprofit organizations during a profit or fee negotiation, the DOE negotiating official shall calculate the fee as for a contract with a commercial concern and then reduce it at least 25 percent. However, depending on the circumstances, the contracting officer may pay profit or fees somewhere between this amount and the appropriate profit or fee as if it were a commercial concern. When this is the case, the contract file shall be documented to specifically state the reason or reasons.

(d) Where a contract with a nonprofit organization is for the operation of Government-owned facilities, the fee should be calculated using the procedures and schedules applicable to operating contracts as set forth in 48 CFR part 970.

915.404–4–70–6 Contracts with educational institutions.

In certain situations the DOE may contract with a university to manage or operate Government-owned laboratories. These efforts are generally apart from, and not in conjunction with, their other activities, and the complexity and magnitude of the work are not normally found in standard university research or study contracts. Such operating contracts are subject to the applicable provisions set forth in 48 CFR part 970.

915.404–4–70–7 Alternative techniques.

(a) Profit or fees to be paid on construction contracts and construction management contracts shall be determined in accordance with the applicable profit/fee technique for such contracts set forth in 48 CFR 915.404–4–71.

(b) Profit and fee to be paid on contracts under $500,000, not using the weighted guidelines, shall be judgmentally developed by the contracting officer by assigning individual dollar amounts to the factors appropriate to DOE profit considerations discussed in 48 CFR 915.404–4–70–2(d).

(c) Contracts which require only delivery or furnishing of goods or services supplied by subcontractors shall include a fee or profit which, in the best judgment of the contracting officer, is appropriate. It would be expected that there would be a declining relationship of profit/fee dollars in relation to total costs. The higher the cost of subcontracts, for example, the lower the profit/fee ratio to these costs.

(d) Profit/Fee considerations in termination settlements are often a question of equity. They are a matter of negotiation. They should not, however, exceed what would have otherwise been payable under weighted guidelines had the termination not occurred.

915.404–4–70–8 Weighted guidelines application considerations.

The Department has developed internal procedures to aid the contracting officer in the application of weighted guidelines and to assure a reasonable degree of uniformity across the Department.

915.404–4–71 Profit and fee-system for construction and construction management contracts.

915.404–4–71–1 General.

(a) Business concerns awarded a DOE construction or construction management contract shall be paid a profit or fee if requested or solicited. The profit or fee objective for a construction or construction management contract shall be an amount appropriate for the type of effort contained therein. It is the intent of DOE to

(1) Reward contractors based on the complexity of work,

(2) Reward contractors who demonstrate and establish excellent records of performance and

(3) Reward contractors who contribute their own resources, including facilities and investment of capital.

(b) Standard fees or across-the-board agreements will not be used or made. Profit or fee objectives are to be determined for each contract according to the effort or task contracted for thereunder.

(c) Profit or fee payable on fixed-price and cost-reimbursable construction or construction management contracts shall be established in accordance with the appropriate procedures and schedules set forth in this subpart.

915.404–4–71–2 Limitations.

Amounts payable under construction and construction management contracts shall not exceed amounts derived from the schedules established for this purpose. Requests to pay fees in excess of these levels shall be forwarded to the Procurement Executive for review and approval.

915.404–4–71–3 Factors for determining fees.

(a) The profit policy stated in 48 CFR 915.404–4–71–1(a) reflects, in a broad sense, recognition that profit is compensation to contractors for the entrepreneurial function of organizing and managing resources (including capital resources), and the assumption of risk that all costs of performance (operating and capital) may not be reimbursable.

(b) The best approach calls for a structure that allows judgmental evaluation and determination of fee dollars for prescribed factors which impact the need for, and the rewards associated with, fee or profit, as follows.

(1) Management risk relating to performance, including the

(i) Quality and diversity of principal work tasks required to do the job,

(ii) Labor intensity of the job,

(iii) Special control problems, and

(iv) Advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(5) Duration of project;

(6) Size of operation;

(7) Benefits which may accrue to the contractor from gaining experience and know-how, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(8) Other special considerations, including support of Government programs such as those relating to small, small disadvantaged, and women-owned small business in subcontracting, energy conservation, etc.

(c) The total fee objective and amount for a particular negotiation is established by judgmental considerations of the factors in paragraph (b) of this section, assigning fee values as deemed appropriate for each factor and totaling the resulting amounts.

(d) In recognition of the complexities of this process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, fee schedules have been developed which set forth maximum fee amounts that contracting activities are allowed to negotiate for a particular transaction without obtaining prior approval of the Procurement Executive. In addition, the fee negotiation objective established in accordance with 48 CFR 915.404–4–71–3(a), (b), and (c) shall not exceed the applicable fee schedule amounts without prior approval of the Procurement Executive. To facilitate application to a contract, the fee amounts are related to the total cost base which is defined as total operating and capital costs.

915.404–4–71–4 Considerations affecting fee amounts.

(a) In selecting final fee amounts for the various factors in 48 CFR 915.404–4–71–3 of this section, the DOE negotiating official will have to make several judgments as discussed in this subsection.

(b) Complexity of a construction project shall be considered by analysis of its major parts. For a project which includes items of work of different degrees of complexity, a single average classification should be considered, or the work should be divided into separate classifications. The following class identifications are appropriate for proper fee determinations.

(1) *Class A*—Manufacturing plants involving operations requiring a high degree of design layout or process control; nuclear reactors; atomic particle accelerators; complex laboratories or industrial units especially designed for handling radioactive materials.

(2) *Class B*—Normal manufacturing processes and assembly operations such as ore dressing, metal working plant and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals; and ordinary laboratories.

(3) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains, and water and power distribution systems.

(4) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(c) Normal management elements of principal tasks relating to a construction contract cover several categories of tasks with differing rates of application throughout the construction period. The principal elements of management effort are outlined in this paragraph. Although each project has a total management value equal to 100% for all elements, the distribution of effort among the various elements will be different for each project due to differences in project character or size. The basic management elements and the normal range of efforts expected to apply for a normal sized project are as follows. When the normally expected effort will not be performed by a contractor, this fact should be considered in arriving at appropriate fee amounts.

Management elements	Effort range	
	Minimum	Maximum
I. *Broad project planning.* Overall project planning and scheduling, establishment of key project organization and consultation with the A–E and DOE. Performed by highest level of contractor's officers, technical personnel and project manager	15	25
II. *Field planning.* Mobilization and demobilization of top field organization from the contractor's existing organization and from other sources as necessary. Detailed project planning and scheduling for construction of facilities. Performed by the project manager and top field professional staff	18	28

Management elements	Effort range	
	Minimum	Maximum
III. *Labor supervision.* Direct supervision of manual employees. Performed by contractor's subprofessional staff, such as superintendents and foremen (some salaried and some hourly rate). This includes the contractor's personnel to coordinate and expedite the work of Subcontractors	12	16
IV. *Acquisition and subcontracting.* Acquisition of other than special equipment. Selection of subcontractors and execution and administration of subcontracts. Performed by contractor's staff under supervision and direction of elements I and II	12	16
V. *Labor relations and recruit-ment (manual).* Performed by the contractor's staff under supervision and direction of elements I, II and III. This includes demobilization of work forces	7	11
VI. *Recruitment of supervisory staff.* Staffing required to supplement the organization under elements I and II, and demobilization during completion of the project. Performed by contractor's permanent staff and recruitment personnel under supervision and direction of management elements I and II	4	6
VII. *Expediting.* Expediting contracting performed by contractor's staff and by subcontractors. Performed by contractor's staff under supervision and direction of elements I and II	4	6
VIII. *Construction equipment operations.* This includes mobilization and demobilization. Performed by contractor's staff under supervision, direction and coordination of elements I, II, and IV	4	6
IX. *Other services.* Timekeeping, cost accounting, estimating, reporting, security, etc., by the contractor's staff under supervision and direction of elements I and II	4	6

(d) Fee considerations dealing with the duration of a project are usually provided by the consideration given to the degree of complexity and magnitude of the work. In only very unusual circumstances should it be necessary to separately weight, positively or negatively, for the period of services or length of time involved in the project when determining fee levels.

(e) The size of the operation is to a considerable degree a continuation of the complexity factor, and the degree and amount of work required to be performed by and with the contractor's own resources. Generally, no separate weighting, positively or negatively, is required for consideration of those factors.

(f) The degree and amount of work required to be performed by and with the contractor's own resources affect the level of fees. Reasonable fees should be based on expectations of complete construction services normally associated with a construction or construction management contract. In the case of a construction contract, reduced services can be in the form of excessive subcontracting or supporting acquisition actions and labor relations interfaces being made by the government. If an unusual amount of such work is performed by other than the contractor, it will be necessary to make downward adjustments in the fee levels to provide for the reduction in services required.

(g) The type of contract to be negotiated and the anticipated contractor cost risk shall be considered in establishing the appropriate fee objective for the contract.

(h) When a contract calls for the contractor to use its own resources, including facilities and equipment, and to make its own cost investment (i.e., when there is no letter-of-credit financing), a positive impact on the fee amount shall be reflected.

915.404–4–71–5 Fee schedules.

(a) The schedules included in this paragraph, adjusted in accordance with provisions of this section and 48 CFR 915.404–4–71–6, provide maximum fee levels for construction and construction management contracts. The fees are related to the estimated cost (fee base) for the construction work and services to be performed. The schedule in paragraph (d) of this section sets forth the basic fee schedule for construction contracts. The schedule in paragraph (f) of this section sets forth the basic fee schedule for construction management contracts. A separate schedule in paragraph (h) of this section has been developed for determining the fee applicable to special equipment purchases and to reflect a differing level of fee consideration associated with the subcontractor effort under construction management contracts. (See 48 CFR 915.404–4–71–6(c) and 915.404–4–71–6(d)).

(b) The schedules cited in paragraph (a) of this section provide the maximum fee amount for a CPFF contract arrangement. If a fixed-price type contract is to be awarded, the fee amount set forth in the fee schedules shall be increased by an amount not to exceed 4 percent of the fee base.

(c) The fee schedule shown in paragraphs (d) and (f) of this section assumes a letter of credit financing arrangement. If a contract provides for or requires the contractor to make their own cost investment for contract performance (i.e., when there is no letter-of-credit financing), the fee amounts set forth in the fee schedules shall be increased by an amount equal to 5 percent of the fee amount as determined from the schedules.

(d) The following schedule sets forth the base for construction contracts:

CONSTRUCTION CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (Percent)	Incr. (Percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.38
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58

CONSTRUCTION CONTRACTS SCHEDULE—Continued

Fee base (dollars)	Fee (dollars)	Fee (Percent)	Incr. (Percent)
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	1.15
150,000,000	2,333,000	1.56	0.99
200,000,000	2,829,000	1.41	0.73
300,000,000	3,563,000	1.19	0.63
400,000,000	4,188,000	1.05	0.52
500,000,000	4,706,000	0.94	.....
Over $500 million	4,706,000	.....	[1] 10.52

[1] 10.52% excess over $500 million.

(e) When using the Construction Contracts Schedule for establishing maximum payable basic fees, the following adjustments shall be made to the Schedule fee amounts for complexity levels, excessive subcontracting, normal contractor services performed by the government or another contractor:

(1) The target fee amounts, set forth in the fee schedule, shall not be adjusted for a Class A project, which is maximum complexity. A Class B project requires a 10 percent reduction in amounts. Class C and D projects require a 20 percent and 30 percent reduction, respectively. The various classes are defined in 48 CFR 915.404–4–71–4(b).

(2) The target fee schedule provides for 45 percent of the contract work to be subcontracted for such things as electrical and other specialties. Excessive subcontracting results when such efforts exceed 45 percent of the total contract work. To establish appropriate fee reductions for excessive subcontracting, the negotiating official should first determine the amount of subcontracting as a percentage of the total contract work. Next, the negotiating official should determine a percentage by which the prime contractor's normal requirement (based on a requirement for doing work with its own forces) is reduced due to the excessive subcontracting and, finally, multiply the two percentages to determine a fee reduction factor.

(3) If acquisition or other services normally expected of the contractor (see 48 CFR 915.404–4–71–4(c)) are performed by the government, or another DOE prime or operating contractor, a fee reduction may also be required. The negotiating official should first determine what percentage of the total procurement or other required services is performed by others. Then the negotiating official should apply this percentage reduction to the normally assigned weightings for the management services or effort as discussed in 48 CFR 915.404–4–71–4(c) to arrive at the appropriate reduction factor.

(f) The following schedule sets forth the base for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.38
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	.....
Over $100 million	1,759,000	.....	[1] 1.29

[1] 1.29% excess over $100 million.

(g) When applying the basic Construction Management Contracts Schedule for determining maximum payable fees, no adjustments are necessary to such payable fees for contractor Force account labor used for work which should otherwise be subcontracted until such Force account work exceeds, in the aggregate, 20 percent of the base. Excessive use of Force account work results when such effort exceeds 20 percent of the fee base; and, when this occurs, appropriate fee reductions for such excessive Force account labor shall be computed as follows:

(1) Determine the percentage amount of Force account work to total contractor effort.

(2) Determine the percentage amount of subcontract work reduced due to the use of Force account work.

(3) Multiply the two percentages to determine the fee reduction factor. It is not expected that reductions in the Construction Management Contracts Schedule fee amounts will be made for complexity, reduced requirements and similar adjustments as made for construction contracts.

(h) The schedule of fees for consideration of special equipment purchases and for consideration of the

subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/SUBCONTRACT WORK SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
100,000	1,500	1.50	1.50
200,000	3,000	1.50	1.50
400,000	6,000	1.50	1.50
600,000	9,000	1.50	1.50
800,000	12,000	1.50	1.50
1,000,000	15,000	1.50	1.00
2,000,000	25,000	1.25	0.85
4,000,000	42,000	1.05	0.70
6,000,000	56,000	0.93	0.65
8,000,000	69,000	0.86	0.60
10,000,000	81,000	0.81	0.56
15,000,000	109,000	0.73	0.48
25,000,000	157,000	0.63	0.43
40,000,000	222,000	0.56	0.40
60,000,000	301,000	0.50	0.36
80,000,000	372,000	0.47	0.34
100,000,000	439,000	0.44	0.25
150,000,000	566,000	0.38	0.21
200,000,000	670,000	0.34	0.12
300,000,000	793,000	0.26	.....
Over $300 million	793,000	.....	[1] 0.12

[1] 0.12% excess over $300 million.

915.404–4–71–6 Fee base.

(a) The fee base shown in the Construction Contracts Schedule and Construction Management Contracts Schedule represents that estimate of cost to which a percentage factor is applied to determine maximum fee allowances. The fee base is the estimated necessary allowable cost of the construction work or other services which are to be performed. It shall include the estimated cost for, but is not limited to, the following as they may apply in the case of a construction or construction management contract:

(1) Site preparation and utilities.

(2) Construction (labor-materials-supplies) of buildings and auxiliary facilities.

(3) Construction (labor-materials-supplies) to complete/construct temporary buildings.

(4) Design services to support the foregoing.

(5) General management and job planning cost.

(6) Labor supervision.

(7) Procurement and acquisition administration.

(8) Construction performed by subcontractors.

(9) Installation of government furnished or contractor acquired special equipment and other equipment.

(10) Equipment (other than special equipment) which is to become Government property (including a component of Government property).

(b) The fee base for the basic fee determination for a construction contract and construction management contract shall include all necessary and allowable costs cited in paragraph (a) of this section as appropriate to the type of contract; except, any home office G&A expense paid as a contract cost per cost principle guidance and procedures shall be excluded from the fee base. The fee base shall exclude:

(1) Cost of land.

(2) Cost of engineering (A&E work).

(3) Contingency estimate.

(4) Equipment rentals or use charges. (See 48 CFR 936.70.)

(5) Cost of government furnished equipment or materials.

(6) Special equipment as defined in 48 CFR 936.7201.

(c) A separate fee base shall be established for special equipment for use in applying the Special Equipment Purchases or Subcontract Work Schedule (see 48 CFR 915.404–4–71–5(h)). The fee base for determination of applicable fees on special equipment shall be based on the estimated purchase price of the equipment.

(d) The fee base under the Construction Management Contracts Schedule for a maximum basic fee determination for a construction management contract shall be comprised of only the costs of the construction manager's own efforts. However, it is recognized that in the case of construction management contracts, the actual construction work will be performed by subcontractors. In most cases the subcontract awards for the construction work will be made by the construction management contractor. Occasionally the contract may involve management of construction performed under a contract awarded by the Department or by one of the Department's operating contractors. In these cases, the actual cost of the subcontracted construction work shall be excluded from the fee base used to determine the maximum basic fee (under the Construction Management Contracts Schedule) applicable to a construction management contract. A separate fee base for additional allowances (using the Special Equipment Purchases or Subcontract Work Schedule) shall be established, which shall be comprised of those subcontract construction costs, special equipment purchases, and other items' costs that are contracted for or purchased by the construction manager.

915.404–4–72 Special considerations for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on a cost-plus-award-fee basis in accordance with 48 CFR 916.404–2, several special considerations are appropriate. Fee objectives for management and operating contracts, including those using the Construction or Construction Management fee schedules from section 48 CFR 915.404–4–71–5, shall be developed pursuant to the procedures set forth in section 48

CFR 970.15404–4–8. Fee objectives for other cost-plus-award-fee contracts shall be developed as follows:

(1) The base fee portion of the fee objective of an award fee contract may range from 0% up to the 50% level of the fee amount for a Cost-Plus-Fixed-Fee (CPFF) contract, arrived at by using the weighted guidelines or other techniques (such as those provided in 48 CFR 915.404–4–71 for construction and construction management contracts). However, the base amount should not normally exceed 50% of the otherwise applicable fixed fee. In the event this 50% limit is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(2) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(3) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee percent	Award fee percent	Maximum total percentage
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(b) Prior approval of the Procurement Executive, is required for total fee (base plus award fee pool) exceeding the guidelines in 48 CFR 915.404–4–72(a)(3).

Subpart 915.6—Unsolicited Proposals

915.602 Policy.

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique and innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:

(1) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(2) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(3) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(4) Processes unsolicited proposals in an expeditious manner and, where practicable, keeps proposers advised as discrete decisions are made;

(5) Assures that each proposal is evaluated in a fair and objective manner; and, (6) Assures that each proposal will be used only for its intended purpose and the information, subject to applicable laws and regulations, contained therein will not be divulged without prior permission of the proposer.

(b) Extensions of contract work resulting from unsolicited proposals shall be processed in accordance with the procedures at 48 CFR 943.170.

915.603 General. (DOE coverage–paragraph (e)).

(e) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition in this paragraph.

915.605 Content of unsolicited proposals. (DOE coverage–paragraph (b)).

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of 48 CFR 917.70.

915.606 Agency procedures. (DOE coverage–paragraph (b)).

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Unsolicited Proposal Coordinator, Office of Procurement and Assistance, Washington, DC 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

915.607 Criteria for acceptance of an unsolicited proposal. (DOE coverage—paragraph (c)).

(c) DOE's cost participation policy, at 48 CFR 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

PART 916—TYPES OF CONTRACTS [AMENDED]

4. The Subpart heading, 916.5 Indefinite-Delivery Contracts, is added immediately preceding section 916.504.

PART 919—SMALL BUSINESS PROGRAMS [AMENDED]

5. Subsection 919.602–1 is amended in paragraph (a)(2) by revising ''Regional'' to read ''Area''.

6. Subsection 919.805–2 is revised to read as follows:

919.805–2 Procedures.

Acquisitions involving section 8(a) competition must comply with source selection procedures set forth in the FAR in accordance with 13 CFR 124.311(e)(1).

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING [AMENDED]

935.016 [Removed]

7. Section 935.016, including subsections 935.016–1, 935.016–2 and 935.016–8, is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS [AMENDED]

8. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

9. Subpart 970.15 is revised to read as follows:

Subpart 970.15—Contracting by Negotiation

970.15404–4 Fees for management and operating contracts.
970.15404–4–1 Fee policy.
970.15404–4–2 Special considerations—educational institutions.
970.15404–4–3 Special consideration—nonprofit organizations (other than educational institutions).
970.15404–4–4 Considerations and techniques for determining fees.
970.15404–4–5 Limitations.
970.15404–4–6 Fee base.
970.15404–4–7 Special equipment purchases.
970.15404–4–8 Special considerations—award fee.
970.15405 Price negotiation.
970.15406–2 Cost or pricing data.
970.15407–2 Make-or-buy plans.
970.15407–2–1 Policy.
970.15407–2–2 Requirements.
970.15407–2–3 Contract clause.

Subpart 970.15—Contracting by Negotiation

970.15404–4 Fees for management and operating contracts.

970.15404–4–1 Fee policy.

(a) DOE management and operating contractors, except educational institutions, may be paid a fee. The fee for a management and operating contract shall be an amount commensurate with the difficulty of the work and the level of required skills, demonstrated excellence in performance, and where applicable, an amount which recognizes contractor contributions or utilizations of their own facilities or other investment capital.

(b) Fee objectives and amounts are to be determined for each contract. Standard fees or across the board agreements will not be used or made. Due to the nature of funding management and operating contracts, it is anticipated that fees shall be established in accordance with the funding cycle; however, a longer period may be used, particularly for production efforts.

(c) Fee amounts payable on contracts for administration, management, operation, and on-site support of Government-owned facilities shall be established in accordance with this part. Amounts payable shall not exceed maximum amounts derived from the appropriate fee schedule established for this purpose. Request to pay fees in excess of the maximum will be sent to the Procurement Executive, for review and approval.

(d) Maximum fees for those management and operating contracts that provide support services shall be determined using the schedule(s) most closely related to the service(s) to be performed. This may be either the production and/or R&D schedules (in some cases this could be both schedules) or the maximum fee schedules for construction or construction management cited in 48 CFR 915.404–4–71. If architect-engineer services are involved, the weighted guidelines, profit-fee technique cited in 48 CFR 915.404–4–70 shall be applied.

(e) When a contract subject to this part requires a contractor to use its own facilities or equipment, or other resources to make its own cost investment for contract performance; e.g., when there is no letter-of-credit financing, consideration will be given to approval of fee amounts based on assigning weights to appropriate fee factors. The weighted guidelines factors developed in 48 CFR 915.404–4–70 may be applied for this purpose. However maximum fees as are discussed in 48 CFR 970.15404–4–1(c) and (d) shall not be exceeded without the Procurement Executive's approval.

970.15404–4–2 Special considerations—educational institutions.

(a) It is DOE policy to compensate educational institutions consistent with the level of financial and management risk they assume in connection with their work for the Department.

(b) Notwithstanding paragraph (a) of this section it may be, under special circumstances, permissible to reimburse or pay a management allowance to any educational institution provided such allowance can be justified and has the approval of the Head of the Contracting Activity.

970.15404–4–3 Special consideration—nonprofit organizations (other than educational institutions).

(a) Unless there is reason to do otherwise, it is the general policy of DOE to pay fees for a management and operating contract with a nonprofit organization; however, it is a matter of negotiation whether a fee will be paid in a given case.

(b) In computing the amounts to be paid, the tax status of the nonprofit organization should be considered. It is difficult to establish the degree to which the fee contributes to an organization's overall net profit since the fee compensates for certain unallowable costs and certain general and administrative expenses. It should be assumed, however, there is an element of profit in the fees paid under management and operating contracts.

(c) In order to assure consideration of the tax benefits of nonprofit organizations the maximum payable fixed fee cited in the fee schedules of this subpart should be reduced by at least 25%. However, depending upon the circumstances and with appropriate justification, fees may be paid between this reduced amount and the fee amount established by the fee schedule.

970.15404–4–4 Considerations and techniques for determining fees.

(a) The intent of the fee policy stated in 48 CFR 970.15404–4–1 reflects recognition that a fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of contractor resources (including capital resources), and the assumption of risk that all incurred costs (operating and capital) may not be reimbursable.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for typical DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows judgmental evaluation and consideration of such significant factors, as outlined in this paragraph, and the selection of and assignment of appropriate fee values therefor:

(1) Management risk relating to performance, including:

(i) The quality and diversity of principal work tasks required to do the job,

(ii) The labor intensity of the job,

(iii) The special control problems, and

(iv) The advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(5) Duration of project;

(6) Size and operation (number of locations, plants, differing operations, etc.);

(7) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit

with the same staff and equipment in some other field of activity).

(8) The relationship of a proposed fee to fees being paid for similar work;

(9) The extent to which the activity contemplated is fundamentally a service being furnished to the Government or is an activity in which the contractor has substantial independent interest, a factor especially pertinent to research work which is closely allied to a contractor's own program and to operations which involve furnishing research facilities which would otherwise not be available because of their large cost;

(10) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(11) Other special considerations, including support of Government programs such as those relating to small and minority business in subcontracting, energy conservation, etc.

(c) The fee objective and amount for a particular negotiation is established by judgmental considerations of the factors in paragraph (6) of this subsection, assigning fee values as deemed appropriate for each factor, and totaling the resulting amounts.

(d) In recognition of the complexities of this fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the fee schedules in 48 CFR 970.1515404–4–5 set forth the maximum amounts of fee that contracting activities are allowed to award for a particular transaction without obtaining prior approval of the Procurement Executive. In addition the fee amount established in accordance with 48 CFR 970.15404–4–4 (a), (b) and (c) shall not be exceeded without prior approval of the Procurement Executive. To facilitate application of the schedules to a contract, the payable fee amounts thereunder are related to the total expected level of cost expenditures under the contract which is defined as the fee base.

970.15404–4–5 Limitations.

(a) Fee schedules representing the maximum allowable fee to be paid under operating and management contracts have been established for the following management and operating contract tasks or efforts.

(1) Production/Manufacturing and

(2) Research and Development

(b) The applicable schedules and maximum fees are:

PRODUCTION EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
Up to $1 Million	.....	.....	7.00
1,000,000	70,000	7.00	6.20
3,000,000	194,000	6.47	5.55
5,000,000	305,000	6.10	4.48
10,000,000	529,000	5.29	3.88
15,000,000	723,000	4.82	3.39
25,000,000	1,062,000	4.25	3.06
40,000,000	1,521,000	3.80	2.67
60,000,000	2,054,000	3.42	2.35
80,000,000	2,524,000	3.16	2.14
100,000,000	2,952,000	2.95	1.32
150,000,000	3,613,000	2.41	1.02
200,000,000	4,123,000	2.06	0.56
300,000,000	4,678,000	1.56	0.48
400,000,000	5,162,000	1.29	0.41
500,000,000	5,574,000	1.11	.....
Over $500 million	5,574,000	.....	[1] 0.41

[1] 0.41% excess over $500 million.

RESEARCH AND DEVELOPMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
25,000	2,500	10.00	10.00
50,000	5,000	10.00	10.00
100,000	10,000	10.00	8.00
200,000	18,000	9.00	8.00
400,000	34,000	8.50	7.50
600,000	49,000	8.17	7.00
800,000	63,000	7.88	7.00
1,000,000	77,000	7.70	6.40
3,000,000	205,000	6.83	6.25
5,000,000	330,000	6.60	5.68
10,000,000	614,000	6.14	5.22
15,000,000	875,000	5.83	4.43
25,000,000	1,318,000	5.27	3.86
40,000,000	1,897,000	4.74	3.38
60,000,000	2,572,000	4.29	2.99
80,000,000	3,170,000	3.96	2.46
100,000,000	3,662,000	3.66	1.54
150,000,000	4,434,000	2.96	1.04
200,000,000	4,955,000	2.48	0.61
300,000,000	5,561,000	1.85	0.53

RESEARCH AND DEVELOPMENT EFFORTS—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
400,000,000	6,095,000	1.52	0.46
500,000,000	6,556,000	1.31	.....
Over $500 million	6,556,000	.....	[1] 0.46

[1] 0.46% excess over $500 million.

970.15404–4–6 Fee base.

(a) The fee base is an estimate of necessary allowable costs to which a fee factor has been applied to determine the maximum fee allowance. It represents the cost of the production or R&D work to be performed, exclusive of the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) The fee base, in addition to the adjustments in paragraph (a) of this subsection, shall exclude:

(1) Any part of the following types of costs which are of such magnitude or nature as to distort the technical and management effort actually required of the contractor:

(i) Estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract;

(ii) Estimated cost or price of subcontracts and other major contractor procurements; and

(iii) Other similar costs.

(2) Special equipment as defined in 48 CFR 970.15404–4–7.

(3) Estimated cost of Government-furnished materials, services and equipment;

(4) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(5) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the operating contract;

(6) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the operating contract.

(c) In calculating the fee base for application of the production schedule, the estimated cost of research and development work and of process development work which goes beyond normal technical support required to ensure continuity of operation shall be excluded. The maximum fee for such R&D and process development work is calculated separately, starting at the beginning of the R&D schedule.

(d) The schedules in this part are not intended to reflect compensation for unusual architect-engineer or construction services provided by the management and operating contractor. Such services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be in addition to the operating fees and should be calculated using the provisions of 48 CFR 915.404–4 relating to architect-engineer or construction fees.

(e) The fee schedules provide the maximum fees payable within the authority of the Head of the Contracting Activity. There may be times however, when the fee schedule does not reflect an adequate compensation to the contractor (such as the use of its own facilities and capital). Proposals to compensate a contractor in excess of the maximum fee schedules shall be submitted to the Procurement Executive. Requests should contain documentation and state specifically why the contractor is entitled to additional fees. (See also 48 CFR 970.15404–4–1(c)).

970.15404–4–7 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment and use the schedule in 48 CFR 915.404–4–71–5(h).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) The maximum allowable fee for such services shall not exceed the fee schedule set forth in 48 CFR 915.404–4–71–5(h) for such services as performed by construction contractors. The fee is based on the estimated price of the equipment being purchased.

(d) For purposes of this part, special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Generally, special equipment is considered to be a capital-asset-type of equipment (typically equipment costing more than $1,000 and having a service life of more than two years) for which the cost of installation and handling (including unloading, hauling and warehousing) is 5%, or less, of the purchase price of the equipment. However, the determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment.

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

970.15404–4–8 Special considerations—award fee.

(a) When a management and operating contract is to be awarded on an award-fee basis, several special considerations are appropriate.

(b) In management and operating contracts, the basic fee portion of the fee negotiation objective shall be established equal to what would otherwise have been the applicable fixed fee established in accordance with 48 CFR 970.15404–4–4. This basic fee includes a 50% base fee and a 50% ''at risk fee.'' No variations from this objective are authorized without the prior approval of the Procurement Executive. The basic fee shall be paid in equal monthly installments, in accordance with the clause at 48 CFR 970.5204–16, Payments and Advances. However, in the event the contractor's performance is judged by the Fee Determination Official to fall into the performance categories of Marginal or Unsatisfactory, as those terms are

defined in subparagraph (c) of this section, the contractor shall be required to refund to the Government up to 50% of the basic fee paid for that evaluation period at a rate of 5% for each performance point below 76, as shown in the table in paragraph (c) of this section.

(c) The award fee portion of the fee objective for a management and operating contract shall be established for each contract using the formula Basic Fee Amount X (multiplied by the) Applicable Award Fee Factor. The applicable award fee factor shall be established according to the following category placements: Defense Facility'A; Defense Facility'B; Enrichment Plant; Miscellaneous. Individual DOE facilities which are operated under award fee arrangements will be assigned to each category by the Procurement Executive, whose designee shall distribute a list of such assignments to all Heads of the Contracting Activities (HCAs). In assigning facilities to categories, the Procurement Executive will consider the factors listed in this paragraph below, to determine the risks'technical, management, and financial'which the contractor will assume in fulfilling the contract requirements. Contracts which involve higher levels of risks shall be placed in higher categories and be eligible for higher award fees. The Procurement Executive, or designee, shall review the category assignments on a regular basis or upon request by the HCA for a particular contract. Reassignments may be made based upon a change in contract requirements or changes in any of the following factors:

(1) Placement of the facility on the EPA's National Priority List (NPL). Facilities which are listed on the NPL shall be considered to involve higher risks.

(2) Nature of the contractor's work at the facility. Contracts involving the management of facilities listed on the NPL or requiring the environmental restoration of NPL sites, shall be considered to involve higher risks, whereas contracts involving unrelated work may be considered of lesser risk, regardless of NPL designations.

(3) Size of the facility in relationship to the areas of risk. Management of a large facility with a minor site designated on the NPL would be considered a lesser risk than management of a small facility which includes several major sites listed on the NPL.

(4) Quantity, complexity and type of Government property for which the contractor is responsible. Contracts requiring control over large quantities of sensitive Government property shall be considered of higher risk than those involving relatively small quantities.

(5) Exposure to Third-Party Liability. Contract activities which expose the contractor to the risk of third-party liability will be considered, and such risk assessed accordingly.

(6) The extent to which the work at the facility presents health and safety risks to the workers at the facility and the public.

(7) In considering these factors, any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor. Where a single contract involves multiple facilities falling into different categories, the basic fee amount shall be divided into amounts applicable to the operation of each facility before applying the award fee pool factor. The following potential award fees shall apply in each category (percent is stated as a percentage of the otherwise applicable maximum fixed fee amount) which is now the basic fee:

Category	Basic fee (percent)	Potential award fee (percent)	Potential maximum total (percent)
Defense Facility-A	100	200	300
Defense Facility-B	100	150	250
Enrichment Plant	100	150	250
Miscellaneous	100	100	200

(d) All management and operating contracts awarded on an award fee basis shall incorporate the following performance grading and fee conversion system into the contract, by including the system in the Performance Evaluation Plan required by the contract clause at 48 CFR 970.5204–54. The performance grading and fee conversion system consists of a set of adjectival grades defined in a narrative form, in terms of performance points, and the percentage of available award fee earned as follows:

FEE CONVERSION TABLE

[The contractor's performance shall be evaluated by the Fee Determination Official at the end of each evaluation period, and graded in accordance with the following scale below]

Performance score	Percent of award fee earned
Outstanding	
Any score in the Outstanding category will earn 100% of the available award fee:	
96 and above	100.0
Good	
95	94.0
94	88.0
93	82.0
92	75.0
91	68.0
90	60.0
89	51.0
88	43.0
87	36.0
86	30.0

FEE CONVERSION TABLE—Continued

[The contractor's performance shall be evaluated by the Fee Determination Official at the end of each evaluation period, and graded in accordance with the following scale below]

Performance score	Percent of award fee earned
Satisfactory	
85	25.0
84	20.0
83	15.0
82	10.0
81	5.0
80	0.0
79	0.0
78	0.0
77	0.0
76	0.0
Marginal	
(Percent of Basic Fee Refunded)	
75	5.0
74	10.0
73	15.0

FEE CONVERSION TABLE—Continued

[The contractor's performance shall be evaluated by the Fee Determination Official at the end of each evaluation period, and graded in accordance with the following scale below]

Performance score	Percent of award fee earned
72	20.0
71	25.0
70	30.0
69	35.0
68	40.0
67	45.0
66	50.0

FEE CONVERSION TABLE—Continued

[The contractor's performance shall be evaluated by the Fee Determination Official at the end of each evaluation period, and graded in accordance with the following scale below]

Performance score	Percent of award fee earned
Unsatisfactory	
Below 65	50.0

Performance scores should be rounded to the nearest tenth of a point and the percent of award fee determined accordingly (e.g., a score of 88.4 equals 46.2% of award fee earned).

NARRATIVE DESCRIPTION OF PERFORMANCE ADJECTIVES

Adjective	Definition (performance description)
Outstanding	Performance substantially exceeds expected levels of performance. Several significant or notable achievements exist. No notable deficiencies in performance.
Good	Performance exceeds expected levels and some notable achievements exist. Although some notable deficiencies may exist, no significant deficiencies exist.
Satisfactory	Performance meets expected levels. Minimum standards are exceeded and ''good practices'' are evident in contract operations. Notable achievements or notable deficiencies may or may not exist.
Marginal	Performance is less than expected. No notable achievements exist; however, some notable deficiencies exist, or any notable achievements which exist are more than offset by significant or notable deficiencies.
Unsatisfactory	Performance is below minimum acceptable levels. Significant deficiencies causing severe impacts on mission capabilities exist. Performance at this level in any area mentioned in the Performance Evaluation Plan may result in a decision by the Fee Determination Official to withhold all award fees for the period.

Definitions

Significant: This term indicates a major event or sustained level of performance which, due to its importance, has a substantial positive or negative impact on the contractor's ability to carry out its mission.

Notable: This term indicates an event or sustained level of performance which is of lesser importance than a ''significant'' event, but nonetheless deserves positive or negative recognition.

(e) Prior approval of the Procurement Executive is required for total fee (basic plus award fee pool) exceeding the guidelines in paragraph (c) of this section. Additionally, in the event use of the award fee guidelines in paragraph (c) of this section result in total fees which exceed or are expected to exceed the statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b), prior approval of the Procurement Executive shall be obtained.

(f) When a management and operating contract is to be awarded on an award-fee basis, the contract shall include the clause at 48 CFR 970.5204–54.

(g) Fee Determination Officials must be careful to ensure that all important areas of contract performance are mentioned in the Performance Evaluation Plan, even if such areas are not assigned specific weights or percentages of award fee.

970.15405 Price negotiation.

(a) Management and operating contract prices (fee) and DOE obligations to support contract performance shall be governed by:

(1) The level of activity authorized and the amount of funds appropriated for DOE approved programs by specific program legislation;

(2) Congressional budget and reporting limitations;

(3) The amount of funds apportioned to DOE;

(4) The amount of obligational authority allotted to program officials and Approved Funding Program limitations; and

(5) The amount of funds actually available to the DOE operating activity as determined in accordance with applicable financial regulations and directives.

(b) Funds shall be obligated and made available by contract provision or modification after the funds become available for obligation for payment to support performance of DOE approved projects, tasks, work authorizations, or services.

(c) Management and operating contracts shall contain appropriate provisions to limit contractor expenditures to the overall amount of funds available and obligated. The clause at 970.5204–15 shall be used for this purpose.

970.15406–2 Cost or pricing data.

(a) The certification requirements of FAR 15.406–2 are not applied to DOE cost-reimbursement management and operating contracts.

(b) The contracting officer shall ensure that management and operating contractors and their subcontractors obtain cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with 48 CFR 15.406–2, and incorporate appropriate contract provisions similar to those set forth at 48 CFR 52.215–10 and 48 CFR 52.215–11 that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(c) The clauses at 48 CFR 52.215–12 and 48 CFR 52.215–13 shall be included in management and operating contracts.

970.15407–2 Make-or-buy plans.

970.15407–2–1 Policy.

(a) Contracting officers shall require management and operating contractors to develop and implement make-or-buy plans that establish a preference for providing supplies or services (including construction and construction management) on a least-cost basis, subject to program specific make-or-buy criteria. The emphasis of this make-or-buy structure is to eliminate bias for in-house performance where an activity may be performed at less cost or otherwise more efficiently through subcontracting.

(b) A work activity, supply or service is provided at ''least cost'' when, after consideration of a variety of appropriate programmatic, business, and financial factors, it is concluded that performance by either ''in-house'' resources or by contracting out is likely to provide the property or service at the lowest overall cost. Programmatic factors include, but are not limited to, program specific make-or-buy criteria established by the Department of Energy, the impact of a ''make'' or a ''buy'' decision on mission accomplishment, and anticipated changes to the mission of the facility or site. Business factors pertain to such elements as market conditions, past experience in obtaining similar supplies or services, and overall operational efficiencies that might be available through either in-house performance or contracting out. Among the financial factors that may be considered to determine a least-cost alternative in a make-or-buy analysis are both recurring and one-time costs attributable to either retaining or contracting out a particular item, financial risk, and the anticipated contract price.

(c) In developing and implementing its make-or-buy plan, a contractor shall be required to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor will communicate its plans, activities, cost-benefit analyses, and decisions with those stakeholders likely to be affected by such decisions, including representatives of the community and local businesses.

970.15407–2–2 Requirements.

(a) *Development of program-specific make-or-buy criteria.* DOE program offices responsible for the work conducted at the facility or site shall develop program specific make-or-buy criteria. Program specific make-or-buy criteria are those factors that reflect specific mission or program objectives (including operational efficiency, contractor diversity, environment, safety and health, work force displacement and restructuring, and collective bargaining agreements) and that, upon their application to a specific work effort, would override a decision based on a purely economic rationale. These criteria are to be used to assess each work effort identified in a facility's or site's make-or-buy plan to determine the appropriateness of a contractor's make-or-buy decisions. Program specific make-or-buy criteria shall be provided to the contractor for use in developing a make-or-buy plan for the facility, site, or specific program, as appropriate.

(b) *Make-or-buy plan property and services.* Supplies or services estimated to cost less than one (1) percent of the estimated total operating cost for a year or $1 million for the same year, whichever is less, need not be included in the contractor's make-or-buy plan. However, adjustments may be made to these thresholds where programmatic or cost considerations would indicate that a particular supply or service should be included in the make-or-buy plan.

(c) *Competitive solicitation requirements.* (1) To the extent practicable, a competitive solicitation for the management and operation of a Department of Energy facility or site should:

(i) Identify those programs, projects, work areas, functions or services that the Department intends for the successful offeror to include in any make-or-buy plan; and

(ii) Require the submission of a preliminary make-or-buy plan for the period of performance of the contract from each offeror as part of its proposal submitted in response to the competitive solicitation.

(2) If the requirement for each offeror to submit a preliminary make-or-buy plan as part of its proposal is impractical or otherwise incompatible with the acquisition strategy, consideration should be given to structuring the evaluation criteria for the competitive solicitation in such a manner as to permit the evaluation of an offeror's approach to conducting its make-or-buy program within the context of the contractual requirements.

(3) The successful offeror's preliminary make-or-buy plan shall be submitted for final approval within 180 days after contract award, consistent with the requirements of 48 CFR 970.5204–76(c), Make-or-buy Plan.

(d) Evaluation of the contractor's make-or-buy plan. In evaluating the contractor's make-or-buy plan, the contracting officer shall consider the following factors:

(1) The program specific make-or-buy criteria (such as operational efficiency, contractor diversity, environment, safety and health, work force displacement and restructuring, and collective bargaining agreements) with particular attention to the effect of a ''buy'' decision on the contractor's ability to maintain core competencies needed to accomplish mission-related program and projects;

(2) The impact of a ''make'' or ''buy'' decision on contract cost, schedule, and performance and financial risk;

(3) The potential impact of a ''make'' or ''buy'' decision on known future mission or program activities at the facility or site;

(4) Past experience at the facility or site regarding ''make-or-buy'' decisions for the same, or similar, supplies or services;

(5) Consistency with the contractor's approved subcontracting plan, as required by the clause entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan'' (FAR 52.219–9), of the contract and implementation of Section 3021 of the Energy Policy Act of 1992.

(6) Local market conditions, including contractor work force displacement and the availability of firms that can meet the work requirements with regard to quality, quantity, cost, and timeliness;

(7) Where the construction of new or additional facilities is required, that the cost of such facilities is in the Government's best interest when compared to subcontracting or privatization alternatives; and

(8) Whether all relevant requirements and costs of performing the work by the contractor and through subcontracting are considered and any different requirements for the same work are reconciled.

(e) Approval. The contracting officer shall approve all plans and revisions thereto. Once approved, a make-or-buy plan shall remain effective for the term of the contract (up to a period of five years), unless circumstances warrant a change.

(f) Administration. The contractor's performance against the approved make-or-buy plan shall be monitored to ensure that:

(1) The contractor is complying with the plan;

(2) Items identified for deferral decisions are addressed in a timely manner; and

(3) The contractor periodically updates the make-or-buy plan based on changed circumstances or significant new work.

970.15407–2–3 Contract clause.

The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–76, Make-or-Buy Plan, in management and operating contracts.

970.3102 Application of cost principles [Amended]

10. Subsection 970.3102–1 is amended at paragraph (c) by: revising ''970.1509–1'' to read ''970.15404–4–1''; revising ''970.1509–4'' to read ''970.15404–4–4''; and revising ''970.1509–5'' to read ''970.15404–4–5''.

11. Subsection 970.3102–15 is amended at paragraphs (b)(1) and (b)(2) by revising ''FAR 15.8'' to read ''48 CFR (FAR) Subpart 15.4''.

12. Section 970.5202 is revised to read as follows:

970.5202 Deviations.

Deviations from FAR and DEAR contract clauses and solicitation provisions shall be made only in accordance with the deviation procedures of 48 CFR (FAR) Subpart 1.4 and written internal Departmental procedures.

970.5204 [Amended].

13. Subsection 970.5204–9 is amended in the NOTE following paragraph (a) by revising ''52.215–22'' to read ''52.215–11''.

14. Subsection 970.5204–15 is amended in the prescriptive text by revising ''970.1508(c)'' to read ''970.15405(c)''.

15. Subsection 970.5204–22 in the clause, paragraph (f)(1), is amended by revising the dollar amount ''$25,000'' to read ''$100,000'', revising (f)(2), redesignating (f)(3) as (f)(4), and adding new (f)(3) to read as follows:

970.5204–22 Contractor purchasing system.

* * * * *

Contractor Purchasing System (Oct 1995)

* * * * *

(f) * * *

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR (FAR) 28.102–2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than $25,000, but not greater than $100,000, the contractor shall select two or more of the payment protections at 48 CFR (FAR) 28.102–1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

* * * * *

16. Subsection 970.5204–44 in the clause, is amended in paragraph (b)(5) by replacing ''970.1508–1'' with ''970.15406–2''; replacing ''52.215–22'' with ''52.215–10''; and replacing ''52.215–23'' with ''52.215-11''.

17. Subsection 970.5204–54 is revised in the prescriptive text by replacing ''970.1509–8(d)'' with ''970.15404–4–8(d)''.

18. Subsection 970.5204–76 is revised in the prescriptive text by replacing ''970.1507–3'' with ''970.15407–2–3''.

[FR Doc. 98–28239 Filed 10–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 101998M]

Fisheries of the Northeastern United States; Summer Flounder Fisheries; Readjustment to the 1998 Commercial State Quota for North Carolina

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

ACTION: Commercial quota adjustment.

SUMMARY: NMFS announces an adjustment to the 1998 summer flounder commercial quota for North Carolina. The North Carolina adjustment complies with a court order setting aside the 1997 overage, which had been deducted from the 1998 quota earlier this year. The public is advised that the quota adjustment has been made and is informed of the revised quota.

DATES: Effective October 20, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fisheries Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: Regulations implementing summer flounder management measures are found at 50 CFR part 648, subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year.

The final specifications for the 1998 summer flounder fishery (62 FR 66304, December 18, 1997), adopted to ensure achievement of a fishing mortality rate (F) of 0.24 for 1998, set a total commercial quota equal to 11,105,636 lb (5.0 million kg). In the preamble to the rule implementing these specifications, NMFS noted that associated adjustments to states' 1998 quotas would be required as a result of any landings in excess of the 1997 quota. Two adjustments were made to the 1998 state commercial quotas, effective January 16, 1998 (63 FR 3478, January 23, 1998) and April 23, 1998 (63 FR 23227, April 28, 1998) to reflect updated 1997 landings. This resulted in an overage of 399,740 lb (181,319 kg) for North Carolina for 1998.

The adjustment in this notification to the North Carolina quota is required by a court order. In response to a lawsuit filed by the North Carolina Fisheries Association, Inc., Georges Seafood, Inc., and the State of North Carolina, the United States District Court for the Eastern District of Virginia, Norfolk Division, on September 28, 1998, ordered that the 1997 overage for the North Carolina summer flounder fishery be set aside. Therefore, this adjustment subtracts 399,740 lb (181,319 kg) from North Carolina's 1997 overage and adds this amount to the 1998 North Carolina quota for summer flounder, revising it from 2,649,849 lb (1,201,951 kg) to 3,049,589 lb (1,383,270 kg) and total coastwide readjusted quota for summer flounder are revised from 10,558,994 lb (4,789,479 kg) to 10,958,734 lb (4,972,102 kg). Table 1. displays the current 1998 quotas resulting from this readjustment to the North Carolina quota.

TABLE 1.—SUMMER FLOUNDER FINAL READJUSTED 1998 QUOTAS

State	Unadjusted 1998 quota [1]		Adjusted 1998 quota [2]		Final readjusted 1998 quota	
	lb	(Kg) [3]	lb	(Kg)	lb	(Kg)
ME	5,284	2,397	4,791	2,173	4,791	2,173
NH	51	23	51	23	51	23
MA	757,841	343,751	721,889	327,448	721,899	327,448
RI	1,742,583	790,422	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	250,791	113,757	250,457	113,605
NY	849,680	385,408	788,282	357,559	788,282	357,559
NJ	1,858,363	842,939	1,858,363	842,939	1,858,363	842,940
DE	[4] (3,685)	(1,671)	(14,534)	(6,593)	(14,534)	(6,593)
MD	226,570	102,770	199,876	90,662	199,876	90,662
VA	2,368,569	1,074,365	2,357,377	1,069,288	2,357,377	1,069,288
NC	3,049,589	1,383,270	2,649,849	1,201,951	3,049,589	1,383,270
Total	11,105,636	5,037,432	10,558,994	4,789,479	10,958,734	4,972,102

[1] As published on December 18, 1997 (62 FR 6304).
[2] As published on April 28, 1998 (63 FR 23227).
[3] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[4] Parentheses indicate a negative number.

Classification

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

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

Dated: October 20, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–28492 Filed 10–20–98; 3:50 pm]

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Proposed Rules

Federal Register
Vol. 63, No. 205
Friday, October 23, 1998

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 273

[INS No. 1809–96]

RIN 1115–AE59

Suspension of Privilege To Transport Aliens to the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service or INS) regulations by allowing the Service to suspend a commercial airline's privilege to transport aliens to the United States if the airline brings in passengers with fraudulent documents contrary to regulation and at a significantly higher rate than the industry standard. This rule is necessary to ensure that airlines prevent the boarding and transport of aliens who use fraudulent documents in an attempt to gain entry to the United States.

Initially, an offending carrier will be fined under section 273 of the Immigration and Nationality Act (Act) for transporting aliens with fraudulent documents at a rate significantly above the industry standard. If the carrier's performance does not improve after the imposition of fines, the Immigration and Naturalization Service will issue a warning letter stating that the Service may cancel the carrier's contracts. If the carrier continues to transport aliens with fraudulent documents, the Service will issue a notice of intent to suspend the carrier's privilege to transport aliens to the United States. If the carrier still transports aliens with fraudulent documents, the Service will suspend the carrier's privilege to transport aliens.

DATES: Written comments must be submitted on or before December 22, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, attention: Public Comment Clerk, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1809–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Una Brien, Director, National Fines Office, Inspections Division, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Arlington, VA 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION: Section 124(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 Stat. 3009, amended section 212(f) of the Immigrant and Nationality Act (the Act) by authorizing the Attorney General to suspend a commercial airline's privilege to transport aliens to the United States if the airline brings in passengers with fraudulent documents. The Attorney General has delegated to the Commissioner of the INS her authority to issue regulations. This rule proposes to add a new § 273.7 to define the steps the Service will take to suspend a commercial airline's privilege, if necessary. This is supported by Articles 4 and 5 of the U.S. Government Model Open Skies Agreement. It also amends § 103.1(f)(3)(iii) by adding an appeal to the Administrative Appeals Office (AAO) of a decision by the Executive Associate Commissioner for Field Operations to suspend an airline's privilege of transporting some or all aliens to the United States.

Section 212(f) of the Act allows the president to suspend the admission of any class of aliens if their entry would be detrimental to the interests of the United States. In IIRIRA, Congress provided that: ''Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.''

It should be noted that the Service has other means available to encourage airlines to comply with the Act by preventing the transport of improperly documented aliens to the United States. Specifically, a carrier is subject to monetary penalties under section 273 of the Act for transporting to the United States an alien which is not in possession of a valid passport or visa, as required. It has long been the Service's policy not to impose a fine against a carrier that transports aliens with fraudulent documents unless the quality of the fraud is exceedingly poor and could have reasonably been detected by carrier personnel at the port-of-embarkation.

In recent years, the Service has been working closely with the air transport industry to provide training to carriers in screening passengers for proper documentation. Administrative fines for bringing in aliens who have destroyed their documents *en route* and arrive in the United States without passports or visas dropped from approximately 3,000 cases in Fiscal Year 1992 to approximately 1,200 cases in Fiscal Year 1995. The primary reason for the decrease in the number of aliens without documents being brought to the United States was the passage in 1990 of legislation which increased the fine imposed on a carrier for the transportation of improperly documented aliens from $1,000 to $3,000 for each violation of section 273(a) of the Act. As a result, carriers, seeking to avoid fines, began document training programs for their agents at overseas ports-of-embarkation. It is anticipated that imposition of fines for bringing in aliens with reasonably detectable fraudulent documents will similarly reduce the frequency of such occurrences.

Prior to December 1994, the Service, by statute, was permitted to remit or refund fines imposed under section 273 of the Act only if the carrier could demonstrate that it did now know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that valid passport or visa was required. Section 209(a)(6) of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416, 108 Stat. 5312, Oct. 25, 1994), added subsection (e) to section 273 to the Immigration and Nationality Act. This new subsection

gave the Service the ability to reduce a fine if a carrier can demonstrate that it screened passengers in accordance with standards prescribed by the Attorney General, or that circumstances exist that the Attorney General determines would justify reduction. In a final rule published in the **Federal Register** on April 30, 1998, at 63 FR 23643, the Service provided procedures a carrier must undertake for the proper screening of passengers at the port-of-embarkation to become eligible for fines reductions, refunds, or waivers. These procedures are considered voluntary.

The provisions, enacted in IIRIRA, allowing the Service to suspend an airline's privilege to transport aliens to the United States would be a last resort, and it is anticipated that it would rarely be used. Generally, once the Service imposes significant monetary penalties against a carrier, the carrier will take corrective action by improving document screening standards, training check-in agents, and upgrading security measures. If fining the carrier proved to be ineffective, the Service could, with reasonable notice, cancel the carrier's Visa Waiver Pilot Program (VWPP), Transit-without-Visa (TWOV), and/or preinspection contracts. If a carrier continued to transport aliens with fraudulent documents to the United States at a significantly higher rate than the industry standard, despite the imposition of fines and the cancellation of contracts, the Service could invoke its authority to suspend a carrier's privilege to transport aliens to the United States. To the extent required under applicable bilateral air services agreements, the United States would pursue consultations with the governments of implicated airlines relative to any potential suspension of a carrier's privilege to transport aliens to the United States.

When it is noted that a commercial airline transports to the United States, at a rate that significantly exceeds the industry standard, aliens with altered or counterfeit documents that should have been identified as deficient by the use of reasonable diligence,[1] and the airline has made insufficient effort to stop the transport of such aliens despite the imposition of fines pursuant to section 273 of the Act, the Service will issue a warning letter. The letter will notify the airline that the number or percentage of passengers with fraudulent documents brought to the United States by the airline is significantly above the industry standard. The letter will also described the circumstances that have prompted the Service to issue the letter and what the carrier must do to comply with Service regulations regarding document screening. The Service will also offer to provide training in the detection of fraudulent documents. The letter will further state that if, within 120 days from the date of the letter, the carrier has not brought its fraudulent document violation rate to an acceptable level compared to the industry standard, the Service may cancel the carrier's VWPP, TWOV, and/or preinspection contracts. Within the 120 days the carrier must bring its fraudulent document violation rate to an acceptable level compared to the industry standard. The carrier may use this 120-day period to train its employees and improve document screening standards in order to reduce the rate at which it transports aliens with fraudulent documents. If the carrier does not reduce its fraudulent document rate to an acceptable level, the Service may take action to cancel with the airline in addition to imposing fines under section 273 of the Act.

If the Service cancels some or all of the airline's contracts, the Service will also inform the airline that it must reduce its fraudulent document violation rate to an acceptable level within 60 days of the cancellation of its contracts, and warn the airline that if it does not achieve this reduction, the Service may take action to suspend the airline's privilege to transport aliens to the United States.

The Service is requesting comments on whether the level at which sanctions are triggered should be given a more precise definition. The Service considered using a numerical formula to calculate the industry standard and setting a level above which sanctions would be invoked. Comments on this or alternative approaches are welcome.

Other criteria for suspending an airline's privilege to transport aliens to the United States were also considered, but not adopted. For example, consideration was given to suspending the privilege if a carrier brought in a number of aliens with fraudulent documents on one flight that was significantly above the industry standard, or if over 10 percent of the alien passengers on any one flight arrived with fraudulent documents, or if a carrier regularly or systematically transported aliens with fraudulent documents. For example, a carrier might operate a 300–400 seat aircraft and bring 30, 40, or 50 fraudulently documented aliens to the United States. However, smaller carriers might operate a 10-seat aircraft and transport 9 aliens with fraudulent documents. Or a carrier might bring in aliens with fraudulent documents on a daily or almost daily basis.

After the contracts are canceled, if the carrier still does not lower its fraudulent document violation rate to an acceptable level within a 60-day period, the Service may issue a notice of intent to suspend the carrier's privilege to transport some or all aliens to the United States. The Service will forward a copy of this notice to the Office of Aviation Programs and Policy of the Department of State (DOS), requesting that DOS contact the appropriate foreign government to the extent required under applicable bilateral air services agreements.

The carrier may submit written representations to the Service stating why the Service should not suspend the carrier's privilege to transport aliens to the United States and may request an interview with the Service. If, within 30 days of the issuance of the notice of intent to suspend, the carrier still does not bring its fraudulent document violation rate to an acceptable level, the Service may suspend the carrier's privilege to transport some or all aliens to the United States or to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation. Any Service decision to suspend the carrier's privilege to transport some or all aliens to the United States will take into consideration any consultations between governments under applicable bilateral air services agreements. The carrier will be fined under section 721 of the Act if it continues to transport aliens to the United States in violation of the suspension order.

The carrier may appeal the Service's decision to the Administrative Appeals Office (AAO). The AAO will adjudicate the appeal as expeditiously as possible.

In order to have its privilege to transport aliens to the United States reinstated, the airline must demonstrate improved document screening and personnel-training standards as defined in 8 CFR 273.3. The carrier must submit evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. This evidence shall be submitted to the Executive Associate Commissioner for Field Operations for consideration. Evidence may include, but is not limited to, the following: (1) Information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, DOS, or other

[1] What is ''reasonable diligence'' (within the meaning of section 273 of the Immigration and Nationality Act) is a factual matter determined upon the particular facts and circumstances of each individual case; what may be reasonable diligence in one case may not be so in another, *Matter of S.S. ''Florida,''* 3 I&N Dec. 111 (BIA 1947; A.G. 1948).

training programs, the number of employees trained, and a description of the training program; (2) information regarding the date and number of improperly documented passengers bound for countries other than the United States and intercepted by the carrier at the port(s)-of-embarkation, including, but not limited to, the passenger's name, date of birth, passport nationality, passport number, other travel document information, reason boarding was refused, the country of destination and port of embarkation; and (3) any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States. The evidence submitted should indicate that the carrier has achieved substantial compliance with INS screening standards in order to improve screening of its passengers. If the Executive Associate Commissioner for Field Operations is satisfied that the carrier has achieved substantial compliance with INS screening standards, he will issue a notice to the carrier reinstating its privilege to transport aliens and enter into contracts pursuant to section 233 of the Act.

It should be noted that this action suspends only the carrier's authorization to bring aliens to the United States. It does not suspend landing rights and it does not suspend authority to bring U.S. citizens or aliens to the United States who are not subject to the order, or to transport persons out of the United States.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factor: Aliens with fraudulent documents make up approximately 4 percent of the total number of aliens found to be inadmissible at airports of entry. The Service anticipates rarely having to use this provision. In the past 4 years, the Service has warned only two carriers that it might take action to fine then if the carrier did not cease bringing aliens to the United States with fraudulent documents. Neither of these carriers was fined. Although the economic impact on a carrier whose privilege is suspended will be significant, it is not expected that a substantial number of small entities will be affected.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulations proposed, herein, will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

This proposed rule does not impose any new reporting or recordkeeping requirements. The evidence requirements for reinstatement contained in § 273.7(j) are not considered an information collection as defined in 5 CFR 1320.3(e). As previously discussed, the Service has warned only two carriers that it might take action if the carrier did not cease bringing aliens to the United States with fraudulent documents.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegation (Government agencies), Freedom of Information, Privacy, Reporting, and recordkeeping requirements, Surety bonds.

8 CFR Part 273

Administrative practice and procedure, Aliens, Carriers, Penalties.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

2. Section 103.1 is amended by:

a. Removing the period at the end of paragraph (f)(3)(iii)(MM) and inserting a ''; and'' in its place, and by

b. Adding a new paragraph (f)(3)(iii)(NN), to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(NN) Suspension of a carrier's privilege to transport some or all aliens to the United States under § 272.7 of this chapter.

* * * * *

PART 273—CARRIER RESPONSIBILITIES AT FOREIGN PORTS OF EMBARKATION; REDUCING, REFUNDING, OR WAIVING FINES UNDER SECTION 273 OF THE ACT; SUSPENSION OF PRIVILEGE TO TRANSPORT ALIENS TO THE UNITED STATES

3. The heading for part 273 is revised as set forth above.

4. The authority citation for part 273 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1323; 8 CFR part 2.

5. Section 273.7 is added to read as follows:

§ 273.7 Warning of intention to suspend a commercial airline's privilege to transport aliens to the United States.

(a) *Transporting aliens with fraudulent documents.* When a commercial airline transports to the United States, at a rate that significantly exceeds the industry standard, aliens who, upon arrival at a U.S. Port-of-Entry, are found to be in possession of fraudulent documents that, in the opinion of the Service, the airline should have detected, and the imposition of fines under 8 CFR 280.1 has not resulted in a satisfactory reduction in the airline's violation rate, the Executive Associate Commissioner for Field Operations may issue a warning letter notifying the carrier that:

(1) The number or percentage of passengers brought to the United States with fraudulent documents is significantly above the industry standard, demonstrating that the violation rate for the subject carrier over a stated period of time has exceeded the industry standard, and stating the difference between the industry standard and the carrier's violation rate;

(2) The Service is available to provide training to carrier personnel in the detection of fraudulent documents pursuant to section 235A(b) of the Act;

(3) The Service requires the rate of fraudulent document violations for the subject carrier to decrease to an acceptable rate within 120 days of the date of service of the warning letter; and

(4) If 120 days after the date of the warning letter the carrier's fraudulent document violation rate is not an acceptable rate, the Executive Associate Commissioner for Field Operations may cancel the carrier's contracts (Forms I–775, I–425, and I–426) pursuant to section 233 of the Act.

(b) *Canceling contracts.* (1) If the carrier's fraudulent document violation rate is not at an acceptable level within 120 days of service of the warning letter, the Service may cancel some or all contracts entered into with the carrier pursuant to section 233 of the Act.

(2) The service will inform the carrier that if, within 60 days of the date of cancellation of the contracts, the carrier can demonstrate that it has reduced its fraudulent document rate to an acceptable level, the carrier may request to become signatory to contracts with the Service in accordance with section 233 of the Act. The Service will also warn the carrier that if the carrier cannot demonstrate that it has reduced its fraudulent document rate to an acceptable level within 60 days of the cancellation of the contracts, the Service may take action pursuant to paragraph (c) of this section.

(c) *Notice of intent to suspend.* (1) If 60 days after the Service cancels a carrier's contract pursuant to paragraph (b)(1) of this section, the carrier has not reduced its violation rate to an acceptable level, the Service may issue a notice of intent to suspend the carrier's privilege to transport some or all aliens to the United States or to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation. The Service will forward a copy of this notice to the Office of Aviation Programs and Policy, Department of State, EB/TRA/AVP, Washington, DC 20520, with a cover letter requesting that the Department of State (DOS) contact the appropriate foreign government to the extent required under applicable bilateral air services agreements. The United States shall pursue consultations with the government of an implicated airline relative to any potential suspension of a carrier's privilege to transport aliens to the United States. The Service shall not take further action against the airline until DOS has indicated, in writing, that it has no objection to the Service proceeding with the suspension.

(2) The carrier may, within 30 days of the date of service of the notice of intent to suspend, submit written representations under oath supported by documentary evidence setting forth reasons why the carrier's privilege to transport aliens to the United States should not be suspended. The carrier may also, at the time of filing these representations, request in writing, an interview before the Executive Associate Commissioner for Field Operations, or his designee, in support of the written representations.

(d) *Allegations denied.* If the carrier denies the allegations in the notice of intent to suspend, then the carrier shall, in its answer, provide all information or evidence on which the answer is based.

(e) *Interview requested.* (1) If in its answer to the warning letter the carrier requests an interview, the carrier shall be given notice of the date set for the interview.

(2) A summary of the information provided by the carrier at the interview shall be prepared and included in the record, along with all other evidence relied on in the adjudication. In the discretion of the Executive Associate Commissioner for Field Operations, the interview may be recorded.

(f) *Decision.* The decision will take into consideration any consultations between governments under applicable bilateral air service agreements.

(1) *Privilege not suspended.* If the carrier demonstrates the required improvement in its fraudulent document violation rate within 30 days of the issuance of the notice of intent to suspend, the Executive Associate Commissioner for Field Operations will notify the carrier that the Service will not, at this time, suspend the privilege of the airline to transport aliens to the United States.

(2) *Privilege suspended.* If the carrier admits the allegations in the notice of intent to suspend, or if it does not demonstrate, within the 30-day period, the required improvement in its fraudulent document violation rate, the Executive Associate Commissioner for Field Operations may issue a notice to the carrier, suspending the privilege of the carrier to transport some or all aliens to the United States or to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation until such time as the Service has certified that the carrier has substantially complied with the screening standards set forth in § 273.3. This notice will summarize evidence relied on, including evidence submitted by the carrier and other evidence that the Service has and give reasons for the suspension. The notice will also inform the carrier that it will be fined under section 271 of the Act if it continues to transport aliens to the United States in violation of a final administrative suspension order.

(g) *Appeal of decision to suspend.* The decision to suspend a carrier's privilege to transport aliens may be appealed to the Service's Administrative Appeals Office (AAO) pursuant to § 103.1(f)(3)(iii)(NN) of this chapter. If the decision is appealed, the suspension will not take place until after the appeal is adjudicated by the AAO.

(h) *Reinstatement.* If a carrier's privilege to transport aliens is suspended in accordance with paragraph (f)(2) of this section, the carrier may have its privilege reinstated by providing evidence that satisfies the Executive Associate Commissioner for Field Operations that it has implemented improved document screening standards as described in § 273.3. The carrier must submit evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. Such evidence may include but is not limited to:

(1) Information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, DOS, or other training programs; the number of employees trained; and a description of the training program;

(2) Information regarding the date and number of improperly documented

passengers bound for countries other than the United States intercepted by the carrier at the port(s) of embarkation, including, but not limited to, the passenger's name, date of birth, passport nationality, passport number, other travel document information, reason boarding was refused, the country of destination, and port of embarkation; and

(3) Any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Dated: October 15, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–28459 Filed 10–22–98; 8:45 am]

BILLING CODE 4410–10–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 616, 618, and 621

RIN 3052–AB63

Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Reproposed rule; request for comment.

SUMMARY: The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) seeks additional comment on a rule to amend its regulations that provide Farm Credit System (System) institutions regulatory guidance concerning leasing activities. The reproposed rule addresses the comments received on the proposed rule and streamlines the regulations where appropriate. The reproposed rule provides clear and concise regulations pertaining to the System's leasing activities and clarifies existing regulations that apply to leasing.

DATES: Please submit your comments on or before December 7, 1998.

ADDRESSES: You may send us your comments via electronic mail to ''regcomm@fca.gov'' or through the Pending Regulations section of the FCA's interactive website at ''www.fca.gov.'' You may also mail or deliver your comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or send them by facsimile transmission to FAX number (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On October 15, 1997, the FCA published a proposed rule that would replace the existing regulatory guidance relating to System institutions' leasing activities (62 FR 53581). The Farm Credit Leasing Services Corporation (FCL) and AgriBank, FCB (AgriBank) provided specific comments on the proposed rule. Ag Credit Agricultural Credit Association and AgFirst, Farm Credit Bank submitted general comments. After considering the four comment letters received, we revised the proposed rule and now seek additional comment. We have renumbered all sections in the reproposed part 616 and note the new section numbers as part of our discussion of the reproposed amendments.

1. Authority and Lessee Eligibility

As originally proposed, § 616.6100(a), (b), and (c) generally restated sections 1.11(c)(2), 2.4(b)(4), and 3.7(a) of the Farm Credit Act of 1971, as amended (Act). Because it is unnecessary to restate the Act in our regulations, we have omitted these paragraphs. The reproposed rule designates the remaining paragraph (d) as § 616.6400 and requires that an institution document that the lease of equipment or facility is authorized under its leasing authorities. In the reproposed rule, § 616.6100 results from the redesignation of § 616.6110, discussed below.

2. Purchase and Sale of Interests in Leases

The existing definition of a ''loan'' in § 614.4325(a)(3) includes leases and generally applies the loan purchase and sale rules to leases. This approach has proven unsatisfactory because the interests in a loan and lease are different; a lease cannot be divided into a principal amount and interest payments. The proposed rule intended to accommodate these differences by providing a new definition tailored to leases. We proposed to define a lease participation in § 616.6000(d) as a fractional undivided interest in: (1) All of the lease payments; (2) the residual value of all of the property leased; or (3) all of the lease payments and the residual value of all of the property leased.

AgriBank and the FCL raised technical concerns with the proposed approach. AgriBank suggested a clarification to the definition of ''interests in leases'' in proposed § 616.6000(a). The FCL recognized the difficulty of treating lease interests in the same manner as loan interests and requested further clarification. After considering these comments, we have concluded that a different and simpler approach is needed. The reproposed rule does not differentiate between ''participation'' interests in leases and other types of lease interests that can be purchased and sold. Reproposed § 616.6100 (§ 616.6110 in the proposed regulation), would authorize a System institution to purchase from any lessor any interest (including a participation interest) in a lease for equipment or facilities used in the operations of eligible borrowers. Specifically, the reproposed rule would:

(1) Eliminate the distinctions concerning the authority to purchase ''lease interests'' and ''lease participation interests'';

(2) Eliminate cross-title restrictions on the purchase of lease interests; and

(3) Eliminate the retention requirement concerning the purchase of lease interests from outside the System. At present, this provision requires that the servicer of the lease have at least a 10-percent ownership interest in the lease in order for a System institution to purchase an interest from a non-System lessor. We conclude that requiring the servicer to have an ownership interest is not necessary to manage risk and is not required by law.

The reproposed rule omits as no longer necessary the definition of a lease participation in proposed § 616.6000(d) and the definition of a participating institution in proposed § 616.6000(e). Reproposed § 616.6000(b) would define ''lease'' to include only those leases for equipment or facilities that are used in the operations of persons eligible to borrow under part 613 of this chapter.

Eliminating the distinctions between ''lease interests'' and ''participation interests'' enables us to shorten the regulation by eliminating proposed § 616.6115. Reproposed § 616.6100 would incorporate relevant provisions from proposed § 616.6115. The following information explains how we combined these provisions:

• We rewrote paragraph (a) of § 616.6100, as reproposed, to allow System institutions to purchase leases and interests in leases. The definition of ''lease'' would continue to limit the types of leases in which System institutions can purchase an interest, that is, leases of equipment or facilities used in the operations of eligible borrowers.

• We clarified that paragraph (b) of § 616.6100, as reproposed, would reflect that the policy requirement applies only if an institution buys or sells interests in leases.

• We removed paragraph (b)(1) of proposed § 616.6110, because there are no restrictions limiting to whom a System institution may sell interests in leases. We renumbered and clarified paragraphs (b)(2) through (b)(7) in reproposed § 616.6100.

• We restructured paragraph (c), which contained requirements roughly parallel to § 614.4325(d) requirements applicable to loans, to incorporate requirements contained in proposed § 616.6115(a) and to add a provision concerning transactions through agents.

• We did not change paragraph (d).

• We removed paragraph (e) of proposed § 616.6110 because it duplicates a provision in § 616.6100(b).

• We redesignated paragraphs (f) and (g) as paragraphs (e) and (f) without change.

AgriBank also suggested adding language to the regulation that would permit lease transactions through agents parallel to loan transactions permitted by § 614.4325(h). We agree that lease transactions through agents should be permitted on the same basis as § 614.4325(h) permits for loans. Reproposed § 616.6100(c)(8) incorporates the rules contained in § 614.4325(h). This provision would require a written agency agreement and periodic review of the agency relationship. If a funding bank serves as an association's agent, the agency agreement must provide for termination of the agreement upon 60-days notice to the bank. In addition, the agreement must provide that an association can require repurchase of the interest in a lease if the interest does not comply with either the agency agreement or the association's underwriting standards. Finally, a technical change is necessary in order to delete the term ''lease'' from the § 614.4325(a)(3) definition of a ''loan'' for purposes of subpart H, since that subpart would no longer apply.

3. Customer Choice of Lease Provider

Proposed § 616.6120 would have required an institution making out-of-territory leases to obtain the concurrence of at least one institution offering similar leasing services in the territory. Upon reconsideration, we are deleting this requirement from the reproposed regulation in order to provide System institutions with additional flexibility to make leases beyond their designated territory. The reproposed rule would not require a System lessor to satisfy any notice or concurrence requirements in order to serve lessees beyond the lessor's territory. The reproposed regulation is now § 616.6200.

4. Leasing Policies, Procedures, and Underwriting Standards

The proposed § 616.6200 would have required a System institution engaged in leasing to adopt a written policy (or policies) and underwriting standards. One provision of the proposed regulation would have required that a System lessor adopt written policies and procedures that require management to establish a prudent residual value at the inception of the lease. The FCL agreed with proposed § 616.6200 in general, but requested that we delete the word ''prudent'' as a modifier of the phrase ''residual value'' in proposed § 616.6200(d). We have eliminated the term ''prudent'' from proposed § 616.6200(d) and from the introductory text of § 616.6200 because it is unnecessary and the written policies and procedures must reflect lease practices that control risk. We have clarified in the reproposed regulation that policies must address the appropriateness of all terms and conditions, including the residual value. We also make a clarifying change to proposed § 616.6200 to replace the general reference to part 614 with the specific reference to the requirements of § 614.4150. To ensure that the list in proposed § 616.6200 does not duplicate any requirement of § 614.4150, we have omitted proposed § 616.6200(a) and (b) and redesignated the remaining paragraphs. The reproposed rule is now § 616.6300.

5. Investment in Leased Assets

We received no comments on the proposed provision concerning investment in leased assets, § 616.6210, which would authorize an institution to purchase property to lease if the acquisition of such property is consistent with the type of leasing being conducted or planned in the future. The reproposed rule is now § 616.6500.

6. Lending and Leasing Limits

We received one comment on the proposal to make leases and loans to a single borrower subject to a ''lending and leasing limit.'' This provision would limit an institution's exposure to risk from a single borrower. The FCL sought clarification of the provision that allows certain interests sold to be excluded from computing the total loans and leases to a borrower. Proposed § 614.4358(b)(5) would have excluded interests in leases sold if the sale agreement met three specific requirements. The third requirement, the subject of the FCL's comment, is that the agreement under which the interest is sold must provide for the sharing of all payments on a pro rata basis according to the percentage interest in the lease. The FCL commented that it is unclear how § 614.4358(b)(5)(iii) applies when the participation interest is solely the residual value. We revised the reproposed rule in response to this comment. The pro rata sharing requirement would apply only to lease payments.

We have made these additional changes to implement the leasing and lending limit regulations in subpart J of part 614 include:

• We clarified that the definition of ''borrower'' includes, for the purposes of subpart J, any customer to whom an institution has made a lease or a commitment to make a lease. *See* § 614.4350(a).

• We expanded the definition of ''loan'' includes all types of leases (operating, financing, and lease interests). *See* § 614.4350(c).

• The reproposed rule would prohibit a System institution from making a lease or a loan if the consolidated amount of all loans and leases to a single borrower exceeds a specific percentage of the institution's lending and leasing limit base. *See* §§ 614.4352 through 614.4355.

• The reproposed rule would prohibit the FCL from making leases to a single lessee or any related entities that exceed 25 percent of the FCL's ''lending and leasing limit base.'' *See* § 614.4356.

• We added the outstanding lease balances to the items included in the computation of obligations. *See* § 614.4358(a)(1).

• All leases, except those that are permitted under § 614.4361, must comply with the leasing and lending limits at all times. *See* § 614.4360(d).

7. Portfolio Limitations

Proposed § 616.6230 would have limited leases made by Farm Credit Banks (FCBs), agricultural credit banks (ACBs), production credit associations (PCAs), Federal land credit associations and agricultural credit associations (ACAs), and the FCL to processing and marketing operations of agricultural or aquatic producers who supply less than

20 percent of the throughput. That provision would have included low-throughput processing and marketing leases in computing loan portfolio restrictions contained in sections 1.11(a)(2) and 2.4(a)(1) of the Act. Loans and leases made to borrowers who supply less than 20 percent of the throughput used in a processing or marketing operation would have been subject to the 15-percent portfolio ceiling in § 613.3010(b). Proposed § 616.6230(b) would have imposed this 15-percent portfolio limitation on the FCL for leases it makes to processing or marketing operations.

Upon reconsideration, we have concluded that the Act does not impose portfolio limitations on leases to processing and marketing operations. In the absence of a statutory requirement or a safety and soundness concern, we do not believe such a limitation on leasing activity is necessary. Therefore, we have not included proposed § 616.6230 in the reproposed rule.

8. Stock Purchase Requirements

We read the Act to impose a stock purchase requirement in connection with some leases, but not others. The Act authorizes FCBs to lease facilities and equipment to ''persons eligible for credit.'' In contrast, the Act authorizes PCAs and Banks for Cooperatives (BCs) to lease equipment only to ''stockholders,'' but does not prescribe any minimum stock purchase requirement. Therefore, lessees who lease equipment from PCAs, ACAs, BCs, or ACBs under titles II or III of the Act must be stockholders.

Because cooperatives operate on a one-person, one-vote basis, the number of shares of stock does not affect membership rights. Therefore, the purchase of a single share of stock is sufficient to satisfy the stockholder requirement. Institutions may also satisfy the stock requirement by counting outstanding shares stockholders already own. The stock requirement in the reproposed rule would not apply to the FCL because its stockholders are System banks, rather than its lease customers. The disclosure requirements for equities issued as a condition to obtain a lease would be the same as disclosure requirements for equities issued as a condition to obtain a loan as required under § 615.5250(a) and (b) of this chapter.

AgriBank inquired whether System institutions could issue participation certificates to lessees, rather than stock. Because both stock and participation certificates satisfy the membership requirements of the Act, the FCA has allowed System institutions to use either one. We inserted the phrase ''or one participation certificate'' into the reproposed rule after the phrase ''at least one share of stock,'' in order to clarify that an institution may issue one participation certificate to satisfy the stock purchase requirement if authorized by the institution's bylaws. The reproposed rule is now § 616.6700.

9. Disclosure Requirements

The proposed rule contained two disclosure requirements. Proposed § 616.6250(a) would have required that lease applicants be provided, not later than the time of lease closing, a copy of all lease documents signed by the lessee. In addition, proposed § 616.6250(b) would have required a System institution to render its decision on the lease application in as expeditious a manner as is practical and provide prompt written notice of its decision to the applicant.

The FCL questioned what constitutes ''lease closing.'' The FCL submits that if the term means lease commencement, this provision could pose a problem for System lessors because it is an industry practice for leases to commence on delivery and acceptance of the equipment by the lessee, while the paperwork may not be finalized until later. The FCL recommended that we omit the phrase ''not later than the time of lease closing'' or alternatively, replace it with the phrase ''within a reasonable time following lease closing.'' The reproposed rule is revised to require that copies be provided to a lessee within a reasonable time following lease closing.

The FCL and AgriBank opposed the proposed requirement to provide notice of adverse action on applications. The FCL contends that requiring System lessors to provide notice of adverse action would increase administrative costs and result in an uneven playing field compared to System competitors. The FCL suggested, as an alternative, the adoption of a threshold similar to that contained in Federal Reserve Board Regulation M, which only applies to consumer leases of less than $25,000. AgriBank recommended that the FCA eliminate entirely the requirement to provide notice of adverse action because the requirement would go beyond current legal and regulatory requirements for other lessors.

The FCA has deleted this requirement in the reproposed rule. However, the reproposal continues to require that an institution provide written notice of its decision on the application. While the FCA believes little additional burden would result from providing the reason(s) for adverse action, it is not required by law. The FCA continues to believe that providing such a notice is a good business practice. The reproposed rule is now § 616.6800.

The existing leasing regulations in §§ 618.8050 and 618.8060 will be deleted upon the effective date of the final rule. The reproposed rule also makes conforming technical changes to §§ 614.4710 and 621.7.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 616

Agriculture, Banks, banking, leasing.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 621

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 614, 618 and 621 are proposed to be amended and part 616 is proposed to be added to chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

§ 614.4325 [Amended]

2. Section 614.4325 is amended by removing the word ''leases,'' from paragraph (a)(3).

3. The heading of subpart J is revised to read as follows:

Subpart J—Lending and Leasing Limits

4. Section 614.4350 is amended by revising paragraphs (a) and (c) to read as follows:

§ 614.4350 Definitions.

* * * * *

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution that complies with the criteria in section 1.7(b) of the Act and the regulations in subpart P of this part) to which an institution has made a loan or a commitment to make a loan either directly or indirectly. For the purposes of this subpart, the term ''borrower'' includes any customer to whom an institution has made a lease or a commitment to make a lease.

* * * * *

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender, including participation interests. The term ''loan'' includes loans and leases outstanding, obligated but undisbursed commitments to lend or lease, contracts of sale, notes receivable, other similar obligations, guarantees, and all types of leases. An institution ''makes a loan or lease'' when it enters into a commitment to lend or lease, advances new funds, substitutes a different borrower or lessee for a borrower or lessee who is released, or where any other person's liability is added to the outstanding loan, lease or commitment.

* * * * *

§ 614.4351 [Amended]

5. Section 614.4351 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base'' each place they appear in the heading and in the entire section.

§ 614.4352 [Amended]

6. Section 614.4352 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base'' in paragraphs (a) and (b)(1); and by adding the words ''and leasing'' between the words ''lending'' and ''limits'' in paragraph (b)(2).

§ 614.4353 [Amended]

7. Section 614.4353 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base''.

§ 614.4354 [Amended]

8. Section 614.4354 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base''.

§ 614.4355 [Amended]

9. Section 614.4355 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit base'' in the introductory paragraph; and by removing the word ''lending'' in the headings of paragraphs (a) and (b).

§§ 614.4356—614.4360 [Redesignated]

10. Sections 614.4356 through 614.4360 are redesignated as §§ 614.4357 through 614.4361; and a new § 614.4356 is added to read as follows:

§ 614.4356 Farm Credit Leasing Services Corporation.

The Farm Credit Leasing Services Corporation may enter into a lease agreement with a lessee if the consolidated amount of all leases and undisbursed commitments to that lessee or any related entities does not exceed 25 percent of its lending and leasing limit base.

11. Newly designated § 614.4358 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit'' in the introductory text of paragraphs (a) and (b); by adding the words ''and lease balances outstanding'' after the word ''loans'' the first place it appears in paragraph (a)(1); by removing the reference ''§ 614.4358'' and adding in its place the reference ''§ 614.4359'' in paragraph (a)(3); by redesignating existing paragraph (b)(5) as paragraph (b)(6); and by adding a new paragraph (b)(5) to read as follows:

§ 614.4358 Computation of obligations.

* * * * *

(b) * * *

(5) Interests in leases sold when the sale agreement provides that:

(i) The interest sold must be:

(A) An undivided interest in all the lease payments or the residual value of all the leased property; or (B) A fractional undivided interest in the total lease transaction;

(ii) The interest must be sold without recourse; and

(iii) The sharing of all lease payments must be on a pro rata basis according to the percentage interest in the lease payments.

* * * * *

§ 614.4359 [Amended]

12. Newly designated § 614.4359 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit'' in paragraphs (a) introductory text, (b), and (c); by removing the reference ''§ 614.4356'' and adding in its place, the reference ''§ 614.4357'' in paragraph (a)(1)(iii); and by removing the reference ''§ 614.4358'' and adding in its place, the reference ''§ 614.4359'' in the heading for column two in Table 1.

13. Newly designated § 614.4360 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limit'' in the heading and in paragraphs (a), (b), (c), and (d); by removing the reference ''§ 614.4360'' and adding in its place, the reference ''§ 614.4361'' in paragraph (a); by removing the reference ''§ 614.4359(b)(3)'' and adding in its place, the reference ''§ 614.4360(b)(3)'' in paragraph (c); by redesignating paragraph (d) as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 614.4360 Lending and leasing limit violations.

* * * * *

(d) All leases, except those that are permitted under the provisions of § 614.4361, reading ''effective date of this subpart'' in § 614.4361(a) and ''effective date of these regulations'' in § 614.4361(b) as ''effective date of this amendment,'' shall be in compliance with the lending and leasing limit on the date the lease is made, and at all times thereafter.

* * * * *

§ 614.4361 [Amended]

14. Newly designated § 614.4361 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limits'' in each place they appear in paragraphs (a) and (b); and by removing the reference ''§ 614.4359'' and adding in its place, the reference ''§ 614.4360'' in paragraph (b).

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4710 [Amended]

15. Section 614.4710 is amended by adding the words ''and leasing'' between the words ''lending'' and ''limits'' in the last sentence of the introductory paragraph and in paragraphs (a)(2) and (a)(3).

16. A new part 616 is added to read as follows:

PART 616—LEASING

Sec.

616.6000 *Definitions.*
616.6100 *Purchase and sale of interests in leases.*

616.6200 *Out-of-territory leasing.*
616.6300 *Leasing policies, procedures, and underwriting standards.*
616.6400 *Documentation requirements.*
616.6500 *Investment in leased assets.*
616.6600 *Leasing limits.*
616.6700 *Stock purchase requirements.*
616.6800 *Disclosure requirements.*

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.9, 3.10, 3.20, 3.28, 4.3, 4.3A, 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.3, 7.6, 7.8, 7.12, 7.13 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2130, 2131, 2141, 2149, 2154, 2154a, 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279a–3, 2279b, 2279c–1, 2279f, 2279f–1).

PART 616—LEASING

§ 616.6000 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Interests in leases* means ownership interests in any aspect of a lease transaction, including, but not limited to, servicing rights.

(b) *Lease* means any contractual obligation to own and lease, or lease with the option to purchase, equipment or facilities used in the operations of persons eligible to borrow under part 613 of this chapter.

(c) *Sale with recourse* means a sale of a lease or an interest in a lease in which the seller:

(1) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(2) Has an obligation to make payments to any party resulting from:

(i) Default on the lease by the lessee or guarantor or any other deficiencies in the lessee's performance;

(ii) Changes in the market value of the assets after transfer;

(iii) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(iv) Any other cause, except that the retention of servicing rights alone shall not constitute recourse.

§ 616.6100 Purchase and sale of interests in leases.

(a) *Authority to purchase interests in leases.* A Farm Credit System institution may purchase leases and interests in leases.

(b) *Policies.* Each Farm Credit System institution that sells or purchases interests in leases shall do so only in accordance with a policy adopted by its board of directors that addresses the following:

(1) The types of leases in which the institution may purchase or sell an interest and the types of interests which may be purchased or sold;

(2) The underwriting standards to be applied in the purchase of interests in leases;

(3) Such limitations on the aggregate lease payments and residual amount of interests in leases that the institution may purchase from a single institution as are necessary to diversify risk, and such limitations on the aggregate amounts the institution may purchase from all institutions as are necessary to assure that service to the territory is not impeded;

(4) Identification and reporting of leases in which interests are sold or purchased;

(5) Requirements for securing from the selling lessor in a timely manner adequate financial and other information concerning the lessee needed to make an independent judgment; and

(6) Any limitations or conditions to which sales or purchases are subject that the board deems appropriate, including arbitration.

(c) *Purchase and sale agreements.* Each agreement to purchase or sell an interest in a lease shall, at a minimum:

(1) Identify the particular lease(s) to be covered by the agreement;

(2) Provide for the transfer of lessee information on a timely and continuing basis;

(3) Identify the nature of the interest(s) sold or purchased;

(4) Specify the rights and obligations of the parties and the terms and conditions of the sale;

(5) Contain any terms necessary for the appropriate administration of the lease, including lease servicing and monitoring of the servicer and authorization and conditions for action in the event of lessee distress or default;

(6) Provide for a method of resolution of disagreements arising under the agreement;

(7) Specify whether the contract is assignable by either party; and

(8) In the case of lease transactions through agents, comply with the provisions of § 614.4325(h) of this chapter, reading the term ''lease'' or ''leases'' in place of the term ''loan'' or ''loans,'' as applicable.

(d) *Independent judgment.* Each institution that purchases an interest in a lease shall make a judgment on the payment ability of the lessee that is independent of the originating or lead lessor and any intermediary seller or broker prior to the purchase of the interest and prior to any servicing action that alters the terms of the original agreement, which judgment shall not be delegated to any person(s) not employed by the institution. A Farm Credit System institution that purchases a lease or any interest therein may use information, such as appraisals or inspections, furnished by the originating or lead lessor, or any intermediary seller or broker; however, the purchasing Farm Credit System institution shall independently evaluate such information when exercising its independent judgment. The independent judgment shall be documented by a payment analysis that considers factors set forth in § 616.6300. The payment analysis shall consider such financial and other lessee information as would be required by a prudent lessor and shall include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions shall adopt procedures to ensure that the interests of their respective shareholders are protected in participation between such institutions.

(e) *Sales with recourse.* When a lease or interest in a lease is sold with recourse, it shall be accorded the following treatment:

(1) The lease shall be considered, to the extent of the recourse or guaranty, a lease by the purchaser to the seller, as well as a lease from the seller to the lessee, for the purpose of determining whether total leases to a lessee are within the lending and leasing limits established in subpart J of part 614.

(2) The amount of the lease subject to the recourse agreement shall be considered a lease sold with recourse for the purpose of computing capital ratios.

(f) *Similar entity lease transactions.* The provisions of § 613.3300 of this chapter that apply to interests in loans made to similar entities shall apply to interests in leases made to similar entities. In applying these provisions, the term ''loan'' shall be read to include the term ''lease'' and the term ''principal amount'' shall be read to include the term ''lease amount.''

§ 616.6200 Out-of-territory leasing.

A System institution may make leases outside its chartered territory. A System institution making out-of-territory leases is not required to provide notification to, or obtain concurrence from, other System institutions.

§ 616.6300 Leasing policies, procedures, and underwriting standards.

The board of each institution engaged in lease underwriting shall set forth a written policy (or policies) and procedures governing such activity that reflect lease practices that control risk and comply with all applicable laws and regulations. Any leasing activity shall comply with the lending policies and loan underwriting requirements in § 614.4150 of this chapter. An institution engaged in the making, purchasing, or syndicating of leases also must establish written policies and procedures that address the additional risks associated with leasing. Written policies and procedures shall address the following, if applicable:

(a) Appropriateness of the lease amount, purpose, and terms and conditions, including the residual value established at the inception of the lease;

(b) Process for estimating the leased asset's market value during the lease term;

(c) Types of equipment and facilities the institution will lease;

(d) Remarketing of leased property and associated risks;

(e) Property tax and sales tax reporting;

(f) Title and ownership of leased assets;

(g) Title and licensing for motor vehicles;

(h) Liability associated with ownership, including any environmental hazards or risks;

(i) Insurance requirements for both the lessor and lessee;

(j) Classification of leases in accordance with generally accepted accounting principles; and

(k) Tax treatment of lease transactions and associated risks.

§ 616.6400 Documentation requirements.

Each institution shall adequately document that any asset it leases is within its statutory authority.

§ 616.6500 Investment in leased assets.

An institution may acquire property to be leased, if the acquisition of the property is consistent with the leasing then conducted by the institution or is consistent with a business plan for expansion of the institution's existing leasing business or for entry into the leasing business.

§ 616.6600 Leasing limits.

All leases made by Farm Credit System institutions shall be subject to the lending and leasing limits prescribed in subpart J of part 614 of this chapter.

§ 616.6700 Stock purchase requirements.

(a) Each System institution making an equipment lease under titles II or III of the Act shall require the lessee to purchase at least one share of stock or one participation certificate in accordance with its bylaws, unless the lessee already owns stock in the institution making the lease. This provision does not apply to the Farm Credit Leasing Services Corporation.

(b) The disclosure requirements of § 615.5250(a) and (b) of this chapter shall apply to stock (or participation certificates) purchased as a condition for obtaining a lease.

§ 616.6800 Disclosure requirements.

(a) Each System institution shall furnish to each lessee a copy of all lease documents signed by the lessee in connection with the lease, within a reasonable time following lease closing.

(b) Each System institution shall render its decision on a lease application in as expeditious a manner as is practical. Upon reaching a decision on a lease application, the institution shall provide prompt written notice of its decision to the applicant.

PART 618—GENERAL PROVISIONS

17. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart C—Leasing

Subpart C—[Removed and Reserved]

18. Subpart C, consisting of §§ 618.8050 and 618.8060, is removed and reserved.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

19. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

Subpart C—Loan Performance and Valuation Assessment

§ 621.7 [Amended]

20. Section 621.7 is amended by removing the reference ''§ 614.4358(a)(2)'' and adding in its place, the reference ''§ 614.4359(a)(2)'' in paragraph (a)(2)(iii).

* * * * *

Dated: October 20, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–28480 Filed 10–22–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–102023–98]

RIN 1545–AW14

Partnership Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the requirements for filing partnership returns on magnetic media under section 6011(e) of the Internal Revenue Code. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations affect partnerships with more than 100 partners. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by January 21, 1999. Requests to speak (with outlines of oral comments) at the public hearing scheduled for January 13, 1999, must be received by December 23, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–102023–98), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–102023–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at htpp://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bridget E. Finkenaur, 202–622–4940;

concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Mike Slaughter, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the filing of partnership returns on magnetic media under section 6011(e)(2) of the Internal Revenue Code. Section 6011(e)(2) was amended by section 1224 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)) (the Act), effective for taxable years ending on or after December 31, 1997. Section 6012(e) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685 (1998)), changes the effective date of section 1224 of the Act to taxable years beginning after December 31, 1997.

Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e)(2)(A) provides that the regulations may not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. However, the last sentence of section 6011(e)(2), which was added by section 1224 of the Act, provides that the Secretary must prescribe regulations requiring partnerships with more than 100 partners to file returns on magnetic media. In addition, section 6011(e)(2)(B) requires that the regulations take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of the regulations.

Currently, the IRS permits certain partnerships to file their partnership returns on magnetic media (including magnetic tape, floppy disk, and electronic filing) with the Internal Revenue Service Center in Andover, Massachusetts. Under this voluntary program, participants have the option of: (1) submitting the entire partnership tax return (including Form 1065, U.S. Partnership Return of Income, Schedules K–1, Partner's Share of Income, Credits, Deductions, etc., and all other related forms and schedules) on magnetic media, or (2) submitting only the Schedules K–1 on magnetic media and filing the rest of the partnership return on paper.

In Notice 97–77 (1997–52 I.R.B. 18 (December 29, 1997)), the IRS notified taxpayers that the Act s amendment to section 6011(e)(2) is not self-executing. Rather, the IRS must first issue regulations that would require partnerships with more than 100 partners to file their partnership returns on magnetic media. Accordingly, partnerships were not required to file their 1997 partnership returns on magnetic media.

Explanation of Provisions

In General

The proposed regulations provide that partnerships with more than 100 partners must file their partnership returns on magnetic media. The determination of whether a partnership has more than 100 partners is made by counting the number of partners the partnership had over the partnership's taxable year, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year.

The proposed regulations provide that a partnership return is a form in Series 1065 (including Form 1065, U.S. Partnership Return of Income, and Form 1065–B, U.S. Return of Income for Electing Large Partnerships), along with the corresponding Schedules K–1 and all other related forms and schedules that are required to be attached to the Series 1065 form.

Magnetic media means any magnetic media permitted under applicable regulations, revenue procedures, or publications. The IRS will prescribe procedures for participation in the mandatory magnetic media filing program for partnerships with more than 100 partners. Included in those procedures will be methods for registering for the program and signing the partnership return. The procedures will be contained in applicable revenue procedures or publications.

The term magnetic media generally includes magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing). Consistent with the definition of magnetic media in other regulations, the proposed regulations define magnetic media broadly. However, under these regulations, the Service plans to require partnerships with more than 100 partners to file their partnership returns electronically. These requirements for electronic filing will be detailed in applicable revenue procedures or publications.

The IRS and Treasury Department believe that requiring affected partnerships to file electronically will enhance the quality of IRS s customer service and will reduce the costs associated with maintaining the ability to accept forms in a variety of magnetic media. Furthermore, the IRS and Treasury Department believe that electronic filing has less burden on taxpayers than filing using other forms of magnetic media.

Electronic filing reduces the normal processing time associated with paper returns in that there is minimal hands-on processing and, therefore, there are no paperwork delays. Faster processing means faster settling of accounts and better customer service. Electronic filing also reduces errors and increases security by reducing duplicate or erroneous returns. In addition, taxpayers receive prompt acknowledgment that their returns have been received and accepted by the Internal Revenue Service. Finally, electronic filing reduces the operating costs for taxpayers whose data already resides on a computer system. Overall, electronic filing of partnership returns should increase customer satisfaction and confidence in the filing process, and be more cost effective for partnerships.

Although the IRS Service Center in Andover, Massachusetts currently accepts returns in the voluntary program on various forms of magnetic media, the systems at this facility are not year 2000 compliant and will not be in operation after 1999. Accordingly, in designing its new magnetic media systems to accept electronically filed returns only, the IRS anticipates that it will no longer be able to accept returns filed in the form currently used by some partnerships in the voluntary program.

Hardship Waiver

The proposed regulations provide procedures for granting waivers of the magnetic media filing requirements for one or more years in cases of hardship. A determination of hardship will be based upon all of the facts and circumstances. Some factors that will be considered in granting waivers include the reasonableness of the incremental cost to the partnership of complying with the magnetic media filing requirements as well as temporary equipment breakdowns and destruction of magnetic media filing equipment.

Penalties

The proposed regulations provide that if a partnership has more than 100 partners and is required to file a partnership return, but fails to file its Series 1065 form, accompanying Schedules K–1, and all other related forms and schedules in the manner required, the partnership is deemed to have failed to file correct information

returns for purposes of the information reporting penalty under section 6721. Penalties for failure to file correct information returns would apply for each Schedule K–1 that is not filed using permissible magnetic media.

Proposed Effective Dates

The IRS is currently focusing a significant portion of its resources on the Year 2000 date change. In addition, the IRS is developing new programs to accommodate the new Form 1065–B and partnership returns filed with a foreign address on the Series 1065 form. Further, partnerships will have to update their processes and technology to implement the electronic filing requirements.

Taking these factors into consideration, the proposed regulations would delay the effective date for filing partnership returns on magnetic media, and phase in the magnetic media filing of certain partnership returns. Thus, the proposed regulations would be generally effective for partnership returns for partnership taxable years ending on or after December 31, 1999. However, electing large partnerships under section 775 and partnerships using foreign addresses on their Series 1065 forms would not be required to file their partnership returns using magnetic media for taxable years ending before January 1, 2001.

Special Analyses

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations will impose no additional reporting or recordkeeping requirement and will prescribe only the method for filing partnership returns that are already required to be filed under section 6031. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, January 13, 1999, at 10 a.m. in Room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by December 23, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Bridget E. Finkenaur, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in the development of these proposed regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6031(a)–1 as proposed to be added at 63 FR 3679 is amended by adding paragraph (e)(1)(iv) to read as follows:

§ 1.6031(a)–1 Return of partnership income.

* * * * *

(e) * * *

(1) * * *

(iv) *Returns filed on magnetic media.* Notwithstanding the provisions of paragraphs (e)(1)(i) and (ii) of this section, the return of a partnership that is required to be filed on magnetic media under § 301.6011–3 of this chapter must be filed at the Service Center indicated in relevant Internal Revenue Service revenue procedures, publications, forms, or instructions.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.6011–3 also issued under 26 U.S.C. 6011; * * *

Par. 5. Section 301.6011–3 is added to read as follows:

§ 301.6011–3 Required use of magnetic media for partnership returns.

(a) *Partnership returns required on magnetic media.* If a partnership with more than 100 partners is required to file a partnership return pursuant to § 1.6031(a)–1 of this chapter, the information required by the applicable forms and schedules must be filed on magnetic media, except as otherwise provided in paragraph (b) of this section. Returns filed on magnetic media must be made in accordance with applicable revenue procedures or publications. In prescribing revenue procedures or publications, the Commissioner may determine that partnerships will be required to use any one form of magnetic media filing. For example, the Commissioner may determine that partnerships with more than 100 partners must file their partnership returns electronically. In filing its return, a partnership must register to participate in the magnetic media filing program in the manner prescribed by the Internal Revenue Service in applicable revenue procedures or publications.

(b) *Waiver.* The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (b). A determination of hardship will be based upon all of the facts and circumstances. One factor in determining hardship will be the reasonableness of the incremental cost to the partnership of complying with the magnetic media filing requirements. Other factors, such as equipment breakdowns or destruction of magnetic media filing equipment, also may be considered. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver will specify the type of partnership return and the period to which it applies. The waiver will also be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If a partnership fails to file a partnership return on magnetic media in the manner required and when required to do so by this section, the partnership will be deemed to have failed to file the return in the manner prescribed for purposes of the information return penalty under section 6721. See § 301.6724–1(c)(3) for rules regarding the waiver of penalties for undue economic hardship relating to filing returns on magnetic media.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

(2) *Partnership.* The term *partnership* means a partnership as defined in § 1.761–1(a) of this chapter.

(3) *Partner.* The term *partner* means a member of a partnership as defined in section 7701(a)(2).

(4) *Partnership return.* The term *partnership return* means a form in Series 1065 (including Form 1065, U.S. Partnership Return of Income, and Form 1065-B, U.S. Return of Income for Electing Large Partnerships), along with the corresponding Schedules K–1 and all other related forms and schedules that are required to be attached to the Series 1065 form.

(5) *Partnerships with more than 100 partners.* A partnership has more than 100 partners if, over the course of the partnership's taxable year, the partnership had more than 100 partners, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year. For purposes of this paragraph (d)(5), however, only those persons having a direct interest in the partnership must be considered partners for purposes of determining the number of partners during the partnership s taxable year.

(e) *Examples.* The following examples illustrate the provisions of paragraph (d)(5) of this section. In the examples, the partnerships utilize the calendar year, and the taxable year in question is 1999:

Example 1. Partnership P had five general partners and 90 limited partners on January 1, 1999. On March 15, 1999, 10 more limited partners acquired an interest in P. On September 30, 1999, the 10 newest partners sold their individual partnership interests to C, a corporation which was one of the original 90 limited partners. On December 31, 1999, P had the same five general partners and 90 limited partners it had on January 1, 1999. P had a total of 105 partners over the course of partnership taxable year 1999. Therefore, P must file its 1999 partnership return on magnetic media.

Example 2. Partnership Q is a general partnership that had 95 partners on January 1, 1999. On March 15, 1999, 10 partners sold their individual partnership interests to corporation D, which was not previously a partner in Q. On September 30, 1999, corporation D sold one-half of its partnership interest in equal shares to five individuals, who were not previously partners in Q. On December 31, 1999, Q had a total of 91 partners, and on no date in the year did Q have more than 100 partners. Over the course of the year, however, Q had 101 partners. Therefore, Q must file its 1999 partnership return on magnetic media.

Example 3. Partnership G is a general partnership with 100 partners on January 1, 1999. There are no new partners added to G in 1999. One of G's partners, A, is a partnership with 53 partners. A is one partner, regardless of the number of partners A has. Therefore, G has 100 partners and is not required to file its 1999 partnership return on magnetic media.

(f) *Effective date.* In general, this section applies to partnership returns for taxable years ending on or after December 31, 1999. However, electing large partnerships under section 775 and partnerships using foreign addresses on their Series 1065 forms are not required to file using magnetic media for taxable years ending before January 1, 2001.

Par. 6. Section 301.6031–1 is revised to read as follows:

§ 301.6031–1 Return of partnership income.

For provisions relating to the requirement of returns of partnership income, see § 1.6031(a)–1 of this chapter. For provisions relating to magnetic media filing of partnership returns, see § 301.6011–3.

Par. 7. Section 301.6721–1 is amended by removing the third, fourth, and fifth sentences of paragraph (a)(2)(ii) and adding four sentences in their place to read as follows:

§ 301.6721–1 Failure to file correct information returns.

(a) * * *

(2) * * *

(ii) * * * However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement) or in the case of a partnership with more than 100 partners, more than 100 information returns (the 100-threshold requirement) (collectively, the threshold requirements). Each Schedule K–1 considered in applying the 100-threshold requirement will be treated as a separate information return. These threshold requirements apply separately to each type of information return required to be filed. Further, these threshold requirements apply separately to original and corrected returns. * * *

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–28264 Filed 10–22–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 169–0097 EC; FRL–6179–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision—San Joaquin Valley Unified Air Pollution Control District; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published September 14, 1998 (63 FR 49053). On September 14, 1998, EPA proposed a limited approval and limited disapproval of revisions to the California State Implementation Plan controlling oxides of nitrogen emissions in the San Joaquin Valley Unified Air

Pollution Control District. At the request of the Western States Petroleum Association, EPA is extending the comment period for 30 days.

DATES: The comment period is extended until November 13, 1988.

ADDRESSES: Comments should be submitted to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday at (415) 744–1202.

Dated: October 8, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–28488 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300690; FRL–6019–7]

RIN 2070–AC18

Certain Plant Regulators, Cytokinins, Auxins, Gibberellins, Ethylene, and Pelargonic Acid; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish exemptions from the requirement of a tolerance for residues of the active ingredients cytokinins, auxins, gibberellins, ethylene, and pelargonic acid in or on all food commodities, when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest. EPA also proposes to remove any existing crop-specific tolerances and/or exemptions from the requirement of a tolerance for the subject active ingredients as well as considering such tolerances to be reassessed as required by the Food Quality Protection Act of 1996 (FQPA). EPA is proposing this regulation on its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators.

DATES: Comments, identified by the docket control number [OPP–300690], must be received on or before December 22, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VI of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 9th fl., Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703) 308–8263; greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA proposes to amend 40 CFR part 180 by establishing exemptions from the requirement of a tolerance for the active ingredients cytokinins (specifically: aqueous extract of seaweed meal and kinetin); auxins (specifically: indole-3-acetic acid and indole-3-butyric acid); gibberellins [gibberellic acids (GA_3 and GA_4 + GA_7), and sodium or potassium gibberellate]; ethylene; and pelargonic acid, in or on all food commodities, when used as plant regulators on plants, seeds or cuttings and on all food commodities, after harvest, in accordance with good agricultural practices. EPA concurrently proposes the revision or revocation and removal of any existing crop-specific tolerances and/or exemptions from the requirement of tolerances for the listed active ingredients when used as plant regulators. In taking this action EPA will consider those tolerances and/or exemptions to be reassessed (Federal Food, Drug, and Cosmetic Act, 408(q) as amended by the FQPA of 1996).

The Agency has selected this group of plant regulators as the subject of this proposal due to their non-toxic mode of action, toxicity profile, low application rates, and the expectation that plant regulator uses will not significantly increase their intake above normally consumed levels. There are additional plant regulator active ingredients which may meet the selection criteria. The Agency may, in the future, propose a similar document addressing other candidate plant regulator active ingredients.

All of the subject active ingredients are currently registered plant regulators, with the exception of indole-3-acetic acid. The Agency discourages the establishment (or existence) of tolerances, or exemptions from the requirement of a tolerance, for active ingredients for which there are no registered pesticide products. Therefore, any Final Rule subsequent to this proposal will not include indole-3-acetic acid (a naturally occurring analog of indole-3-butyric acid) in the tolerance exemption for auxins, unless during the comment period specific requests that it be included are received. Such requests must document the intention of the commentor to promptly submit upon publication of the Final Rule an application to register a plant regulator product containing indole-3-acetic acid as an active ingredient.

The Agency is making this proposal upon its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators. A plant regulator is defined by EPA as ''...any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof...'' (FIFRA sec. 2 (v)). Additionally, plant regulators are characterized by their low rates of application; high application rates of the same compounds often are herbicidal.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated

dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' Additionally, section 408(b)(2)(D)(v) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

EPA has assessed the toxicology data base for the subject plant regulators and has sufficient data to assess the hazards and to make a determination on aggregate exposure, consistent with section 408(c)(2), for the exemptions from the requirement of a tolerance. EPA's assessment of the exposures, including dietary exposure, and risks associated with establishing these exemptions follows.

A. Waiver of Data Due to Low Toxicity

Tolerance exemptions for these types of substances are usually based on the results of subchronic feeding, developmental toxicity and mutagenicity studies, but for many of the plant regulators some or all of these study requirements have been waived because of negligible exposure from very low use rates. Such use rates for these active ingredients are expected to be effective when these substances are used as plant regulators and these low use rates are not expected to significantly increase dietary intake over that anticipated from consumption of a normal diet because the subject active ingredients are naturally occurring (or are synthesized to approximate the naturally occurring forms) in plants. Plants are part of a normal human diet. These substances are effective plant regulators when applied at low rates, but are often herbicidal when applied at high rates. The toxicological data presented below demonstrate that testing at high doses yields few effects in laboratory animals. Doses high enough to cause toxicity in animal studies would represent application rates toxic to crops (high, herbicidal rates), whereas the subject of this proposal is the plant regulator (low rates) use.

Human health data requirements for indole-3-butyric acid were waived for these reasons. Also, data from the published literature on ethylene, and the absence of any reports of significant toxicity from its widespread clinical use as an anesthetic were accepted by the Agency as sufficient to support the conclusion that ethylene will be nontoxic to humans under the conditions of use as a plant regulator (including low application rate), and no additional toxicity data on ethylene are required. No additional toxicity data are needed for cytokinins since they are naturally occurring in numerous plant food sources and are available as a food supplement.

Because there are no registered pesticide products with indole-3-acetic acid as the active ingredient, no data have been received or reviewed. Indole-3-acetic acid is a naturally occurring analog of indole-3-butyric acid, for which all human health data were waived for the reasons discussed above. Human health data on indole-3-acetic acid would be similarly waived.

A full Tier I data set (40 CFR 158.690) was available and reviewed for the gibberellins.

The 90–day oral toxicity study on pelargonic acid was waived on the strength of the absence of toxic effects at or below a limit dose (1,000 milligrams/kilogram/day (mg/kg/day)) in the 2–week range finding and developmental toxicity test results.

B. Data on Acute Toxicity

The mammalian acute toxicity data for the plant regulators considered in this exemption indicate low toxicity following single oral, dermal, or inhalation exposures (Toxicity Category III or IV). When tested for primary eye irritation, results for some of the subject active ingredients (pelargonic acid and indole-3-butyric acid, only) placed them in Toxicity Category II, but these findings do not adversely affect the proposed tolerance exemptions, which are based on dietary exposures. Prevention of eye irritation is addressed through protective equipment required by the product labels.

C. Other Toxicity Data

Subchronic toxicity data and genotoxicity assays were considered for gibberellins and pelargonic acid.

In two subchronic dietary studies of GA_3 and $GA_4 + GA_7$ in rats, the No Observed Adverse Effect Levels (NOAELs) approached or exceeded an oral limit dose (1,000 mg/kg/day), and the Lowest Observed Adverse Effect Levels (LOAELs) were twofold to fivefold higher than the limit dose. An oral developmental toxicity study with GA_3 in rats resulted in maternal and developmental toxicity NOAELs equal to or greater than the oral limit dose (highest dose tested), but an oral developmental toxicity study with $GA_4 + GA_7$ in rabbits established maternal and developmental toxicity NOAELs at 300 mg/kg/day. The highest dose tested (1,000 mg/kg/day) increased incidences of mortality, abortion, clinical signs of toxicity and gross pathological observations. $GA_4 + GA_7$ had no genotoxic effects at or below limit doses in a reverse mutation assay with *Salmonella typhimurium*, in an *in vivo* mouse micronucleus test, and in an *in vitro* UDS (unscheduled DNA synthesis) assay at concentrations up to 1,260 µg/ml. GA_3 was also negative at or below limit concentrations in *S. typhimurium* reverse mutation assays and in an *in vitro* mouse lymphoma cell assay. However, an *in vitro* cytogenetics assay in human lymphocytes demonstrated chromosomal effects at 4,500 µg/ml with metabolic activation and at 2,500 µg/ml without metabolic activation which suggested a potential concern for induction of chromosome damage *in vitro*. These two doses reduced the mitotic index of test cultures by 69% and 50% compared with control cultures for the 4,500 and 2,500 µg/ml levels, respectively, which indicated that these dose levels had excessive cytotoxicity. In addition, dose levels equal to or less than 2,500 µg/ml with metabolic activation or 1,250 µg/ml in the absence of metabolic activation did not induce chromosomal aberrations.

A 14–day range finding test with pelargonic acid to determine dosing concentrations for a 90–day rat oral toxicity study revealed no adverse effects from pelargonic acid at any dose level, including the highest dose of 20,000 ppm (2 percent of the diet), or 1,834 mg/kg/day (a level exceeding the limit dose of 1,000 mg/kg/day). These results and those from the developmental toxicity study described below indicated that a 90–day oral toxicity study is not necessary for dietary risk assessment. No evidence of maternal or developmental toxicity was

seen in an oral developmental toxicity screen with pelargonic acid at a limit dose (1,500 mg/kg/day). No dermal or systemic toxicity and no increased incidence of tumors were observed in a chronic dermal toxicity study in mice; the mice were treated twice weekly with 50 mg doses of undiluted pelargonic acid for 80 weeks. Pelargonic acid was shown not to be genotoxic in bacteria (*S. typhimurium*) at limit concentrations (5,000 µg/plate) or in an *in vivo* mouse micronucleus assay at dose levels of 1,250, 2,500 or 5,000 mg/kg. In an *in vitro* mouse lymphoma forward mutation assay pelargonic acid induced a mutagenic response at levels greater than or equal to 50 µg/ml with metabolic activation. However, the small sizes of the mutant colonies indicated that the genetic damage was associated with chromosomal damage instead of specific gene mutations. Pelargonic acid in the absence of metabolic activation did not induce gene mutations in mouse lymphoma cells at concentrations as high as 1,200 µg/ml, and higher concentrations were cytotoxic. The *in vivo* mouse micronucleus assay with pelargonic acid did not corroborate the chromosomal findings in the *in vitro* mouse lymphoma assay.

III. Aggregate Exposures

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and drinking water and all other non-occupational exposures, including exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The mammalian toxicology data for these plant regulators indicate low acute toxicity following oral exposure (Toxicity Category III or IV). At the levels used as plant regulators, human dietary exposure is expected to be negligible and acute toxicity from such exposure is not expected. Subchronic and developmental toxicity studies indicated that toxicity did not occur as a result of repeated oral doses at or above 1,000 mg/kg of body weight, and no mutagenic activity was observed. Therefore, it is unlikely that chronic dietary exposures would be high enough to result in effects harmful to humans.

1. *Food*. Residue analyses data, if any have been submitted, are not a component of this determination since these plant regulators either are naturally occurring in many food plants and are therefore a component of the normal human diet, and/or are used at very low rates. The Agency believes that use of the above plant regulators will result in negligible to nonexistent residues in or on foods or feed.

2. *Drinking water exposure*. For the purposes of assessing the potential dietary exposure under these exemptions, EPA considered that under these exemptions the subject active ingredients could be present in all food commodities. Other potential sources of dietary exposure of the general population to residues of pesticides are residues in drinking water. Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate residues of the subject active ingredients in drinking water.

B. Other Non-occupational Exposure

For the subject active ingredients, the toxicity data demonstrated no toxic endpoints upon which to base a risk characterization at or below 1,000 mg/kg of body weight/day (the limit dose). Any non-occupational risk is expected to be insignificant because of the non-toxic mode of action and low exposure resulting from the low plant regulator application rates. Also, the subject active ingredients are naturally occurring in foods and turf, or are synthetics approximating the natural forms in structure and activity. Additionally, appropriate label precautions will mitigate risk from exposure through residential (home and garden) use.

1. *Dermal exposure*. The mammalian toxicology data for these plant regulators indicate low acute toxicity following dermal exposure (Toxicity Category III or IV), with the following exception. Acute toxicity studies placed technical pelargonic acid in Toxicity Category II for primary dermal irritation.

2. *Inhalation exposure*. The mammalian toxicology data for these plant regulators indicate low acute toxicity following inhalation exposure (Toxicity Category III or IV).

IV. Other Considerations

A. Endocrine Disruptors

The Agency has no information to suggest that the subject plant regulators will have an effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of these biological plant regulators at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects. Because of the long-term history of natural exposure in the diet, it is not anticipated that the subject active ingredients will require endocrine effects screening.

B. Analytical Method(s)

The Agency proposes to establish exemptions from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that analytical methods are not required for enforcement purposes for any of the subject active ingredients.

C. Codex Maximum Residue Level

There are no CODEX tolerances nor international tolerance exemptions established for the subject active ingredients, when used as plant regulators, at this time.

V. Safety Determination for U.S. Population, Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children.

Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, the Agency believes that there are reliable data to support the conclusion that the subject active ingredients when used as plant regulators are practically non-toxic to mammals, including infants and children, and, thus, there are no threshold effects, and EPA has not used a margin of exposure (safety) approach to assess their safety. As a result, the provision requiring an additional margin of exposure (safety) does not apply.

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action.

Based on the information and data considered, the Agency has determined that use of these pesticides as plant growth regulators will not pose a dietary risk under reasonably foreseeable circumstances.

As to cytokinins, auxins, and ethylene, the lack of concern regarding toxic effects (as evidenced by the waivers of data on indole-3-butyric acid and cytokinins, and the reliance upon public literature on ethylene), plus the low plant regulator application rates, and the expectation that plant regulator uses will not significantly increase intake of these active ingredients above normally consumed levels demonstrate that there is reasonable certainty of no harm from their use as plant regulators.

As to gibberillins, although there were some positive results at cytotoxic doses from genotoxicity assays, the negative results from the other genotoxicity assays with gibberellins, low plant regulator application rates, and the expectation that plant regulator uses will not significantly increase intake of gibberellins above normally consumed levels demonstrate that there is reasonable certainty of no harm from use of gibberellins as plant regulators.

As to pelargonic acid, the results of the toxicity studies, negative results in two of the three genotoxicity assays, low plant regulator application rates, and the expectation that plant regulator uses will not significantly increase intake of pelargonic acid above normally consumed levels demonstrate that there is reasonable certainty of no harm from use of this substance as a plant regulator.

Accordingly, EPA concludes that, in amending 40 CFR part 180, to establish the exemptions as proposed, there is a reasonable certainty that no harm to the general population, including infants and children, will result from aggregate exposure to the pesticide chemical residues of the subject active ingredients, when used as plant regulators. The safety of infants and children is supported by oral toxicity data indicating that, for the subject active ingredients, the doses must exceed 1,000 mg/kg/day before toxicity occurs.

VI. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300690] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300690]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This action proposes exemptions from the tolerance requirement under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this proposed action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 13, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.224 [Removed]

2. By removing § 180.224 *Gibberellins; tolerances for residues.*

3. In § 180.1016 by revising paragraph (a) to read as follows:

§ 180.1016 Ethylene; exemption from the requirement of a tolerance.

* * * * *

(a) For all food commodities, it is used as a plant regulator on plants, seeds, or cuttings and on all food commodities after harvest and when applied in accordance with good agricultural practices.

* * * * *

§ 180.1042 [Removed]

4. By removing § 180.1042 *Aqueous extract of seaweed meal; exemption from the requirement of a tolerance.*

5. By revising § 180.1098, to read as follows:

§ 180.1098 Gibberellins [Gibberellic Acids (GA_3 and GA_4 + GA_7), and Sodium or Potassium Gibberellate]; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of gibberellins [gibberellic acids (GA_3 and GA_4 + GA_7), and sodium or potassium gibberellate] in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

§ 180.1099 [Removed]

6. By removing § 180.1099 *Indole butyric acid (IBA); exemption from the requirement of a tolerance.*

7. In § 180.1159 by revising paragraph (a) to read as follows:

§ 180.1159 Pelargonic acid; exemption from the requirement of tolerances.

(a) An exemption from the requirement of a tolerance is established for residues of pelargonic acid in or on all food commodities when used as a plant regulator on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

* * * * *

8. By adding new § 180.1157 and § 180.1158 to read as follows:

§ 180.1157 Cytokinins; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of cytokinins (specifically; aqueous extract of seaweed meal and kinetin) in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

§ 180.1158 Auxins; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of auxins (specifically; indole-3-acetic acid and indole-3-butyric acid) in or on all food commodities when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest in accordance with good agricultural practices.

[FR Doc. 98–28360 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6179–4]

Land Disposal Restrictions: Notice of Intent To Grant a Site-Specific Treatment Variance to Chemical Waste Management, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today proposing to grant a site-specific treatment variance from the Land Disposal Restriction (LDR) standards for two specific hazardous wastes to be stabilized by Chemical Waste Management, Inc. (CWM) at their Kettleman Hills facility in Kettleman City, California. These wastes have been classified as D010, as well as D004, D006, D007, and D008. CWM requests this variance because the wastes of concern cannot be treated to the treatment standard of 5.7 mg/L TCLP (63 FR 28556, May 26, 1998) for nonwastewater forms of D010 waste. The chemical properties of the wastes in question appear to differ significantly from the waste used to establish the LDR standard. Accordingly, the Agency today proposes to grant a site-specific treatment variance to CWM from the selenium treatment standard for the two wastes discussed in this proposal. The Agency is proposing an alternate treatment standard of 51 mg/L TCLP for the waste generated by Owens Brockway Glass Container Company, and 25 mg/L TCLP for the waste generated by Ball-Foster Glass Container Corporation.

If this proposal is finalized, CWM may land dispose of these two treated wastes in a RCRA Subtitle C landfill provided they comply with the specified alternate treatment standard for selenium nonwastewaters and they meet all other applicable LDR treatment standards. Furthermore, the Agency proposes to grant this variance for a period of three years. During this period, the Agency will request the petitioner to submit information on whether new technologies have become available to treat these wastes to the national treatment level of 5.7 mg/L TCLP and also whether some type of vitrification or recovery technology can be employed to recover and/or treat the selenium component of the waste in lieu of stabilization. Note that waste already disposed of pursuant to the standard established in a treatment variance would be lawfully disposed, and would not have to be retreated if the standard in the variance were altered or lapsed.

DATES: EPA is requesting comments on today's proposed decision. Comments will be accepted until November 13, 1998. Comments postmarked after the close of the comment period will be stamped ''late'' and may or may not be considered by the Agency.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–98–CWMP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–CWMP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding 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, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

The index is available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/osw/hazwaste.htm#ldr
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking, contact Elaine Eby at (703) 308–8449 or EBY.ELAINE@epamail.epa.gov, or Josh Lewis at (703) 308–7877 or LEWIS.JOSH@epamail.epa.gov, Office of Solid Waste (5302 W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency ''Paperless Office'' campaign. For further information on the submission of diskettes contact Josh Lewis of the Waste Treatment Branch at (703) 308–7877.

A. Authority

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' EPA has interpreted this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was sustained by the court in *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355 (D.C. Cir. 1989). The Agency has recognized that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA established a treatment variance (40 CFR 268.44) that, if granted, becomes the treatment standard for the waste at issue.

B. Summary of Petition

On May 12, 1997, the Agency published ''Land Disposal Restrictions Phase IV: Second Supplemental Proposal on Treatment Standards for Metal Wastes and Mineral Processing Wastes, Mineral Processing and Bevill Exclusion Issues, and the Use of Hazardous Waste as Fill'' (62 FR 26041). In this proposal, the Agency proposed to revise the Universal Treatment Standard (UTS) for selenium nonwastewaters from 0.16 mg/L TCLP to 5.7 mg/L TCLP. The Agency also proposed to apply the revised UTS standard to D010 nonwastewaters (D010 denotes a waste that is characteristically hazardous for selenium).

On August 12, 1997, CWM submitted comments on the supplemental proposed rule. CWM stated that the standards for selenium should be raised and reiterated an earlier suggestion that EPA establish a High Selenium >200 ppm subcategory for nonwastewaters, with the establishment of a treatment standard of 10 mg/L TCLP, because of the technical problems in achieving lower levels for more highly-concentrated selenium waste streams. CWM stated that it had consistently experienced problems treating waste streams from glass manufacturing companies to the current level of 5.7 mg/L TCLP. To further illustrate this point, CWM provided treatability testing data from a selenium-contaminated waste stream (untreated TCLP of 80.13 mg/L), which showed that CWM formulated 16 different treatment recipes prior to targeting one which could possibly treat a selenium waste to below the 5.7 mg/L standard.

On October 20, 1997, per the Agency's request for additional information on the facility's selenium treatment using stabilization, CWM submitted additional testing data from their Kettleman Hills, California facility. These data consisted of bench-scale stabilization treatment testing for selenium-bearing wastes generated from various glass manufacturing companies. The wastes contained leachate concentrations of selenium ranging from 76.3 to 1024 mg/L TCLP. Stabilization tests were submitted on three different selenium waste streams using various combinations of the following stabilization reagents: ferrous sulfate, calcium polysulfide, ferric chloride, sodium bisulfate, portland cement, and cement kiln dust. Data from these tests showed that more than 60 different stabilization recipes failed to meet the selenium treatment standard of 5.7 mg/L TCLP, with only five recipes achieving compliance.

In the Phase IV Final Rule, the Agency determined that a treatment standard of 5.7 mg/L TCLP was appropriate for D010 nonwastewaters (63 FR 28556, May 26, 1998). However,

the Agency further concluded that high-level selenium waste streams, in particular the waste streams for which data was submitted by CWM, were unable to achieve the 5.7 mg/L TCLP standard. The Agency suggested that it would propose a site-specific treatment variance for these high selenium waste streams being treated by CWM in the near future. Id.

II. Basis for Determination

Under 40 CFR 268.44(h), EPA allows facilities to apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated by BDAT to specified levels or by the specified methods. Note that there are other grounds for obtaining treatment variances, but this is the only provision relevant to the present petition.

CWM formally submitted their request for a treatment variance by subsequent letter.[1] CWM also sent comments in support of the Land Disposal Restrictions Phase IV—Second Supplemental (62 FR 26041, May 12, l997) as well as additional supplemental information. The Agency has used this information in evaluating the variance request by CWM. All information and data used in the development of this proposed treatment variance can be found in the RCRA docket supporting this proposal.

A. Establishment of BDAT for Selenium

In the Third Third rule (55 FR 22521, June 1, 1990), the Agency developed performance standards for selenium based on stabilization as BDAT. At that time, EPA had information indicating that wastes containing high concentrations of selenium were rarely generated and land disposed. The Agency also stated that it believed that for most waste containing high concentrations of selenium, recovery of the selenium was feasible using recovery technologies currently employed by copper smelters and copper refining operations. The Agency further stated that it did not have any performance data for selenium recovery, but available information indicated that recovery of elemental selenium out of certain types of scrap material and other types of waste was practiced in the United States. No comments or data were received on this issue in the Third Third rulemaking docket. Consequently, to establish the treatment standard, the Agency used performance data from the stabilization of a D010 mineral processing waste, which it determined to be the most difficult to treat selenium waste. This waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The selenium levels in treated residuals were between 1.80 and 0.154 mg/L TCLP. This waste also contained high concentrations of arsenic, cadmium, and lead. The binder to waste ratios varied from 1.3 to 2.8.

B. Chemical Properties and Treatability Information on CWM's Selenium Wastes

The two waste streams at issue here appear to be significantly different from the wastes used to set the treatment standard, and the current treatment standard of 5.7 mg/L TCLP for D010 nonwastewaters is not attainable using BDAT on these two wastes. The first waste stream, generated by Owens Brockway Glass Container Company, Vernon, California and identified by CWM in the petition documents as D79726, is electrostatic precipitator dust generated during glass manufacturing operations. Presently, CWM is storing 130 cubic yards of this unprocessed waste on-site. An additional forty cubic yards have been treated but fail to meet the standard of 5.7 mg/L TCLP. The generator estimates a monthly generation rate of 40 cubic yards.

D79726 is characterized as a grey and white solid containing no free liquids or organic constituents. It consists of 50–60% salt cake and 40–50% soda ash. Concentrations of selenium in the untreated waste have been measured between 80.13 and 1024 mg/L TCLP. The waste also has significant concentrations of arsenic, cadmium, chromium, and lead and has exhibited the following additional waste code listings: D004, D006, D007, and D008.

Three samples or batches of the waste were tested to determine appropriate stabilization recipes. A summary of these samples is presented in Table I. For Batch 96222928 (581 mg/L TCLP selenium in the untreated sample), CWM tested nine different recipes, with reagent to waste ratios ranging between 0.6 and 4.3. Reagents included iron sulfate, cement and cement kiln dust. Treated selenium TCLP concentrations for Batch 96222928 ranged from 4.34 to 228 mg/L TCLP. Batch 96222929 contained 1024 mg/L TCLP selenium in the untreated waste. Thirty-three different recipes were tested with treated concentrations of selenium ranging from 5.23 to 290.5 mg/L TCLP, with reagent to waste ratios ranging from 0.6 to 5.0. Batch 96222930 contained 465 mg/L TCLP selenium in the untreated waste and was tested using nine recipes with reagent to waste ratios ranging from 1.3 to 4.4. Concentrations of selenium in the treated waste ranged from 11.3 mg/L to 109 mg/L TCLP.

TABLE I.—SUMMARY OF OWENS BROCKWAY SELENIUM WASTE

Batch No.	Untreated Se TCLP (mg/L)	Treated Se TCLP range (mg/L)
96222928	581	4.34–228.
96222929	1024	5.23–290.5.
96222930	465	11.3–109.

The second waste stream, generated by the Ball-Foster Glass Container Corporation, El Monte, California and identified in CWM documents as DZ2050, is dry scrubber solid from glass manufacturing. CWM's waste profile identified the selenium concentrations in the untreated waste as 20.9 mg/L TCLP. It also identifies the waste as characteristic for lead (D008). Presently, none of this waste is being stored at the CWM facility; however, the generator anticipates a quarterly generation rate of twenty cubic yards. The untreated leachate concentration for selenium in the waste stream sample used to develop a treatment recipe was measured at 59.8 mg/L TCLP, with a lead concentration of 5.79 mg/L TCLP and an arsenic concentration of 5.70 mg/L TCLP. CWM tested 20 different stabilization recipes on the waste. Treated concentrations for selenium ranged from 1.83 mg/L TCLP to 50.6 mg/L TCLP, with reagent to waste ratios ranging from 0.3 to 5.0.

The Agency has reviewed the information submitted by CWM on these two waste streams and believes that, as demonstrated by the data, both wastes satisfy the criteria of differing significantly in chemical composition from the waste that was used to generate the treatment standard. Selenium TCLP concentrations in untreated D79726 waste are one to three orders of magnitude higher than the waste used to calculate the treatment standard. Similarly, untreated TCLP concentrations of selenium in DZ2050 were measured an order of magnitude

[1] Letter to Fred Chanania, USEPA, from Mitchell Hahn, Chemical Waste Management, Inc., July 30, 1998.

higher. Furthermore, the treatment being employed by the petitioner is consistent with EPA's determination of BDAT and the process used is well-designed and operated. It should be noted that it is difficult, if not impossible, to optimize treatment for selenium when other metals are being treated, because the selenium solubility curve differs from that for most other metals. Thus, successfully stabilizing other metals generally means that treatment for selenium cannot be optimized (see 63 FR 28569, plus further explanation provided below). Therefore, EPA is seeking comment on this proposed site-specific treatment variance for two high selenium waste streams generated by glass manufacturing operations.

III. Alternative Treatment Standard for D010

As discussed above, the data demonstrate that the waste used to generate the treatment standard differs significantly from the wastes that may be treated by CWM, which supports our view that wastes containing high concentrations of selenium are not easily treated using the BDAT technology of stabilization. As previously acknowledged and discussed by the Agency in a past rulemaking (see 62 FR 26041), wastes with selenium concentrations greater than 1.0 mg/L TCLP in the presence of other metals, e.g., cadmium, lead or chromium, may encounter difficulties in stabilization. This is due to a difference in pH/solubility curves: selenium's minimum solubility is at a neutral to mildly acidic pH (6.5–7.5) while other characteristic metals have a minimum solubility in the alkaline pH range (8–12) (62 CFR 26045).

EPA has determined, in analyzing the data on D79726 (waste generated by Owens Brockway Glass Container Company), the most effective stabilization recipe for this waste consists of 0.7 parts iron sulfate combined with 2.0 parts cement, resulting in a reagent to waste ratio of 2.7 to 1. For each of the three analytical trials submitted for the waste stream, this specific recipe achieved 36.8, 34.08, and 43.7 mg/L selenium TCLP in the treated waste. While the data indicated that other recipes achieved lower TCLP values (4.34 to 28.51 mg/L), these reagent to waste ratios all exceeded 4.0 to 1. The Agency questions whether such a high reagent to waste ratio is either effective or optimized treatment. High reagent to waste ratios can lead to questions of impermissible dilution.

As part of their petition, CWM has stated that reagent to waste ratios of 1 or less are preferred, and we generally concur. In the Phase IV rule, the Agency did not generally use stabilization data with reagent to waste ratios greater than 1 (See: ''Final Draft Site Visit Report for the August 20–21 Site Visit to Rollins Environmental's Highway 36 Commercial Waste Treatment Facility Located in Deer Trail, Colorado'' November 21, 1996 and the economic analysis supporting the Phase IV final rule). However, in the case for selenium, the existing treatment standard, as discussed earlier, was calculated from data with reagent to waste ratios ranging from 1.8 to 2.7. Based on the Agency's review of the performance data and the reagent to waste ratios used to calculate the current treatment standard of 5.7 mg/L TCLP, we conclude that a reagent to waste ratio of 2.7 is optimized treatment for the selenium waste generated by Owens Brockway Glass Container Company. Using the BDAT methodology,[2] the Agency has calculated an alternative treatment standard of 51 mg/L TCLP based on three data points (36.8, 34.08 and 43.7) that were the result of stabilization treatment using a reagent to waste ratio of 2.7 for the waste identified as D79726 and generated by Owens Brockway.

For the second waste stream, identified as DZ2050 and generated by the Ball-Foster Glass Container Corporation, treatment data submitted to the Agency indicate that the most effective treatment is achieved using the reagent to waste ratios of 1.8, 2.2, 2.3, 2.4, and 2.7. Treated waste concentrations for selenium were as follows: 11.6, 7.47, 8.22, 15.6, and 4.82 mg/L TCLP. These treatment recipes are all consistent with the reagent to waste ratios used to establish the existing standard of 5.7 mg/L TCLP. Using these five data points, the Agency has calculated an alternative treatment standard of 25 mg/L TCLP for the D010 waste generated by Ball-Foster.

IV. Request for Comment

Based on the foregoing, the Agency proposes to grant CWM's petition for a site-specific treatment variance for the two D010 waste streams for a period of three years. We are proposing to limit the proposed treatment variance to three years to encourage CWM to continue researching new stabilization, vitrification, and recovery technologies that may more effectively deal with these two waste streams. Again, please note that waste already disposed of pursuant to the standard established in a treatment variance would be lawfully disposed, and would not have to be retreated if the standard in the variance were altered or lapsed. The Agency requests comments on all aspects of this proposal, especially with regard to the necessity for a separate high selenium treatability group, the proposed reagent to waste ratio of 2.7 to 1 for the selenium waste generated by Owens Brockway, the performance of stabilization technologies, and the proposed duration of the variance. Any information on glass manufacturing wastes would also be particularly useful to the Agency.

Should the Agency grant this variance, we would amend 40 CFR part 268 to note that the D010 waste from Ball-Foster Glass Container Corporation would be subject to a selenium TCLP of 25 mg/L, and the D010 waste from Owens Brockway Glass Container Company would be subject to a selenium TCLP of 51 mg/L. Both wastes would be treated by Chemical Waste Management, Inc. at their Kettleman Hills facility in Kettleman City, California. This variance would be effective for three years.

V. Administrative Requirement

A. Executive Order 12866

This proposed treatment variance does not create any new regulatory requirements. It merely establishes alternative treatment standards for specific wastes which replace standards already in effect. This proposed rule is, therefore, not a ''significant'' regulatory action within the meaning of Executive Order 12866. Because this proposed variance only changes the treatment standards applicable to two D010 waste streams at the Chemical Waste Management, Inc. facility in Kettleman City, California, and does not change in any way the paperwork requirements already applicable to these wastes, it does not affect requirements under the Paperwork Reduction Act.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written

[2] BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's proposed rule does not create a mandate on state, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposed rule.

C. Executive Order 13045

Today's proposed variance is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this action is not an economically significant proposal, and it is not expected to create any environmental health risks or safety risks that may disproportionately affect children. The wastes described in this proposal will be treated by Chemical Waste Management, Inc., and then disposed of in a RCRA Subtitle C landfill, ensuring that there will be no risks that may disproportionately affect children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposal is to issue a variance from treatment standards established in the recently promulgated LDR Phase IV Rule for TC metal hazardous wastes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

E. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Today's proposed variance applies to two D010 waste streams that will be treated by Chemical Waste Management, Inc. at their Kettleman City, California facility and disposed of in a RCRA Subtitle C landfill, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today's proposal will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This proposed rule also does not create new regulatory requirements; rather, it merely establishes alternative treatment standards for specific wastes which replace standards already in effect. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

G. Regulatory Flexibility Act

This proposed treatment variance does not create any new regulatory requirements. It merely establishes alternative treatment standards for a specific waste which replace standards already in effect, and it only applies to the Chemical Waste Management, Inc. facility in Kettleman City, California. Thus, this proposed rule would not have a significant impact on a

substantial number of small entities. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act: Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed rule, therefore, does not require a regulatory flexibility analysis.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. There are no voluntary consensus technical standards directly applicable to metal contaminants in hazardous waste that exhibit the toxicity characteristic for metals. Therefore, EPA did not consider the use of any voluntary standards in this proposal.

I. Submission to Congress and the General Accounting Office

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides, with limited exceptions, that no rule promulgated on or after March 29, 1996 may take effect until it is submitted to Congress and the Comptroller General along with specified supporting documentation. However, this requirement does not apply to ''any rule of particular applicability. * * *'' 5 U.S.C. 804(3). The proposed rule is of particular applicability, applying only to a particular waste at one facility under particular (and, as noted, exceptional) circumstances. Consequently, the Congressional review provisions of SBREFA are not applicable and this rule, if accepted, can take effect without submittal to Congress.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–28487 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6176–4]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program for Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Louisiana Department of Environment Quality's (LDEQ) Clusters V and VI Hazardous Waste Program under the Resource Conservation and Recovery Act. In the rule section of this **Federal Register** (FR), the EPA is approving the State's request as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to that immediate final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, a second FR document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before November 23, 1998.

ADDRESSES: Written comments referring to Docket Number LA98–1 may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address listed below. Copies of the materials submitted by LDEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, Wells Fargo Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444. Louisiana Department of Environmental Quality, H.B. Garlock Building. 7290 Bluebonnet, Baton Rouge, Louisiana 70810, Phone number (504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 98–27705 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6166–4]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by North Carolina. In the final rules section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the authorization is set forth in the immediate final rule. If no adverse written comments are received, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a withdrawal in the **Federal Register**. EPA will then respond to public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before November 23, 1998.

ADDRESSES: Mail written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center,

61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8440. You can examine copies of the materials submitted by North Carolina during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8190, and North Carolina Department of Environment and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 29201, (919) 733–2178.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: August 28, 1998.

A. Stanley Meiburg,

Regional Administrator, Region 4.

[FR Doc. 98–28491 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–61; FCC 98–258]

Policy and Rules Concerning the Interstate, Interexchange Marketplace

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Further Notice of Proposed Rulemaking examines restrictions that limit a common carrier's ability to bundle certain goods and services together and offer such bundles to the public. The goods and services at issue include telecommunications services, enhanced services, and customer premises equipment (CPE). Our rules currently prohibit telecommunications carriers from bundling telecommunications services with CPE, and place restrictions on the bundling of telecommunications services with enhanced services. Our current restrictions not only prevent carriers from offering distinct goods and/or services only on a bundled basis, but also prohibit carriers from offering ''package discounts,'' which enable customers to purchase an array of products in a package at a lower price than the individual products could be purchased separately. In this proceeding, we examine whether market conditions have changed sufficient to warrant lifting our restrictions on the bundling of CPE and enhanced services with basic telecommunications services.

DATES: Comments are due on or before November 23, 1998 and reply comments are due on or before December 23, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW, Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Michael Pryor, Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted October 1, 1998 and released October 9, 1998 (FCC 99–258). The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW, Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc9735.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Initial Regulatory Flexibility Act Analysis: Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules in this Further NPRM of Proposed Rulemaking (Further NPRM). Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further NPRM, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission shall send a copy of this Further NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. 603(a).

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In this Further Notice of Proposed Rulemaking (Further NPRM), we examine restrictions that limit a common carrier's ability to bundle certain goods and services together and offer such bundles to the public. The goods and services at issue include telecommunications services, enhanced services, and customer premises equipment (CPE). Bundling means selling different goods and/or services together in a single package. Our rules currently prohibit telecommunications carriers from bundling telecommunications services with CPE, and place restrictions on the bundling of telecommunications services with enhanced services. Our current restrictions not only prevent carriers from offering distinct goods and/or services only on a bundled basis, but also prohibit carriers from offering ''package discounts,'' which enable ''customers [to] purchase an array of products in a package at a lower price than the individual products could be purchased separately.''

2. In this proceeding, we examine whether market conditions have changed sufficiently to warrant lifting our restrictions on the bundling of CPE and enhanced services with basic telecommunications services. At the time the Commission adopted the CPE and enhanced services bundling restrictions, the Commission recognized, ''[i]f the markets for components of [a] commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle.''

3. This review is consistent with our overall effort to reduce regulation wherever conditions warrant. The review we take in this notice is also consistent with our statutory obligation, as part of our biennial review of regulations, to eliminate or modify regulations that ''are no longer necessary in the public interest as the result of meaningful economic competition.''

II. Background

4. In light of changes in the interexchange market over the past decade and the passage of the Telecommunications Act of 1996 (1996 Act), the Commission issued a Notice of Proposed Rulemaking, 61 FR 14717,

April 3, 1996, (*Interexchange NPRM*) on March 25, 1996, initiating a review of the Commission's regulation of interstate, domestic, interexchange services. The *Interexchange NPRM, inter alia,* sought comment on the Commission's tentative conclusion to revise its rule against bundling of common carrier communications services and CPE by allowing nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange telecommunications services.

5. In the *Interexchange Second Report and Order,* 61 FR 59340, November 22, 1996, the Commission deferred action on its tentative conclusion to modify the CPE bundling restriction. The Commission noted that AT&T, in its comments on the Commission's tentative conclusions regarding CPE bundling, raised the issue of whether the Commission should also eliminate the restrictions on bundled packages of enhanced and interexchange services offered by nondominant interexchange carriers. The enhanced services restriction (which is not codified in the Commission's rules) was adopted by the Commission in the *Computer II* proceeding. In the *Interexchange Second Report and Order,* the Commission stated that it would issue a Further NPRM addressing the continued application of both the CPE and enhanced services bundling restrictions.

6. We note, in addition, that Congress required the Commission to conduct a biennial review of regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be ''no longer necessary in the public interest.'' Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations to promote ''meaningful deregulation and streamlining where competition or other considerations warrant such action.'' In this Further NPRM, therefore, we seek comment on the extent to which the continued application of both the CPE and enhanced services bundling restrictions is ''no longer necessary in the public interest.''

7. In order to develop a more detailed and complete record than was possible in the context of the much larger *Interexchange Proceeding,* we issue this Further NPRM focused solely on the bundling and package discount issues. In addition to developing a more complete record on the issues surrounding bundling and discounts on packages of CPE and interstate, domestic, interexchange services offered by nondominant interexchange carriers, we seek further comment on the issues raised by commenters. We believe that developing a more complete record on our previous tentative conclusions, and the issues raised by the parties, will facilitate more informed decision-making. We therefore ask interested parties to respond to the issues raised in this Further NPRM. To the extent that parties want any arguments made in response to the *Interexchange NPRM* to be made part of the record for this Further NPRM, we ask them to restate those arguments in their comments.

III. Discussion

A. CPE Unbundling

8. In the *Computer II* proceeding, the Commission adopted a rule requiring all common carriers to sell or lease CPE separate and apart from such carriers' regulated communications services, and to offer CPE solely on a deregulated, non-tariffed basis. Section 64.702(e) of our rules provides:

> Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.

Carriers previously had provided CPE to customers as part of a bundled package of services. The Commission required carriers to separate the provision of CPE from the provision of telecommunications services because it found that continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market. The Commission recognized, however, that there may not be any anticompetitive effects of bundling ''[i]f the markets for components of [a] commodity bundle are workably competitive.''

9. In the *Interexchange NPRM,* the Commission tentatively concluded that it should modify the CPE bundling restriction codified in section 64.702(e) to allow nondominant interexchange carriers to bundle CPE with their interstate, domestic, interexchange services. The Commission noted that bundling may benefit consumers and promote competition, as long as the markets for the components of the bundle are substantially competitive so that carriers could not engage in anticompetitive conduct. The Commission tentatively concluded that, in light of the development of substantial competition in the markets for CPE and interstate, interexchange services, it was unlikely that nondominant interexchange carriers could engage in the type of anticompetitive conduct that led the Commission to prohibit the bundling of CPE with the provision, *inter alia,* of interstate, domestic, interexchange services. In support of this tentative conclusion, we note that the Commission has previously determined that the CPE market is competitive, and that the interstate, domestic, interexchange market is substantially competitive.

10. We seek comment on whether the restriction against bundling CPE with interstate, domestic, interexchange services ''is no longer necessary in the public interest due to meaningful economic competition'' in both the CPE and interstate, domestic, interexchange markets. In particular, we seek further comment on our tentative conclusion that both the CPE market and the interstate, domestic, interexchange services market demonstrate sufficient competition that it is unlikely that nondominant interexchange carriers could engage in anticompetitive behavior should the Commission allow the bundling of CPE with interstate, domestic, interexchange services. Commenters should provide empirical data on the level of competition in the interexchange and CPE markets to support their comments on these issues. We note that IDCMA previously submitted comments arguing that an interexchange carrier, even if lacking market power, nevertheless might have the ability to force consumers of their interstate, interexchange service offerings to purchase CPE from that same interexchange carrier. We seek comment on IDCMA's argument. We also seek comment on whether interexchange carriers that lack market power could ''lock in'' customers, through the use of long-term contracts and early termination penalties, and thus impede competition in the CPE market.

11. The Commission has previously found that bundling may be used as an ''efficient distribution mechanism'' and an ''efficient promotional device'' that may allow consumers to obtain goods and services ''more economically than if it were prohibited.'' We seek comment on whether we would benefit consumers and foster increased competition in the CPE and interexchange services markets by eliminating the CPE unbundling rule for nondominant interexchange carriers. We also seek comment on whether other

benefits or costs would result from modifying the CPE unbundling rule as it applies to these carriers. Parties should address whether amending the CPE unbundling rule for nondominant interexchange carriers would benefit consumers, by enabling carriers as well as CPE vendors to offer consumers innovative packages at prices that reflect reduced transaction costs. Parties should also address the contention raised by IDCMA, CERC, and ITAA in their previous comments that allowing nondominant interexchange carriers to bundle CPE and interstate, domestic, interexchange services would not benefit consumers, because the unbundling rule does not preclude interexchange carriers from offering one-stop shopping and creating service/equipment packages; it only requires them to charge separately for each component. We also seek comment on whether the Commission should adopt transition mechanisms if we were to permit bundling of CPE and interstate, domestic, interexchange services, and if so, what transition mechanisms should be adopted.

12. In the *Interexchange NPRM,* the Commission also sought comment on the effect that the proposed amendment of § 64.702(e) would have on the Commission's other policies or rules. We seek comment on whether the proposal to allow bundling and discounts for packages of CPE with interstate, domestic, interexchange service is consistent with the purposes of the Act. In particular, we seek further comment on whether there are any other provisions of the Act or the Commission's rules and regulations that are relevant to our analysis. For example, IDCMA and CERC assert in their prior comments that the Commission's proposal is inconsistent with the intent of Congress, as demonstrated by section 629 of the Act, which prohibits the bundling of multichannel video programming service with the equipment used by consumers to access multichannel video programming service.

13. In addition, we seek comment on whether or under what conditions bundling of CPE with interstate, domestic, interexchange services would violate the requirements in sections 201 and 202 of the Act that rates, practices, and classifications be just, reasonable, and not unjustly or unreasonably discriminatory. Parties should address whether, as IDCMA contends, an interexchange carrier that provides transmission service at a lower price to customers that agree to use carrier-provided CPE would violate sections 201 and 202. Parties should also address whether an interexchange carrier that provides CPE at a discount to customers that agree to use that carrier's interstate, domestic, interexchange services would violate sections 201 and 202. Parties should further address IDCMA's assertion that an interexchange carrier ''could choose to make transmission service available only to customers that agreed to obtain carrier-provided CPE,'' in violation of the nondiscrimination requirements found in section 202 of the Act.

14. We also seek further comment on IDCMA's assertion that allowing interexchange carriers to bundle CPE with interstate, domestic, interexchange services would cause the Commission to reregulate CPE because interexchange carriers could offer CPE as a part of their regulated transmission offering. Parties should address IDCMA's contention that, because the Commission would have to ensure that a bundle of CPE and the regulated transmission offering comply with Title II pricing requirements, the Commission would necessarily need to impose Title II regulation on CPE. Parties should further address whether such concerns about reregulation of CPE would apply if the CPE and the interstate, domestic, interexchange services are priced separately, but a package discount is given for customers that purchase both products. U S West, citing the *Cellular Bundling Order,* 57 FR 28466, June 25, 1992, suggests that the Commission could avoid the regulation of CPE by permitting packaging of CPE and transmission services, but continuing to require that CPE and common carrier services be treated, for regulatory purposes, as different products subject to different regulatory regimes (*i.e.* that CPE remain unregulated). We seek comment on whether such an approach is appropriate in this instance. We further seek comment on any other issues that may arise when CPE is packaged with a telecommunications service that is regulated under Title II of the Act.

15. We further seek comment on the contention raised by IDCMA, CERC, and ITAA that permitting nondominant interexchange carriers to bundle CPE and interstate, domestic, interexchange services would allow such carriers to subsidize the provision of equipment from the charges for service. In addition, we seek comment on the basis upon which to allocate revenue between telecommunications services and CPE when priced as a package for purposes of calculating a carrier's universal service contribution.

16. Moreover, we seek comment on whether and how the CPE bundling proposal would affect the Commission's Part 68 rules. Specifically, although we have not proposed modifications to the Commission's Part 68 registration program in this Further NPRM, we seek comment on whether the ''demarcation point'' between telephone company communications facilities and terminal equipment, as defined in section 68.3 of the Commissions rules, would change if CPE and interexchange carriers network offerings were bundled or packaged together at a discount, and what effect, if any, this would have on the Commission's Part 68 program.

17. We further seek comment on whether and how the CPE bundling proposal would affect a carrier's disclosure obligation under § 64.702(d)(2), the ''all-carrier rule.'' Section 64.702(d)(2) requires that all carriers owning basic transmission facilities disclose to the public all information relating to network design ''insofar as such information affects either intercarrier interconnection or the manner in which interconnected CPE operates.'' We seek comment on the concern expressed by IDCMA and CERC that carriers that offer bundled CPE and service packages will not provide independent or unaffiliated equipment manufacturers with the necessary technical interface information. In particular, we seek comment on whether we need to require public disclosure of network interfaces beyond what is already required in section 64.702(d)(2) of our rules should we remove the CPE bundling restriction.

18. In the *Interexchange NPRM* we also asked parties to comment on whether we should require interexchange carriers offering packages of CPE and interstate, domestic, interexchange services to continue to offer separately unbundled, interstate, domestic, interexchange services. We seek further comment on this issue. In particular, we seek further comment on whether this ''unbundled option'' requirement would benefit consumers by ensuring that those consumers that do not wish to purchase carrier-provided CPE may obtain transmission services only. For example, as U S West notes, the Commission allows bundling of cellular CPE and cellular service, provided that the cellular service is also offered separately. We also seek comment on whether any additional safeguards are necessary to protect consumers and how any such safeguards should be structured. We seek further comment on CERC's proposal that the Commission should require carriers that offer packages of CPE and interexchange services to state separately the charges for CPE and

service in both advertising materials and bills, even when the bundled service is being sold at a single price. We also seek comment on CERC's further suggestion that the Commission permit the customer to obtain the service separately at a price which, when added to the CPE price, does not exceed the price for obtaining CPE and the telecommunications service jointly. Parties should address whether adopting this proposal would undermine the benefits to consumers of allowing package discounts for bundles of CPE and interstate, domestic, interexchange services.

19. In a related vein, we sought comment in the *Interexchange NPRM* on whether the U.S. Government's obligations under the General Agreement on Trade in Services (GATS) to ensure that ''service suppliers'' are permitted ''to purchase or lease and attach terminal or other equipment which interfaces with the [public telecommunications transport] network and which is necessary to supply [their] services'' implies that interexchange carriers should be required to offer separately unbundled, interstate, domestic, interexchange services on a nondiscriminatory basis if they are permitted to bundle CPE with the provision of such services. We seek further comment on whether amending the unbundling rule is consistent with U.S. international obligations under both the GATS and the North American Free Trade Agreement (NAFTA), and whether such obligations require that interexchange carriers bundling CPE and interstate, domestic, interexchange services also continue to offer such services separately and unbundled from CPE.

20. We also seek comment on whether eliminating the prohibition against bundling CPE with interstate, domestic, interexchange services offered by nondominant interexchange carriers would adversely affect competition in the international market. The impact on the international market may arise because many carriers currently offer bundled interstate, domestic, interexchange, and international services. Nondominant interexchange carriers would thus be able to offer packages that include CPE, international services, and interstate, domestic, interexchange services. We therefore seek comment on whether there are any anticompetitive effects of allowing nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with international services. Parties should address whether any anticompetitive effects they identify should preclude a nondominant interexchange carrier from bundling CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with international services. Parties should also address whether there are any safeguards to prevent anticompetitive conduct that are less restrictive than prohibiting such bundles.

21. Furthermore, the *Interexchange NPRM* sought comment on whether and how the entry of incumbent local exchange carriers (LECs), including the Bell Operating Companies (BOCs), into the market for interstate, domestic, interexchange services should affect our analysis. After the *Interexchange NPRM* was issued, the Commission, in the *LEC Classification Order,* 62 FR 35974, July 3, 1997, classified the BOCs' section 272 affiliates as nondominant in the provision of in-region, interstate, interLATA services. The Commission also classified the BOCs and their affiliates as non-dominant in the provision of out-of-region interstate, domestic, interexchange services. The Commission concluded that the requirements established by, and the rules implemented pursuant to, sections 271 and 272 of the Act, together with other existing Commission rules, sufficiently limit the ability of a BOC and its section 272 affiliate to use the BOC's market power in the local exchange or exchange access markets to raise and sustain prices of interstate, interLATA services above competitive levels. In addition, the Commission classified independent incumbent LECs and their affiliates as nondominant in the provision of interstate, interexchange services. The Commission further required these independent LECs to provide in-region, interexchange services through separate affiliates that satisfy the requirements established in the *Competitive Carrier Fifth Report and Order,* 49 FR 34824, September 4, 1984, but did not require such separation in order to be classified as nondominant in the provision of out-of-region interstate, interexchange services.

22. Based on the safeguards imposed by the Act and the Commission's rules thereunder, we tentatively conclude that, to the extent the BOCs and their section 272 affiliates, as well as independent LECs and their affiliates, are classified as nondominant in the provision of interstate, domestic, interexchange services, these carriers may bundle CPE with such services to the same extent as other nondominant interexchange carriers. We seek comment on this tentative conclusion.

23. We also seek comment on whether there are any anticompetitive effects of allowing any nondominant interexchange carrier to bundle CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange services. Parties should address whether any anticompetitive effects they identify should preclude a nondominant interexchange carrier from bundling CPE with interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange services. Parties should also address whether there are any safeguards to prevent anticompetitive conduct that are less restrictive than prohibiting such bundles.

24. Furthermore, we seek comment on the broader question raised by SBC in previous comments in this proceeding of whether to continue the prohibition on bundling interstate CPE with local exchange or exchange access services. We recognize that nondominant interexchange carriers are entering the local exchange and exchange access markets. As they do so, they may be able to offer local exchange and exchange access services in conjunction with the bundled offering of CPE and interstate, domestic, interexchange services. Nondominant interexchange carriers may thus be able to offer a package that includes CPE, local exchange services, and interstate, domestic, interexchange services. SBC argues that local exchange carriers would be at a disadvantage, because they would be unable to offer packages that included CPE. In this Further NPRM, we seek comment on the issues raised by SBC as to whether to allow bundling of CPE with local exchange and exchange access services.

25. We note that the basis for the Commission's tentative conclusion in the *Interexchange NPRM* to allow nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange services is that both the CPE and interstate, domestic, interexchange markets are substantially competitive and that nondominant interexchange carriers do not possess market power in the interstate, interexchange market. Thus, the Commission tentatively concluded in the *Interexchange NPRM* that allowing such carriers to bundle CPE with interstate, domestic, interexchange services is unlikely to lead to the anticompetitive conduct that led the Commission to prohibit the bundling of CPE with telecommunications services.

26. We seek comment on whether a similar analysis should be adopted in assessing whether to allow the bundling of CPE with local exchange and

exchange access services. The analysis, as noted, contains two parts. The first part of the analysis focuses on the nature of the component markets. We seek comment on whether the differences in the structures of and the market conditions in the local exchange, exchange access, and interexchange markets warrant continued applicability of the CPE bundling restrictions to local exchange and exchange access markets. The second part of the analysis in the *Interexchange NPRM* concludes that allowing nondominant interexchange carriers to bundle CPE and interstate, domestic, interexchange services would be unlikely to lead to anticompetitive conduct, because such carriers do not have market power. We seek comment on whether there are carriers in the local exchange or exchange access markets that would similarly not raise anticompetitive concerns if allowed to bundle CPE with local exchange and exchange access services. In this regard, parties should address what role market power should play in the analysis and whether carriers that do not possess market power in the local exchange and exchange access markets would be able to engage in the anticompetitive conduct which led the Commission to prohibit such bundling. Parties should also address whether lifting the CPE bundling restrictions on only certain categories of carriers in the local exchange and exchange access markets would promote competition and the provision of innovative services and packages, thereby benefiting consumers.

27. Finally, we seek comment on the jurisdictional issues that may arise if we allow bundling of CPE and local exchange services. We note that, although the Commission has deregulated CPE, the Commission has the authority, under Title I of the Communications Act, to regulate CPE that is used for both interstate and intrastate communications and to preempt inconsistent regulation on the part of the states. States have the authority to regulate the provision of local exchange services. As discussed above, an issue regarding the regulation of CPE may arise if CPE, which was deregulated by the Commission, is bundled or packaged with a regulated service. Moreover, jurisdictional questions may arise if CPE is bundled with local exchange services, because states have the authority to regulate local exchange services, while the Commission has the authority to regulate CPE. We therefore seek comment on what, if any, impact allowing the bundling or packaging of CPE with local exchange service may have on the states' regulation of local exchange service or on the Commission's regulation of CPE. We note that similar jurisdictional issues may arise with bundles or packages of interexchange and local exchange services, although we do not consider such jurisdictional issues in this proceeding.

B. Enhanced Services

28. In the *Computer II* proceeding, the Commission adopted a regulatory scheme that distinguished between the common carrier offering of basic transmission services and the offering of enhanced services. The Commission defined a ''basic transmission service'' as the common carrier offering of ''pure transmission capability'' for the movement of information ''over a communications path that is virtually transparent in terms of its interaction with customer-supplied information.'' The Commission further stated that a basic transmission service should be limited to the offering of transmission capacity between two or more points suitable for a user's transmission needs. The common carrier offering of basic services is regulated under Title II of the Communications Act. In contrast, the Commission defined enhanced services as:

> services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.

Enhanced services are not regulated under Title II of the Communications Act.

29. We note that the 1996 Act does not utilize the Commission's basic/enhanced terminology, but instead refers to ''telecommunications services'' and ''information services.'' We concluded in the *Non-Accounting Safeguards Order*, 62 FR 2927, January 21, 1997, that, although the text of the Commission's definition of ''enhanced services'' differs from the 1996 Act's definition of ''information services,'' the two terms should be interpreted to extend to the same functions. We recently issued a report reviewing the Commission's interpretation of the terms ''telecommunications services'' and ''information services.'' In that report, we concluded that, in the 1996 Act, Congress intended these terms to refer to distinct categories of services and that Congress sought ''to maintain the *Computer II* framework'' and the basic/enhanced distinction in its definition of ''telecommunications services'' and ''information services.'' To avoid confusion in this Further NPRM, we will continue to use the terms ''basic services'' and ''enhanced services'' to refer to the restrictions adopted in the *Computer II* proceeding.

30. In the *Computer II* proceeding, the Commission required common carriers that own transmission facilities and provide enhanced services to ''acquire transmission capacity pursuant to the same prices, terms, and conditions reflected in their tariffs when their own facilities are utilized.'' This requirement has been interpreted in decisions since *Computer II* to mean that ''carriers that own common carrier transmission facilities and provide enhanced services must unbundle basic from enhanced services and offer transmission capacity to other enhanced service providers under the same tariffed terms and conditions under which they provide such services to their own enhanced service operations.''

31. Although the Commission did not specifically seek comment in the *Interexchange NPRM* on the restriction against bundling of enhanced and basic telecommunications services, AT&T urged the Commission, in its comments, to issue a further notice of proposed rulemaking on this issue. Specifically, AT&T proposes that the Commission eliminate the prohibition on bundled packages of enhanced services and interstate, interexchange services offered by nondominant interexchange carriers. The Commission declined in the *Interexchange Second Report and Order*, 61 FR 59340, November 22, 1996, to determine whether it should eliminate the CPE unbundling rule because it found, in part, that AT&T's request presented issues similar to those raised in the *Interexchange NPRM* relating to bundling of CPE with interstate, domestic, interexchange services by nondominant interexchange carriers. The Commission found in the *Interexchange Second Report and Order* that it did not have a sufficient record to address AT&T's proposal to remove the restriction on bundling enhanced services with interstate, domestic, interexchange services.

32. We thus seek comment in this Further NPRM on whether we should remove the restrictions on the bundling of enhanced services with interstate, domestic, interexchange services offered by nondominant interexchange carriers. We also seek comment on whether the restrictions against bundling enhanced services with interstate, domestic, interexchange services offered by nondominant interexchange carriers is

no longer necessary in the public interest.

33. As we noted above, the Commission found that BOC section 272 affiliates would be classified as nondominant interexchange carriers. We note that, in the *Non-Accounting Safeguards Order*, the Commission allowed the BOCs' section 272 affiliates to bundle interLATA telecommunications service with interLATA information services, as long as the affiliate provided interLATA telecommunications services on a resale basis. The Commission noted that if ''a BOC's section 272 affiliate were classified as a facilities-based telecommunications carrier (*i.e.*, it did not provide interLATA telecommunications services solely through resale), the affiliate would be subject to a *Computer II* obligation to unbundle and tariff the underlying telecommunications services used to furnish any bundled service offering.'' In its discussion of this issue in the *Non-Accounting Safeguards Order*, the Commission noted that the market for interLATA information services ''is fully competitive'' and the market for interLATA telecommunications services is ''substantially competitive.'' Because of these market conditions, the Commission stated that there was ''no basis for concern that a section 272 affiliate providing an information service bundled with an interLATA telecommunications service would be able to exercise market power.'' We seek comment on the effect on this proceeding of the decision in the *Non-Accounting Safeguards Order* to permit BOC section 272 affiliates that provide interLATA telecommunications services solely on a resale basis to bundle such telecommunications services and interLATA information services. Specifically, we seek comment on whether the enhanced services market and the interstate, domestic, interexchange services market are sufficiently competitive so that it is unlikely that nondominant interexchange carriers could engage in anticompetitive behavior should the Commission eliminate the restrictions on bundling of enhanced services with interstate, domestic, interexchange services. Commenters should provide empirical data on the level of competition in the interexchange and enhanced services markets to support their comments on these issues. We also seek comment on whether, as claimed by ITAA, AT&T or any other nondominant interexchange carriers have the ability, to discriminate in favor of their own enhanced service offerings.

34. Commenters should also address AT&T's assertion that the rationale underlying the elimination of the CPE bundling restriction applies with equal force to the enhanced services bundling restriction, and therefore, that the Commission must lift the restriction on bundling enhanced services with interexchange services if the CPE bundling restriction is lifted. Commenters should explain how the similarities or differences between the CPE and enhanced services markets should affect our analysis. Commenters should address not only whether the issues raised in the CPE discussion above apply to the proposal to remove the enhanced services bundling restriction, but also whether additional issues are raised. Commenters should also discuss whether any transition mechanisms or safeguards, such as those discussed with respect to modifying the CPE unbundling rule, would be necessary or sufficient to protect against anticompetitive behavior if the Commission were to permit interexchange carriers to bundle enhanced services with interstate, domestic, interexchange services.

35. As in the CPE bundling discussion above, we also seek comment on whether there are any anticompetitive effects of allowing nondominant interexchange carriers to bundle enhanced services with interstate, domestic, interexchange services, when such services, in turn, are packaged with international services.

36. We seek comment on whether there are any anticompetitive effects of allowing nondominant interexchange carriers to bundle, or provide discounts on packages of, enhanced services and interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange services. Parties should further address whether any effects they identify should preclude a nondominant interexchange carrier from bundling, or offering discounts on packages of, enhanced services and interstate, domestic, interexchange services, when such services, in turn, are packaged with local exchange services. Parties should also address whether there are any safeguards to prevent anticompetitive conduct that are less restrictive than prohibiting such bundles.

37. In addition, as in the CPE discussion above, we seek comment on the broader question of whether to amend the enhanced services bundling restriction to allow any carrier to bundle enhanced services with local exchange and exchange access services. Commenters should address not only whether the issues raised in the CPE discussion above apply to the elimination of the enhanced services bundling restriction, but also whether additional issues are raised. We note, as discussed below, that we consider in this Further NPRM only those services that are within the scope of the Commission's recognized jurisdiction. We recognize that states have authority to regulate local exchange services and enhanced services that are offered purely on an intrastate basis. Thus, in this Further NPRM, we do not consider the bundling of local exchange services and purely intrastate enhanced services.

38. As noted above, the basis for the Commission's tentative conclusion in the *Interexchange NPRM* to allow nondominant interexchange carriers to bundle CPE with interstate, domestic, interexchange services is that both the CPE and interstate, domestic, interexchange markets are substantially competitive and that nondominant interexchange carriers do not possess market power in the interstate, interexchange market. We seek comment on whether a similar analysis should be adopted in assessing whether to allow the bundling of enhanced services with local exchange and exchange access services. We also seek comment on whether the differences in the structures of and the market conditions in the local exchange, exchange access, and interexchange markets warrant continued applicability of the enhanced services bundling restrictions to the local exchange and exchange access markets. We further seek comment on whether there are carriers in the local exchange or exchange access markets that would not raise anticompetitive concerns if allowed to bundle enhanced services with local exchange and exchange access services. In this regard, parties should address what role market power should play in the analysis and whether carriers that do not possess market power in the local exchange and exchange access markets would be able to engage in the anticompetitive conduct which led the Commission to prohibit such bundling. Parties should also address whether lifting the enhanced services bundling restrictions on only certain categories of carriers in the local exchange and exchange access markets would promote competition and the provision of innovative services and packages, thereby benefitting consumers. In addition, as in the CPE discussion above, we seek comment on what, if any, impact allowing the bundling of enhanced services with local exchange service may have on the states' regulation of local exchange

service and intrastate enhanced services, or on the Commission's regulation of enhanced services.

39. We note that the Commission has authority to regulate interstate enhanced services. We also have authority to regulate jurisdictionally mixed enhanced services where it is ''not possible to separate the interstate and intrastate components'' and to preempt inconsistent regulations on the part of the states for the intrastate portion of those services where ''state regulations would negate valid FCC regulatory goals.'' Thus, we tentatively conclude that the questions upon which we seek comment in this Further NPRM fall within the scope of our authority.

IV. Procedural Matters

A. Ex Parte Presentations

40. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's revised *ex parte* rules, which became effective June 2, 1997. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.

B. Initial Regulatory Flexibility Act Analysis

41. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules in this Further NPRM of Proposed Rulemaking (Further NPRM). Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further NPRM, and should have a separate and distinct heading designating them as responses to the IRFA.

42. *Need for and Objectives of the Proposed Rules.* The Commission is issuing this Further NPRM to review our regulatory framework for interstate, domestic, interexchange telecommunications services with regard to the bundling of customer premises equipment (CPE) and enhanced services. The Commission seeks comment on amending the Commission's rules and regulations restricting the bundling of CPE and enhanced services, respectively, with interexchange services, in our continuing effort to establish a pro-competitive, de-regulatory national policy framework. The Commission also seeks comment on the impact that amending these rules and regulations may have on the local market and on local exchange carriers, and whether the Commission should amend these rules and regulations for carriers in the local exchange or exchange access markets.

43. *Legal Basis.* The proposed action is authorized under sections 1, 2, 4, 10, 11 201–205, 215, 218, 220, 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 215, 218, 220, 303.

44. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.* Under the RFA, small entities include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has no more than 1,500 employees.

45. In this IRFA, we consider the potential impact of this Further NPRM on three categories of entities, ''small interexchange carriers,'' ''small incumbent LECs,'' and ''small non-incumbent LECs.'' Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this IRFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' Finally, we note that our analysis below includes the description of those small entities that might be directly affected by this Further NPRM. We also recognize, however, that this Further NPRM may have an indirect effect on small CPE and enhanced services providers.

46. *Interexchange Carriers.* The proposals in this Further NPRM would affect all interexchange carriers that meet the definition of a ''small business concern.'' Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interstate, domestic, interexchange services. The SBA, however, has defined small businesses for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. According to our most recent data, 143 companies are engaged in the provision of interexchange services. Several of these carriers have more than 1,500 employees, and it seems certain that some of these carriers are not independently owned and operated. Because we cannot estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under the SBA definition, we estimate that there are fewer than 143 small entity interexchange carriers that may be affected by the proposed decisions in this Further NPRM. We seek comment on this estimate.

47. *Incumbent LECs.* SBA has not developed a definition of small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,371 small incumbent LECs that may be affected by the decisions and regulations adopted in this Further NPRM. We seek comment on this estimate.

48. *Non-Incumbent LECs.* SBA has not developed a definition of small non-incumbent LECs. For purposes of this Further NPRM, we define the category of ''small non-incumbent LECs'' to include small entities providing local

exchange services which do not fall within the statutory definition in section 251(h), including potential LECs, LECs which have entered the market since the 1996 Act was passed, and LECs which were not members of the exchange carrier association pursuant to § 69.601(b) of the Commission's regulations. We believe it is impracticable to estimate the number of small entities in this category. We are unaware of any data on the number of LECs which have entered the market since the 1996 Act was passed, and we believe it is impossible to estimate the number of entities which may enter the local exchange market in the near future. Nonetheless, we will estimate the number of small entities in a subgroup of the category of ''small non-incumbent LECs.'' According to our most recent data, 109 companies identify themselves in the category ''Competitive Access Providers (CAPs) & Competitive LECs (CLECs).'' A CLEC is a provider of local exchange services which does not fall within the definition of ''incumbent LEC'' in section 251(h). Although it seems certain that some of the carriers in this category are CAPs, are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of non-incumbent LECs that would qualify as small business concerns under SBA's definition. We seek comment on this estimate.

49. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Further NPRM does not place any reporting, record keeping, or other compliance requirements on small interexchange carriers or on small local exchange carriers. The Further NPRM does seek comment on what, if any, safeguards are necessary to guard against potential competitive abuses by interexchange carriers, or local exchange carriers, should the Commission amend its rules restricting bundling of CPE and enhanced services. If any such safeguards are adopted, they may have an impact on interexchange carriers and local exchange carriers that qualify as small business concerns.

50. *Steps Taken to Minimize Any Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* As mentioned above, the Commission believes that our proposed rules may have a significant economic impact on interexchange carriers and local exchange carriers insofar as they are small businesses. The rules we propose in this Further NPRM are designed to have a positive impact on interexchange carriers, including small interexchange carriers, and local exchange carriers, including small local exchange carriers, because such rules would remove restrictions from their operations. Such carriers would then be able to create and offer service and equipment packages that, under the current rules, cannot be bundled and offered. We seek comment on these tentative determinations, and on additional actions we might take in this regard to relieve burdens on small interexchange and local exchange carriers.

51. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.* The Commission is proposing to amend § 64.702(e) of the Commission's Rules, 47 CFR 64.702(e), as well as the Commission's rules and regulations that restrict the bundling of CPE and enhanced services, respectively, with interexchange services. The Commission is also seeking comment on the impact that amending these rules and regulations may have on the local market and on local exchange carriers, and whether the Commission should amend these rules and regulations for carriers in the local exchange or exchange access markets. We are aware of no rules that may duplicate, overlap, or conflict with the proposed rules. We seek comment on this conclusion.

C. Comment Filing Procedures

52. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 23, 1998 and reply comments on or before December 23, 1998. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent 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. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CC Docket No. 96–61. 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.

53. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. NW, Room 222, Washington, DC 20554.

54. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Janice Myles, Common Carrier Bureau, Policy and Program Planning Division, 1919 M Street, NW, Room 544, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

55. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW, Room 239, Washington, DC 20554.

56. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

V. Ordering Clauses

57. Accordingly, it is ordered that pursuant to sections 1, 2, 4, 10, 11, 201–

205, 215, 218, 220, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 215, 218, 220, and 303(r), a further Notice of Proposed Rulemaking is adopted.

58. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28477 Filed 10–22–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 43

[CC Docket No. 98–137; FCC 98–170]

Prescription of Interstate Depreciation Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, request for comments.

SUMMARY: In this document, the Commission proposes to reduce or streamline further its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent LECs, provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission, expanding the prescribed range for the digital switching plant account, and eliminating salvage from the depreciation process. It also seeks comment on whether the Commission should permit carriers to set their own depreciation rates if they are willing to waive the automatic low-end adjustment. These proposed modifications are designed to minimize the reporting burden on carriers and to provide incumbent LECs with a greater flexibility to adjust their depreciation rates while allowing the Commission to maintain adequate oversight. This NPRM seeks comment on whether the current procedures for protecting confidential information, are adequate or whether additional safeguards need to be adopted to protect information that carriers regard as confidential. The Commission invites commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of its proposed modifications.

DATES: Comments are due on or before November 23, 1998 and reply comments are due on or before December 8, 1998. Written comments by the public on the modified information collections are due on or before November 23, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collections on or before December 22, 1998.

ADDRESSES: One original and six copies of all comments and reply comments should be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. All filings should refer to 1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98–137, and FCC 98–170. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the docket number for this proceeding, which is CC Docket No. 98–137. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Ernestine Creech, Accounting Safeguards Division, 2000 L Street, N.W., Room 257, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding (including the docket number in this case, CC Docket No. 98–137), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Thomas G. David, Attorney, Common Carrier Bureau, Accounting Safeguards Division, (202) 418–7116, or via the Internet at tdavid@fcc.gov, or Wade Herriman, Common Carrier Bureau, Accounting Safeguards Division, (202) 418–0862. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on October 14, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. An electronic copy of the document also may be found on the Commission's Web Page at <www.fcc.gov/ccb/XXXXXXX.pdf>.

Paperwork Reduction Act

This NPRM contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due December 22, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0168.

Title: Reports of Proposed changes in Depreciation Rates—Section 43.43.

Type of Review: Proposed Revision of Existing Collection.

Respondents: Business or other for profit.

Number of Respondents: 11.

Estimated Time per Response: 6000.

Total Annual Burden: 66,000 Burden Hours.

Estimated Cost Per Respondent: $0.

Needs and Uses: In this NPRM the Commission proposes to reduce or streamline further its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent LECs, provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission, expanding the prescribed range for the digital switching plant account, and eliminating salvage from the depreciation process. It also seeks comment on whether carriers should be allowed to set their own depreciation rates.

Background

1. Section 11 of the Communications Act requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications service to determine whether the regulations are no longer necessary in the public interest as a result of meaningful economic competition between providers of such service and whether such regulations should be repealed or modified.

2. Although price caps regulation largely eliminated the direct link between costs and prices, a carrier's depreciation remains significant, even under current price cap rules, in the following situations: (1) a calculation of a low-end adjustment; (2) a recalculation of the productivity factor; (3) an exogenous cost determination; (4) a calculation of the Base Factor Portion that is used to determine how much a carrier can recover through End User Common Line charges; or (5) the cost support a carrier would have to provide if it proposed an Actual Price Index (''API'') higher than its Price Cap Index (''PCI''). In addition to these price cap effects, changes in depreciation expense may also affect prices or federal support payments through new mechanisms created to implement the Telecommunications Act of 1996. For example, the Commission required incumbent LECs to use depreciation factors within the FCC authorized ranges when calculating forward-looking economic costs for universal service high cost loop support purposes. Also, state commissions have required incumbent LECs to use interstate depreciation rates or life and salvage factors developed during the Commission's depreciation prescription process when calculating rates for interconnection or unbundled network elements. Finally, depreciation may play a role in a takings claim under the Fifth Amendment.

Issue for Comment

3. In this NPRM, the Commission seeks comment on conditions under which carriers could set their own depreciation rates without compromising the Commission's oversight, even in the absence of full competition. In addition, the document proposal several options for streamlining these depreciation rules by eliminating all unnecessary regulatory requirements. The Commission invites commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of the proposed modifications to those rules.

4. The Commission seeks comment on BellSouth's proposal that carriers be allowed to set their own depreciation rates on the condition that they not seek an automatic low-end adjustment. The Commission also seeks comment on what additional conditions could be imposed to eliminate the need for depreciation prescription in the other contexts upon which the Commission relies on it. If the Commission can identify conditions that would eliminate the need for it to prescribe depreciation in the remaining situations identified in this document, the Commission proposes to allow carriers to set their own depreciation rates.

5. In the event that the Commission continues to set some depreciation rates for some carriers, it tentatively concludes that the depreciation prescription requirements for incumbent LECs subject to the depreciation prescription process should be further streamlined by doing the following: (1) reducing the supporting documentation required for carriers selecting depreciation factors from within the prescribed ranges; (2) eliminating depreciation prescription for carriers that select depreciation factors within the ranges; (3) expanding the range of lives for digital electronic switching equipment; and (4) eliminating net salvage from the depreciation prescription process.

Filing and Prescription Procedures

6. In this NPRM, the Commission proposes to reduce filings to four summary exhibits and the electronic data files used to generate them, provided carriers select depreciation factors from within the ranges and certify that their selections are consistent with their operations. The four summary exhibits are a comparison of existing and proposed depreciation rates; a comparison of existing and proposed annual depreciation expenses; a book and theoretical reserve summary; and the depreciation factors. The Commission further proposes that, if a carrier selects depreciation factors from within the ranges for all of its accounts, the Commission would permit the rates to go into effect without a prescription order. The Commission believes that its proposal to eliminate its prescription of depreciation rates under these conditions will save time and resources for both the Commission and incumbent LECs. It seeks comment on this proposal and on SBC's proposal that the Commission remove itself completely from the prescription of depreciation rates for price cap carriers.

Equipment Life Ranges

7. The Commission expects that the retirement rates for the digital switching will continue to increase and therefore we propose to expand the range for digital switching equipment from a range of 16 to 18 years to a wider range of 13 to 18 years. The Commission's proposal will permit a carrier that can support life estimates between 13 and 16 years to select a new life estimate without an out-of-range filing. It requests comment on this proposal. The Commission has concluded that, except for the digital switching equipment account, it has no evidence indicating that the current ranges are either too long or too short. The Commission asks whether the ranges for any of the accounts other than digital switching require revision. Commenters proposing range changes should propose specific new ranges and should provide justifications for their proposals. The Commission also requests comment about whether the Commission's existing confidentiality procedures, contained in 47 CFR 0.457 and 0.459 of the Commission's rules, are adequate or whether additional safeguards need to be adopted to protect information that carriers regard as confidential.

Proposed Treatment for Salvage and Cost of Removal

8. In order to calculate net salvage, carriers must estimate both gross salvage and cost of removal. Given the speculative nature of these estimates and the burdens associated with their calculation, the Commission tentatively concludes that the prescription of net salvage no longer serves a regulatory purpose and that eliminating that factor from the depreciation prescription formula would significantly reduce the regulatory burden of the depreciation

prescription process. Accordingly, the Commission proposes to eliminate the future net salvage factor from the depreciation formula and to record salvage and cost of removal as a current expense in the period incurred. Alternatively, the Commission could make the elimination of salvage from the depreciation formula optional, allowing each incumbent LEC the option to treat net salvage as either a current expense or a component of depreciation. The Commission seeks comment on these proposals.

9. In commenting on the proposed removal of net salvage from the depreciation process, commenters should address the effect this change could have on the current depreciation rates, whether new rates should be prescribed, whether the elimination of salvage would require adjustment of depreciation reserves, and what accounting changes would be necessary to effectuate the change.

10. The Commission tentatively concludes that, if it removes net salvage from the depreciation process, it should create a new account, Account 6566, Net cost of removal, to record both salvage receipts and removal costs incurred. The Commission also tentatively concludes that it should revise §§ 32.3100, Accumulated depreciation, and 32.2000, Instructions for telecommunications plant accounts, to eliminate the provisions that salvage and cost of removal be recorded in the depreciation reserve account. The Commission requests comment on the tentative conclusions. The Commission also requests comment on whether it should require carriers to keep subsidiary record categories in Account 6566 for salvage and cost of removal.

Reporting Requirements for Mid-Sized LECs

11. In separate proceedings on ARMIS and Accounting Biennial Review, the Commission proposes to create a category of mid-sized incumbent LECs that would be subject to a lighter regulatory burden than would be imposed on large incumbent LECs. Similarly, the Commission proposes in this proceeding, in addition to the streamlined processes proposed for all carriers, that mid-sized incumbent LECs not be required to file annual theoretical reserve studies. Because the Commission would continue to receive theoretical reserve studies from the largest incumbent LECs, which represent over 90 percent of the industry, this proposal would relieve these mid-sized companies of this regulatory burden without seriously encumbering the Commission's ability to monitor its depreciation prescription process. *See* 47 CFR 43.43. To avoid unnecessary complexity, the Commission tentatively concludes that it should apply the definition of mid-sized LEC that is adopted in the ARMIS proceeding[1] to the Commission's depreciation prescription requirements. The Commission requests comments on this proposal.

Low-End Adjustment

12. The Commission seeks comment on whether it should permit carriers to set their own depreciation rates, as proposed by several incumbent LECs, or alternatively, whether such carriers should be permitted to do so only on the condition that they become ineligible for a low-end adjustment.

Conclusion

13. The Commission tentatively concludes that the elimination of depreciation regulation at this time would have an adverse impact in several critical areas, including the calculation of universal service high cost loop support, takings claims, and the low-end adjustment. The Commission tentatively concludes that, if adopted, our proposal would eliminate all unnecessary depreciation prescription requirements and retain only those essential to the sound administration of the universal service high cost loop support and the achievement of the Commission's other regulatory goals. The Commission seeks comment on this tentative conclusion and solicits comment on SBC's alternative proposal that depreciation rates for price cap carriers should be based on ''economic analysis consistent with the procedures called for by Generally Accepted Accounting Principles (''GAAP'').'' The Commission also seeks comment on how it should determine when sufficient competition exists to allow it to eliminate the depreciation prescription process.

Procedural Issues

Ex Parte Presentations

14. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

Regulatory Flexibility Analysis

15. The Regulatory Flexibility Act (''RFA'') requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' See 5 U.S.C. § 601 *et seq.*, amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[2] 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''). See 15 U.S.C. 632.

16. This NPRM proposes to eliminate the prescription of depreciation rates for incumbent LECs in most cases, expand the prescribed range for the digital switching plant account, and eliminate salvage from the depreciation process. This NPRM also asks whether we should permit carriers to set their own depreciation rates if they are willing to waive their right to a low-end adjustment. The NPRM proposes to further reduce the reporting requirements for certain mid-sized incumbent LECs by eliminating their obligation to file an annual theoretical reserve study. Neither the Commission nor SBA has developed a definition of ''small entity'' specifically applicable to LECs. The closest definition under SBA rules is that for establishments providing ''Telephone Communications, Except Radiotelephone,'' which is Standard Industrial Classification (''SIC'') code 4813. Under this definition, a small entity is one that, including affiliates of the entity, employs no more than 1,500 persons. See 13 CFR 121.201, SIC code 4813.

17. The Commission certifies that the proposals in this NPRM, if adopted, will not have a significant economic impact

[1] ARMIS NPRM at 7. In that proceeding, we propose to streamline the depreciation prescription process for certain mid-sized incumbent LECs based on the aggregate revenues of the incumbent LEC and any LEC that it controls, is controlled by, or is under common control with another LEC. If the aggregate revenues of these affiliated incumbent LECs are less than $7 billion, then each LEC within that group would be eligible to not file annual theoretical reserve studies. Incumbent LECs with individual annual operating revenues below the indexed revenue threshold would continue to be exempt from the Commission's depreciation prescription process.

[2] Id. § 601(6).

on a substantial number of small entities. Pursuant to long-standing rules, incumbent LECs with annual operating revenues exceeding the indexed revenue threshold must comply with the Commission's depreciation prescription process. This NPRM proposes to reduce certain of these depreciation requirements. These changes should be easy and inexpensive for incumbent LECs to implement and will not require costly or burdensome procedures. The Commission therefore expects that the potential impact of the proposal rules, if such are adopted, will be beneficial and will not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the NPRM require additional RFA analysis, they should include a discussion of these issues in their comments.

18. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

19. *Accordingly, it is ordered that,* pursuant to Sections 1, 4, 11, 201–205, 215, 218, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 201–205, 215, 218, 220 and 403 that notice is hereby given of proposed amendments to Parts 32 and 43 of the Commission's rules, 47 CFR Parts 32 and 43, as described in this Notice of Proposed Rulemaking.

20. *It is further ordered that* the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28479 Filed 10–22–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 205
Friday, October 23, 1998

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

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, November 6, 1998. The meeting will be held in the Conference Room, Intermountain Region Support Office—Santa Fe, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Swearing-In Ceremony
III. Chairman's Report
IV. Millennium Issues
  A. Federal Stewardship
  1. Review of field trip to Los Alamos—Discussion and Action
  2. Future Council consideration of stewardship issues—Discussion
  3. Proposed Presidential Memorandum on Federal Stewardship—Discussion and Action
  B. Internet Discussion Forum—Discussion and Action
V. Executive Director's Report
VI. New Business
VII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C., 202–606–8503; at least seven (7) days prior to the meeting.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: October 19, 1998.

John M. Fowler,

Executive Director.

[FR Doc. 98–28440 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–10–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Passenger Vessel Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. This document gives notice of the dates, times, and location of the next meeting of the Passenger Vessel Access Advisory Committee (Committee).

DATES: The next meeting of the Committee is scheduled for November 18 through 21, 1998, beginning at 9:00 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: The meetings will be held at 1331 F Street, NW., Washington, DC, in the third floor training room.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 19 (Voice); (202) 272–5449 (TTY). E-mail pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov /notices/pvaacmtg.htm).

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Passenger Vessel Access Advisory Committee (Committee) to assist the Board in developing proposed accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 43136 (August 12, 1998). The Committee is composed of owners and operators of various passenger vessels; persons who design passenger vessels; organizations representing individuals with disabilities; and other individuals affected by the Board's guidelines.

The Committee will meet on the dates and at the location announced in this notice. The meeting is open to the public. The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Paul Beatty by November 9, 1998. Persons attending the meetings are strongly encouraged to use public transportation since parking is extremely limited. The accessible entrance to the Metro Center Metro Station is located about three blocks from the meeting site.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98–28481 Filed 10–22–98; 8:45 am]

BILLING CODE 8150–01–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 the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: November 23, 1998.

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

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

SUPPLEMENTARY INFORMATION: On August 14, 21 and 28, September 4 and 11, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 43660, 44834, 45996, 47227, 48696 and 48697) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

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

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

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

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

Accordingly, the following services are hereby added to the Procurement List:

Food Service Attendant, Enlisted Dining Facility and Summer Camp, United States Military Academy, West Point, New York

Janitorial/Custodial, Postwide, Fort Stewart, Georgia

Janitorial/Custodial, Social Security Administration Building, 517 N. Barry Street, Olean, New York

Janitorial/Custodial, Postwide, Fort Bragg, North Carolina

Janitorial/Custodial, Hill City Office and Shop, Hill City, South Dakota

Laundry/Dry Cleaning, Fort Polk, Louisiana.

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

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 will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

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

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities 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 commodities are hereby deleted from the Procurement List:

Rod Straight, Headless

5340–01–102–4539

Blackboard

7110–00–843–7917
7110–00–132–6650

Cap, Garrison

8405–01–232–5330
8405–01–232–5331
8405–01–232–5332
8405–01–232–5333
8405–01–232–5334
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8405–01–232–5337
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8405–01–375–8998
8405–01–375–8999

Soap, Toilet

8520–01–058–7463

Connie S. Corley,

Administrative Officer.

[FR Doc. 98–28468 Filed 10–22–98; 8:45 am]

BILLING CODE 6353–01–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

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

ACTION: Proposed Additions to and Deletions from Procurement List.

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

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 23, 1998.

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

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

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

Additions

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

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

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

Commodities

Pen, Ballpoint, Pushcap w/Refills

7520–01–451–1065 (Black Barrel, Black Ink)
7520–01–451–1066 (Burgundy Barrel, Blue Ink)
7510–01–451–2269 (Refill, Black Ink)
7510–01–451–2273 (Refill, Blue Ink)

NPA: West Texas Lighthouse for the Blind, San Angelo, Texas

Services

Grounds Maintenance

Naval Air Weapons Station, China Lake, California, NPA: Desert Area Resources and Training, Ridgecrest, California

Laundry Service

New England Area Requirements-FISC, NPA: Newport County Chapter of Retarded Citizens, Inc., Middletown, Rhode Island

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 will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Tool Box, Portable

5140–00–651–7676
5140–00–388–3416
5140–00–226–9020
5140–00–226–9021
5140–00–329–6305
5140–00–226–9019
5140–00–226–9018
5140–00–289–8911
5140–00–289–8910

Connie S. Corley,

Administrative Officer.

[FR Doc. 98–28469 Filed 10–22–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Amended Final Results of Antidumping Duty Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: (A–580–812)

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

ACTION: Amended final results of administrative review of antidumping duty order.

SUMMARY: On September 23, 1998, the Department of Commerce published the final results of its administrative review of the antidumping duty order on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea. This review covered two manufacturers/exporters of the subject merchandise to the United States and four third-country resellers from Singapore, Malaysia, Canada, and Hong Kong for the period May 1, 1996, through April 30, 1997. The two manufacturers/exporters were Hyundai Electronics Industries, Co. (Hyundai), and LG Semicon Co., Ltd. (LG, formerly Goldstar Electronics Co., Ltd.). The third-country resellers were Techgrow Limited (Hong Kong) (Techgrow), Singapore Resources Pte. Ltd. (Singapore), NIE Electronics Sdn. Bhd. (Malaysia) (NIE), and Vitel Electronics Ottawa Office (Canada) (Vitel).

LG and Hyundai submitted ministerial error allegations with respect to the final results of administrative review on September 17, 1998. The petitioner, Micron Technology Inc. (Micron), submitted rebuttal comments on September 24, 1998. Based on the correction of certain ministerial errors made in the final results of review, we are amending our final results of review with respect to LG. We are also clarifying the assessment language cited in our final results with respect to both LG and Hyundai

EFFECTIVE DATE: October 23, 1998.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Enforcement Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (the Department) has now amended the final results of this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to 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 references to the Department's regulations are to the regulations set forth at 19 CFR 353 (1997).

Scope of Review

Imports covered by the review are shipments of DRAMs of one megabit or above from Korea. Included in the scope are assembled and unassembled DRAMs of one megabit and above. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (VRAMS), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of the motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Background

On September 23, 1998, the Department published the final results of its administrative review of the antidumping duty order on DRAMs from Korea. See Notice of Final Results of Antidumping Administrative Review: Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea, 63 FR 50867, September 23, 1998) (final results).

On September 17, 1998, LG and Hyundai submitted timely written allegations that the Department made certain ministerial errors in the above-referenced administrative review. Petitioner submitted timely rebuttal comments in regards to respondents' allegations. For a complete discussion of the allegations, *see* the Department's October 1, 1998, Memorandum from Tom Futtner to Holly A. Kuga regarding Antidumping Review of Dynamic Random Access Memory Semiconductors (DRAMs) from Korea: Ministerial Error Allegations Regarding the Final Results.

As discussed below, in accordance with 19 CFR 353.28(d), we have determined that the language used in our final results needed to be clarified and that certain ministerial errors were made in the margin calculations for LG.

Alleged Ministerial Errors

LG

Comment 1: Typographical Error in its Model Match Programming. LG claims that the Department made a typographical error when it defined the variable US MONTH for the model matching programming. Petitioner had no comment.

DOC Position: We agree with LG. We have corrected this typographical error.

Comment 2: Typographical Error in a Product Code. LG alleges that the Department incorrectly input a product code in the computer program. Petitioner had no comment.

DOC Position: We agree with LG. We have amended the computer program to correct this typographical error.

Comment 3: Selling Expenses by Product Code Rather Than Control Number. LG alleges that the Department assigned selling expenses to the unreported sales based on product code rather than control number since the Department stated in its final results that some of the unreported sales involved product codes that had not been part of the questionnaire response. LG claims that the Department had control numbers for the unreported sales that it assigned selling expenses to based on product code. LG, therefore, claims that the Department should correct the program to assign selling expenses on the basis of control number.

Petitioner states that the Department intended to assign selling expenses on the basis of product code. Petitioner further contends that the Department rejected LG's argument to assign selling expenses to the unreported sales on the basis of control number in its final results.

DOC Position: We disagree with LG. We did not have product codes for all unreported sales. Furthermore, where we did not have product codes, we did not have control numbers. Independent of those facts, however, the Department decided to use product code where it existed as the basis for assigning selling expenses to the unreported DRAM transactions. Where we did not have product code, we relied on the density of the DRAM in question to assign the selling expenses that would be used in our analysis. Because this is not a clerical error, we have not made any changes to our calculations.

Comment 4: Control Numbers Used for Several Unreported Sales. LG alleges that the Department assigned the wrong control numbers to certain unreported sales. LG states that the Department assigned control numbers to certain unreported sales for the purpose of assigning costs to those products. However, according to LG, the Department should have, for model matching purposes, changed the control numbers for those products back to the original control number. LG claims that the dumping margin is distorted as a result of this failure to use the proper control number. Petitioner had no comment.

DOC Position: We agree with LG. We assigned control numbers to three models of DRAMs in the unreported sales for the purposes of assigning costs to those products. However, after assigning production costs to these products, we failed to re-apply the original control numbers to these products for sales comparison purposes. We have amended the computer program to ensure that the original control numbers are re-assigned to these products.

Comment 5: Calculation of Constructed Value (CV) Profit. LG alleges that the Department applied the CV-profit rate to a basis different than that used to calculate the profit rate. Specifically, LG claims that the CV-profit rate was calculated based on a cost of production (''COP'') that excludes selling expenses and profit, while it was applied to a COP that included selling expenses and packing.

The petitioner claims that the CV-profit rate was calculated incorrectly, but that LG's proposed method of correction is incorrect as well. Petitioner contends instead that the Department should correct its error by applying the standard CV-profit calculation methodology.

DOC Position: We agree with LG and the petitioner that the CV-profit rate was applied to a basis different than that used to calculate the CV-profit rate. We have corrected our calculations to ensure that we calculate the CV-profit rate according to the standard methodology.

Comment 6: Deduction of Imputed Inventory Carrying Costs in the Calculation of CV. LG alleges that the Department failed to deduct imputed inventory carrying expenses in its calculation of CV. Petitioner claims that, since imputed inventory carrying expenses are not included in CV, they should not be deducted from CV.

DOC Position: We do not add amounts for imputed expenses in calculating CV. However, after calculating CV, we have, in essence, NV, and adjustments to NV are appropriate when CV is the basis for NV. In this case, imputed inventory carrying expenses are indirect selling expenses. Because LG's U.S. price was based on constructed export price (CEP), and an offset to CEP was appropriate in this case, we intended in the final review results to deduct the imputed inventory carrying expenses as an adjustment to CV. As this did not occur, we made the appropriate changes to our calculations to account for this clerical error (see DOC position on Comment 7).

Comment 7: Inclusion of Imputed Inventory Carrying Costs in the Calculation of the CEP Offset for CV Comparisons. LG alleges that the Department failed to include imputed inventory carrying expenses in its calculation of the CEP offset for CV comparisons. Petitioner agrees that imputed inventory carrying expenses should be included in the CEP offset.

DOC Position: We agree with LG and the petitioner. We failed to include imputed inventory carrying expenses in the calculation of LG's CEP offset calculations as we said we would in the final review results. For these amended results, we have adjusted our computations accordingly.

Comment 8: Adjustments made to Unreported Sales for Credit Expenses and Commissions. LG claims that the Department mistakenly made adjustments to the unreported sales for commissions and credit. LG states that the record supports the conclusion that there were no commissions or credits expenses associated with these sales. Therefore, LG concludes, the Department should not have assigned these expenses to the unreported sales.

Petitioner claims that the Department intended, as part of its application of adverse facts available, to include commissions and credit expenses in its calculations of the adjustments for the unreported sales. Petitioner therefore concludes that the Department did not commit any clerical error by assigning these expenses to the unreported sales.

DOC Position: We disagree with LG. We intentionally assigned selling expenses, including credit expenses and commissions, to the unreported sales on an adverse facts available basis. No changes have been made to the program.

Comment 9: Calculation of Duty Assessment Rates by Importer. LG alleges that the Department's computer program failed to appropriately calculate importer-specific rates. Instead, LG claims that the program calculated an assessment rate for only one importer of record, LG Semicon America, Inc. (''LGSA''). LG states that the Department should amend its computer program to ensure that duty assessment rates are calculated for each importer.

The petitioner claims that the Department properly attributed the antidumping duties related to the unreported sales to LG. Petitioner therefore concludes that the Department should continue to calculate a single weighted-average assessment rate for LGSA as the importer.

DOC Position: We agree with LG. As stated in the final results, we intended to calculate importer-specific assessment rates. We have corrected the computer program to ensure that an assessment rate is calculated for each importer of record in this review.

Hyundai

Comment 1: Calculation of Duty Assessment Rate. Hyundai alleges that the Department mistakenly calculated its assessment rate by dividing the total antidumping duty by the total entered value of sales made during the POR. Hyundai argues that the Department should have divided the antidumping duty by the value of the entries made during the POR.

Petitioner points out that the Department included only Hyundai's CEP sales in its calculation of an assessment rate. It mistakenly excluded the duties due and total value of further manufactured sales.

DOC Position: We disagree with Hyundai. We intentionally based Hyundai's assessment rate on the entered value of the sales made during the POR. In our preliminary results, we stated that we ''calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties.'' See Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from the Republic of Korea, 63 FR 11411, March 9, 1998 (Preliminary Results) We received no comments from either respondent or petitioner regarding that methodology. However, in the final results, we stated that we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer. The sentence should have read that we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total *entered value* of *sales* of subject merchandise *sold* during the POR for each importer (emphasis added). We are amending these final results to reflect that assessment language.

We agree with the petitioner. We mistakenly excluded the total value and duties related to the further manufactured sales. We have corrected the computer program to calculate an assessment rate for Hyundai based on its CEP sales as well as the further manufactured sales.

Amended Final Results

We are clarifying the assessment language with respect to both LG and Hyundai and, as a result of our correction of the ministerial errors for LG, we have determined the following amended margin exists for LG for the period May 1, 1996, through April 30, 1997:

Manufacturer/exporter	Amended weight-ed-average margin percentage
LG	9.04

There is no change to Hyundai's weighted-average margin percentage as a result of the correction of ministerial errors in this review period.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning the respondents directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon

publication of this notice of amended final results of review for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a) of the Act: (1) For the company named above, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results which covered that manufacturer or exporter; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results which covered that manufacturer; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 3.85 percent, the all others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with section 751(i) of the Act.

Dated: October 16, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–28500 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–201–822, A–412–818, A–427–814, A–428–825, A–475–824, A–588–845, A–580–834, A–583–831)

Stainless Steel Sheet and Strip From Italy, France, Germany, Mexico, Japan, the Republic of Korea, the United Kingdom and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations

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

ACTION: Notice of postponement of preliminary determinations for antidumping duty investigations of stainless steel sheet and strip from Italy, France, Germany, Mexico, Japan, the Republic of Korea, the United Kingdom and Taiwan

SUMMARY: The Department of Commerce (''the Department'') is postponing the preliminary determinations of the antidumping duty investigations of stainless steel sheet and strip from Italy, France, Germany, Mexico, Japan, the Republic of Korea, the United Kingdom and Taiwan. These investigations cover manufacturers and exporters of the subject merchandise during the period April 1, 1997 through March 31, 1998.

EFFECTIVE DATE: October 23, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Doyle (Japan and France) at (202) 482-0159; Linda Ludwig (United Kingdom) at (202) 482–3833; Rick Johnson (South Korea) (202) 482–3818; John Kugelman (Germany and Mexico) at (202) 482–0649; and Maureen Flannery (Italy and Taiwan) at (202) 482–3020; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230.

Postponement of Preliminary Determinations

On June 30, 1998, the Department initiated antidumping duty investigations of imports of stainless steel sheet and strip from Italy, France, Germany, Mexico, Japan, the Republic of Korea, the United Kingdom and Taiwan. The notice of initiation stated that we would issue our preliminary determinations by November 17, 1998 (63 FR 37521; July 13, 1998).

On October 6, 1998, petitioners made a timely request pursuant to 19 CFR 351.205(e) of the Department's regulations for a 30 day postponement, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act. Petitioners stated that a postponement of the preliminary determinations is necessary in order to give the Department time to address the many issues raised by these investigations. For example, petitioners noted that seven of the eight investigations involve below-cost allegations. In addition to the cost allegations cited by petitioners, these cases involve complex issues, including those related to downstream sales, affiliation, limited reporting and country of origin.

Therefore, the Department is postponing the preliminary determinations of the aforementioned investigations 30 days, to December 17, 1998. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, which is on file in Room B–099 at the Main Commerce Building.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: October 16, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 98–28503 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Steel Concrete Reinforcing Bar From Turkey; Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce is extending the time limits of the preliminary results of the first antidumping duty administrative review of steel concrete reinforcing bar from Turkey. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period October 10, 1996, through March 31, 1998.

EFFECTIVE DATE: October 23, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Sergio Gonzalez,

Office 5, Office of AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–1776, or (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the initial time limits established by the Uruguay Round Agreements Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until April 30, 1999. See Memorandum to Robert S. LaRussa, dated October 16, 1998.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: October 19, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Adminstration.

[FR Doc. 98–28501 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Steel Concrete Reinforcing Bar From Turkey; New Shipper Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of Extension of Time Limits of Preliminary Results of Review.

SUMMARY: The Department of Commerce is extending the time limits of the preliminary results of the new shipper antidumping duty administrative review of steel concrete reinforcing bar from Turkey. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period October 10, 1996, through June 30, 1998.

EFFECTIVE DATE: October 23, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Office 5, Office of AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–1776, or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the initial time limits established by the Uruguay Round Agreements Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until April 30, 1999. See Memorandum to Robert S. LaRussa, dated October 16, 1998.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: October 19, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Adminstration.

[FR Doc. 98–28502 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 980911236–8236–01]

Proposed Reaffirmation of Federal Information Processing Standard (FIPS) 140–1, Security Requirements for Cryptographic Modules

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice: request for comments .

SUMMARY: The purpose of this notice is to announce NIST's five-year review of FIPS 140–1, Security Requirements for Cryptographic Modules, for Federal agency use. FIPS 140–1 was first issued in 1994. The standard identifies requirements for four security levels for cryptographic modules to provide for a wide spectrum of data and a diversity of application environments. The standard provided that it be reviewed within five (5) years to consider its usefulness and new or revised requirements that may be needed to meet technological and economic changes.

DATES: Comments on this review of FIPS 140–1 must be received on or before January 21, 1999.

ADDRESSES: Written comments concerning this standard should be sent to: Information Technology Laboratory, ATTN: Review of FIPS 140–1, Bldg. 820, Room 562, National Institute of Standards and Technology, Gaithersburg, MD 20899. Comments may also be sent via e-mail to ''140–1review@nist.gov.'' All comments, written and electronic, will be published on NIST web site ''http:csrc.nist.gov /encryption/.''

FOR FURTHER INFORMATION CONTACT: Mr. Miles Smid (301) 975–2938, National Institute of Standards and Technology, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: FIPS 140–1, Security Requirements for Cryptographic Modules, first issued in 1994, identifies requirements for four security levels for cryptographic modules to provide for a wide spectrum of data sensitivity (e.g., low value administrative data, million dollar funds transfers, and life protecting data), and a diversity of application environments. The standard provided that it be reviewed within five (5) years to consider its usefulness and new or revised requirements that may be needed to meet technological and economic changes.

Interested parties may order a copy of FIPS 140–1 from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487–1650. Copies of FIPS 140–1 may also be downloaded from *http:// csrc.nist.gov /fips.*

Comments from industry, government agencies, and the public are invited on the following alternatives for FIPS 140–1.

—Reaffirm the standard for another five (5) years. NIST would continue to support the validation of cryptographic modules that implement the standard. FIPS 140–1 would continue to be an approved method for protecting unclassified information.

—Revise the applicability and/or implementation statements of the standard. Please include specific recommendations. If a revision is necessary, NIST will continue to support the FIPS 140–1 validation program until the revision is approved.

Comments on other proposed recommendations would also be welcomed.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the computer Security of 1987, Public Law 104–106.

Dated: October 19, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–28513 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. 071798D

Endangered and Threatened Wildlife; Recovery Plans for Listed Marine Mammals

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the final recovery plan for the U.S. Atlantic and Pacific stocks of blue whales (*Balaenoptera musculus*), as required by the Endangered Species Act of 1973.

ADDRESSES: Requests for a copy of the recovery plan may be submitted to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Also, the final plan is provided on NMFS Protected Resources internet website at www.nmfs.gov/prot_res/cetacean/blue.html.

FOR FURTHER INFORMATION CONTACT: Gregory K. Silber, Ph.D., Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301-713-2322; Fax: 301–713–0376.

SUPPLEMENTARY INFORMATION:

Background

Congress passed the Endangered Species Act in 1973 (16 U.S.C. 1531 *et seq*) (ESA) to protect species of plants and animals endangered or threatened with extinction. NMFS and the U.S. Fish and Wildlife Service share responsibility for the administration of the Act. NMFS is responsible for most marine mammal species, including the blue whale. Listed endangered and threatened species under NMFS jurisdiction are identified in 50 CFR 222.23(a) and 50 CFR 227.4, respectively. The List of Endangered and Threatened Wildlife, which contains species under the jurisdiction of both agencies, is provided in 50 CFR 17.11(h). The blue whale is listed as endangered.

Section 4(f)(1) of the ESA requires that NMFS and FWS develop and implement recovery plans for the conservation and survival of endangered and threatened species, unless such plans would not promote the conservation of the species. A plan was prepared at the request of the Assistant Administrator for Fisheries to promote the recovery of blue whales.

NMFS published a notice of availability of the draft recovery plan for blue whales in the **Federal Register** on August 1, 1997 (62 FR 41367). Comments were received from four people during the 60-day comment period. Reviewers' comments and NMFS' responses to the comments are identified here.

Comment 1. The plan should place more emphasis than it currently does on blue whale stocks in the North Atlantic Ocean.

Response. Changes have been made in various parts of the plan to reflect this comment. However, as noted in the plan, in the North Pacific Ocean, blue whale distribution in the North Atlantic Ocean is largely outside U.S. waters. Therefore, much of the emphasis on the North Pacific Ocean stocks remains.

Comment 2. With regard to human interactions with blue whales, vessel strikes in particular, one commenter reported that 25 percent of the 355 blue whales photo-identified in the St. Lawrence River had scars attributable to vessel contact.

Response. This observation has been added to the discussion of vessel disturbance in the Human Impact section.

Comment 3. One comment indicated that toxic contaminants, particularly for ''blue whales found in the Gulf of St. Lawrence, carry significant levels of PCBs and pesticides such as DDT.''

Response. The discussion of contaminants in the Human Impact section was modified accordingly.

Comment 4. One reviewer provided specific information on blue whale seasonal occurrence and distribution in the Gulf of St. Lawrence.

Response. The discussion in the section on distribution and habitat use was expanded to include this information.

Comment 5. A reviewer noted that, while likely true that Northern Hemisphere blue whales are generally smaller than their Southern Hemisphere counterparts, a 92–ft (28–m) female was reported in Davis Strait catch records, larger than the 27–m (89 ft) whale reported in the draft plan.

Response. This change has been made and appears in the section on Species Description and Taxonomy.

Comment 6. One commenter pointed out that, inasmuch as fin whales are sympatric with blue whales in a number of locations in the North Atlantic, they should be considered significant competitors for prey consumed by blue whales.

Response. This comment is addressed in the section on Competition with the statement that ''[a]ll baleen whale species that are sympatric with the blue whale eat euphausiids to some extent and are, therefore, potential competitors.''

Comment 7. One commenter noted that the number of calves seen in the Gulf of St. Lawrence is low; only nine calves have been reported there in 19 years of research. Off Iceland, however, three calves were observed in only 10 days of surveys in July 1996 and July 1997. Also, several observations were provided on the sex ratio of calves and the timing of weaning.

Response. These observations were incorporated into the discussion of reproduction.

Comment 8. One commenter noted that 352 blue whales have been photo-identified in eastern Canadian and New England waters, and 32 have been identified from waters off Iceland.

Response. These data have been added to the Abundance and Trends section.

Comment 9. Two reviewers indicated that the research recommended in the plan was focused on surveys which tended to document ''effects'' rather than ''causes.'' They suggested that the plan identify studies designed to examine testable hypotheses, e.g., why are only the Icelandic and California populations apparently recovering? They suggested that one could, for example, test the hypothesis that populations with slow (or no) recovery rates feed on pelagic aggregations which tend to be less dense and more patchy than the euphausiid aggregations on which the coastally feeding blue whale populations (Iceland and California) feed.

Response. This suggestion has been included in section 3.3 of the step-down outline narrative.

Comment 10. More studies need to be done on the effects of anthropogenic underwater sound, including those originating from military operations.

Response. NMFS believes that this is a valid comment and shares the view that anthropogenic underwater sound may adversely affect whales and their habitat. While NMFS believes that studies are needed to better understand these affects, it believes that this is a ''second tier'' threat relative to more direct threats. Also, it believes that possible adverse affects from underwater noise is systemic to nearly all oceanic waters and not a problem specific to blue whales and the recovery of blue whales. Therefore, studies specific to the affects of noise on blue whales were not identified in the plan. Nonetheless, the discussion of the status of research on the effects of sound emission from the Acoustic

Thermometry of Ocean Climate experiment and from the U.S. Navy's Low-Frequency Active sonar system testing is provided in the Habitat Degradation and Military Operations sections, respectively.

Comment 11. With regard to the discussion on stocks in the North Pacific population, one commenter suggested adding the phrase '' ...based on the presence of rare epizoites on blue whales which were not found on other species known to migrate north ...'' to the sentence, ''[h]owever, he recently concluded that the California population is separate from that in the Gulf of and eastern Aleutians (Rice 1992).''

Response. This suggested change has been made.

Comment 12. One reviewer challenged the assertion that blue whales regularly feed on the pelagic red crab, *Pleuroncodes planipes*, as reported by Rice (1974) and Rice (1986).

Response. In response to this comment, the sentence that read ''[o]ne exception to their near-total dependence on euphausiid prey is that blue whales regularly feed on pelagic red crabs, *Pleuroncodes planipes*, off Baja California (Rice 1974, 1986)'' in the draft has been changed in the final plan to read, ''[o]ne exception to their near-total dependence on euphausiid prey is that blue whales have been observed feeding on pelagic red crabs, *Pleuroncodes planipes*, off Baja California (Rice 1974, 1986), although these observations have not been confirmed by subsequent observations or other analyses (e.g., fecal analysis).''

Comment 13. A reviewer suggested a change in the discussion about blue whale prey in the Gulf of California, Mexico.

Response. Two sentences on this subject have been changed to read, ''[b]etween February and April, blue whales in the Gulf of California, Mexico, have been observed feeding on euphausiid surface swarms (Sears 1990), consisting mainly of *Nyctiphanes simplex* engaged in reproductive activities (Gendron 1990, 1992). Sears (1990) regarded *Nyctiphanes simplex* as the principal prey of blue whales in the region, and results from recent fecal analyses confirmed this assertion (Del Angel-Rodriguez and Gendron 1997).''

Comment 14. One reviewer indicated that the section on Reproduction did not, but should, indicate that the Gulf of California is the only known nursing and probable calving ground in the North Pacific.

Response. The following sentence has been added ''[t]herefore, this area is likely an important nursing and calving area for the species.''

Comment 15. A reviewer pointed out that there are no regulations or guidelines for whale watching in Mexican waters and suggested that this be noted in the plan.

Response. The boat disturbance discussion in the North Pacific section has been modified to reflect this comment.

Comment 16. One reviewer noted that there are three (not two) blue whale photo-identification catalogs, including one for the waters off Baja California and portions of the Mexico mainland Pacific coast.

Response. Under Narrative, section 2.3 of the Plan has been modified accordingly.

Comment 17. A reviewer suggested that the importance of blue whale habitat in the Gulf of California be clarified in section 3.2 of the Narrative.

Response. In response to this comment, the sentence on Mexico has been modified to read, ''[i]n Mexico, the waters of Baja California, particularly the southwestern portion of the Gulf of California where nursing, feeding, and probably calving occurs, are clearly of great importance to many eastern North Pacific blue whales, including whales that spend part of the year in U.S. waters.''

Authority: 16 U.S.C. 1531-1543 *et seq.*

Dated: October 19, 1998.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–28508 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101698F]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Large Pelagics Committee will hold a public meeting.

DATES: The meetings will be held on Monday, November 9, 1998, from 8:00 a.m. until 5:00 p.m., and Tuesday, November 10, 1998, from 8:00 a.m. until 3:00 p.m.

ADDRESSES: This meeting will be held at the Mid-Atlantic Fishery Management Council Office, 2nd Floor Conference Room, Alan Frear Federal Building, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop Mid-Atlantic Council comments on the Highly Migratory Species and Atlantic Billfish Fishery Management Plans.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 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.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 19, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–28507 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101698E]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK.

DATES: The meetings will be held on November 8–12, 1998.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Sunday, November 8, and continue through Monday, November 9, 1998.

2. The Scientific and Statistical Committee (SSC) will meet beginning at 1:00 p.m. on Sunday, November 8, continuing through Monday, November 9, 1998.

3. The Council will begin at 8:00 a.m. on Tuesday, November 10, 1998, continuing through at least Thursday, November 12, and possibly into Friday morning, November 13, 1998.

The North Pacific Fishery Management Council and its advisory bodies will hold a special meeting to discuss management implications of draft Senate Bill 1221, and to discuss the current status of Stellar sea lions and potential management measures to mitigate fisheries impacts on those marine mammals.

SB 1221 (assuming its passage) will mandate specific management measures for the pollock fisheries in the Bering Sea/Aleutian Islands, and the pollock and Pacific cod fisheries in the Gulf of Alaska, and will likely necessitate additional actions by the Council.

Also on the agenda for the November meeting will be a discussion of total weight measurement in the groundfish fisheries, as it relates to SB 1221, and a discussion of the recent crab license limitation actions from the Council's October meeting, relative to SB 1221 and relative to possible State of Alaska crab fishery management considerations.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 7 working days prior to the meeting date.

Dated: October 19, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–28506 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101598D]

Marine Mammals; Permit No. 926

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Robin W. Baird, Dalhousie University, Halifax, Nova Scotia, B3H 4J1, Canada, has requested an amendment to scientific research Permit No. 959.

DATES: Written comments must be received on or before November 23, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Resources Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*),the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

The Permit Holder is currently authorized to: radio tag via suction cup attachment, killer whales (*Orcinus orca*) and Dall's porpoise (*Phocoenoides dalli*) annually in the waters of Washington, Southeast Alaska, Oregon, and California over a five year period; and to suction-cup TDR/VHF tag the following additional species of cetaceans: Baird's beaked whales (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), sperm whales (*Physeter macrocephalus*), northern right whale dolphins (*Lissodelphis borealis*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Risso's dolphins (*Grampus griseus*), short-finned pilot whales (*Globicephala macrorhynchus*), false killer whales (*Pseudorca crassidens*), minke whales (*Balaenoptera acutorostrata*), and gray whales (*Eschrichtius robustus*).

The Permit Holder is now requesting authorization to: (1) expand the geographic research area to include Hawaii waters; (2) include suction-cup TDR/VHF tagging of several additional species of marine mammals found in Hawaii waters (*i.e.*, spotted dolphins (*Stenella attenuata*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), pygmy killer whales (*Feresa attenuata*), melon headed whales (*Peponocephala electra*), Blainville's or dense beaked whales (*Mesoplodon densirostris*), and humpback whales (*Megaptera novaeangliae*)); and (3) collect photo-identification and behavioral information on small odontocetes in Hawaii waters (*i.e.*, those odontocete species listed above as well as bottlenose dolphins (*Tursiops truncatus*) and those species which are currently covered in the existing permit that are found in Hawaii waters (*i.e.*, short-finned pilot whales (*Globicephala macrorhynchus*), false killer whales (*Pseudorca crassidens*), Cuvier's beaked whales (*Ziphius cavirostris*), sperm whales (*Physeter macrocephalus*), Risso's dolphins (*Grampus griseus*), and killer whales (*Orcinus orca*).

The primary goal of the proposed research on the subject species is to study their diving behavior using time-depth recorder data.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 20, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–28509 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit and Sublimit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

October 19, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

EFFECTIVE DATE: October 23, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339 and sublimit for Categories 338–S/339–S are being increased for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67827, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 23, 1998, you are directed to increase the limit and sublimit for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
338/339	2,484,898 dozen of which not more than 1,798,427 dozen shall be in Categories 338–S/339–S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–28458 Filed 10–22–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, October 28, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28586 Filed 10–21–98; 12:28 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, November 4, 1998, 3:00 p.m.

LOCATION: Room 410 B/C, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: October 21, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–28615 Filed 10–21–98; 2:26 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Monday, November 2, 1998, 2:00 p.m.

LOCATION: Room 420 East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 1999 Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1999.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: October 21, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–28616 Filed 10–21–98; 2:26 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–02]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–02, with attached transmittal, policy justification and sensitivity of technology.

Dated: October 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

09 OCT 1998
In reply refer to:
I-73683/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-02, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost $486 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 410 million
Other	$ 76 million
TOTAL	$ 486 million

(iii) Description of Articles or Services Offered: Nine CH-47SD CHINOOK helicopters, chaff, three T55-L-714A spare turbine engines, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, field service representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support.

(iv) Military Department: Army (YUX)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 09 OCT 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - CH-47SD Helicopters

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested a possible sale of nine CH-47SD CHINOOK helicopters, chaff, radar warning receiver, three T55-L-714A spare turbine engines, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, field service representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support. The estimated cost is $486 million.

This proposed sale is consistent with United States law and policy, as expressed in Public Law 96-8. This sale is a multi-year purchase. The initial Letter of Offer and Acceptance (LOA) for a portion of this program will be signed in FY 99. LOA amendments to add the remaining quantities notified herein will be signed in subsequent years.

Taiwan will use these helicopters to improve their capability to transport personnel and cargo for both military and humanitarian assistance purposes. Taiwan intends to use the nine aircraft to establish an Air Transportation Battalion. A survey was undertaken based on the approval provided for the FMS of the CH-47SD during the 1998 U.S. - Taiwan Arms Sales Talks. Taiwan will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Corporation, Ridley Park, Pennsylvania. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of three U.S. Government Quality Assurance Teams to Taiwan for a week to assist in each delivery and deployment of the helicopters. There will be up to four U.S. Government personnel, twice annually, for one week intervals to participate in program management and technical reviews and up to ten U.S. Government personnel for annual (alternating) program reviews. Additionally, two contractor representatives will be needed in Taiwan for a one year period each.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act
Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The CH-47 CHINOOK helicopter is designed to provide air transportation for cargo, troops and weapons within the combat area. It can perform other missions such as vertical supply/replenishment of internal and external loaded cargo, disaster relief, passenger transport, search and rescue, self-retrieval and self-deployment. This aircraft is suitable for operations during day, night, visual and instrument meterorological conditions. The CH-47A, B, and C model airframes were updated and improved with seven newly designed and developed components; fiberglass rotor blades, drive system, hydraulic system, auxiliary power unit, electrical system, advanced flight control system, multi-cargo hook system, and night vision goggle compatible lighting. The CH-47D is the latest version used by the U.S. Army. The Ch-47SD has been improved by incorporation of an avionics control and management system, T55-L-714A engines and a long-range fuel system.

2. The CH-47SD configuration proposed for Taiwan is as follows:

a. (U) The following equipment is not considered to be classified:

- ARC-210 VHF/UHF Communication System
- AN/AIC-11746(V) Interphone System
- AN/APX-100(V) IFF Transponder
- Inertial Navigation System with Embedded Global Positioning System
- AN/ARN-147(V)1 Very High Frequency Omni-directional Range/Instrument Landing System
- Air Data Computer
- AN/209J(V)5 Radar Altimeter
- AN/ARN-153 TACAN
- Primus-701 Weather Radar

b. The AAR-60 Missile Detection system is a non-U.S. system manufactured by Daimler Benz.

c. The AN/AVS-6(V)1 night vision goggles are unclassified without the laser filter.

d. The ALE-47(V) Flare/Chaff Dispenser is a programmable, threat-adaptive Countermeasures Dispenser System and is considered to be classified. The ALE-47(H) is 1553 bus comptabile and has the capability of interfacing with other Aircraft Survivability Equipment and avionics systems to utilize aircraft parameters and threat data. Automatic dispensing may be enabled for the radar warning receiver, active jammer, and missile warning system. The U.S. Army has installed the ALE-47 Advanced Countermeasures Dispensers on the MH-47E CHINOOK Special Operations Aircraft. The ALE-47 uses modified M-130 Dispenser Assemblies with internal sequences removed. The recipient currently used the ALE-47 on their F-16. The programmable portion of the hardware and associated software is classified Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the classified technology/system being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–28412 Filed 10–22–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

AGENCY: Department of the Air Force, DoD.

ACTION: Notice

SUMMARY: Notice is hereby given that the President has exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information to any unauthorized persons.

FOR FURTHER INFORMATION CONTACT: Mr. W. Kipling At Lee, Jr., Deputy General Counsel (Military Affairs), Office of the Secretary of the Air Force, Washington DC 20330; telephone (703) 695–5663.

SUPPLEMENTARY INFORMATION: 42 USC Section 6961 makes each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste subject to all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. 42 USC Section 6961 also states that the President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so and that any exemption shall be for a period not in excess of one year.

On September 25, 1998, the President exempted the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person.

Therefore, the text of the Memorandum from the President to the Secretary of the Air Force is set forth below.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

Presidential Determination No. 98–36
September 25, 1998
Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force
Subject: Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, (the subject of litigation in Kasza v. Browner (D. Nev. CV–S–94–795–PMP) and Frost v. Perry (D. Nev. CV–S–94–714–PMP), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning the operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton,

[FR Doc. 98–28349 Filed 10–22–98; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) for the Disposal and Reuse of the Charles River Park Parcel, Army Materials Technology Laboratory (AMTL), Watertown, MA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces today the availability of the EA and Finding of No Significant Impact (FNSI) for the disposal and reuse of the Charles River Park parcel, AMTL, Watertown, Massachusetts. The 1988 Commission on Base Realignment and Closure established by the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Public Law 100–526, recommended the closure of AMTL. The proposed action is the disposal of property made available by the closure of AMTL.

DATES: Comments must be submitted on or before November 23, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Susan Holtham, U.S. Army Corps of Engineers, New England District (ATTN: Environmental Resource Section), 696 Virginia Road, Concord, Massachusetts 01742–2571.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Holtham at (978) 318–8536 or by telefax at (978) 318–8560.

SUPPLEMENTARY INFORMATION: The EA evaluates the effects of disposal and subsequent reuse of the Charles River Park parcel which comprises approximately 11 acres. The Army will negotiate the transfer of 11 acres to the Commonwealth of Massachusetts, Metropolitan District Commission (MDC) or another owner. In 1920, the Army granted a permanent right-of-way for the parcel to the Commonwealth of Massachusetts, MDC. Through the grant, MDC assumed responsibility for care, management and police jurisdiction over the property, however, ownership remained with the Army.

Three alternative methods of disposal were analyzed: Encumbered disposal, unencumbered disposal and retention of the property in caretaker status (i.e., no action alternative). The Army's preferred alternative for disposal of the Charles River Park parcel is encumbered disposal which involves conveying the property with conditions imposed on special easements, remedial activities, historic properties, and wetlands.

The EA, which is incorporated into the FNSI, examines potential effects of the proposed action and alternatives on resource areas and areas of environmental concern: Land use, climate, air quality, geology, water resources, infrastructure, hazardous and toxic substances, biological resources, cultural resources, economic development, social and economic development, and quality of life.

The EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment. Issuance of a FNSI would be appropriate. An Environmental Impact Statement is not required prior to implementation of the proposed actions.

The EA also will be available for public review at the Watertown Free Library, 123 Main Street, Watertown, Massachusetts 02172–4401; call (617) 972–6430 for hours of operation.

Dated: October 19, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–28439 Filed 10–22–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 22, 1998.

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

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

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

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 19, 1998.

Kent H. Hannaman,

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

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Reinstatement.

Title: Application for Grants Under Emergency Immigrant Education Program.

Frequency: Annually.

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

Reporting and Recordkeeping Burden:

Responses: 57

Burden Hours: 9,177.

Abstract: This application is used by State educational agencies to apply for formula grants authorized under the Emergency Immigrant Education Act (Title VI of P.L. 98–511 as amended by P.L. 103–382).

[FR Doc. 98–28435 Filed 10–22–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed information collection that DOE is developing for submission to the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*). This information collection would collect information from individual homeowners, solar energy system installers and other solar energy industry representatives concerning the details of newly installed solar energy systems (e.g., system size and technology).

DATES: Consideration will be given to comments submitted by December 22, 1998.

ADDRESSES: Written comments may be submitted to: Department of Energy, Attn: Kimberley Kendall, Office of Renewable Energy and Energy Efficiency (EE–1), 6C–016/Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585. (202) 586–0927, E-mail: kim.kendall@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Collection Title: U.S. Department of Energy/Million Solar Roofs Initiative Registry.

Type of Review: New collection.

OMB Number: None.

Type of Respondents: Individuals, solar energy system installers, and other solar energy industry representatives.

Estimated Number of Respondents: 1,000.

Estimated Total Burden Hours: 500.

Frequency of Response: One time only.

Abstract: DOE plans to publicize widely the existence of the registry through its Regional Support Offices, the Million Solar Roofs website, DOE's bi-weekly electronic Million Solar Roofs newsletter, meetings, conferences and the like, and through its relationship with renewable energy organizations. Due to the high level of interest in MSR in the solar energy community, DOE expects that many solar energy system installers, individuals, utilities, governments, and solar energy manufacturers will wish to ''register'' their solar energy systems. Registration would take place electronically (a paper form would also available upon request) by responding to a series of very brief questions. If a system met the established criteria, a Million Solar Roofs certificate would automatically be generated and mailed to the respondent. Registration would take place one time only. DOE plans to aggregate the data and generate reports detailing the

geographic distribution of systems and, among other things, the sizes and types of systems. This data collection will assist DOE in its management of and planning for the continued success of the Million Solar Roofs Initiative.

Request for Comments: Pursuant to 44 U.S.C. 3506(c)(2)(A), DOE invites comments on: (1) Whether the proposed collection of information is necessary to measure the progress and success of the Million Solar Roofs Initiative; and (2) the accuracy of DOE's estimate of the burden of the proposed information collection; (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 choose to respond. Additional information about DOE's proposed information collection may be obtained from the contact person named in this notice.

Issued in Washington, D.C. on October, 19, 1998.

Brian T. Castelli,

Chief of Staff, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 98–28496 Filed 10–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of Solicitation Number DE–PS07–99ID13730—Nuclear Engineering Education Research (NEER) Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for awards of financial assistance (i.e., grants) for state-of-the-art research that contributes to any of the following eight areas: reactor physics; reactor engineering; nuclear materials; radiological engineering; radioactive waste management; applied radiation science; nuclear safety and risk analysis; and innovative technologies for next generation reactors, space power and propulsion, or radiation sources. The issuance date of Solicitation Number DE–PS07–99ID13730 was October 16, 1998. The solicitation is available in its full text via the Internet at the following URL address: http:// www.id.doe.gov /doeid/pds /proc-div.html. The deadline for receipt of applications is 45 days after the issuance date of the solicitation or by November 30, 1998.

ADDRESSES: Applications should be submitted to: Dallas L. Hoffer, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Dallas Hoffer, Contract Specialist at *hofferdl@id.doe.gov*, Janet Surrusco, Purchasing Agent at *surrusjk@id.doe.gov*, or Linda Hallum, Contracting Officer at *hallumla@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The solicitation was issued pursuant to 10 CFR 600.6(b). Eligibility for awards under this Nuclear Engineering Education Research (NEER) Program will be restricted to U.S. colleges and universities with nuclear engineering degree programs or options. The purpose of the NEER program is to (1) support basic research in nuclear engineering; (2) assist in developing nuclear engineering; and (3) contribute to strengthening the academic community's nuclear engineering infrastructure. The statutory authority for this program is Public law 95–91.

Issued in Idaho Falls on October 14, 1998.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 98–28498 Filed 10–22–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, November 18, 1998: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

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

5:30 p.m. Call to Order
5:45 p.m. Approve Meeting Minutes
6:00 p.m. Public Comment/Questions
6:30 p.m. Presentations
7:30 p.m. Break
7:45 p.m. Presentations
9:00 p.m. Public Comment
9:30 p.m. Administrative Issues
10:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The 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 a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

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 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on October 19, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–28494 Filed 10–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat 770), notice is hereby given of the following meeting:

DATE AND TIME: Thursday, November 19, 1998, 9:00 AM.

PLACE: Four Seasons Hotel 2800 Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585.

Purpose of the Council: To provide advice, information, recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Call to order and opening remarks by Dr. E. Linn Draper, Chairman of the National Coal Council.
—Remarks by the Honorable Bill Richardson, Secretary of Energy (invited).
—Briefing by Mary Hutzler, Assistant Administrator for Energy Information Administration, on recent EIA Study on Impacts of Kyoto Protocol on the US.
—Report by Dr. Robert Nickell on the Coal Study Work Group.
—Administrative reports.
—Presentation by Dr. Randolph Williams, Environmental Synergy, Inc., on Biodiversity and Carbon Sequestration.
—Report by Steve Jenkins, TECO Energy, on the Fourth Conference of the Parties in Buenos Aires, Argentina.
—Other business.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 20, 1998.

Rachel M. Samuel,

Deputy Committee Advisory, Management Advisory Officer.

[FR Doc. 98–28497 Filed 10–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee

Date and Time: Thursday, November 19, 8:30 a.m.–3:45 p.m.; Friday, November 20, 8:30 a.m.–12:15 p.m.

Place: U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., S.W., Washington, DC 20585

For Further Information Contact: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 426–1101.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy-related statistical matters.

Tentative Agenda

Thursday, November 19, 1998

A. Opening Remarks by the Chairman
B. Major Topics
1. Handling High-Profile EIA Reports
2. Update on Greenhouse Gas Environmental Impact Studies
3. Electricity Restructuring
4. Panel Discussion on Data Topics in the 21st Century
5. The National Energy Information Center

Friday, November 20, 1998

6. A New Natural Gas Imports Model for the Short-Term Integrated Forecasting System
7. Procedures to Accelerate and Improve Short-Term Natural Gas Estimates
8. Alternatives to Reducing the Cost of the Residential Energy Consumption Survey
9. Public Comment
C. Closing Remarks by the Chairman

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on October 20, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–28495 Filed 10–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 99–02; Plasma Physics Junior Faculty Development Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research (OER), U.S. Department of Energy hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers.

DATES: To permit timely consideration for awards in FY 1999, formal applications in response to this notice should be received on or before February 3, 1999.

ADDRESSES: Completed formal applications referencing Program Notice 99–02 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–02. The above address must also be used when submitting applications by U. S. Postal Service Express, and commercial mail delivery service or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald McKnight, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, ER–55, 19901 Germantown Road, Germantown,

Maryland 20874–1290. Telephone: (301) 903–4597. E-mail: ron.mcknight@oer.doe.gov.

SUPPLEMENTARY INFORMATION: The Plasma Physics Junior Faculty Development Program was started in FY 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Applications from Junior Faculty involved in any areas of plasma physics research, not only magnetic fusion, are welcomed and encouraged. Emphasis is to be placed on basic plasma science research. For applications to be considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during FY 1999, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-by-case basis. DOE may make up to three awards during FY 1999, depending on the number of meritorious applications and the availability of appropriated funds. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. These grants will not normally be renewed after the project period is completed; grantees may, however, submit new grant applications to continue their research using the usual Office of Energy Research grant application process. Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605 which is available on the World Wide Web at: http:// www.er.doe.gov/ production/grants/ grants.html

The Catalog Of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on October 1, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–28493 Filed 10–22–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

October 19, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 1:00 p.m. on Monday, October 26, 1998 and continuing on Tuesday, October 27, 1998, if necessary, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–0583, Bob Keegan at (202) 208–0158, or Edith A. Gilmore at (202) 208–2158.

David P. Boergers,

Secretary.

[FR Doc. 98–28425 Filed 10–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–15–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

October 19, 1998.

Take notice that on October 13, 1998, Northern Natural Gas Company, (Applicant), P.O. Box 3330, Omaha, Nebraska, 68103–0330, filed in Docket No. CP99–15–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for approval to upgrade an existing delivery tap for service to Alliant-IES (Alliant), under Applicant's blanket certificate issued in Docket Nos. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to upgrade an existing delivery tap, located in Hamilton County, Iowa, to accommodate increased natural gas deliveries to Alliant under currently effective throughput service agreements. Applicant states that the upgrade includes the replacement of the existing meter and regulators with no anticipated ground disturbance. Applicant asserts that Alliant has requested the upgrade of the existing delivery point to provide increased natural gas service to the Ellsworth #1 town border station to serve additional interruptible volumes. Applicant further asserts that the estimated peak day volume at the upgraded delivery point will change from 650 MMBtu to 1040 MMBtu and that the estimated annual volume at the upgraded delivery point will change from 76,000 MMBtu to 96,444 MMBtu. It is indicated that the total estimated cost to upgrade this delivery point is $25,000, which Alliant will reimburse Applicant.

It is asserted by Applicant that the proposed activity is not prohibited by Applicant's existing tariff and that Applicant has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to any of Applicant's other customers.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to

intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–28426 Filed 10–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–74–000]

South Mississippi Electric Power Association v. Entergy Services, Inc.; Notice of Filing

October 19, 1998.

Take notice that on September 1, 1998, Southern Mississippi Electric Power Association tendered for filing a complaint against Entergy Services, Inc., as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, Entergy) in connection with Entergy's May 5, Update to its Open Access Transmission Tariff (OATT) filed in Docket No. ER98–2910–000, as modified and supplemented on May 15 and August 14, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 30, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint are also due on October 30, 1998.

David P. Boergers,

Secretary.

[FR Doc. 98–28461 Filed 10–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–10–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

October 19, 1998.

Take notice that on October 8, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–10–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install regulating facilities at an existing delivery point under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to deliver natural gas to Mississippi Valley Gas Company (MVG) at Southern's West Lincoln Delivery Point (meter station), as specified under the Exhibit B to the Service Agreement between Southern and MVG. The meter station is located at or near Milepost 39.148 on Southern's 18-inch Cranfield-Gwinville Line in Section 8, Township 7 North, Range 7 East, Lincoln County, Mississippi.

MVG has requested and Southern has agreed to make certain modifications to the meter station to increase the reliability of service and minimize interruptions caused by fluctuations in pressure on Southern's pipelines. Southern will modify the existing meter station by installing two 2″ Fisher 626HM–195 regulators. There will be no change in contract pressure as a result of the modifications and the estimated cost is $12,160. Southern states that the proposed modifications will not result in any termination of service, will not have any impact on Southern's peak day or annual deliveries and will not result in a change in the total Firm Transportation Demand delivered to MVG. Southern also states that the modifications are not prohibited by its existing tariff and that Southern has the ability to accomplish the deliveries to MVG without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–28427 Filed 10–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2389]

Edwards Manufacturing Company, City of Augusta, Maine; Notice of Plan To Remove Edwards Dam

October 19, 1998.

A plan was filed on September 30, 1998, for removal of Edwards Dam as contemplated in the settlement agreement approved by the Commission on September 16, 1998. Included with the filing is a motion requesting Commission approval of the plan.

The dam removal plan is filed by the State of Maine in anticipation of transfer of the project license to the State of Maine on January 1, 1999. Dam removal and property restoration are scheduled for completion in 1999 following license transfer. The State of Maine proposes to use controlled demolition blasting to establish an initial breach in the dam, followed by the dismantling of the remainder of the dam using conventional excavation equipment. The goal of dam removal and property restoration is to return the site to a condition suitable for mixed use, including, but not limited to, recreational, commercial, and industrial uses.

Copies of the plan are available through the Commission's Public Reference Room at the address listed below. In addition, the document may

be obtained through the Commission's Records Information Management System (RIMS) available through the Commission's Homepage at www.ferc.fed.us.

Comments on the dam removal plan and request for Commission approval may be filed within 30 days of the date of this notice at the following address: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (P–2389) prominently on any filing. For additional information, please contact Mr. John A. Schnagl at (202) 219–2661.

David P. Boergers,

Secretary.

[FR Doc. 98–28462 Filed 10–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–3–000, et al.]

MidAmerican Energy Co., et al.; Electric Rate and Corporate Regulation Filings

October 16, 1998.

Take notice that the following filings have been made with the Commission:

1. MidAmerican Energy Company

[Docket No. EL99–3–000]

Take notice that on October 8, 1998, MidAmerican Energy Company filed a Petition for Enforcement and Declaratory Order pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3(h)(2)(B)(1994)) and Rule 207(a)(2) of the Commission's rules of practice and procedure (18 CFR 385.207(a)(2)). MidAmerican requests the Commission to initiate an enforcement action to enjoin the Iowa Utilities Board (IUB) from implementing a final decision it issued pursuant to Iowa's Alternate Energy Production (AEP) Statute and § 199–15.11(5) of the implementing regulations thereunder that directs MidAmerican to interconnect an AEP facility owned by David M. Leisinger with the MidAmerican system to offer net billing metering arrangements. MidAmerican also requests the Commission to issue a declaratory order that the final decision of the IUB is preempted by PURPA, if the AEP facility is a qualifying facility (QF), or by the Federal Power Act, if the AEP facility is not a QF.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Eclipse Energy, Inc., AC Power Corporation, Russell Energy Services Company, Alpena Power Marketing, L.L.C., Western States Power Providers, Inc., Entergy Services, Inc., UGI Power Supply, Inc., Energy Unlimited, Inc.

[Docket Nos. ER94–1099–018, ER97–2867–005, ER96–2882–008, ER97–4745–004, ER95–1459–012, ER99–169–000, ER96–2715–009, ER98–1622–002]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 8, 1998, Eclipse Energy, Inc. filed certain information as required by the Commission's June 15, 1994 letter order in Docket No. ER94–1099–000.

On October 8, 1998, AC Power Corporation filed certain information as required by the Commission's July 8, 1995 order in Docket No. ER97–2867–000.

On October 8, 1998, Russell Energy Services Company filed certain information as required by the Commission's October 30, 1996 order in Docket No. ER96–2882–000.

On October 9, 1998, Alpena Power Marketing, L.L.C. filed certain information as required by the Commission's November 13, 1997 order in Docket No. ER97–4745–000.

On October 9, 1998, Western States Power Providers, Inc. filed certain information as required by the Commission's October 10, 1995 letter order in Docket No. ER95–1459–000.

On October 9, 1998, Entergy Services, Inc. filed certain information as required by the Commission's December 17, 1997 order in Docket No. ER96–2709–000.

On October 9, 1998, UGI Power Supply, Inc. filed certain information as required by the Commission's October 11, 1996 order in Docket No. ER96–2715–000.

On October 9, 1998, Energy Unlimited, Inc. filed certain information as required by the Commission's May 5, 1998 order in Docket No. ER98–1622–000.

3. Cinergy Services, Inc.

[Docket No. ER98–523–001]

Take notice that on October 13, 1998, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc. (the Cinergy Operating Companies), filed a supplemental compliance filing in this docket on January 6, 1998.

Copies of this filing have been served upon the state commissions of Ohio, Indiana and the Customers in this proceeding.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Enserco Energy Inc., UGI Power Supply, Inc., CHI Power Marketing, Inc., COM/Energy Marketing, Inc., Griffin Energy Marketing, L.L.C., Continental Energy Services, L.L.C., United American Energy Corp.

[Docket Nos. ER96–2964–008, ER96–2715–010, ER96–2640–008, ER98–449–003, ER97–4168–004, ER97–319–007, and ER96–3092–009]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 9, 1998, Enserco Energy Inc. filed certain information as required by the Commission's December 1, 1996 order in Docket No. ER96–2964–000.

On October 9, 1998, UGI Power Supply, Inc. filed certain information as required by the Commission's October 11, 1996 order in Docket No. ER96–2715–000.

On October 13, 1998, CHI Power Marketing, Inc. filed certain information as required by the Commission's September 12, 1996 order in Docket No. ER96–2640–000.

On October 13, 1998, COM/Energy Marketing, Inc. filed certain information as required by the Commission's December 23, 1997 order in Docket No. ER98–449–000.

On October 13, 1998, Griffin Energy Marketing, L.L.C. filed certain information as required by the Commission's October 29, 1997 order in Docket No. ER97–4168–000.

On October 13, 1998, Continental Energy Services, L.L.C. filed certain information as required by the Commission's December 31, 1996 order in Docket No. ER97–319–000.

On October 13, 1998, United American Energy Corp. filed certain information as required by the Commission's January 3, 1997 letter order in Docket No. ER96–3092–000.

5. Portland General Electric Company

[Docket No. ER98–3759–001]

Take notice that on October 13, 1998, Portland General Electric Company (PGE), in accordance with the Commission's September 11, 1998, order in the above-captioned docket, filed its compliance filing.

The compliance filing has been served upon all Participants in this matter.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Unitil Power Corp.

[Docket No. ER99–168–000]

Take notice that on October 13, 1998, Unitil Power Corp. (UPC), tendered for filing a service agreement between UPC and TransCanada Power Marketing Ltd. (TransCanada), for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

UPC requests an effective date of September 18, 1998, for the service agreement with TransCanada.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Fitchburg Gas and Electric Light Company

[Docket No. ER99–176–000]

Take notice that on October 13, 1998, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing a service agreement between Fitchburg and TransCanada Power Marketing Ltd. (TransCanada), for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000.

Fitchburg requests an effective date of September 18, 1998, for the service agreement with TransCanada.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER99–177–000]

Take notice that on October 13, 1998, Western Resources, Inc. (Western Resources), tendered for filing agreements between Western Resources and Tenaska Power Services Company and OG&E Energy Resources. Western Resources states that the purpose of the agreements is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreements are proposed to become effective September 17, 1998.

Copies of the filing were served upon Tenaska Power Services Company, OG&E Energy Resources, and the Kansas Corporation Commission.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Montana Power Company

[Docket No. ER99–179–000]

Take notice that on October 13, 1998, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission a supplement to Montana Rate Schedule FERC No. 177, Amendment No. 1. Rate Schedule FERC No. 177 is a Power Sales Agreement between Montana and Puget Sound Energy.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Minnesota Power & Light Company

[Docket No. ER99–180–000]

Take notice that on October 13, 1998, Minnesota Power & Light Company and Superior Water, Light and Power tendered for filing a signed Service Agreement for Umbrella Firm Point-to-Point Transmission Service with Consumers Energy Company and The Detroit Edison Company (collectively, the Michigan Companies) under its Transmission Service Agreement to satisfy its filing requirements under this tariff.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas And Electric/ Kentucky Utilities Company

[Docket No. ER99–181–000]

Take notice that on October 13, 1998, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/ KU and Consumers Energy Company and The Detroit Edison Company (referred to collectively as the Michigan Companies) under LG&E/KU's Open Access Transmission Tariff.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Texas Utilities Electric Company

[Docket No. ER99–182–000]

Take notice that, on October 13, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing an executed Transmission Service Agreement (TSA) with Southern Company Energy Marketing, L.P., for certain Unplanned Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Southern Company Energy Marketing, L.P., as well as the Public Utility Commission of Texas.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER99–183–000]

Take notice that on October 13, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62522, tendered for filing a Netting Agreement between Citizens Power Sales (Citizens) and Illinois Power. The Netting Agreement principally provides that, during each month in which payments for wholesale power services are due, Illinois Power and Citizens will net the amounts owed by each party to the other, such that the only payment to be made will be by the party owing the difference between the two amounts.

Illinois Power has requested an effective date of September 15, 1998.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Idaho Power Company

[Docket No. ER99–184–000]

Take notice that on October 13, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Confirmation Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Washington Water Power Company.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Idaho Power Company

[Docket No. ER99–185–000]

Take notice that on October 13, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Washington Water Power Company.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER99–186–000]

Take notice that on October 13, 1998, San Diego Gas and Electric Company (SDG&E), tendered for filing an unexecuted Service Agreement between SDG&E and NutraSweet Kelco Company (Kelco) for service under SDG&E's Open Access Distribution Tariff (OADT). SDG&E states that it and Kelco have been unable to agree as to whether

SDG&E is required to purchase the output of Kelco's Qualifying Facility at San Diego, California after October 19, 1998. SDG&E further states that it tenders the Service Agreement to assure that service under the OADT is available to Kelco, should it be needed, after October 19, 1998.

Copies of this filing have been served upon the California Public Utilities Commission and Kelco.

SDG&E requests that the Service Agreement be made effective as of October 19, 1998.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER99–187–000]

Take notice that on October 13, 1998, Arizona Public Service Company (APS), tendered for filing an Umbrella Service Agreement to provide Non-Firm Point-to-Point Transmission Service to Avista Energy Inc. (Avista), under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Avista and the Arizona Corporation Commission.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER99–188–000]

Take notice that on October 13, 1998, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison), with Duke Power, a Division of Duke Energy Corporation.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: November 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–28428 Filed 10–22–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5496–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly Receipt of Environmental Impact Statements Filed October 12, 1998 Through October 16, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980417, DRAFT EIS, AFS, OR, Mill Creek Watershed Timber Sales Project, Implementation, Ochoco National Forest, Crook County. OR, Due: November 30, 1998, Contact: Dave Owens (541) 416–6425.

EIS No. 980418, DRAFT SUPPLEMENT, FHW, NB, US 75 Highway Roadway Improvement, Updated Information, Improvements from segment Murray (Highway N–1) to Bellevue Fairview Road), Cass and Sarpy Counties, NB, Due: December 07, 1998, Contact: Edward Kosola (402) 437–5521.

EIS No. 980419, DRAFT EIS, COE, FL, Programmatic EIS—Central and Southern Florida Multi-Purpose Project, Comprehensive Review Study, Everglades National Park, Orlando to Florida Bay, FL, Due: December 31, 1998, Contact: Elmar Kurzbach (904) 232–2325.

EIS No. 980420, DRAFT EIS, AFS, MT, Ash and Iron Mountain Grazing Permit Reissuance, Allotment Gallatin National Forest, Park County, MT, Due: December 07, 1998, Contact: Pat Hoppe (406) 848–7375.

EIS No. 980421, DRAFT EIS, COE, OR, WA, Columbia and Lower Willamette River Federal Navigation Channel, Improvement Channel Deepening, OR and WA, Due: December 07, 1998, Contact: Steve Stevens (503) 808–4768.

EIS No. 980422, DRAFT EIS, AFS, ID, West Fork Potlatch Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Palouse Ranger District, Latah County, ID, Due: December 14, 1998, Contact: Karl Dekome (208) 875–1131.

EIS No. 980423, DRAFT EIS, FHW, VT, VT 9/100 Transportation Improvement Study (NH–010–1(33), In the Towns of Wilmington and West Dover, Federal Permits and Approvals, NPDES Permit and COE Section 10 and 404 Permits. Windham County, VT, Due: December 19, 1998, Contact: Kenneth R. Sikora, Jr. (802) 828–4423.

EIS No. 980424, DRAFT EIS, FTA, NY, Buffalo Inner Harbor Development Project, Funding and COE Section 10 and 404 Permits, Downtown Waterfront Redevelopment Project, Eric County, NY, Due: December 07, 1998, Contact: Anthony G. Carr (212) 264–8162.

EIS No. 980425, FINAL EIS, FHW, IL, Federal Aid Route 310/US 67 Expressway Study, Godfrey to Jacksonville, Funding and COE Section 404 Permit, Madison, Jersey, Greene, Morgan and Scott Counties, IL, Due: November 16, 1998, Contact: William C. Jones (708) 283–3510.

EIS No. 980426, DRAFT EIS, AFS, ID, Coeur d'Alene River Ranger District Noxious Weed Control Project, Treating 76 Specific Sites across District, Kootenai and Shoshone Counties, ID, Due: December 07, 1998, Contact: Kristin Philbrook (208) 769–3000.

Dated: October 20, 1998.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 98–28510 Filed 10–22–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

October 19, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning

the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0767.

Expiration Date: 10/31/2001.

Title: Auction Forms and License Transfer Disclosures Supplement for the 2nd R&O, Order on Reconsideration, and 5th NPRM in CC Docket 92–297.

Form No.: N/A.

Estimated Annual Burden: 773,000 annual hours; 30 minutes to 4 hours per response; 180,000 responses.

Description: The rules require small business applicants to submit ownership information and gross revenue calculations, and all applicants must submit joint bidding agreements. In the cases of defaults the FCC retains the discretion to reauction such licenses. Finally, licensees transfering licenses within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Certification is required for entities dropping out of auction to secure certain ownership interests in participants. Small busines, must disclose to the Commission informmation regarding partitioning and disaggregation to avoid unjust enrichment.

OMB Control No.: 3060–0801.

Expiration Date: 3/31/1999.

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses—WT Docket 97–82, Fourth Report and Order

Form No.: N/A.

Estimated Annual Burden: 188 annual hours; .25 hours per response; 750 responses.

Description: The C Block Fourth Report and Order requires each applicant for C block sectrum to attach to its short-form application a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owned to any Federal agency. This information will allow the Commission to determine the amount of the upfront payment to be paid by each applicant and will help ensure that C block reauctions are conducted fairly and efficiently.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28478 Filed 10–22–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act 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 9:00 a.m. on Tuesday, October 27, 1998, 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.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Revised Statement of Policy on the National Environmental Policy Act of 1969.

Discussion Agenda

Memorandum and resolution re: Proposed Amendment of Part 326 of FDIC Rules and Regulations—Minimum Security Devices and Procedures and Bank Secrecy Act Compliance Program.

Memorandum re: BIF Amendment Rates for the First Semiannual Amendment Period of 1999.

Memorandum re: SAIF Amendment Rates for the First Semiannual Amendment Period of 1999.

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 aide (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (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: October 20, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–28565 Filed 10–21–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: November 3, 1998.

Place: The FEMA Conference Operator in Washington, DC will arrange the teleconference. Individual interested in participating should fax a request including their telephone numbers to (202) 646–4596 no later than November 2, 1998.

Time: 11:00 a.m. to 1:00 p.m., EST.

Proposed Agenda:

1. Call to order.
2. Announcements.
3. Action on Minutes of September 29 Teleconference meeting.
4. Discussion of 1998 Annual Report.
   a. Status
   b. Resolution of Issues
   c. Format of Recommendations
5. Agenda for December meeting.
6. Status of the Map Service Center contract.
7. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting on December 7–8, 1998.

Dated: October 19, 1998.

Craig S. Wingo,

Deputy Associate Director for Mitigation.

[FR Doc. 98–28483 Filed 10–22–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 6, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Robert C. Arneson, Excelsior, Minnesota, and Amy J. Hewitt, Clear Lake, Iowa; each to acquire additional voting shares of Arneson Bancshares, Inc., Clear Lake, Iowa, and thereby indirectly acquire additional voting shares of Clear Lake Bank and Trust Company, Clear Lake, Iowa.

Board of Governors of the Federal Reserve System, October 19, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28415 Filed 10–22–98; 8:45 am]

BILLING CODE 6210–01–F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 November 16, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Dartmouth Capital Group, Inc.; Dartmouth Capital Group, L.P., and Eldorado Bancshares, Inc., all of Laguna Hills, California; to acquire 100 percent of the voting shares of Antelope Valley Bank, Lancaster, California.

Board of Governors of the Federal Reserve System, October 19, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28416 Filed 10–22–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, October 28, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http: // www.federal reserve. gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–28580 Filed 10–21–98; 11:26 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13½% for the quarter ended September 30, 1998. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 15, 1998.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 98–28429 Filed 19–22–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee and the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meetings

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) announces the following subcommittee and committee meetings.

Name: Community/Tribal Subcommittee.

Times and Dates: 8:30 a.m.–5 p.m., November 3, 1998; 8:30 a.m.–5 p.m., November 4, 1998.

Place: ATSDR, 35 Executive Park Drive, Training Room, Atlanta, Georgia 30329.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: This subcommittee will bring to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee will report directly to the Board of Scientific Counselors.

Matters to be Discussed: Issues and concerns of the community/tribal subcommittee related to ATSDR community and tribal programs, policies and activities will be identified and recommendations for the agency will be developed. The subcommittee will discuss ways and means of effecting outreach to communities affected by hazardous substances in the environment; the draft ATSDR Ombudsman manual and related ombudsman issues; ATSDR staff presentations on health studies methodologies, medical monitoring, exposure assessment, development of an ATSDR community-oriented web site, and community access to health services. A report will be prepared and presented to the Board of Scientific Counselors.

Name: Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry.

Times and Dates: 8:30 a.m.–5:30 p.m., November 5, 1998; 8:30 a.m.–3:45 p.m., November 6, 1998.

Place: ATSDR, 35 Executive Park Drive, Training Room, Atlanta, Georgia 30329.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency seeks to make grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters to be Discussed: Agenda items will include a presentation on ATSDR Exposure Investigations; an overview of the ATSDR Human Health Studies Program; a report to the Board of Scientific Counselors from the Community/Tribal Subcommittee on issues and concerns related to hazardous waste sites; an ATSDR update on the Child Health Initiative; a presentation on Uncertainty in Health Guidance Values in Relation to Children's Health; and a report on Minority Health and Environmental Medicine Capacity/Medical Care.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Due to administrative delays, this notice has not been published fifteen days prior to the start of the meeting.

Contact Person for More Information: Charles Xintaras, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: October 19, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–28456 Filed 10–22–98; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: The National Outcomes Survey of People with Developmental Disabilities.

OMB No.: New.

Description: This survey will focus on educational, employment, housing, and health situations of people with developmental disabilities, and their opportunities to make choices. Respondents will be people with disabilities and their family members. They will also be queried regarding assistance from three specific public entities.

Respondents: Individuals or Household.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Pre-test	300	1	2	600
NCOR/Harris National Outcomes Survey	1000	1	2	2,000

Estimated Total Annual Burden Hours: 2,600.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to made a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Attn: Ms. Wendy Taylor.

Dated: October 19, 1998.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 98–28517 Filed 10–22–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Voluntary Customer Satisfaction Surveys to Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)—New—Executive Order 12862 directs agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse agencies, through a range of mechanisms, including publications, technical assistance and web sites. Many of these services are focused on information dissemination activities. The purpose of this submission is to obtain generic approval for satisfaction surveys of SAMHSA's customers.

The primary use for information gathered will be to identify strengths and weaknesses in current service provisions by SAMHSA and to make improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act (GPRA). Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups will be used to develop the survey questionnaire in some instances.

The estimated annual hour burden is as follows:

Type of survey	Number of respondents	Responses/respondent	Hours/response	Total hours
Focus groups	150	1	2.50	375
Mail/telephone/e-mail surveys	10,000	1	.33	3,300
Total	10,150			3,675

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 19, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–28457 Filed 10–22–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–32]

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 suitable for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, Room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for

review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreages floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling AIr Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; VA: Mr. George L. Szwarcman, Director, Land Management Service, 184A, Department of Veterans Affairs, 881 Vermont Avenue, NW, Room 414, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (These are not foll-free numbers).

Dated: October 16, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/23/98

Suitable/Available Properties

Buildings (by State)

California

Marine Culture Laboratory
Granite Canyon
34500 Coast Highway
Monterey CA 93940–
Landholding Agency: GSA
Property Number: 54983011
Status: Surplus
Comment: 3297 sq. ft. office bldg. & lab on 4.553 acres, envir.
GSA Number: 9–C–CA–1499

Hawaii

Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779840002
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site only

Maine

Bldg. 22
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77984008
Status: Excess
Comment: 2687 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 36
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779840009
Status: Excess
Comment: 8840 sq. ft., most recent use—storage, off-site use only

Bldg. 38
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77984010
Status: Excess
Comment: 19,612 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 234
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77984011
Status: Excess
Comment: 768 sq. ft., presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Maryland

Cheltenham Naval Comm. Dtchmt.
9190 Commo Rd., AKA 7700 Redman Rd.
Clinton Co: Prince Georges MD 20397–5520
Landholding Agency: GSA
Property Number: 779330010
Status: Excess
Comment: 32 bldgs., various sq. ft., most recent use—admin/comm, & 39 family housing units of 230.35 acres, presence of lead paint/asbestos, 20.09 acres leased to County w/improvements
GSA Number: 4–N–MD–544A

Montana

Missoula Fireweather Site
Highway 83
Missoula MT 59801–
Landholding Agency: GSA
Property Number: 549830012
Status: Surplus
Comment: 256 sq. ft. metal transmitter bldg. & 384 sq. ft. garage, distance to available water unknown
GSA Number: 7–C–MT–610

Washingon

Moses Lake U.S. Army Rsv Ctr
Grant County Airport
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 219630118
Status: Surplus
Comment: 4499 sq. ft. /2.86 acres, most recent use—admin.
GSA Number: 9–D–WA–1141

Suitable/Unavailable Properties

Buildings (by State)

South Carolina

Bldg. 10
Veterans Affairs Medical Center
6439 Garners Ferry Rd.
Columbia Co: Richland SC 29209–1639
Landholding Agency: VA
Property Number: 979830001
Status: Underutilized
Comment: 19,928 sq. ft. admin. bldg., under renovation, historical significance, located within medical facility

Wisconsin

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Landholding Agency: VA
Property Number: 979830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Suitable/To Be Excessed

Buildings (by State)

South Carolina

5 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 101 Vector Ave., 112, 114, 116, 118 Intercept Ave.
Landholding Agency: Air Force
Property Number: 189830035
Status: Unutilized
Comment: 1433 sq. ft. +345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
N. Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 102 Vector Ave.
Landholding Agency: Air Force
Property Number: 189830036
Status: Unutilized
Comment: 1545 sq. ft. +345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 103 Vector Ave.
Landholding Agency: Air Force
Property Number: 189830037
Status: Unutilized
Comment: 1445 sq. ft. + 346 sq. ft. carport, lead base paint/exterior most recent use—residential

18 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 104–107 Vector Ave., 108–111, 113, 115, 117, 119 Intercept Ave., 120–122 Radar Ave.
Landholding Agency: Air Force
Property Number: 189830038
Status: Unutilized
Comment: 1265 sq. ft. + 353 sq. ft. carport, lead base paint/exterior most recent use—residential

Unsuitable Properties

Buildings (by State)

California

Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number 779840001

Status: Excess
Reason: Extensive deterioration

Hawaii

Bldg. 134
Naval Station, Pearl Harbor
Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779840003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 135
Naval Station, Pearl Harbor
Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779840004
Status: Excess
Reason: Extensive deterioration

Maine

Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779840005
Status: Excess
Reason: Extensive deterioration

Bldg. 15
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779840006
Status: Excess
Reason: Extensive deterioration

Bldg. 16
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779840007
Status: Excess
Reason: Extensive deterioration

Michigan

Granite Island Light Station
Lake Superior
Lake Superior MI
Landholding Agency: GSA
Property Number: 549840001
Status: Excess
Reason: Other
Comment: inaccessible
GSA Number: 1–U–MI–791

New Hampshire

Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779840012
Status: Underutilized
Reason: Secured Area

Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779840013
Status: Underutilized
Reason: Secured Area

Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779840014
Status: Underutilized
Reason: Secured Area

Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 779840015
Status: Underutilized
Reason: Secured Area

Virginia

13 Garages
Naval Base Norfolk Complex
Norfolk VA
Location: A–39A, F–32A, F–33E/W, G–31E, G–31W, G–45A, H–7A, SP–18A, SP–19A, SP–20A, SP–21A, SP–24A, SP–26A
Landholding Agency: Navy
Property Number: 779840016
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 844
Former Park Place Enlisted Club
808 Burwell St.
Bremerton Co: Kitsap WA 98314–
Landholding Agency: GSA
Property Number: 549840002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–D–WA–1164

[FR Doc. 98–28129 Filed 10–22–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

National Recreation Lakes Study Commission

AGENCY: National Recreation Lakes Study Commission.

ACTION: Notice of third meeting of the National Recreation Lakes Study Commission.

SUMMARY: The Omnibus Parks and Public Land Management Act of 1996 authorizes a presidential commission to review the demand for recreation at Federal lakes, and to develop alternatives for enhanced recreation uses, primarily through innovative public/private partnerships. This will be the third meeting of the Commission.

DATES: November 9–10, 1998, starting at 8:00 a.m. on November 9 and starting at 1:00 p.m. on November 10.

ADDRESSES: The meeting will be held at the Lake Lanier Islands Hilton Resort, 7000 Holiday Road, Lake Lanier Islands, Georgia. The Commission will address old business and hear presentations concerning protecting environmental values at Federal lakes; the feasibility of a National Recreation Lake System; revenue sources for managing Federal recreation resources; and the principles of concession management. There will also be special presentations made by the Tennessee Valley Authority, the Army Corps of Engineers, the North American Lakes Management Society and the Colorado State Parks Division of Parks and Outdoor Recreation.

The Commission will invite comments from the public beginning at 2:00 p.m. on November 9.

FOR FURTHER INFORMATION CONTACT: Jeanne Whittington at 202–219–7104.

Dated: October 19, 1998.

Bruce R. Brown,

Acting Executive Director, National Recreation Lakes Study Commission.

[FR Doc. 98–28411 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Richard Cusick, Fallbrook, CA. The applicant wishes to establish a cooperative breeding program for the Green-cheeked conure (Blue mutation) (*Pyrrhura molinae*), the Painted conure (*Pyrrhura picta roseifrons*), the Rose-crowned conure (*Pyrrhura rhodocephala*) and the Blue-throated conure (*Pyrrhura cruentata*). Mr. Cusick wishes to be an active participant in this program with two other private individuals. The Avicultural Society of America has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: October 19, 1998.

Rosemarie Gnam,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 98–28482 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination to Acknowledge the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8. Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Match-e-be-nash-she-wish Band of Pottawatomi Indians (MBPI) of Michigan, c/o Mr. D.K. Sprague, P.O. Box 218, Dorr, Michigan 49323, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies all seven criteria set forth in 25 CFR 83.7, as modified by 25 CFR 83.8.

DATES: This determination is final and is effective 90 days from publication of the Final Determination, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed with the Interior Board of Indian Appeals pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary—Indian Affairs, (202) 208–7163.

SUPPLEMENTARY INFORMATION: The Assistant Secretary's proposed finding to acknowledge the MBPI was published in the **Federal Register** on July 16, 1997, (62 FR 136, 38113–38115). The 180-day period provided for in the regulations for comment on the proposed finding closed January 12, 1998. Third party comments were received on January 12, 1998, from Dennis J. Whittlesey, Esq., on behalf of the City of Detroit. The 60-day period provided for in the regulations (25 CFR Part 83.10(k)) for the petitioner to respond to third-party comments ended March 13, 1998. The petitioner responded to the third-party comments, but did not submit a response to the proposed finding other than an updated membership list.

This final determination is made following a review of the third party comments on the proposed finding to acknowledge the MBPI, of the MBPI's response to the third party comments, and of the 1998 membership MBPI list. MBPI is informally referred to by itself and by others as the Gun Lake Band or Gun Lake Tribe. All references in third party comments to that name have been taken as applying to MBPI.

The 1994 regulations required an evaluation of whether MBPI was a previously acknowledged tribe within the meaning of the regulations. Because it has been determined that MBPI meets the definition of unambiguous Federal acknowledgment in section 83.1, it has been evaluated under modified requirements provided in section 83.8 of the regulations. Conclusions concerning previous acknowledgment are solely for the purposes of a determination of previous acknowledgment under 25 CFR Part 83, and are not intended to reflect conclusions concerning successorship in interest to a particular treaty or other rights. The proposed finding determined that Shop-quo-ung was a signatory to the 1855 Treaty of Detroit. Shop quo-ung's Band received annuity payments under that treaty until 1870. This band was antecedent to the MBPI petitioner. Therefore, the date of 1870 was used for purposes of the proposed finding for previous Federal acknowledgment. The third party comments challenged this determination, but did so based on a misidentification of the treaty signer in question as another man, Sagana, rather than Shop-quo-ung aka Moses Foster, who survived until after 1900 and whose subsequent career as chief of the band was well documented. This third party specifically noted also the descent of ''most of the people who attended the Bradley and Salem churches'' from Shop-quo-ung's band. These comments do not require a change in the determination of previous unambiguous Federal acknowledgment as made in the proposed finding, which is affirmed.

Criterion 83.7(a), as modified by the application of section 83.8 (d)(1), requires external identification of the petitioner as an Indian entity from the date of last Federal acknowledgment. It also requires that these identifications make clear that the group being identified was the same as the entity which had been previously federally acknowledged, but does not require that such identifications specifically refer to the Indian entity as a ''tribe.'' The proposed finding concluded that MBPI clearly meets criterion 83.7(a), since such identifications had been made by the Bureau of Indian Affairs (BIA) and other Federal records such as the special Indian Population schedules of the 1900 and 1910 census, by the Methodist Church, by a sequence of local and regional historians writing from the 1880's to the present, by the WPA guide to the state of Michigan, and by local newspapers. The Indian mission church at Bradley in Allegan County, Michigan, and its daughter church at Salem were clearly tied to a continuously existing Indian entity which predated the 1870 date of previous unambiguous Federal acknowledgment and which has continued to exist and be identified until the present. Therefore, the conclusion of the proposed finding that MBPI meets criterion 83.7(a) as modified by 83.8(d)(1) is affirmed.

Under criterion 83.7(b) as modified by 83.8(d)(2), a demonstration of meeting the criterion for community (defined by the regulations as ''any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers'') is required only for the present day, or modern, community. However, the historical and anthropological survey of the MBPI provided sufficient evidence that it had constituted a historical community as well, which had been centered at Bradley in Allegan County, Michigan since the founding of the Griswold Mission in 1838–1839. The existence of continuous community since the latest date of unambiguous previous Federal acknowledgment, 1870, was clearly documented by church, census, and other records. The proposed finding concluded that at least 50 per cent of the petitioner's members were Potawatomi speakers from historical times up through 1957, and that since then, the members have come together in significant numbers across all family lines, and have maintained a significant rate of informal social interaction. The proposed finding concluded that MBPI not only met the requirements of 83.7(b) as modified by 83.8(d) at the present time, but also that it met the requirements of the unmodified 83.7(b) from 1870 to the present. This finding is affirmed by the final determination.

The third party comments on the proposed finding argued that modern community did not exist in MBPI because of its alleged intention to seek trust land in the Detroit, Michigan, area; because of the pre-1992 presence of MBPI names on the membership list of Huron Potawatomi, Inc. (HPI), which was federally acknowledged through the 25 CFR Part 83 process in 1994; and because numerous MBPI members were allegedly dually enrolled with other Michigan tribes.

Taking land into trust is a separate issue from Federal acknowledgment and does not impact the 25 CFR Part 83 criteria. Evidence of enrollment in other tribes may be pertinent to criterion 83.7(b), but it is not dispositive. Community as defined by the regulations involves much more than a formal membership list. A substantial body of anthropological evidence clearly showed the existence of a distinct community that functioned in the Bradley/Salem area even during the years when many residents of that community had their names on the membership list of HPI. The relationship of the formal membership lists of the two groups was extensively analyzed by the HPI proposed finding and final determination as well as by the MBPI proposed finding.

The third party comments alleged that ''scores'' of MBPI members carried on the 1994 membership list had disaffiliated from the petitioner in order to join another specified tribe, the Little River Band of Ottawa Indians. The BIA identified the names of all persons who had been included on the 1994 MBPI membership list who were not on the 1998 MBPI membership list. Of the 49 individuals, there was one duplicate entry, three persons in one tribe, five persons not enrolled elsewhere, six persons in a second tribe, 11 persons in a third tribe, and 25 persons currently enrolled with Little River. The data did not indicate that persons formerly or currently enrolled with MBPI (see discussion under criterion 83.7(f)) were, as a group, choosing to join any other single tribe according to a pattern, or according to major family lines or political factions. Eliminating the duplicate entry, an analysis of the 48 who disenrolled indicated that their disaffiliation had minimal relevance for MBPI's modern community, since the disenrollments did not change the character of the group as a whole. Therefore, the conclusion of the proposed finding that MBPI meets criterion 83.7(b) as modified by 83.8(d)(2) is affirmed.

Criterion 83.8(d)(5) provides that if a petitioner which has demonstrated previous Federal acknowledgment cannot meet the streamlined evidentiary requirements provided by 83.8, it may demonstrate that it meets the requirements of the criteria in 83.7(a) through (c) from last Federal acknowledgment to the present. The proposed finding concluded that MBPI met the provisions of 83.7(c) in the unmodified form, having maintained political influence or authority over its members from 1870 to the present. There as an identifiable sequence of leadership throughout this period. During the periods when the community did not have a formal governing structure, a significant level of bilateral political influence or authority was maintained by indigenous ordained and lay ministers through the Methodist Indian missions at Bradley and Salem, Michigan. This influence extended to the whole community. Additionally, under the provisions of interaction between criterion 83.7(b)(2) and 83.7(c)(3), the proposed finding also used the existence of sufficient evidence for criterion 83.7(b) for MBPI for the entire period since 1870 to provide sufficient evidence for criterion 83.7(c) until 1957, and evidence of community after 1957 also was used as one form of evidence under 83.7(c)(1)(iv).

The third party comments argued that, ''church activities do not constitute the type of ''political influence''' required under 83.7(c). However, in the case of several other petitions, the Assistant Secretary has accepted church activities as demonstrating the existence of political influence or authority within the petitioning group and providing a focus of leadership. The Assistant Secretary has also accepted informal leadership and forms of leadership other than council-type structures in prior acknowledgment decisions. In preparing the 1994 revised regulations, the Department specifically rejected more stringent requirements of formal political organization for petitioners. Therefore, we affirm the conclusion of the proposed finding that MBPI meets the requirements of 83.7(c) as modified by 83.8(d)(3).

MBPI met criterion 83.7(d) for the proposed finding. No comments or new evidence was submitted pertaining to this criterion. Therefore, this final determination affirms that MBPI meets criterion 83.7(d).

The proposed finding concluded that MBPI met criterion 83.7(e), descent from the historical Indian tribe. Because this case was considered under 83.8(d), MBPI was required to demonstrate descent from the federally acknowledged entity as it existed in 1870. All persons on the 1994 MBPI membership list, and all persons on the 1998 MBPI membership list, descend from persons listed on the 1870 annuity payroll for Shop-quo-ung's Band and from persons listed on the 1904 Taggart Roll, which was prepared by the BIA to determine eligibility for Potawatomi claims payments.

One commenter argued that research in documents prior to a 1839 payment list discussed in the genealogical technical report to the proposed finding might call into question, ''the entire Potawatomi identity of the historic bands who comprise the modern Indian entity.'' The Assistant Secretary was aware at the time of the proposed finding that individual families of the Bradley and Salem communities also have Ottawa ancestry. This fact is in accordance with a long-standing pattern of intertribal marriages in Michigan. The identity of the bands prior to the last date of previous unambiguous Federal acknowledgment is not an issue: the MBPI members have clearly established descent from the band as it existed as of 1870. Therefore, this final determination affirms the conclusion of the proposed finding that MBPI meets criterion 83.7(e). After an extensive analysis of the relationship of MBPI enrollment to that of HPI under criterion 83.7(f), the proposed finding concluded that the MBPI membership was composed principally of persons who were not members of any acknowledged North American Indian tribe. The adult MBPI members had provided written confirmation of their membership in MBPI, on behalf of themselves and on behalf of the minors for whom they had legal custody, prior to the issuance of the HPI proposed finding and prior to Federal acknowledgment of HPI.

The BIA verified the 1998 MBPI membership list, concluding that only 17 per cent of the current MBPI membership is dually enrolled with other tribes. The 17 percent of dually enrolled MBPI members are divided among three other federally acknowledged tribes. The membership of MBPI is composed principally of persons who are not members of any acknowledged tribe. Therefore, this final determination affirms the conclusion of the proposed finding that MBPI meets criterion 83.7(f).

MBPI met criterion 83.7(g) for the proposed finding. No comments or new evidence was submitted pertaining to this criterion. Consequently, this final determination confirms that MBPI meets criterion 83.7(g).

This determination is final and will become effective 90 days from the date of publication, unless a request for reconsideration is filed pursuant to § 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (§ 83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the **Federal Register** (§ 83.11(a)(2)).

Dated: October 14, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–28438 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P, AA–14015]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 19,503.74 acres. The lands involved are within the Tongass National Forest in southeast Alaska.

Copper River Meridian, Alaska

T. 44 S., R. 60 E.,
Secs. 23, 24 and 26.
T. 42 S., R. 61 E.,
Sec. 31.
T. 44 S., R. 61 E.,
Secs. 1, 12, 13, 24 and 26.
T. 49 S., R. 66 E.,
Secs. 6, 7, 17 thru 20, 29 thru 32.
T. 50 S., R. 66 E.,
Secs. 5 thru 8, 17 thru 21, 28 thru 33.
T. 51 S., R. 66 E.,
Secs. 4, 5 and 6.
T. 56 S., R. 73 E.,
Sec. 36.
T. 57 S., R. 72 E.,
Secs. 19 and 30.
T. 74 S., R. 80 E.,
Secs. 16, 17, 19, 20, 21, 30 and 31.
T. 75 S., R. 82 E.,
Secs. 16, 17, 19, 20 thru 30, and 32.
T. 73 S., R. 85.,
Sec. 12.
T. 74 S., R. 86 E.,
Secs. 25, 26, 27, 33 thru 36.
T. 74 S., R. 87 E.,
Sec. 31.
T. 76 S., R. 82 E.,
Secs. 2, 11, 19, 20, 24 and 30.
T. 80 S., R. 83 E.,
Secs. 9, 15, 16 and 17.
T. 81 S., R. 83 E.,
Sec. 23.
T. 81 S., R. 84 E.,
Sec. 21.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Juneau Empire*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 23, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 98–28455 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–7123–00–6068]

Notice of Decision: To Amend Honey Lake Management Framework Plan; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that on October 5, 1998, John Bosworth, 743 Acting Field Manager, Eagle Lake Field Office, issued a decision to amend the 1976 Honey Lake Management Framework Plan (MFP) Off-Highway Vehicle Designations for Area 6, and Area 7 which includes the Fort Sage OHV Area and surrounding BLM public lands managed by the BLM in Lassen County, California. To protect public lands and resources from damage an off-highway vehicle designation of ''limited to designated roads and trails'' will be established for this area. The affected public land includes all BLM managed lands within:

Mount Diablo Meridian

T. 26 N., R. 16 E. (BLM lands east of State Highway 395)
T. 26 N., R. 17 E.
T. 25 N., R. 17 E.
T. 25 N., R. 18 E.

SUPPLEMENTARY INFORMATION: A copy of the decision and maps showing the exact location of the OHV designations may be obtained by writing the Eagle Lake Field Office at the above address or calling (530) 257–0456. This action is under authority of 43 CFR 8340.0–3.

FOR FURTHER INFORMATION CONTACT: John Bosworth, Acting Field Manager, Eagle Lake Field Office, Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130. (530) 257–0456. For a period of 45 days from the date of publication of this notice, interested parties may submit written comments or objections to the Field Manager, Eagle Lake Field Office at the above address.

Dated: October 5, 1998.

John Bosworth,

Acting Field Manager.

[FR Doc. 98–28504 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service's National Center for Recreation and Conservation and National Center for Cultural Resources, Stewardships and Partnerships.

ACTION: Notice and request for comments.

Abstract: The National Park Service (NPS) is proposing in 1998 to conduct mail surveys of recipients of services and/or assistance of the following programs: Rivers, Trails, and Conservation Assistance Program (RTCA), Federal Lands to Parks Program (FLP), National Heritage Area Program (NHA), Wild and Scenic Rivers Coordination Program (WSR), and the Historic Preservation Technical Assistance Program (HP). This survey will be conducted to meet the requirements of the 1995 Government Performance and Results Act (GPRA) and will be used to develop goals to improve effectiveness and public accountability of the respective programs.

Program	Estimated number of	
	Responses	Burden hours
Rivers, Trails, and Conservation Assistance (RTCA) Program	188	62
National Heritage Area (NHA) Program	8	3

Program	Estimated number of	
	Responses	Burden hours
Federal Lands to Parks (FLP) Program	75	25
Wild and Scenic Rivers Coordination (WSR) Program	3	1
Historic Preservation Technical Assistance Program	369	123
Total	643	214

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites pubic comment on these five proposed information collection requests (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to obtain information to help evaluate and improve its recreation and conservation assistance program and its historic preservation programs

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for these five surveys (FR Vol. 63, No 119 6/22/98).

DATES: Public comments will be accepted on or before November 23, 1998.

Send comments to: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to Dr. Steven Hollenhorst (Voice: (304) 293–3721 x2441) (e-mail: *shollenh@wvu.edu*) or Dr. Michael A. Schuett (Voice: (304) 293–3721(x2415) (e-mail: *mschuett@wvu.edu*), West Virginia University, Division of Forestry, PO Box 6125, Morgantown, WV 26506–6125.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before November 23, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT: Dr. Steven Hollenhorst (Voice: (304) 293–3721 x2441) (email: *shollenh@wvu.edu)*; Dr. Michael A. Schuett (Voice: (304) 293–3721 x2415) (email: mschuett@wvu.edu); West Virginia University, Division of Forestry, PO Box 6125, Morgantown, WV 26506–6125.

SUPPLEMENTARY INFORMATION:

Titles: National Park Service Partnership Programs GPRA Information Collections.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The Government Performance and Results Act requires the Federal agencies to prepare an annual performance report documenting the progress made toward achieving long term goals. The National Park Service needs the information in the proposed collections to assess the annual progress being made toward meeting Long-term Goals IIIa2 and IIIa3 of the National Park Service Strategic Plan of 1997. The information sought is not collected elsewhere by the Federal Government. The proposed information collections impose no data burden on the potential responders. Responding to the proposed collections is voluntary and is based on data that the respondents already collect and/or personal opinion. The National Park Service needs to obtain information to help evaluate and improve its recreation and conservation assistance program and its historic preservation programs.

Automated data collection: At the present time, there is no automated way to gather this information.

Description of respondents: A sample of partners (individuals, organizations, and/or public agencies) who have received services and/or assistance from the National Park Service Rivers, Trails, and Conservation Assistance Program (RTCA), Federal Lands to Parks Program (FLP), National Heritage Area Program (NHA), Wild and Scenic Rivers Coordination Program (WSR), and/or the Historic Preservation Technical Assistance Program (HP).

Estimated average number of respondents: 643 (mail survey).

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 20 minutes (mail survey).

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 214 hours (mail survey).

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–28434 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Restoration Plan and Environmental Assessment for the Colonial Pipeline Oil Spill, Reston, VA

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft restoration plan and environmental assessment for the Colonial Pipeline Oil Spill, Reston, Virginia.

SUMMARY: Pursuant to the Oil Pollution Act of 1990 and the National Environmental Policy Act of 1969 (NEPA), the National Park Service and U.S. Fish and Wildlife Service, jointly with the Commonwealth of Virginia and the District of Columbia, announce the availability of the Draft Restoration Plan and Environmental Assessment for the Colonial Pipeline Oil Spill, Reston, Virginia.

DATES: The Draft Restoration Plan and Environmental Assessment will remain available for public review through November 20, 1998. Comments regarding this document should be received no later than November 20, 1998. Additionally, a public meeting will be held to discuss the Draft Restoration Plan and Environmental Assessment starting at 7 p.m. on November 5, 1998, at the Herndon Middle School, 901 Locust Street, Herndon, Virginia.

ADDRESSES: Comments on the Draft Restoration Plan and Environmental Assessment should be sent to the following contact person Daniel

Hamson, National Park Service, Environmental Quality Division, 1849 C Street, NW. (Mail Stop 2749), Washington, DC 20240.

Public reading copies of the Draft Restoration Plan and Environmental Assessment will be available for review at the following location. Virginia Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193.

SUPPLEMENTARY INFORMATION: On March 28, 1993, a subsurface petroleum products pipeline owned and operated by the Colonial Pipeline Company ruptured near Reston, Virginia, discharging approximately 408,000 gallons of No. 2 fuel oil (diesel) into Sugarland Run, the Potomac River, and surrounding environments. Several natural resources, including fish, wildlife, and their habitats, were adversely affected. Additionally, recreational use of natural resources in and around National Park Service facilities, and regional and local parks, was adversely affected. This Draft Restoration Plan and Environmental Assessment presents the Trustees' proposed restoration alternative for making the environment and the public whole for injuries to, or loss of, natural resources and services resulting from the Oil Spill. It also evaluates the environmental impacts and considers the no action alternative as required by NEPA. The Trustees are soliciting comments on this Draft Restoration Plan and Environmental Assessment. These comments will be considered in evaluating the Environmental Assessment, making decisions pursuant to NEPA, and developing the Final Restoration Plan.

FOR FURTHER INFORMATION: Contact Daniel Hamson, National Park Service, at the above address.

Dated: October 19, 1998.

Sharon Kliwinski,

Acting Associate Director, Natural Resource Stewardship and Science, National Park Service.

[FR Doc. 98–28433 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Continuation of the preparation of an Environmental Impact Statement for the Great Egg Harbor National Scenic and Recreational River Comprehensive Management Plan

AGENCY: National Park Service.

ACTION: Continuation of the Preparation of an Environmental Impact Statement.

SUMMARY: This notice announces the continuation of the work toward preparation of an Environmental Impact Statement for the development of a Comprehensive Management Plan for the Great Egg Harbor National Scenic and Recreational River in New Jersey. The Notice of Intent for this project appeared in the April 10, 1997 **Federal Register.** Upon completion of an Environmental Assessment, a further determination was made that an Environmental Impact Statement should be prepared to address National Environmental Policy Act requirements for development of the Comprehensive Management Plan. We encourage all who have an interest in this National Park System unit's future to contact Mary Vavra, National Park Service Program Manager, by letter or telephone.

FOR FURTHER INFORMATION CONTACT: Mary Vavra, Program Manager, National Park Service, Philadelphia Support Office, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, (215) 597–9175.

Dated: October 12, 1998.

Marie Rust,

Field Director, Northeast Field Area, National Park Service.

[FR Doc. 98–28430 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting: The Christmas Pageant of Peace Inc.

The National Park Service is seeking public comments and suggestions on the planning of the 1998 Christmas Pageant of Peace, which opens December 9, on the Ellipse (President's Park), south of the White House. The meeting will be held at 11:00 a.m., Wednesday, November 4, 1998, in room 234 of the National Capital Region Building, at 1100 Ohio Drive, S.W., in East Potomac Park.

Persons who would like to comment at the meeting should notify the Naitonal Park Service by October 30, by calling the White House Visitor center between 9 a.m. and 4 p.m. weekdays, at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, S.W., Washington, DC 20242, and can be accepted until October 28.

Dated: October 16, 1998.

Stan E. Lock,

Deputy Director, White House Liaison.

[FR Doc. 98–28431 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–68]

Lamb Meat

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) (the Act).

SUMMARY: Following receipt of a properly filed petition on October 7, 1998, on behalf of the American Sheep Industry Association, Inc., National Lamb Feeders Association, Harper Livestock Co., Winters Ranch Partnership, Godby Sheep Co., Talbott Sheep Co., Iowa Lamb Corp., Ranchers' Lamb of Texas, Inc., and Chicago Lamb & Veal Co., the Commission instituted investigation No. TA–201–68 under section 202 of the Act to determine whether lamb meat, provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the Harmonized Tariff Schedule of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

For further information concerning the conduct of this investigation, hearing procedures, 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 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a 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 confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 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 CBI under the APO.

Hearings on injury and remedy.—The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on January 12, 1999, at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on February 25, 1999. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before January 5, 1999, and February 16, 1999, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing conferences to be held at 9:30 a.m. on January 7, 1999 and February 18, 1999, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is December 21, 1998; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is February 18, 1999. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is January 15, 1999; that for filing posthearing briefs on remedy is March 4, 1999. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before January 15, 1999, and pertinent to the consideration of remedy on or before March 4, 1999. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 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 section 201.16(c) 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 CBI 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 the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: October 19, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–28464 Filed 10–22–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA Number 178N]

Industrial Uses and Handling of Gamma-butyrolactone; Solicitation of Information

AGENCY: Drug Enforcement Administration.

ACTION: Notice of request for information.

SUMMARY: The Drug Enforcement Administration (DEA) is soliciting information on the chemical gamma-butyrolactone (GBL). GBL has been identified as the major precursor to gamma-hydroxybutyrate (GHB), a drug substance that is under consideration for control in the Controlled Substances Act (21 U.S.C. 801 et seq.). DEA is seeking information on the GBL trade so that diversion of GBL may be prevented with minimal impact on legitimate trade, in the event that GHB becomes a controlled substance. The DEA is soliciting information on the manufacturing, distribution, consumption, storage, disposal and uses of GBL.

ADDRESSES: Responses to this notice may be sent to Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537.

DATE: Responses to this notice may be submitted by December 22, 1998.

SUPPLEMENTARY INFORMATION: The chemical gamma-butyrolactone (GBL) has been identified as the principal precursor used in the clandestine manufacture of gamma-hydroxybutyrate (GHB). GBL is also identified as dihydro-2(3H)-furanone; 1,2-butanolide; 1,4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number [96–48–0]. GHB has been banned from sale for human consumption by the Food and Drug Administration, controlled in several states and is under consideration for placement into the Controlled Substance Act (CSA). Control of GHB under the CSA would permit the administrative control of GBL as either an immediate precursor (21 U.S.C. 811(e)) or listed chemical (21 U.S.C. 802(34)) if certain findings are made. The DEA is studying the manufacturing, industrial uses and distributions of GBL to become aware of possible methods of diversion from these legitimate sources. This information will help the DEA to evaluate the potential impact on legitimate industry if control of GBL is necessary under the CSA. Control measures, if warranted and imposed, would regulate the manufacture, distribution and other handling of GBL.

DEA is aware this substance is used by industry as a synthetic intermediate with application to polymers, pharmaceuticals and agricultural industries, as a solvent, cleaning agent, and cosmetic ingredient. DEA recognizes that regulation of GBL may have some effect upon these, and other, industrial activities. However, DEA is not aware of the entire scope of use of GBL by industry and consumers. Therefore, DEA invites all interested

persons to provide DEA with any information on the manner of manufacturing, distribution, consumption, storage, disposal and uses of GBL by industry and others. Both quantitative and qualitative data is sought.

Such information may be submitted to the Drug and Chemical Evaluation Section and is requested by December 22, 1998. Information designated as confidential or proprietary will be treated accordingly. The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) (FOIA), is governed by section 310(c) of the CSA (21 U.S.C. 830(c)) and the Department of Justice procedures set forth in 28 CFR 16.7.

Dated: October 16, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 98–28417 Filed 10–22–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,566]

Rosbro Plastics Company (a/k/a School House Candy Company), Pawtucket, RI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Eligibility to Apply for Worker Adjustment Assistance on September 22, 1998, applicable to workers of Rosbro Plastics Company located in Pawtucket, Rhode Island. The notice will soon be published in the who adversely **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced plastic bottles for the health and beauty industry. The State has provided information showing that the workers of Rosbro State separated from employment at the Pawtucket plant have had their wages reported under the unemployment insurance (UI) tax account for School House Candy Company. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include those workers of Rosbro Plastics Company who were adversely affected by the increase by increased imports.

The amended notice applicable to TA–W–34,566 is hereby make issued as follows:

All workers of Rosbro Plastics Company, also known as School House Candy Company, Pawtucket, Rhode Island, who were engaged in employment related to the production of plastic bottles and who became totally or partially separated from employment on or after May 6, 1997 through September 22, 2002, are eligibile to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 2d day of October, 1996.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28447 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,867; Owens Corning Fiberglass Co., Windows and Patio Doors Div., Martinsville, VA

TA–W–34,997; Hudson I.C.S., San Leandro, CA

TA–W–34,884; Pioneer Finishing Duro Industries, Fall River, MA

TA–W–34,681; Raytheon Systems Co., Fort Wayne, IN

TA–W–34,583 & TA–W–34, 584; Quantegy, Inc., Opelika, AL and Peachtree City, GA

TA–W–34,977; IEC Electronics, Arab, AL

TA–W–34,865; KAO Infosystem Co., Canyon Park Facility Bothell, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,849 & TA–W–34, 850; Coats North America, Denver, PA and Monroeville, AL

TA–W–34,863; National Oil Well, Fairfield and Crossville, IL

TA–W–34,713; NCC Industries, Inc., Cortland, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,012; Warn Industries, International Business Unit, Milwaukee, OR

TA–W–34,953; Stewart Superior Corp., Chicago, IL

TA–W–34,548; Champlain Industries, Clifton, NJ

TA–W–34,014; Terry Logging, Inc., Elgin, OR

TA–W–34,493; Warwick Dyeing Corp., West Warwick, RI

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,944; Somaber Corp., Miami, FL: August 17, 1997.

TA–W–34,819; Harris Semiconductor, Mountain Top, PA: July 10, 1997.

TA–W–34,892; Philips Semiconductors, Albuquerque, NM: August 6, 1997.

TA–W–34,898; Calblelink, Inc., Kings Mountain, NC: July 25, 1997.

TA–W–35,045; Summit Station, MFG, Inc., Pine Grove, PA: September 22, 1997.

TA–W–34,978; Remington Products Co L.L.C., Bridgeport, CT: September 2, 1997.

TA–W–34,924; Native Textile Carisbrook Co., Glens Falls, NY: August 21, 1997.

TA–W–34,853; Stibnite Mine, Inc., McCall, ID: August 3, 1997.

TA–W–34,807; A & B; Philomath Forest Product, A Div. OF W.T.D. Industries, Cutting Mill, Philomath, OR, W.T.D. Industries, Control Saw Div., Corvallis, OR, Sedro-Wooley Lumber Co., A Div. Of W.T.D. Industries, Sedro-Wooley, WA: July 29, 1997.

TA–W–34,943; Profiles, New York, NY: August 24, 1997.

TA–W–34,961; Interfrost, Inc., Holley, NY: August 27, 1997.

TA–W–34,962; Koszegi Industries, Inc., South Bend, IN: August 25, 1997.

TA–W–34,690; Imation Corp., Wahpeton, ND: June 1, 1997.

TA–W–34,604; Master Lock Door, Hardware Div., Auburn, AL: May 21, 1997.

TA–W–35,013; Acme Electric Corp., Electronics Div., Cuba, NY: September 9, 1997.

TA–W–34,933; G.H. Bass & Co., Wilton, ME: October 11, 1998.

TA–W–34,805; Kern Manufacturing, Inc., Flora, IL: July 9, 1997.

TA–W–34,951; Schlumberger Anadrill, Casper, WY: August 18, 1997.

TA–W–35,006; TexMex Trim, Inc., Los Indios, TX: September 16, 1997.

TA–W–34,873; Eaton Corp., Cutler-Hammer Industrial Controls Div., Bowling Green, KY: March 21, 1998 & before September 30, 1998.

TA–W–34,856 & A; Ademco Group, Syosset, NY and El Paso, TX: August 8, 1997.

TA–W–34,921; L.C. Neely Drilling, Inc., Robinson, IL: August 18, 1997.

TA–W–34,976; Excel Garment Manufacturing Co., Inc., El Paso, TX: August 26, 1997.

TA–W–34,916; Donora Sportswear Co., Inc., Donora, PA: October 14, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02556; Decorative Home Accents, Home Innovations a/k/a Draymore Manufacturing, Morresville, NC

NAFTA–TAA–02614; Terry Logging, Inc., Elgin, OR

NAFTA–TAA–02581; Donora Sportswear Co., Inc., Donora, PA

NAFTA–TAA–02561; Pioneer Finishing, Duro Industries, Fall River, MA

NAFTA–TAA–02562; Philips SemiConductors, Albuquerque, NM

NAFTA–TAA–02542; Dash America, Okie Apparel Plant, Hugo, OK

NAFTA–TAA–02594; Stewart Superior Corp., Chicago, IL

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02642; The Banana Tree, El Paso, TX

NAFTA–TAA–02635; Smith Corona Corp., Cortland, NY

The investigations revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02611; Lane Punch Corp., New Berlin, WI: September 10, 1997.

NAFTA–TAA–02616; Santa's Best, Millville, NJ: September 8, 1997.

NAFTA–TAA–02572 & Al Ademco Group, Syosset, NY and El Paso, TX: August 17, 1997.

NAFTA–TAA–02582; Schlumberger Anadrill, Casper, WY: August 18, 1997.

NAFTA–TAA–02601; Excel Garment Manufacturing, Inc., El Paso, TX: August 26, 1997.

NAFTA–TAS–02605; TexMex Trim., Inc., Los Indios, TX: August 28, 1997.

NAFTA–TAA–02443; Raytheon Systems Co., Fort Wayne, IN: June 12, 1997

NAFTA–TAA–2598; Interfrost, Inc., Holley, NY: August 27, 1997.

NAFTA–TAA–02589; Native Textiles, Carisbrook Co., Glens Falls, NY: August 26, 1997.

NAFTA–TAA–02546; Stibnite Mine, Inc., McCall, ID: August 10, 1997.

NAFTA–TAA–02565; Philomath Forest Products, A Div., of W.T.D. Industries, Cutting Mill, Philomath, OR, W.T.D. Industries, Central Saw Div., Corvallis, OR and Sedro-Wolley Lumber Co., A Div. of W.T.D. Industries, Sedro-Wooley, WA: July 27, 1997.

NAFTA–TAA–02643; Summit Station Mfg., Inc., Pine Grove, PA: September 22, 1997.

NAFTA–TAA–02625; Eastman Kodak Co., Health Imaging Digital Systems Platform, Rochester, NY: September 14, 1997.

I hereby certify that the aforementioned determinations were issued during the month of October 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 14, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28449 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 949]

Ademco Group, El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1998 in response to a worker petition which was filed on behalf of workers at Admeco Group, El Paso, Texas.

All workers of the subject firm are included under an existing investigation in process (TA–W–34,856). Consequently, further investigation in this case would serve no purpose.

Signed at Washington, D.C. this 13th day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28453 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,939]

Lee Sportswear, Inc., Plantersville, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1998 in response to a worker petition which was filed on behalf of workers at Lee Sportswear, Inc., located in Plantersville, Mississippi.

On October 1, 1998 the petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this day of 5th October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28446 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 2, 1998.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 2, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 28th day of September, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 09/28/1998]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,001	NACCO Materials Handling (Wkrs	Fairview, OR	09/14/1998	Forklifts.
35,002	Paramount Headwear (Wkrs)	Van Buren, MO	09/17/1998	Caps.
35,003	Paramount Headwear (Wkrs)	Dexter, MO	09/18/1998	Caps.
35,004	Harris Semiconductor Corp (IBEW)	Findlay, OH	09/10/1998	Semiconductor Circuitry.
35,005	Harris Semiconductor (Wkrs)	Palm Bay, FL	09/14/1998	Semiconductor Ships.
35,006	TexMex Trim, Inc (Co.)	Los Indios, TX	09/16/1998	Automatic Shift Knob.
35,007	ICI Explosives USA (OCAW)	Tamaqua, PA	09/16/1998	Explosives.
35,008	Thomson Consumer Elec. (Wkrs)	El Paso, TX	09/12/1998	Television, Satelites, Cameras, Antenas.
35,009	Spalding Sports Worldwide (Wkrs)	Chicopee, MA	09/05/1998	Golf Balls and Golf Clubs.
35,010	Outdoor Recreation Group (Co.)	Los Angeles, CA	09/11/1998	Backpacks, Duffles and Accessories.
35,011	Richard's Sportwear (Wkrs)	San Fernando, CA	09/09/1998	Demin Apparel.
35,012	Warn Industries (Wkrs)	Milwaukie, OR	08/25/1998	Vehicular Hubs and Winches.
35,013	Acme Electric Corp (Co.)	Cuba, NY	09/09/1998	Custom Power Supply.
35,014	Terry Logging, Inc (Co.)	Elgin, OR	09/08/1998	Logs.
35,015	Marcelle's Fashions, Inc (Wkrs)	El Paso, TX	09/14/1998	Jackets, Pants, Skirts, Blouses.
35,016	Eaton Technologies, Inc (Wkrs)	Parsons, TN	09/12/1998	Metal Automotive Products.
35,017	A.B.D., Inc (Wkrs)	North Bergen, NJ	08/28/1998	Textiles.
35,018	Ferro Corp., Louthon Plt (Wkrs)	East Liverpool, OH	08/10/1998	High Temperature Oxide Materials.
35,019	Intel Corp (Wkrs)	Rio Rancho, NM	09/10/1998	CPU's for Computers.
35,020	Lane Punch Corp (Wkrs)	New Berlin, WI	09/10/1998	Punches and Die Components.
35,021	Vastar Resources (Wkrs)	Woodward, OK	09/17/1998	Oil and Gas.
35,022	Armtex, Inc (Co.)	Pilot Mountain, NC	09/11/1998	Knitted Cotton and Polyester Fabrics.
35,023	Cub Cadet, MTD (UFCW)	Brownsville, TN	09/16/1998	Lawn and Garden Tractors.
35,024	Todd Products Corp (Co.)	Brentwood, NY	09/15/1998	OEM Switching Power Supplies.
35,025	SportKnit, Inc. (Co.)	Albertson, NC	09/17/1998	Sports Apparel.

APPENDIX—Continued

[Petitions Instituted on 09/28/1998]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,026	Big C Corp (Wkrs)	Red Boil Spgs, TN	09/17/1998	Gas Grill Covers.
35,027	Trico Products Corp (UAW)	Buffalo, NY	09/01/1998	Windshield Wiper Systems.
35,028	Wire Form, Inc (Wkrs)	Warren, MI	09/11/1998	Car Door Lock Rods.
35,029	Quitman Manufacturing (Wkrs)	Quitman, GA	09/15/1998	Activewear and Loungewear.
35,030	Wolverine Drilling (Wrks)	Kenmare, ND	09/14/1998	Oil Drilling.
35,031	Halliburton Energy Serv. (Wkrs)	Duncan, OK	09/14/1998	Oilfield Services.
35,032	TRW/BDM-Petroleum Tech. (Wkrs)	Bartlesville, OK	09/15/1998	Research and Biotechnology.
35,033	Anvil Knitwear (Wkrs)	Whiteville, NC	09/17/1998	T-Shirts.
35,034	Geneva Steel (USWA)	Vineyard, UT	09/18/1998	Hot Rolled Steel Products.
35,035	Smith Corona Corp (Wkrs)	Cortland, NY	09/18/1998	Typewriters and Accessories.
35,036	Woodhall Weaving Mills (Wkrs)	Pawtucket, RI	09/17/1998	Synthetic Fabrics.
35,037	Sandy Shaw, Inc (Co.)	New York, NY	09/16/1998	Ladies' Dresses.
35,038	Litton Industries (Wkrs)	Garland, TX	09/11/1998	Night Vision Equipment.
35,039	Reese Enterprises, Inc (Co.)	Plymouth, PA	09/16/1998	Metal Parts.

[FR Doc. 98–28451 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,595]

Sunds Defibrator Woodhandling, Incorporated, d.b.a. Carthage Machine Company, Carthage, New York; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice of Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance applicable to TA–W–34,595 which was published in the **Federal Register** on June 1, 1998 (63 FR 33954) in FR Document 98–16552.

This revises the subject firm location for TA–W–34,595 on the second line in the appendix table on page 33954. On the second line in the third column, the subject firm (location) should read Carthage, New York.

Signed in Washington, DC, this 13th day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28452 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Workforce Investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee; Notice of Appointment of Members

SUMMARY: Notice is hereby given that appointments have been made to fill eighteen (18) vacancies on the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

The membership of the Committee and categories represented are as follows.

Representing JTPA Section 402 Grantee Program Community

Mr. Frank Acosta, Executive Director, Motivation, Education and Training, Inc., Cleveland, Texas

Dr. John D. Arnold, Ph.D., Chief Executive Officer, Portable Practical Educational Preparation, Patagonia, Arizona

Ms. Barbara Coleman, State Director, Telamon Corporation, Columbia, South Carolina

Mr. Ernest A. Flores, Executive Director, Central Valley Opportunity Center, Inc., Merced, California

Mr. Richard A. Joanis, Executive Director, Telamon Corporation, Raleigh, North Carolina

Mr. Radames A. Lamenza, Director JTPA Program, Puerto Rico Department of Labor and Human Resources, Hato Rey, Puerto Rico

Ms. Sharon Liederman, Executive Director, Rural Employment Opportunities, Inc., Helena, Montana

Mr. Carlos Saavedra, Director, Adult Migrant Program and Services, Division of Workforce Development, Florida Department of Education, Tampa, Florida

Ms. Terry Meek, Executive Director, Proteus Employment Opportunities, Inc., Des Moines, Iowa

Mr. Stuart J. Mitchell, III, President and CEO, Rural Opportunities, Inc., Rochester, New York

Ms. Ella Ochoa, Executive Director, NAF Multicultural Human Development Corporation, North Platte, Nebraska

Mr. Robert Ozuna, MSFW Program Director, Washington State Migrant Council, Sunnyside, Washington

Mr. Clevon Young, Executive Director, Arkansas Human Development Corporation, Little Rock, Arkansas

Representing Other Organizations/ Disciplines

Mr. Cipriano Garza, Director, Migrant Education Program, Miami-Dade County Public Schools, Homestead, Florida

Mr. Raul Meyreles, Executive Director, La Cooperativa Campesina de California, Sacramento, California

Ms. L. Diane Mull, Executive Director, Association of Farmworker Opportunity Programs, Inc, Arlington, Virginia

Ms. Delores Huerta, Secretary-Treasurer, United Farmworkers of America, Keene, California

Mr. Baldemar Velasquez, President, Farm Labor Organizing Committee, Toledo, Ohio

The Migrant and Seasonal Farmworker Employment and Training Advisory Committee was established to provide a mechanism for securing advice regarding the overall operation and administration of Migrant and Seasonal Farmworker programs, as well as the coordination of other programs providing services to migrant and seasonal farmworkers. In addition, the Committee will be asked to solicit the views of farmworker groups and to advise the Secretary of Labor with regard to program implementation under the Workforce Investment Act, performance standards, program evaluaton and services needed in support of the Section 402 program.

DATES: These appointments were made and were effective on October 19, 1998. The Committee Charter provides for two

year staggered terms and it provides that members may be reappointed. In order to stagger the terms, one-half of the initial appointments are for a one-year term. Those appointments selected for the initial one-year terms were identified by the Secretary.

FOR FURTHER INFORMATION CONTACT: Anna W. Goddard, Director, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone: (202) 219–5500.

Signed at Washington, DC on this 19th Day of October, 1998.

Anna W. Goddard,

Director, Office of National Program, Employment and Training Administration.

[FR Doc. 98–28448 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Workforce Investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) as amended, notice is hereby given of a meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

Time and Date: The meeting will begin at 9:00 am on November 5, 1998, and continue until approximately 4:30 p.m., and will reconvene at 9:00 a.m. on November 6, 1998, and adjourn at close of business that day. From 3:30 to 5:00 p.m. on November 6, 1998 will be reserved for participation and presentations by members of the public.

Place: U.S. Department of Labor, 200 Constitution Avenue, N.W., Frances Perkins Building, Room North 5437–A,B,C, Washington, D.C. 20210 Telephone (202) 219–9105.

Status: The meeting will be open to the public. Persons with disabilities, who need special accommodations, should contact the Director, National Programs no less than ten days before the meeting.

Matters to be Considered: The agenda will focus on the following topics:

- Election of Committee Chair and Vice Chair,
- Formation of a workgroup on regulations for the Workforce Investment Act,
- Transitioning of the MSFW Grantee Partnership with ETA to the Advisory Committee,
- Formation of a workgroup on performance standards.

For Further Information Contact: Anna W. Goddard, Director, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–5500.

Signed at Washington, DC, this 19th day of October, 1998.

Anna W. Goddard,

Director, Office of National Programs, Employment and Training Administration.

[FR Doc. 98–28444 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02596]

Ademco Group, El Paso, Texas; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 25, 1998, on behalf of a worker at Ademco Group, El Paso, Texas.

During the course of the investigation it was revealed that the workers were covered under an existing certification, NAFTA–02572. Therefore, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, D.C. this 13th day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28450 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,231 and NAFTA—02180]

Eagle Veneer, Incorporated Harrisburg Plywood Division, Harrisburg, Oregon; Notice of Revised Determination on Reconsideration

On August 27, 1998, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 4, 1998 (63 FR 47325).

The Department initially denied TAA to workers of Eagle Veneer, Inc. Harrisburg Plywood Division, Harrisburg, Oregon, producing CDX plywood because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted further survey analysis of major customers of Eagle Veneer, Harrisburg Plywood Division. The survey revealed that former major customers reduced purchases of CDX plywood from the Harrisburg plant and increased purchases of imports from Canada of oriented strand board (OSB) similar to the articles produced at the Harrisburg plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports from Canada of articles like or directly competitive with CDX plywood, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Eagle Veneer, Incorporated, Harrisburg Plywood Division. In accordance with the provisions of the Act, I make the following certification:

All workers of Eagle Veneer, Inc., Harrisburg Plywood Division, Harrisburg, Oregon who became totally or partially separated from employment on or after December 11, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974; and

All workers of Eagle Veneer, Inc., Harrisburg Plywood Division, Harrisburg, Oregon who became totally or partially separated from employment on or after December 11, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 6th day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28454 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,899 and NAFTA–02551]

Matsushita Electric Corporation of America (Matsushita Television Company), San Diego, CA; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 25, 1998, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment

Assistance (TAA) and NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notices applicable to workers of the subject firm located in San Diego, California, were signed on September 16, 1998. The NAFTA–TAA decision was published in the **Federal Register** on September 28, 1998 (63 FR 51606). The TAA decision will be published soon.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of war erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of TAA and NAFTA–TAA for workers and Matsushita Electric Corporation of America, Matsushita Television Company, San Diego, California was based on the finding that the workers do not produce an article, as required by Section 222 and 250 of the Trade Act of 1974. As stated in the original negative determinations, the workers provide technical and administrative functions and are not affiliated with a facility for which the Department has certified the workers eligible to apply for adjustment assistance. Layoffs were a result of the parent company making a strategic business decision to shift the technical and administrative functions to Mexico. The company did not shift ''production'' of items to Mexico from San Diego during the relevant time period. Shifting job functions does not qualify the worker group to be certified under NAFTA–TAA under Section 250.

The petitioners did not provide any new information to indicate that the worker group was involved in the production of televisions or any article with the meaning of Section 222 or 250 of the Trade Act of 1974, as amended.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C. this 6th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–28445 Filed 10–22–98; 8:45 am]

BILLING CODE 4310–30–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 supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA980001 (Feb. 13, 1998)
PA980003 (Feb. 13, 1998)
PA980017 (Feb. 13, 1998)
PA980018 (Feb. 13, 1998)
PA980020 (Feb. 13, 1998)
PA980032 (Feb. 13, 1998)
PA980038 (Feb. 13, 1998)
PA980051 (Feb. 13, 1998)
PA980062 (Feb. 13, 1998)
PA980065 (Feb. 13, 1998)

Volume III

Georgia
GA980022 (Feb. 13, 1998)
GA980073 (Feb. 13, 1998)
GA980086 (Feb. 13, 1998)
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GA980088 (Feb. 13, 1998)

Volume IV

Michigan
MI980002 (Feb. 13, 1998)
MI980003 (Feb. 13, 1998)
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Volume V

Iowa
IA980005 (Feb. 13, 1998)
IA980010 (Feb. 13, 1998)
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Kansas
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KS980012 (Feb. 13, 1998)
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MO980072 (Feb. 13, 1998)

Volume VI

None

Volume VII

California
CA980001 (Feb. 13, 1998)
CA980002 (Feb. 13, 1998)
CA980004 (Feb. 13, 1998)
CA980009 (Feb. 13, 1998)
CA980027 (Feb. 13, 1998)
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CA980039 (Feb. 13, 1998)
CA980040 (Feb. 13, 1998)
CA980041 (Feb. 13, 1998)

Hawaii
HI980001 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arrange by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 16th day of October 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–28231 Filed 10–22–98; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

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[Docket No. RM 98–6]

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AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of filings, request for comments.

SUMMARY: The Copyright Office is publishing a list of stations listed in affidavits sent to the Copyright Office in which the owner or licensee of the station attests that the station qualifies as a specialty station in accordance with the Federal Communications Commission's (FCC) definition of specialty station in effect on June 24, 1981. Any party may file with the Copyright Office an objection to an owner's claim of specialty station status.

DATES: Comments must be received November 23, 1998. The effective date of the annotated list will coincide with the beginning of the accounting period that starts after the publication of the final list in the **Federal Register**.

ADDRESSES: If sent by mail, submit an original and two copies to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If hand delivered, bring the document to: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor,

Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: Under the cable compulsory license, section 111 of the title 17, United States Code, a cable operator may carry the signal of a television station classified as a specialty station at the base rate rather than at the higher 3.75% rate that is usually incurred for the carriage of a non-permitted signal. 37 CFR 256.2(c). Specialty station status is determined by reference to the former regulations of the Federal Communications Commission (FCC) which defined a specialty station as ''a commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of the weekly prime-time hours.'' 47 CFR 76.5(kk) (1981). The FCC no longer determines whether a station qualifies as a specialty station; however, the Copyright Office updates the list periodically, because the list remains relevant to the cable compulsory license scheme.

The Copyright Office published its first specialty station list in 1990 under a procedure which allowed the owner of the station to file an affidavit with the Office attesting to the fact that the station's programming comports with the 1981 FCC definition, and hence, qualifies it as a specialty station. 55 FR 40021 (October 1, 1990). The Office agreed at that time to update the list approximately every three years.

Accordingly, on August 4, 1998, the Copyright Office published a notice asking the owner, or a valid agent of the owner, to file a sworn affidavit with the Copyright Office stating that the station's programming satisfies the FCC's former requirements for specialty station status. 63 FR 41599 (August 4, 1998). In response to the notice, the Copyright Office received affidavits on behalf of forty-nine broadcast television stations. These stations are listed below. Any party that objects to another party's claim to specialty station status should submit specific and factual comments as to which station(s) he or she objects to, and why. A final annotated list of specialty stations including references to any objections filed against a particular station owner's claim will be published in the **Federal Register**.

Copyright Office licensing examiners shall refer to the final annotated list in examining a statement of account where a cable system operator claims specialty station status for a particular station. If a cable system operator claims specialty station status for a station not on the published final list, the examiner determines whether the owner of the station has filed an affidavit since publication of the list. Affidavits received after the publication of the final annotated list shall be kept on file in the Licensing Division of the Copyright Office. Any interested party may file an objection to any such late-filed affidavit and the objection shall be filed together with the corresponding affidavit.

List of Specialty Stations: Call Letters and Cities of License

CBAFT Moncton, New Brunswick, Canada
CBFT Montreal, Quebec, Canada
CBKFT Regina, Saskatchewan, Canada
CBOFT Ottawa, Ontario, Canada
CBUFT Vancouver, British Columbia, Canada
CBVT Quebec City, Quebec, Canada
CBWFT Winnipeg, Manitoba, Canada
CBXFT Edmonton, Alberta, Canada
CFCM–TV Quebec, Quebec, Canada
CFER–TV Rimouski, Quebec, Canada
CFTM–TV Montreal, Quebec, Canada
CHEM–TV Trois-Rivieres, Quebec, Canada
CHLT–TV Sherbrooke, Quebec, Canada
CJPM–TV Chicoutimi, Quebec, Canada
CKSH–TV Sherbrooke, Quebec, Canada
K30CE Austin, TX
K48AM Albuquerque, NM
K52AO Tucson, AZ
KABE–LP Bakersfield, CA
KCHF Santa Fe, NM
KDRX–LP Phoenix, AZ
KDTV–LP Santa Rosa, CA
KDTV(TV) San Francisco, CA
KFTV(TV) Hanford, CA
KLUZ–TV Albuquerque, NM
KMEX–TV Los Angeles, CA
KTSF(TV) San Francisco, CA
KTVW–TV Phoenix, AZ
KUVN–LP Fort Worth, TX
KUVN(TV) Garland, TX
KUVS(TV) Modesto, CA
KWEX–TV San Antonio, TX
KWHY–TV Los Angeles, CA
KXLN–TV Rosenberg, TX
W47AD Hartford, CT
W50BF–TV Sharon (Mercer County), PA
W63BF Aguadilla, Puerto Rico
WAQP–TV Saginaw, MI
WGBO–TV Joliet, IL
WINM–TV Angola, IN
WKBS–TV Johnstown/Altoona, PA
WLTV(TV) Miami, FL
WLXI–TV Greensboro, NC
WNYB–TV Jamestown, NY
WPCB–TV Greensburg/Pittsburgh, PA
WTCT–TV Marion, IL
WTLJ–TV Muskegon, MI
WXTV–LP Philadelphia, PA
WXTV(TV) Paterson, NJ

Dated: October 20, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98–28514 Filed 10–22–98; 8:45 am]

BILLING CODE 1410–31–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to Illinois Power Company (IP, or the licensee) for operation of the Clinton Power Station (CPS), located in DeWitt County, Illinois.

The proposed amendment requests deferral of the next scheduled local leak rate test for valve 1MC–042 until the seventh refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises Technical Specification (TS) 5.5.13 to permit deferral of the leakage rate testing of primary containment penetration 1MC–042 until the seventh refueling outage. Analyzed accidents are considered to be initiated by the failure of plant structures, systems, or components. The potential for increased leakage through primary containment penetration 1MC–042 is not itself a condition that is or could lead to an initiator of any analyzed accident. The proposed change will not alter the operation of or otherwise increase the failure probability of any plant equipment whose failure could initiate an analyzed accident. As such, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the availability and successful functioning of the equipment assumed to operate in response to the analyzed accident, and the setpoints at which these actions are initiated. Primary containment penetration 1MC–042 forms part of the overall primary containment boundary which serves to provide a barrier to prevent the release of fission products to the environment in the event a previously analyzed accident should occur.

The only attributes of this change that could affect the consequences of a previously analyzed accident are the leakage characteristics pertaining to the primary containment isolation function of 1MC–042. The leakage acceptance criteria for penetration 1MC–042 are not being revised as a result of the proposed change. Since penetration 1MC–042 was successfully tested earlier during the current shutdown period, and since this penetration has an excellent leakage performance history, and because no significant degradation mechanisms have been present since it was last tested, there is adequate assurance that penetration 1MC–042 will continue to maintain adequate leak tightness throughout the next operating cycle. The proposed change for this one penetration is thus not expected to have any significant effect itself on the overall leak rate of the containment. Further, a conservative margin already exists with respect to the leakage assumed in the accident analyses due to the overall Type B and Type C leakage being limited by TS 5.5.13 to less than or equal to 0.6 La prior to unit restart. On this basis, the proposed change has no significant impact on the radiological analysis for the design basis accident(s) that assumes limited containment leakage. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed accident.

Therefore, this change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises TS 5.5.13 to allow the primary containment leakage rate test of penetration 1MC–042 to be deferred until the seventh refueling outage. No new failure modes are introduced by the proposed change as it only concerns or potentially affects leakage already considered or accounted for with respect to primary containment penetrations. The proposed change does not change the operating characteristics, function, or mechanical design of penetration IMC–042. Likewise, there are no changes being made to any other equipment or structures. No new or different equipment is being installed, and no installed equipment whose failure might initiate an analyzed event is being operated in a different manner. The proposed change does not impact core reactivity or the manipulation of fuel bundles. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered.

Therefore, based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The margin of safety potentially affected by the proposed change is associated with the postaccident offsite dose consequences associated with the integrity of the primary containment boundary. The proposed change revises TS 5.5.13 to permit deferral of the leakage rate testing of primary containment penetration 1MC–042 until the seventh refueling outage. The design of penetration 1MC–042 and its leakage performance criteria are not affected by this change. Deferral of the leakage rate test will not in and of itself create a condition such that there will be a significant loss of isolation capability of the subject penetration, nor will the proposed change affect the leakage characteristics of the other components and structures that form portions of the primary containment boundary. Based on the leakage rate test history of penetration 1MC–042 and the absence of any significant degradation mechanisms that could cause this penetration to experience a reduction in effectiveness as a primary containment boundary, the proposed change does not involve any significant impact on containment leakage, and therefore does not involve any significant impact on the dose analysis for which a maximum containment leakage is assumed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days of the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 23, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 5, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 19th day of October 1998.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–28463 Filed 10–22–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 1, 1998.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of October 1, 1998, of one rescission proposal that is pending and was contained in a special message for FY 1998. This message was transmitted to Congress on July 24, 1998.

Rescissions (Attachments A and B)

As of October 1, 1998, one rescission proposal totaling $5.2 million had been transmitted to the Congress. Attachment B shows the status of the FY 1998 rescission proposals.

Information From Special Messages

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the edition of the **Federal Register** cited below:

63 FR 41303, Monday, August 3, 1998

Jacob J. Lew,

Director.

Attachments

ATTACHMENT A—STATUS OF FY 1999 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	5.2
Rejected by the Congress.	
Currently before the Congress	5.2

ATTACHMENT B—STATUS OF FY 1999 RESCISSION PROPOSALS—AS OF OCTOBER 1, 1998

[Amounts in thousands of dollars]

Agency/bureau/account	Recission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management:								
Mineral leasing and associated payments	R98–25	5,200	.....	7–24–98				
Total, Rescissions	.....	5,200	0	.....	0	.....	0	

[FR Doc. 98–28484 Filed 10–22–98; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26928]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 16, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) and any amendment is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 10, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 10, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–8307)

American Electric Power Company, Inc. (''AEP''), a registered holding company, and AEP Resources Service Company, Inc. (''Resources''), a wholly owned service company subsidiary of AEP, (formerly AEP Energy Services, Inc.), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment with the Commission under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

By orders dated April 5, 1995 and December 28, 1998 (HCAR Nos. 26267 and 26442, respectively) (''Orders'') the Commission authorized AEP, through its direct and indirect subsidiaries, to engage in development activities (including preliminary studies, research, investigation and consulting) pertaining to independent power facilities, including, among other things, exempt wholesale generators and foreign utility companies. The Orders also authorized AEP to: (1) Guarantee the debt of Resources in an amount not to exceed $51 million; and (2) issue guarantees and assumptions of liability on behalf of Resources to third parties in an aggregate amount not to exceed $200 million (collectively, ''Guarantee Authority'').

AEP now requests that the Commission extend the Guarantee Authority from December 31, 1998 through December 31, 2001 under the terms and conditions stated in the Orders.

Columbia Energy Group, et al. (70–9359)

Columbia Energy Group (''Columbia''), a registered holding company, Columbia's service company subsidiary, Columbia Energy Group Service Corporation, Columbia's liquified natural gas subsidiaries, Columbia LNG Corporation and CLNG Corporation, Columbia's trading subsidiary, Columbia Atlantic Trading Corporation, Columbia's energy services and marketing subsidiaries, Columbia Energy Services Corporation, Columbia Energy Power Marketing Corporation, Columbia Energy Marketing Corporation, Energy.COM Corporation, Columbia Service Partners, Inc., Columbia Assurance Agency, Inc., Columbia Energy Group Capital Corporation, and Columbia Deep Water Services, all located at 13880 Dulles Corner Lane, Herndon, Virginia, 20171–4600, Columbia's exploration and production subsidiaries, Columbia Natural Resources, Inc., Alamco, Inc., Alamco-Delaware, Inc., Hawg Hauling & Disposal, Inc., Phoenix-Alamco Ventures, L.L.C., Clarkburg Gas, L.P., and Columbia Natural Resources Canada, Ltd., all located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302, Columbia's gas transmission subsidiaries, Columbia Gas Transmission Corporation, 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0416, Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057, and Columbia's distribution subsidiaries, Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, all located at 200 Civic Center Drive, Columbus, Ohio 42315, Columbia's network service subsidiaries, Columbia Network Services Corporation and CNS Microwave, both located at 1600 Dublin Road, Columbus, Ohio 43215–1082, Columbia's propane distribution subsidiary, Columbia Propane Corporation, at 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236, and Columbia's other subsidiaries, Columbia Electric Corporation, Tristar Pedrick Limited Corporation, Tristar Pedrick General Corporation, Tristar Binghamton General Corporation, Tristar Binghamton Limited Corporation, Tristar Vineland Limited Corporation, Tristar Vineland General Corporation, Tristar Rumford Limited Corporation, Tristar Georgetown General Corporation, Tristar Georgetown Limited Corporation, Tristar Fuel Cells Corporation, TVC Nine Corporation, TVC Ten Corporation, and Tristar System Inc., all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 42, 45 and 54.

By Commission order dated December 23, 1996 (HCAR No. 26634) (''Omnibus Financing Order''), Columbia was authorized to engage in a wide range of financing transactions through December 31, 2001, including long-term debt and equity financing in the amount not to exceed $5 billion outstanding at any one time, subject to certain terms and conditions. Columbia now proposes, through December 31, 2003, to expand the Omnibus Financing Order and specifically request authorization to increase its long-term intrasystem financing authority to an amount not to exceed $7 billion, under the terms and conditions stated in the Omnibus Financing Order. The long-term financing could include the issuances of a combination of debentures (which may be in the form of medium-term notes), common stock, preferred stock, and other equity and debt securities. The long-term debt securities could include convertible debt, subordinated debt, bank borrowing, and securities with call and put options.

The Omnibus Financing Order also authorized Columbia to enter into guarantee arrangements, obtain letters of credit, and otherwise provide credit support for its respective subsidiaries in amounts of up to $500 million (''Guarantees'') through December 31, 2001. By Commission order dated November 18, 1997 (HCAR No. 26780), the Guarantee authority was increased to $2 billion. Columbia now proposes, through December 31, 2003, to increase the amount of its Guarantee authority to $5 billion under the terms and

conditions stated in the Omnibus Financing Order.

Columbia notes that, as of June 30, 1998, there were outstanding guarantees and letters of credit totaling approximately $725 million in connection with the operations of Columbia Energy Services Corporation (the gas marketing subsidiary) and Columbia Energy Power Marketing Corporation (the power marketing subsidiary).

Columbia also requests authorization to acquire, retire and redeem securities that it has issued to an associate company, an affiliate, or an affiliate of an associate company.

The Southern Company (70–9335)

The Southern Company (''Southern''), 270 Peachtree Street, NW, Atlanta, Georgia 30303, a registered holding company under the Act, has filed an application-declaration (the ''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 32 and 33 of the Act and rules 42, 45, 46 and 53 under the Act.

Southern seeks authorization to organize and acquire all of the common stock of one or more subsidiaries (collectively, the ''Financing Subsidiary'')[1] to effect various financing transactions (''Financing Transactions'') through September 30, 2003. Southern expects the Financing Transactions to include the issuance and sale of up to an aggregate of $1.5 billion in any combination of preferred securities, debt securities, stock purchase contracts and stock purchase units. Southern further proposes to effect directly (i.e., without the Financing Subsidiary) any Financing Transaction.

Southern proposes to acquire all of the outstanding shares of common stock of the Financing Subsidiary for amounts (inclusive of capital contributions that may be made to the Financing Subsidiary by Southern) aggregating up to 35% of the total capitalization of the Financing Subsidiary. The business of the Financing Subsidiary will be limited to effecting financing transactions for Southern and its affiliates. In connection with the financing transactions, Southern will propose to enter into one or more guarantee or other credit support agreements in favor of the Financing Subsidiary.

Southern also proposes to organize, or have the Financing Subsidiary organize, one or more separate special purpose subsidiaries (''Special Purpose Subsidiaries'') as any one or any combination of (a) a limited liability company, (b) a limited partnership, (c) a business trust or (d) any other entity or structure, foreign or domestic, that Southern considers advantageous.

The respective Special Purpose Subsidiaries then will issue and sell preferred securities (''Preferred Securities''), with a specified par or stated value or liquidation preference per security. Southern or the Financing Subsidiary will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount up to 21% of the total equity capitalization of the Special Purpose Subsidiary.[2] The aggregate of the investment by Southern, the Financing Subsidiary and/or an Investment Sub shall be referred to as the ''Equity Contribution.'' The Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, in one or more series, subordinated debentures, promissory notes or other debt instruments (''Notes'') governed by an indenture or other document. The Special Purpose Subsidiary will apply both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities by it to purchase Notes.

Alternatively, the Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary. Under these agreements, the Special Purpose Subsidiary will loan to the Financing Subsidiary (''Loans'') both the Equity Contribution and the proceeds from the sale of the Preferred Securities. The Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing the Loans.[3]

Southern also proposes that it or the Financing Subsidiary guarantee (''Guaranties'') (i) payment of dividends or distributions on the Preferred Securities of any Special Purpose Subsidiary if and to the extent the Special Purpose Subsidiary has funds legally available for this purpose, (ii) payments to the Preferred Securities holders of amounts due upon liquidation of the Special Purpose Subsidiary or redemption of the preferred Securities of the Special Purpose Subsidiary, and (iii) certain additional amounts that may be payable in respect of the Preferred Securities.

The Notes and related Guaranties will be subordinate to all other existing and future subordinated indebtedness for borrowed money of the Financing Subsidiary and may have no cross-default provisions with respect to other indebtedness of the Financing Subsidiary—i.e., a default under any other outstanding indebtedness of the Financing Subsidiary would not result in a default under any Note or Guaranty.

Southern proposes that, in addition to, or as an alternative to, any Preferred Securities financing described above, the Financing Subsidiary may issue and sell Notes directly to investors without an intervening Special Purpose Subsidiary. Southern proposes that these Notes will be unsecured, may be either senior or subordinated obligations of the Financing Subsidiary, may be convertible or exchangeable into common stock of Southern or Preferred Securities, but otherwise will have terms and provisions substantially as described above (''Debt Securities'').

Southern also proposes that the Financing Subsidiary may issue and sell shares of its preferred stock (''Preferred Stock''). Any issuance of preferred Stock will have a specified par or stated value per share. In accordance with applicable state law, the Preferred Stock will have the voting powers, designations, preferences, rights and qualifications, limitations or restrictions as stated and expressed in the resolutions providing for the issue duly adopted by the board of directors of the Financing Subsidiary. These rights may include rights of conversion or exchange into common stock of Southern or Preferred Securities.

Southern further proposes that the Financing Subsidiary may issue and sell stock purchase contracts (''Stock Purchase Contracts''), including contracts obligating holders to purchase

[1] Southern also proposes to acquire as a Finance Subsidiary Southern Company Capital Funding, Inc., currently a wholly owned subsidiary of Southern Energy, Inc.

[2] If the Special Purpose Subsidiary is organized under an LLC Act that requires at least two members, Southern or the Financing Subsidiary may organize a second special purpose subsidiary (''Investment Sub'') to acquire and hold Special Purpose Subsidiary membership interests. In this case, the Investment Sub may acquire all of the common stock, general partnership or other common equity interests of the Special Purpose Subsidiary.

[3] Each Note will have a term of up to 50 years. Prior to maturity, the Financing Subsidiary will pay interest only on the Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities. The dividend or distribution rate may be either a fixed rate or an adjustable rate to be determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods. The interest payments will constitute each Prospective Special Purpose Subsidiary's only income and will be used by it to pay dividends or distributions on the Preferred Securities issued by it and dividends or distributions on the common stock or the general partnership or other common equity interests of the Special Purpose Subsidiary. The Preferred Securities may be convertible or exchangeable into common stock of Southern.

from Southern, and Southern to sell to the holders, a specified number of shares of common stock of Southern at a future date or dates. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as a part of units (''Stock Purchase Units'') consisting of a Stock Purchase Contract and Debt Securities, Preferred Securities or other debt obligations of third parties, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of Southern under the Stock Purchase Contracts. The Stock Purchase Contracts may require Southern or the Financing Subsidiary to make periodic payments to the holders of the Stock Purchase Units or vice versa, and the payments may be unsecured or prefunded on some basis.

Southern also proposes that the proceeds of the Preferred Securities, Debt Securities, Preferred Stock, Stock Purchase Contracts and Stock Purchase Units may be utilized to pay dividends to Southern to the extent that may be permitted under the Act and applicable state law, to acquire the securities of associate companies in transactions that are exempt from section 9(a)(1) of the Act under rule 52(d), to make capital contributions or open account advances to subsidiaries in transactions that are exempt from section 12(b) of the Act under rule 45(b)(4), to acquire the securities of one or more ''exempt wholesale generators'' (''EWGs''), ''foreign utility companies'' (''FUCOs'') or ''exempt telecommunications companies,'' and as authorized by Commission orders or as permitted under other rules of general applicability (including general corporate purposes such as repayment of indebtedness).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28423 Filed 10–22–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40545; File No. SR–CHX–98–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Addition of an Interpretation to the Minimum Variation Rule

October 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 1998,[3] the Chicago Stock Exchange, Inc. (''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 CHX. 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

CHX is proposing to add Interpretation and Policy .06 to Article XX, Rule 22 relating to the trading by members in increments smaller than the minimum variation in order to match bids and offers displayed in other markets for the purpose of preventing Intermarket Trading System (''ITS'') trade-throughs. Proposed new language is in *italics.*

Article XX—Minimum Variation

Rule 22 No text change.

* * * Interpretations and Policies

.01 through .05 No text change.

.06 *Notwithstanding the foregoing and any other rule regarding adherence to the minimum variation, a member may execute orders on the Floor in increments smaller than the minimum variation in order to match bids and offers displayed by other markets for the purpose of preventing Intermarket Trading System trade-throughs, provided, however, a limit order executed on the Exchange must continue to be priced at an increment no less than the current minimum variation for such security, and specialists must continue to reflect their principal bids and offers in such increments.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX 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. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Over the past 18 months, a number of self regulatory organizations (''SROs''), including the Exchange, the Pacific Exchange, Inc. (''PCX''), the American Stock Exchange (''Amex''), the Nasdaq Stock Market (''Nasdaq''), the New York Stock Exchange (''NYSE'') and the Chicago Board Options Exchange (''CBOE''), have reduced the minimum trading and quotation increments of most equity securities to as little as $\frac{1}{16}$ of one dollar.[4] Subsequent to the reduction to sixteenths, several third market makers have commenced quoting securities in increments smaller than those approved for trading on the exchanges on which the securities are listed or traded.[5] Several exchanges have responded by permitting their members to execute trades in these finer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was filed on October 13, 1998, the substance of which is incorporated into this notice. Letter from Patricia L. Levy, General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 9, 1998.

[4] *See* Exchange Act Release Nos. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (approving a PCX rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for stocks); 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment to $\frac{1}{16}$ for certain Amex-listed equity securities); 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a Nasdaq rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for certain Nasdaq-listed securities); 38897 (August 1, 1997), 62 FR 42827 (August 8, 1997) (approving a NYSE rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for certain NYSE-listed securities); and 39159 (September 30, 1997), 62 FR 52365 (October 9, 1997) (approving a CBOE rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for stocks).

[5] For example, Nasdaq systems are capable of trading securities priced under $10 in increments as fine as $\frac{1}{32}$ of one dollar. Securities priced over $10 may be traded in increments as fine as $\frac{1}{16}$ of one dollar. As a result, the Nasdaq third market makers may trade Amex listed securities that are traded on CHX and priced at less than $10 in increments finer than sixteenths.

increments under certain circumstances.[6] Like these other exchanges, the CHX believes that it is important to provide its members with flexibility to effect transactions on the Exchange at a smaller increment than is set forth in its existing interpretations and policies. (*i.e.*, $\frac{1}{16}$ for most securities) for the purpose of matching a displayed bid or offer in another market at such smaller increment (*i.e.*, $\frac{1}{32}$, $\frac{1}{64}$ or smaller) for the purpose of preventing ITS trade-throughs. For example, if the best bid on the Exchange is 8 and a bid of $8\frac{1}{32}$ is displayed through ITS in another market center, the Exchange specialist or floor broker may execute a market or marketable limit order at $8\frac{1}{32}$ in order to match the other market's bid. Limit orders entered on the Exchange, however, will continue to be priced at the current minimum trading increments (*i.e.*, usually $\frac{1}{16}$), and orders priced in smaller increments will not be accepted. In addition, specialists will not be permitted to quote in these finer increments.

The proposed amendment will allow CHX traders to match prices disseminated by market makers that may better the CHX quote by an increment finer than the current minimum increment (usually $\frac{1}{16}$). Further, the proposal will enable the Exchange to match prices disseminated by another exchange in the event that another exchange were to reduce its minimum trading increment. Thus, the proposed amendment will assist Exchange members in fulfilling their obligation to obtain the best price for their customers.

While the new interpretation would give members the extra flexibility that they need, the Exchange believes that a member would violate the spirit and intent of this new interpretation and would, most likely, be considered to have engaged in manipulative activity, in the event that the member enters an order in another market in a smaller variation for the express purpose of enabling such member to execute trades on the Exchange at such small increment. For example, if floor broker sent to a third market maker a 100 share limit order to buy that is priced $\frac{1}{32}$ or $\frac{1}{64}$ better than the current quote solely to enable the floor broker to cross a large block of stock on the Exchange at such better price without a specialist intervention, the Exchange would probably consider the floor broker to have engaged in manipulative activity.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 CHX.

All submissions should refer to File No. SR–CHX–98–25 and should be submitted by November 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28199 Filed 10–22–98; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Exchange Act Release Nos. 40199 (July 14, 1998), 63 FR 39336 (July 22, 1998) (approving PCX rule permitting members to trade in increments smaller than $\frac{1}{16}$, in order to match bids and offers displayed in other markets for the purpose of preventing ITS trade-throughs); 40189 (July 10, 1998), 63 FR 38439 (July 16, 1998) (approving Amex rule permitting members to trade in increments smaller than $\frac{1}{16}$, in order to match bids and offers displayed in other markets for the purpose of preventing ITS trade-throughs).

[7] The Exchange believes this is consistent with a recent SEC enforcement action brought against two brothers who used the SEC's Limit Order Display Rule to manipulative the quote to their advantage. *See In re Ian Fishman and Lawrence Fishman*, Admin. Proc. File No. 3–9629 (June 24, 1998). In that case, the Commission stated that the brothers used a limit order ''to move the public bid or offer quote, in order to permit [Fishman] to buy or sell a security at a price that otherwise would not have been available in the market,'' and found that such activity violated Exchange Act Rule 10b–5.

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40556; File No. SR–NASD–98–64]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Extending the Arbitrator List Selection Method to Disputes Involving Members and Associated Persons

October 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission''), and amended on September 30, 1998 and October 2, 1998,[3] the proposed rule change as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment Nos. 1 and 2 made technical changes to the original rule filing which are incorporated into this notice and order granting accelerated approval. *See* letters from John M. Ramsay, Vice President and General Counsel, NASD Regulation (''Ramsay'') to Katherine A. England, Assistant Director, Division of Market Regulation (''England''), dated September 29, 1998

Continued

described in Items I and II below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rules 10202, 10203, and 10308 of the NASD to extend the previously proposed arbitrator list selection method to intra-industry disputes.[4] Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

10202. Composition of Panels

(a) In disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes or receipt of commissions, the panel of arbitrators shall be appointed as provided by paragraph (b)(1) or (2) or Rule 10203, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators shall be appointed as provided by Rule 10302 or Rule 10308, whichever is applicable.

(b)*(1) Composition of Arbitration Panel.*

(A) Claims of $50,000 or Less

If the amount of a claim is $50,000 or less, the Director shall appoint an arbitration panel composed of one non-public arbitrator, unless the parties agree to the appointment of a public arbitrator.

(i) If the amount of a claim is $25,000 or less and an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitrator panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(ii) If the amount of a claim is greater than $25,000 and not more than $50,000 and a party in its initial filing or an arbitrator appointed to the case requests that a panel of three arbitrators be appointed, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(B) Claims of More Than $50,000

If the amount of a claim is more than $50,000, the Director shall appoint an arbitration panel composed of three non-public arbitrators, unless the parties agree to a different panel composition.

(2) Except as otherwise provided in paragraph (a), in all arbitration matters between or among members and/or persons associated with members and where the amount in controversy exceeds $50,000, exclusive of attendant costs and interest, a panel shall consist of three arbitrators, all of whom shall be [from the securities industry] *non-public arbitrators.*

(c) In proceedings relating to injunctions under Rule 10335, the provisions of Rule 10335 shall supersede the provisions of this Rule.

(d) Except as otherwise provided in this Rule or Rule 10203, the provisions of Rule 10308 shall apply to intra-industry disputes.

10203. Simplified Industry Arbitration

(a) Any dispute, claim, or controversy arising between or among members or associated persons submitted to arbitration under this Code involving a dollar amount not exceeding $25,000, exclusive of attendant costs and interest, shall be resolved by an arbitration panel constituted pursuant to the provisions of subparagraph (1) hereof solely upon the pleadings and documentary evidence filed by the parties, unless one of the parties to the proceeding files with the Office of the Director of Arbitration within ten (10) business days following the filing of the last pleading a request for a hearing of the matter.

(1) In any proceeding pursuant to this Rule, an arbitration panel shall consist of [no fewer than one (1) but no more than three (3) arbitrators, all of whom shall be from the securities industry] *a single non-public arbitrator.*

(2) (Unchanged)

(b) Unchanged)

* * * * *

10308. Selection of Arbitrators [in Customer Disputes]

This rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator [in arbitration proceedings involving a customer]. (Remainder unchanged)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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 by the places specified in Item IV below. NASD Regulation 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 proposed rule change is designed to conform the arbitrator selection process for intra-industry disputes to the recently proposed list selection method for disputes involving public customers.[5]

Background

In its report published in January 1996 (''Task Force Report''), the Arbitration Policy Task Force (''Task Force'')[6] made recommendations to improve the securities arbitration process administered by the NASD. Recommendation No. 8 provided: ''Arbitrator selection, quality, training, and performance should be improved by various means, including adoption of a list selection method, earlier appointment of arbitrators, enhancement of arbitrator training, and increased compensation.'' A footnote in the Task Force Report stated, ''We also recommend that a form of list selection be used in employee-firm and member-member arbitration.''[7]

(''Amendment No. 1''); and Ramsay to England, dated October 2, 1998 (''Amendment No. 2'').

[4] The arbitrator list selection rule proposal for customer disputes is contained in SR–NASD–98–48, which was published by the Commission for comment in Securities Exchange Act Release No. 40261 (July 24, 1998), 63 FR 40761 (July 30, 1998), and is being approved simultaneously with this rule filing.

[5] *See supra* note 4. This proposed rule change relates only to process, rather than substance. NASD Regulation stated that it may, at a later date, consider amendments to the panel composition rules for industry disputes in general and for statutory employment discrimination disputes in particular.

[6] The NASD formed the Arbitration Policy Task Force in September 1994 for the purposes of studying the securities arbitration process administered by the NASD and of making suggestions for reform. The Task Force delivered its Report (''Task Force Report'') to the NASD Board in January 1996.

[7] Task Force Report at 96 n.134.

Principles Underlying the Previously Filed Customer List Selection Rule Proposal

NASD Regulation considered the Task Force's recommendations at length, and consulted with the National Arbitration and Mediation Committee (''NAMC'') and others about the efficacy of the proposals. All persons consulted favored the selection of arbitrators by the parties using a form of list selection. In addition, most were in favor of developing a system featuring the capability, when appropriate and as technologically feasible, to generate the arbitrator lists from a computer system programmed to incorporate relevant selection factors, such as geographic proximity of an arbitrator to the proposed site of the hearing, subject matter knowledge, and classification of an arbitrator as a public arbitrator or a non-public arbitrator, rather than developing a system in which the lists of arbitrators to be forwarded to parties for ranking would be generated solely on the basis of the staff's judgment.

Following the principle that parties in arbitration should be given more input into the selection of arbitrators, NASD Regulation developed a rule for customer arbitrations providing that, in a one-arbitrator case, the parties to the arbitration will be provided a list of public arbitrators, and, in a three-arbitrator panel case, the parties will be provided a list of public arbitrators and a list of non-public arbitrators. The parties will use the lists to express numerical preferences for the arbitrators listed and those rankings will determine the outcome of the arbitrator selection process, unless an arbitrator declines to serve because the arbitrator is unavailable, recuses him or herself, or is disqualified because of a conflict of interest.

Extension of List Selection Method to Intra-Industry Disputes

NASD Regulation believes that the proposed methodology for selecting arbitrators in customer arbitration will also benefit employees and members in their use of the arbitration forum for intra-industry disputes. The same considerations of giving parties more choice in choosing their panelists and allowing for computerized rotation of arbitrators will also apply in the intra-industry context. The proposed rule change is also expected to eliminate the increased costs that would result from continuing the current method of staff selection of arbitrators only for intra-industry arbitrations after the new system for customer arbitration is effective. NASD Regulation expects that the proposed rule will be viewed as a significant improvement over the current method of selecting arbitrators in intra-industry disputes, in that it provides employees and members with the same choice in picking their arbitration panels that are being extended to customers and members in the area of customer disputes.

NASD Regulation's computerized Neutral List Selection System (''NLSS''), now in the final stages of development, is designed to produce lists of arbitrators using the factors identified above. The NLSS will not need to be amended to accommodate the requested change, because it already has the capability of generating lists of public or non-public arbitrators. Moreover, the pool of arbitrators from which panelists are chosen is the same for both customer and intra-industry disputes. For those intra-industry disputes that require use of an all-industry (non-public) panel, only the non-public arbitrator list will be generated. For disputes that currently require a public arbitrator or a majority of public arbitrators, as provided in the second sentence of Rule 10202(a), the provisions of Rule 10308 will apply in the same way as they would apply to customer disputes.

The arbitrator database contains information relating to the background of the arbitrators, so subject matter knowledge can be considered if the parties would like an arbitrator with specialized experience, such as employment compensation, employment discrimination, or specific securities products. The extension of list selection to intra-industry arbitration will not have any effect on the quality of arbitrators chosen for a particular case, and gives the parties more of a voice in choosing their panelists than they currently have. It also will allow for computerized rotation of arbitrators used in both customer and intra-industry arbitrations.

Desciption of Amendments

The proposed rule change amends Rules 10202, 10203, and 10308. References in Rules 10202 and 10203 to arbitrators ''from the securities industry'' have been amended to comport with the terminology used in Rule 10308, ''non-public arbitrators.'' The method of arbitrator selection is not currently specified in Rules 10202 and 10203. A new paragraph has been added to Rule 10202, however, to make it explicit that the arbitrator selection method of Rule 10308 will apply to intra-industry disputes.

Rule 10202(a) continues to provide that, in disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes or receipt of commissions, a panel of non-public arbitrators will be appointed as provided by paragraph (b)(1) or (2) Rule 10203, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators will be appointed as provided by Rule 10302 or Rule 10308, whichever is applicable. Accordingly, other claims, including those involving allegations of defamation or employment discrimination,[8] would be heard by a public panel as provided in Rules 10302 (for small claims) or 10308 (for all other claims).

The amendment to Rule 10202(b)(1) parallels the provisions of proposed amendments to Rule 10308(b)(1) made in Amendment No. 3 to SR–NASD–98–48, the companion list selection rule proposal for customer arbitration, except that the panels will consist of either one or three non-public arbitrators unless the parties agree otherwise. Rule 10202(b)(1)(A) provides that, for claims of $50,000 or less, the Director will appoint a single non-public arbitrator, unless the parties agree to the appointment of a public arbitrator. Paragraph (b)(1)(A) also clarifies that certain cases that are for a claim of $50,000 or less may be arbitrated by a three-person panel rather than by one arbitrator in certain circumstances. Under paragraph (b)(1)(A)(i), for a claim of $25,000 or less, a single arbitrator already appointed to the case may request that the Director appoint two additional arbitractors. Under paragraph (b)(1)(A)(ii), for a claim of more than $25,000 and not more than $50,000, any party (in its initial filing) or an appointed arbitrator may request that the Director appoint a three-arbitrator panel. Also, the phrase, ''a party,'' is used to clarify that either a claimant or a respondent may request a three-arbitrator panel under this subparagraph. Under paragraph (b)(1)(B), for claims of more than $50,000, the Director will appoint three non-public arbitrators, unless the parties agree to a different panel composition.

[8] Pursuant to recent amendments to Rule 10201, claims of employment discrimination in violation of a statute are not required by NASD rules to be arbitrated after January 1, 1999; however, parties may agree to arbitrate such claims. *See* SR–NASD–97–77, approved by the Commission in Securities Exchange Act Release No. 40109 (June 22, 1998), 63 FR 35299 (June 29, 1998).

Rule 10202(b)(2) provides that, except as otherwise provided in paragraph (a), in all arbitration matters between or among members and/or persons associated with members, and where the amount in controversy exceeds $50,000, exclusive of attendant costs and interest, a panel shall consist of three arbitrators, all of whom shall be non-public.

New paragraph (c) was added to Rule 10202 to avoid any confusion over the interaction between this rule and the injunction rule, Rule 10335.[9] Paragraph (c) provides that, in proceedings relating to injunctions under Rule 10335, the provisions of Rule 10335 supersede the provisions of Rule 10202. Rule 10335 contains a corresponding provision, stating that, except as otherwise provided in Rule 10335, the remaining provisions of the Code apply to proceedings instituted under that Rule.

New paragraph (d) clarifies the relationship between the arbitrator selection rules for industry and customer disputes. This provision was added to alert parties to the fact that the proposed list selection method will also be used for intra-industry disputes, excluding cases arising under Rule 10202(a), because the proposed list selection rule was initially intended to apply only to customer disputes until further changes were made to the industry arbitration rules.

Rule 10203 has been changed to provide that a single non-public arbitrator will be appointed in simplified industry arbitrations brought under that rule. Under the old rule, a panel of one to three arbitrators was appointed.

In Rule 10308, references to customers in the title and introductory language have been deleted to avoid confusion when those rules are used in intra-industry arbitration. NASD Regulation does not believe that other amendments are needed to Rule 10308 to indicate differences that might apply in intra-industry arbitration, because Rule 10204 already provides as follows:

> Except as otherwise provided in Rule 10200 Series, the Rules and procedures applicable to arbitrations concerning industry and clearing controversies shall be those set forth hereinafter under the Rule 10300 Series.

Therefore, specific provisions of the Rule 10200 Series will supersede any contrary provisions of Rule 10308. Any doubts as to whether a provision should be superseded would continue to be resolved in favor of using the Rule 10300 Series provision. For example, Rule 10308(c)(5) provides that if the parties are unable to agree on a chairman, the Director will appoint one of the public arbitrators as the chairperson. In an intra-industry dispute, if all arbitrators on the panel are non-public, this provision would be superseded and the Director would appoint one of the non-public arbitrators to be the chairperson. If, on the other hand, the intra-industry dispute were one in which there are two public arbitrators and one non-public arbitrator on the panel, Rule 10308(c)(5) would apply as written, and one of the public arbitrators would be chosen to serve as the chairperson. Because the current practice is for the customer arbitration rules to apply by default where they are not specifically superseded by the intra-industry rules, NASD Regulation does not believe that confusion will occur.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will promote the public interest by simplifying the arbitration process and reducing administrative time and expense by conforming the intra-industry arbitrator list selection process to the customer process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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.

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. 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 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–98–64 and should be submitted by November 13, 1998.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b) of the Act and the rules and regulations thereunder applicable to a national securities association in general and, in particular, the requirements of Section 15A(b)(6) of the Act,[11] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[12] The Commission believes that it is reasonable to extend the arbitrator list selection method to disputes involving members and association persons, as well as customer disputes, because the proposed rule change will promote a neutral resolution of disputes by allowing members and associated persons greater input in the selection of the arbitrators to hear their cases. The Commission also believes that is reasonable to conform the simplified industry arbitration rule to the simplified arbitration rule used by investors by changing the number of arbitrators appointed in these cases to one as opposed to a panel of one to three. The Commission believes the proposed rule change will simplify the arbitration process and, by substantially conforming the intra-industry arbitrator list selection process to the customer

[9] NASD Regulation has filed a proposed rule change to Rule 10335 in SR–NASD–98–49. *See* Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

process, reduce administrative time and expense.[13]

Pursuant to Section 19(b)(2) of the Act,[14] the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register** in that accelerated approval will benefit parties in intra-industry arbitration by extending to them the same arbitrator list selection method proposed to be implemented for customer arbitration.

It is therefore ordered, pursuant to Section 19(b)(2)[15] of the Act, that the proposed rule change (SR–NASD–98–64) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28465 Filed 10–22–98; 8:45 am]

BILLING CODE 8010–01–M

[13] Simultaneously with the approval of this proposed rule change, the Commission has approved the arbitrator list selection rule proposal for customer disputes contained in SR–NASD–98–48. The Discussion Section of the order approving that rule change is incorporated into this approval order. *See* Securities Exchange Act Release No. 40555.

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a))(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before November 23, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: Candidate for Appointment to Advisory Councils.

Form No: 898.

Frequency: On Occasion.

Description of Respondents: Candidates for Advisory Councils.

Annual Responses: 700.

Annual Burden: 93.

Dated: October 15, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–28421 Filed 10–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3140, #3141]

State of California (and a Contiguous County in Arizona)

Riverside County and the contiguous counties of Imperial, Orange, San Bernardino, and San Diego in the State of California, and La Paz County in the State of Arizona constitute a disaster area as a result of a fire which occurred on August 31, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on December 14, 1998 and for economic injury until the close of business on July 15, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damages are 314005 for California and 314105 for Arizona. For economic injury the numbers are 9A3700 for California and 9A3800 for Arizona.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 15, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–28418 Filed 10–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Wyoming, dated September 25, 1998, the United States Small Business Administration hereby revokes the license of Capital Corporation of Wyoming, Inc., a Wyoming corporation, to function as a small business investment company under the Small Business Investment Company License No. 08/08–0048 issued to Capital Corporation of Wyoming, Inc. on September 27, 1979 and said license is hereby declared null and void as of October 16, 1998.

United States Small Business Administration.

Dated: October 16, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–28419 Filed 10–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Massachusetts, dated August 26, 1998, the United States Small Business Administration hereby revokes the license of Southern Berkshire Investment Corporation, a Massachusetts corporation, to function as a small business investment company

under the Small Business Investment Company License No. 01/01–0348 issued to Southern Berkshire Investment Corporation on October 25, 1989 and said license is hereby declared null and void as of October 16, 1998.

Small Business Administration.

Dated: October 16, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–28420 Filed 10–22–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities; Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Application for U.S. Benefits Under the Canada-U.S. International Agreement—0960—0371. The information collected on form SSA–1294 is used to determine entitlement to benefits. The respondents are individuals who live in Canada and file for U.S. Social Security Benefits.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

2. Quarterly Statistical Report on Recipients and Payments Under State-Administered Assistance Programs for Aged, Blind and Disabled (Individuals and Couples) Recipients—0960— 0130. The information collected on form SSA–9741 is used to provide statistical data on recipients and assistance payments under the SSI State-administered State supplementation program. These data collections are needed to complement the information available for the Federally administered programs under SSA, and to more fully explain the impact of the public income support programs on the needy, aged, blind and disabled. The respondents are State agencies who administer supplementary payment programs under SSI.

Number of Respondents: 30.

Frequency of Response: 4 times annually.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 120 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Work Activity Report (Self-Employed) 0960–NEW. The information collected on form SSA–820 is used by the Social Security Administration to help determine if an individual meets the disability provisions for entitlement to benefits. The respondents are claimants for initial or continuing entitlement to disability benefits who are or were engaging in substantial gainful activity.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 50,000 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: October 16, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–28343 Filed 10–22–98; 8:45 am]

BILLING CODE 4190–29–P

STATE DEPARTMENT

[Public Notice No. 2913]

Advisory Committee on Religious Freedom Abroad; Public Meeting Notice

The Department of State announces a meeting of the Secretary of State's Advisory Committee on Religious Freedom Abroad on Wednesday, November 4, 1998 at 10:00 a.m. in Room 1107 at the U.S. Department of State, 2201 C Street, N.W., Washington, D.C. The Advisory Committee will focus on a summary of conferences that have addressed the issue of religious freedom and discuss their implications for foreign policy recommendations.

Admittance of public members will be limited to the seating available. In this regard, entrance to the State Department is controlled. One of the following photo IDs will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. government identification (company IDs are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Members of the public wishing to observe the meeting or otherwise desiring more information should contact Alexandra Arriaga, Executive Secretary, Advisory Committee on Religious Freedom Abroad, Bureau of Democracy, Human Rights, and Labor, Department of State, 2201 C Street, N.W., Washington, D.C. 20520, telephone (202) 647–1422.

Dated: October 20, 1998.

John Shattuck,

Chairman, Advisory Committee on Religious Freedom Aboard.

[FR Doc. 98–28587 Filed 10–21–98; 12:51 pm]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 225]

Paperwork Reduction Act Responsibilities; Delegation of Functions

By virtue of the authority vested in the Secretary of State by Section 1 of the

State Department Basic Authorities Act (22 U.S.C. 2651(a)), I hereby delegate to the Chief Information Officer the authority to redelegate to the Bureau of Administration the functions conferred on the Department of State by the Paperwork Reduction Act (44 U.S.C. 3506) governing the Department's information collection procedures.

Notwithstanding the provisions of this delegation of authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any function hereby delegated.

This delegation of authority shall be published in the **Federal Register.**

Dated: September 11, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–28424 Filed 10–22–98; 8:45 am]

BILLING CODE 4710–10–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment: Proposed Determination in Section 301 Investigation Concerning Intellectual Property Laws and Practices of the Government of Paraguay

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determination and request for written comments.

SUMMARY: The United States Trade Representative (USTR) is seeking public comment on a proposed determination that certain acts, policies and practices of the Government of Paraguay concerning the protection and enforcement of intellectual property rights are unreasonable and constitute a burden or restriction on United States commerce.

DATES: This action was taken October 16, 1998. Written comments of interested persons are due by noon on November 16, 1998.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864; Kellie Meiman, Director for Mercosur and the Southern Cone, (202) 395–5190; or Geralyn S. Ritter, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: On January 16, 1998, the USTR identified Paraguay as a ''priority foreign country'' under the ''Special 301'' provisions of the Trade Act of 1974, as amended (19 U.S.C. 2242). In identifying Paraguay as a ''priority foreign country,'' the USTR noted deficiencies in Paraguay's acts, policies and practices regarding intellectual proprerty, including a lack of effective action to enforce intellectual property rights. The USTR also observed that the Government of Paraguay had failed to enact adequate and effective intellectual property legislation covering patents, copyrights and trademarks. As required under Section 302(b)(2)(A) of the Trade Act (19 U.S.C. 2412(b)(2)(A)), an investigation of these acts, policies and practices was initiated on February 17, 1998. On August 4, 1998, the investigation was extended until November 17, 1998, in light of the complex and complicated issues involved. Thus, pursuant to section 304(a)(3)(B) of the Trade Act, the USTR must determine on or before November 17, 1998, whether the Government of Paraguay's acts, policies and practices regarding intellectual property are unreasonable and burden or restrict U.S. commerce.

During bilateral negotiations held to resolve these issues, the Government of Paraguay indicated that it has undertaken and will undertake a number of actions to improve the protection of intellectual property rights in Paraguay. For example, since this investigation was initiated, Paraguay has passed new copyright and trademark laws, and has undertaken efforts to legalize government use of software. The Government of Paraguay also has made efforts to improve enforcement of intellectual property rights, including conducting a number of notable recent seizures of counterfeit and pirated products.

Despite these efforts, significant issues remain unresolved. Piracy and counterfeiting of U.S. products continue to be serious problems in Paraguay. Paraguay remains a major transshipment point from which pirated and counterfeit products are distributed to markets throughout Latin America. Pirated and counterfeit products continue to be widely available in retail outlets, particularly in Cuidad del Este. Moreover, the Paraguayan judicial system fails to provide effective relief for violations of intellectual property rights. There are frequent reports that infringers are not prosecuted, that seized products are not destroyed, that cases are often mishandled, and that judges lack sufficient understanding of intellectual property issues. In addition, the recently-passed copyright law fails to provide that copyright piracy is a ''public'' criminal offense, and therefore public prosecutors will not enforce its provisions. Finally, Paraguay appears to have made little progress toward enacting legislation to provide adequate and effective patent protection.

Proposed Determination

If the issues that are the basis for this investigation are not addressed, the USTR proposes to determine pursuant to section 304(a)(1) of the Trade Act that acts, policies, and practices of the Government of Paraguay with respect to the protection and enforcement of intellectual property rights are unreasonable and constitute a burden or restriction on U.S. commerce. In the event the USTR makes such a determination, the USTR also must determine pursuant to section 304(a)(1)(B) what action, if any, to take in response.

Public Comment

In accordance with section 304(b)(1)(A) of the Trade Act, USTR invites the presentation of views of interested persons concerning the determinations required under section 304(a)(1). In particular, written comments should address: (1) The USTR's proposed determination that the Government of Paraguay's acts, policies or practices concerning the protection and enforcement of intellectual property rights are unreasonable and constitute a burden or restriction on U.S. commerce; and (2) what actions, if any, would be appropriate to take in response.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20,593) and must be filed on or before noon on Monday, November 16, 1998. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 416, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301–117) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–117) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12

noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 101.

Joanna K. McIntosh,

Chairperson, Section 301 Committee.

[FR Doc. 98–28441 Filed 10–22–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 16, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4570
Date Filed: October 13, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 MATL–EUR 0034 dated October 6, 1998
Mid Atlantic-Europe Resos r1–31
PTC12 MATL–EUR 0035 dated October 9, 1998 Minutes
PTC12 MATL–EUR Fares 0009 dated October 6, 1998 Tables
Intended effective date: March 1, 1999.

Docket Number: OST–98–4571
Date Filed: October 13, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–JK 0031 dated October 9, 1998
PTC23 EUR–JK 0032 dated October 9, 1998
Expedited Europe-Japan/Korea Resos
r1–002nn r3–002jj
r2–074I r4–015v
Intended effective date: as early as November 15, 1998.

Docket Number: OST–98–4572
Date Filed: October 13, 1998
Parties: Members of the International Air Transport Association
Subject:
PAC/RESO/401 dated October 7, 1998
Expedited Agency Resolutions in Southwest Pacific
Intended effective date: expedited November 1, 1998.

Docket Number: OST–98–4580
Date Filed: October 14, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Reso 033f
Local Currency Rate Changes—Zimbabwe
Intended effective date: November 1, 1998.

Docket Number: OST–98–4581
Date Filed: October 14, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 Telex Mail Vote 963
Roll Back 2% Passenger Increase from Kuwait to Europe
Intended effective date: January 1, 1999.

Docket Number: OST–98–4584
Date Filed: October 14, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0051 dated October 13, 1998 r1–6
PTC23 ME–TC3 0052 dated October 13, 1998 r7–8
Middle East—TC3 Expedited Resos
Intended effective date: as early as December 1, 1998.

Docket Number: OST–98–4585
Date Filed: October 14, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC12 NMS–ME 0065 dated October 2, 1998 r1–18
PTC12 NMS–ME 0066 dated October 2, 1998 r19–37
North Atlantic-Middle East/Israel Resos
PTC12 NMS–ME 0067 dated October 9, 1998 Minutes
PTC12 NMS–ME FARES 0028 dated October 9, 1998 Tables
Intended effective date April 1, 1999.

Docket Number: OST–98–4594
Date Filed: October 16, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Resos 024f (r1) & 033f (r2)
Local Currency Fare/Rate Changes—Botswana
Intended effective date: October 15, 1998.

Docket Number: OST–98–4595
Date Filed: October 16, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 Telex Mail Vote 964
Extend Expire Date on Within-Africa Fares
Intended effective date: December 1, 1998.

Docket Number: OST–98–4596
Date Filed: October 16, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 AFR–TC3 0052 dated October 13, 1998 r1
PTC23 AFR–TC3 0053 dated October 13, 1998 r2
Expedited Africa—TC3 Resos
r1–002ss r2–002tt
Intended effective date: December 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–28511 Filed 10–22–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Carrier Permits Air Filed Under Subpart Q During the Week Ending October 16, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4582.

Date Filed: October 14, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 11, 1998.

Description: Application of Polyot Airlines pursuant to 49 U.S.C. Section 41302, Part 212 and Subpart Q, applies for an initial foreign air carrier permit authorizing it to provide cargo transportation of property and mail on a charter basis between a point or points in the Russian Federation and a point or points in the United States, and other charters.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–28512 Filed 10–22–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–05–U–00–CRW) To Use a Passenger Facility Charge (PFC) at Yeager Airport in Charleston, WV

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 use a PFC at Yeager Airport in Charleston, West Virginia, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 23, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airport Circle, Rm. 101, Beaver, WV 25813–9350.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy C. Murnahan, Assistant Airport Director for the Central West Virginia Regional Airport Authority at the following address: 100 Airport Rd—Suite 175, Charleston, West Virginia 25311–1080.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Central West Virginia Regional Airport Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, 176 Airports Circle, Beaver, West Virginia, 25813, (304) 252–6216. 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 a PFC at Yeager Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 16, 1998, the FAA determined that the application to impose a PFC submitted by the Central West Virginia Regional Airport Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 17, 1998.

The following is a brief overview of the application.

Application number: 98–05–U–00–CRW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1999.

Proposed charge expiration date: April 1, 1999.

Total estimated PFC revenue: $269,678.

Brief description of proposed projects:

Rehabilitate Runway (5–23)
Rehabilitate Terminal (Baggage System)
Rehabilitate Access Road
Rehabilitate Taxiway (C)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Under FAR Part 135—Charter Operators for hire to the general public and Unscheduled Part 121 Charter Operators for hire to the general public.

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: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central West Virginia Regional Airport Authority.

Issued in Jamaica, New York on October 16, 1998.

Thomas Felix,

Manager, Planning and Programming Branch, AEA–610, Eastern Region.

[FR Doc. 98–28476 Filed 10–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33673]

Consolidated Rail Corp.—Operation Exemption—A Line of the State of New York

Consolidated Rail Corporation (Conrail) has filed a verified notice of exemption under 49 CFR 1150.31 to operate railroad trackage owned by the State of New York, a noncarrier. The 10,000 feet of railroad track, known as the Oak Point Link, lies between a point of connection with the Metro-North Commuter Railroad's Hudson Line, in the vicinity of High Bridge, and connects with yard tracks of Conrail through the Harlem River Yard, located in New York, Bronx County, NY.

The transaction was expected to be consummated on October 12, 1998.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33673, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John J. Paylor, Esq., Consolidated Rail Corporation, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 16, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–28398 Filed 10–22–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33660]

Wheeling & Lake Erie Railway Company, Consolidated Rail Corporation, and CSX Transportation, Inc.—Joint Relocation Project Exemption—in New London and Greenwich, OH

Wheeling & Lake Erie Railway Company (W&LE), Consolidated Rail Corporation (Conrail), and CSX Transportation, Inc. (CSXT), have jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to enter into a project involving the relocation of W&LE's line of railroad between New London and Greenwich, OH. The relocation will facilitate more efficient train operations and allow for the removal of unnecessary and duplicative trackage. The proposed transaction was scheduled to take place no sooner than October 2, 1998.

W&LE is a Class II rail carrier operating approximately 850 miles of rail line in 4 states. Conrail is a Class I rail carrier operating approximately

10,500 miles of rail line in 13 states and the District of Columbia. CSXT is a Class I rail carrier operating approximately 18,504 miles of rail line in 20 states, the District of Columbia, and Ontario, Canada.[1]

W&LE proposes to: (1) Acquire overhead trackage rights over a Conrail line between New London and Greenwich; (2) acquire overhead trackage rights over a short segment of CSXT's line which connects with Conrail's line and W&LE's line at Greenwich; (3) construct a short connecting track between its line and Conrail's line at New London to permit operation of the trackage rights; and (4) abandon its own line between New London and Greenwich.[2] There are no active shippers located on the line to be abandoned.

Under the joint agreement, W&LE will have the right to operate its trains over Conrail's line between Conrail milepost 47.0 at New London and CSXT's milepost BG 193.23 at Greenwich, a distance of approximately 7.85 miles.[3] W&LE and Conrail will install turnouts and connecting track totaling approximately 1,100 feet in the southeast quadrant of the intersection of Conrail's line and W&LE's line at New London. W&LE will maintain its existing interchange with CSXT at Greenwich.

The proposed relocation project will permit the consolidation of parallel rail operations onto Conrail's and CSXT's existing lines, which have adequate capacity to handle the traffic of both parties. W&LE will benefit by saving the cost of maintaining and rehabilitating its line, including the cost of maintaining and rehabilitating the existing diamond at New London that will be eliminated as a result of this project. W&LE will also benefit by reusing the rail and obtaining the net proceeds from salvage of its own line. The relocation of W&LE's operations will facilitate construction of the connection between CSXT's line and Conrail's line at Greenwich.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into a new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.CC. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33660, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: William C. Sippel, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710; Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202; and John J. Paylor, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 16, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–28604 Filed 10–22–98; 8:45 am]

BILLING CODE 4915–00–P

[1] *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Lease/Agreements—Conrail Inc. and Consolidated Rail Corporation,* STB Finance Docket No. 33388 [Decision No. 88] (served June 19, 1998).

[2] The trackage rights to be acquired by W&LE include use of the connection to be constructed in the northwest quadrant of the intersection of Conrail's line and CSXT's line at Greenwich. The construction of that connection was authorized by the Board in STB Finance Docket No. 33388 (Sub-No. 3), decision served November 25, 1997.

[3] Under the plan for allocating certain assets of Conrail between CSXT and Norfolk Southern as approved by the Board, Conrail's line between New London and Greenwich will be allocated to New York Central LLC and will be operated by CSXT.

federal register

Friday
October 23, 1998

Part II

Environmental Protection Agency

40 CFR Parts 9, 86, and 89
Control of Emissions of Air Pollution From Nonroad Diesel Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 86, and 89

[AMS–FRL–6155–3]

RIN 2060–AF76

Control of Emissions of Air Pollution From Nonroad Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is finalizing new emission standards for nonroad diesel engines. The affected engines are used in most land-based nonroad equipment and some marine applications. The emission reductions resulting from the new standards will translate into significant, long-term improvements in air quality in many areas of the U.S. For engines in this large category of pollution sources, the standards for oxides of nitrogen and particulate matter emissions will be reduced by up to two-thirds from current standards. Overall, this program will provide much-needed assistance to states facing ozone and particulate air quality problems, which are causing a range of adverse health effects for their citizens, especially in terms of respiratory impairment and related illnesses.

In compliance with the Paperwork Reduction Act, this document announces that the information collection requirements contained in this rule were approved by the Office of Management and Budget.

DATES: The amendments to 40 CFR Parts 86 and 89 are effective December 22, 1998. The amendments to 40 CFR Part 9 are effective October 23, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1998.

ADDRESSES: Materials relevant to this rule, including the Final Regulatory Impact Analysis are contained in Public Docket A–96–40, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

For further information on electronic availability of this final rulemaking, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Alan Stout, U.S. EPA, Engine Programs and Compliance Division, (734) 214–4805; stout.alan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture or introduce into commerce new compression-ignition nonroad engines, vehicles, or equipment, and entities that rebuild or remanufacture nonroad compression-ignition engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of new nonroad diesel engines and equipment.
Industry	Rebuilders and remanufacturers of nonroad diesel engines.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, the reader should carefully examine the regulations, especially the applicability criteria in 40 CFR 89.1, and the existing regulatory language in 40 CFR Part 89. Questions regarding the applicability of this action to a particular entity may be directed to the person listed in **FOR FURTHER INFORMATION CONTACT.**

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language and Final Regulatory Impact Analysis (Final RIA) are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. An 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 Mobile Sources also publishes **Federal Register** actions and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Introduction

Air pollution continues to represent a serious threat to the health and well-being of millions of Americans and a large burden to the U.S. economy. Mobile source emission control programs, however, have a history of technological success that have made a very large contribution to reducing exposure to ambient air pollution. On June 17, 1994, the Environmental Protection Agency (EPA) made an affirmative determination under section 213(a)(2) of the Clean Air Act that nonroad engines are significant contributors to ambient ozone or carbon monoxide (CO) levels in more than one nonattainment area (59 FR 31306, June 17, 1994). In the same notice, EPA also made a determination under section 213(a)(4) that other emissions from compression-ignition (CI) nonroad engines rated at or above 37 kilowatts (kW), specifically emissions of particulate matter (PM) and smoke, cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Also in the June 1994 final rule, EPA set a first phase of emission standards (''Tier 1 standards'') for nonroad diesel engines rated 37 kW and above.[1, 2] In the Notice

[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

of Proposed Rulemaking (NPRM) for this final rule (September 24, 1997, 62 FR 50152), EPA extended the finding under 213(a)(4) to CI nonroad engines rated under 37 kW. A more detailed discussion of the history of emission control programs for nonroad engines and other mobile sources is included in the preamble to the proposal for this rule.

In the NPRM, EPA estimated the contribution of nonroad diesel engines for comparison with other emission sources. For 1996, these engines were estimated to represent about 27 percent of mobile source emissions of oxides of nitrogen (NO_X) and 13 percent of total NO_X emissions. EPA estimates that these engines currently contribute about 48 percent of the directly emitted PM from mobile sources and 16 percent of total controllable PM emissions. In addition to directly emitted PM, EPA estimates that NO_X emissions cause a significant additional amount of PM in the form of secondary nitrate particles. On average nationwide, this indirect PM represents an additional contribution to PM equal to about 30 percent of the total directly emitted PM tonnage. EPA projections also indicate that without further emission controls, the already significant contribution of nonroad diesels to NO_X and PM will increase in the future. Chapter 5 of the Final Regulatory Impact Analysis (Final RIA) presents more complete estimates of emissions from all land-based nonroad diesel engines and marine diesel engines rated under 37 kW.[3]

This final rule is the result of several years of activity focused on reducing diesel engine emissions in the U.S. In 1994 and 1995, states and environmental groups encouraged EPA to adopt more stringent emission standards for highway and nonroad diesel engines to address the need for national pollution reduction measures to improve air quality in many urban areas. In response, EPA initiated discussions with engine manufacturers and other interested parties regarding future emission controls for these engines. EPA subsequently finalized new emission standards for heavy-duty highway engines starting with the 2004 model year (October 21, 1997 62 FR 54695) and proposed the emission requirements for nonroad diesel engines that are finalized in this document (September 24, 1997, 62 FR 50152).

This document finalizes a new set of emission standards for all nonroad diesel engines, except for locomotive engines, engines used in underground mining equipment, and marine engines rated at or above 37 kW. This rule includes first-ever EPA emission standards for emissions from diesel engines rated under 37 kW. The emission reductions resulting from these engines will be a major step in reducing the human health and environmental impacts of ground-level ozone and particulate matter. Emissions from other nonroad engines not covered by this final rule are being addressed in other EPA rulemakings.

As EPA has pursued the emission reductions needed to meet air quality goals, an important consideration has been harmonization with standards for nonroad engines adopted or under consideration in California, Europe, and elsewhere in the world. The goal of harmonization has been a major impetus and an important factor in the development of this rule. The principal goal of harmonization efforts, avoiding widespread duplicative design configurations, has been addressed in finalizing these emission standards. While some differences remain between EPA's final rule and the proposal established in Europe, EPA plans to continue its harmonization work with governments in Europe and in other countries. One major area in which a coordinated effort is being pursued is the development of a more effective particulate emission control program, including the evaluation and possible modification of the certification test cycle, as discussed in Section III.

Based on the information presented in the preamble to the proposed rule and in the Final RIA, EPA believes the new standards are technologically feasible and otherwise appropriate under the Act. Nonetheless, it is clear that a significant amount of research and development will be needed on the part of engine manufacturers and others to comply with the new standards. Accordingly, EPA intends to review the feasibility of some of the standards finalized in this document by 2001, as described in Section III.

II. Content of the Final Rule

This rulemaking includes a comprehensive program to reduce emissions from nonroad diesel engines and equipment. The program as finalized consists of stringent new emission standards, requirements to ensure that engines maintain their level of emission performance as they age, provisions providing compliance flexibility to engine and equipment manufacturers, and a voluntary program to encourage the introduction of low-emitting engines.

A. Emission Standards and Related Provisions

EPA is finalizing new emission standards for PM, CO, and nonmethane hydrocarbons (NMHC) and NO_X combined, covering all nonroad diesel engines except for locomotives, engines used in underground mining equipment, and large (rated at or above 37 kW) engines used in marine applications. Engines not included in this rulemaking are or will be addressed by other federal programs. EPA is finalizing a set of emission standards that vary in level and implementation date, depending on the rated power of the engine and other factors. The Agency believes that the standards finalized in this document are consistent with the Clean Air Act requirement that standards represent the ''greatest degree of emission reduction achievable'' given the criteria specified by the Act (see Section IV below).

1. Emission Standards

In general, new emission standards for engines rated between 37 and 560 kW are finalized in two tiers, building on the phase-in schedule adopted in 1994 in the Tier 1 rule. Table 1 lists the range of standards for the different power categories, including all the tiers of standards with the affected model years. These standards approximate the degree of control anticipated from existing standards covering engines used in heavy-duty diesel highway vehicles, with appropriate consideration of differences in the sizes and operational characteristics of the engines and in the organization of the industries. Specifically, the first set of new standards (Tier 2) generally parallel the emission standards that apply beginning with 1998 model year highway engines (58 FR 15781, March 24, 1993). The second set of new standards (Tier 3) parallel standards that apply beginning with 2004 highway engines (October 21, 1997, 62 FR 54695). The standards for engines rated at or above 37 kW become effective in the 2001 to 2006 time frame for Tier 2 levels and 2006 to 2008 for Tier 3 levels.

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other fuels may also be used. This contrasts with otto-cycle engines (also called spark-ignition or SI engines), which typically operate on gasoline.

[2] This rulemaking is based on metric units. With the exception of engine power ratings, English units are included parenthetically throughout the preamble. The conversion of engine power ratings is included in Table 1, but is not repeated in the rest of the document.

[3] See also, ''Nonroad Engine and Vehicle Emission Study—Report and Appendices,'' EPA–21A–201, November 1991 (available in Air Docket A–96–40).

Table 1
Emission Standards in g/kW-hr (g/hp-hr)

Engine Power	Tier	Model Year	NMHC + NOx	CO	PM
kW<8 (hp<11)	Tier 1	2000	10.5 (7.8)	8.0 (6.0)	1.0 (0.75)
	Tier 2	2005	7.5 (5.6)	8.0 (6.0)	0.80 (0.60)
8≤kW<19 (11≤hp<25)	Tier 1	2000	9.5 (7.1)	6.6 (4.9)	0.80 (0.60)
	Tier 2	2005	7.5 (5.6)	6.6 (4.9)	0.80 (0.60)
19≤kW<37 (25≤hp<50)	Tier 1	1999	9.5 (7.1)	5.5 (4.1)	0.80 (0.60)
	Tier 2	2004	7.5 (5.6)	5.5 (4.1)	0.60 (0.45)
37≤kW<75 (50≤hp<100)	Tier 2	2004	7.5 (5.6)	5.0 (3.7)	0.40 (0.30)
	Tier 3	2008	4.7 (3.5)	5.0 (3.7)	—
75≤kW<130 (100≤hp<175)	Tier 2	2003	6.6 (4.9)	5.0 (3.7)	0.30 (0.22)
	Tier 3	2007	4.0 (3.0)	5.0 (3.7)	—
130≤kW<225 (175≤hp<300)	Tier 2	2003	6.6 (4.9)	3.5 (2.6)	0.20 (0.15)
	Tier 3	2006	4.0 (3.0)	3.5 (2.6)	—
225≤kW<450 (300≤hp<600)	Tier 2	2001	6.4 (4.8)	3.5 (2.6)	0.20 (0.15)
	Tier 3	2006	4.0 (3.0)	3.5 (2.6)	—
450≤kW≤560 (600≤hp≤750)	Tier 2	2002	6.4 (4.8)	3.5 (2.6)	0.20 (0.15)
	Tier 3	2006	4.0 (3.0)	3.5 (2.6)	—
kW>560 (hp>750)	Tier 2	2006	6.4 (4.8)	3.5 (2.6)	0.20 (0.15)

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The standards finalized in this document for engines rated under 37 kW are the first EPA emission standards for these engines. The Tier 1 standards will be phased in by power category beginning in 1999, with Tier 2 standards phased in by power category beginning in 2004. Tier 3 standards are not being set for these engines, or for engines rated over 560 kW, in this rule.

In power categories for which Tier 3 standards are finalized, the Agency has chosen not to include more stringent PM standards. As discussed in Section III below, EPA has a number of reasons for deferring the establishment of a Tier 3 PM control program at this time, but is actively working toward this goal. The Agency believes that Tier 3 PM standards will be more appropriately discussed in the context of the improved technical understanding that will exist by the time of the 2001 feasibility review, also discussed in Section III.

EPA will maintain the current smoke standards for nonroad diesel engines rated at or above 37 kW and will extend the applicability of these standards to nonroad diesel engines rated under 37 kW, except 1-cylinder engines and marine propulsion engines. In addition, constant-speed engines are being exempted from smoke regulations. This is discussed in detail in Section II.H.

2. Related Provisions

a. Definition of Compression-Ignition. The requirements of 40 CFR Part 89 apply to all compression-ignition engines. Most current compression-ignition engines burn diesel fuel and operate over the conventional diesel cycle, which generally allows interchangeable use of the terms ''compression-ignition,'' ''diesel-cycle,'' and ''diesel.'' Some of these engines, however, can be modified to operate on other fuels such as natural gas or liquefied petroleum gas. Because these engines do not clearly fall into existing engine categories, EPA proposed a definition for nonroad compression-ignition engines that follows from definitions established for highway engines. The proposed definition focuses on the engine cycle, rather than the ignition mechanism, with the presence of a throttle as an indicator to distinguish between diesel-cycle and otto-cycle operation. Use of a throttle to regulate power (not just to maintain smooth low-load operation) corresponds with otto-cycle operation. Regulating power by controlling the fuel supply in lieu of a throttle corresponds with lean combustion and diesel-cycle operation. This language allows the possibility that a natural gas-fueled engine equipped with a sparkplug will be considered a compression-ignition engine, but EPA continues to believe that the proposed definition is the best way to segregate these engines. Nonroad engines fueled by natural gas could then fall under emission standards for nonroad diesel engines, finalized in this document, or for nonroad spark-ignition engines, which are currently under development. The supporting documentation for EPA's introduction of emission standards for methanol-fueled engines provides a more complete consideration of the different technologies involved and lays out a rationale for this conclusion.[4] To allow adequate time to certify engines that may be affected, this definition will take effect beginning January 1, 2000.

b. Hobby Engines. Many extremely small engines used to power model airplanes, model boats, and other such hobby equipment qualify as nonroad compression ignition engines. EPA is not establishing an emission standard for these small hobby engines at this time. These engines are designed and operated very differently than larger engines used in other applications. The Agency is not aware of information about these engines that would allow an assessment of the feasibility of the proposed standards, or help to establish feasible alternative standards, taking into consideration the factors relevant under section 213(a)(3) of the Act. Also, it is not clear whether such small engines could be appropriately and consistently tested with existing equipment, or, if so, whether any of the test cycles described below would adequately represent the in-use operation of these engines. Furthermore, EPA could not realistically impose the proposed useful life requirements or the warranty and maintenance interval provisions on these engines given their limited durability and frequent adjustment by the user. It should be noted that these engines have a low average annual hours of usage and an extremely low power output, and therefore contribute very little to the emissions inventory.

Although there are many distinguishing features of this hobby class of engines, the comments received on the proposal indicate that per-cylinder displacement provides an adequate and simple basis for distinguishing this class from other types of engines. Even though the Agency lacks the information that would allow a precise determination of the displacement level above which the proposed standards can be considered feasible, a displacement of 50 cubic centimeters per cylinder is well above the displacement level that is typical of this class of engines, and well below that of the smallest engines outside this group. Therefore, the final rule excludes engines with a displacement of less than 50 cubic centimeters per cylinder from the emissions standards in Part 89.

c. NMHC Measurement. EPA in this final rule changes from a measurement of total hydrocarbons to nonmethane hydrocarbons. There is, however, no standardized method for measuring methane in diesel engine exhaust. Therefore, EPA will allow manufacturers to develop and use their own procedure to analyze nonmethane hydrocarbons, with prior approval from EPA, or measure total hydrocarbons and subtract 2 percent from the measured hydrocarbon mass to correct for methane.

d. Selective Enforcement Audits. In the Tier 1 rule, the Agency adopted a program of Selective Enforcement Audits (SEAs) to ensure that actual production engines meet the emissions standards. The Agency is not making changes to this program. However, recognizing that engine manufacturers will be required to undertake significant engineering challenges in relatively short time frames in order to meet the Tier 2 and Tier 3 standards adopted in this rulemaking, including the challenge of stabilizing initial production variability, EPA will only impose SEAs during the first year in which a standard is in effect for those engine families where strong evidence exists that SEA failure would be likely.

B. Test Procedures

The standards finalized in this document are based on the use of EPA's existing steady-state (modal) test procedures. In addition, new steady-state test cycles are specified for constant-speed engines, marine propulsion engines, and engines rated under 19 kW. The Agency and the industry are working to better understand the sensitivity of nonroad diesel engine emissions to the test cycle, as discussed in Section III. The following sections describe EPA's selection of various test cycles and fuel specifications.

1. Test Cycles

Compliance with emission standards is determined by measuring emissions while operating engines over a prescribed test cycle. The final rule, following the practice established in the

[4] ''Summary and Analysis of Comments on the Notice of Proposed Rulemaking for Emission Standards and Test Procedures for Methanol-Fueled Vehicles and Engines,'' EPA, January 1989.

Tier 1 rule, specifies a cycle that is nominally the same as the International Organization for Standards (ISO) 8178 C1 test cycle as the principle test cycle for measuring emissions from most engines. Additional cycles are defined for specific engine types. Engines that are limited by design to constant-speed operation will be subject to testing using a test cycle equivalent to the ISO 8178 D2 cycle. This cycle, which omits idle and intermediate-speed modes from the C1 cycle, is representative of engines such as generators, which are designed never to run at these omitted speeds.[5] Because of the more limited range of engine operation in the D2 cycle, manufacturers must ensure that engines certified with data generated with the D2 cycle are used exclusively in constant-speed applications. Accordingly, these engines must include labeling information indicating this limited emission certification.

For variable-speed engines rated under 19 kW, EPA is specifying a test cycle that is equivalent to the ISO 8178 G2 cycle. The G2 cycle includes the same modes as the D2 cycle and adds a mode for operation at idle. The G2 and D2 cycles also have different weighting factors for the various modes. The G2 cycle was developed to represent the operation of small diesel engines used primarily at rated speed, such as in lawn and garden applications, generators, pumps, welders, and air compressors. EPA is specifying a test cycle equivalent to the ISO 8178 E3 cycle for testing propulsion marine engines rated under 37 kW. The E3 cycle, which consists of engine operation at four different engine speeds and four different loads, was developed by ISO to represent the operation of propulsion marine engines, and has been supported by an Agency investigation. Auxiliary marine engines subject to this rule (i.e., engines installed on a marine vessel, but not used for propulsion) will be tested using the either G2, C1, or D2 test cycles, consistent with the constraints described above for the counterpart land-based nonroad engines.

Finally, EPA will generally allow manufacturers to use the C1 test cycle to generate certification data for engines otherwise required to use the D2 or G2 test cycle. EPA will also allow manufacturers to use the C1 test cycle to generate certification data for propulsion marine engines where such engines are included in a land-based engine family. In each of these cases in which the manufacturer elects to use the C1 cycle, EPA would retain its ability to test using the respective G2, D2, or E3 test cycle, but would also be able to test using the C1 test cycle. Additional discussion of EPA plans for further evaluation and development of appropriate test cycles is provided in Section III.

2. Test Fuel

Section 206(h) of the Clean Air Act requires that test fuels be representative of in-use conditions. Therefore EPA is updating the specifications for the sulfur content in diesel test fuels to make them more representative of in-use fuels. EPA is finalizing test fuel specifications with a sulfur specification of 0.03 to 0.40 weight-percent (wt%), which covers the range of sulfur levels observed for most in-use fuels. The final sulfur specifications are slightly different from that proposed (0.05 to 0.5 wt%), because EPA believes the final specification more appropriately covers the range of sulfur levels found in the majority of in-use fuels. Manufacturers will be free to test using any fuel within this range. Thus, they will be able to harmonize their nonroad test fuel with either on-highway testing (<0.05 wt%) or with European testing (0.1 to 0.2 wt%). Testing conducted by EPA would use test fuels typical of in-use fuels.

At this time, EPA believes that the average sulfur level of diesel fuel being used in current nonroad engines is on the order of 0.2 wt%. In order to provide manufacturers with some certainty regarding how EPA will implement its test fuel policy, the Agency is including a regulatory provision specifying that it will use test fuels with sulfur levels no greater than 0.20 wt% when it performs testing of Tier 1 engines and Tier 2 engines rated at or above 37 kW. EPA is not applying this provision to Tier 3 engines or Tier 2 engines rated under 37 kW because those standards do no take effect for some time, and EPA has no basis for determining what the properties of in-use fuels for these engines will be. Moreover, EPA has not determined that it would be an appropriate long-term policy to specify a narrow range for the sulfur specification. This would be especially true for engines utilizing catalytic aftertreatment to reduce particulate emissions. Such engines may comply with the emission standards when tested using a moderately low sulfur fuel, but have much higher particulate emissions when using a higher sulfur fuel with a sulfur level between 0.3 and 0.4 wt%. Although not addressing it at this time, EPA intends to examine test fuels for Tier 3 engines and Tier 2 engines rated under 37 kW in its 2001 feasibility review.

In the 1994 final rule, EPA allowed manufacturers to test for certification of PM emission levels using the low-sulfur test fuel specified by the California Air Resources Board (California ARB) for nonroad diesel engines, with a maximum sulfur content of 0.05 wt%. EPA's objective was to minimize any difference from the protocol previously established for California, because EPA finalized PM standards for engines rated over 130 kW only in response to industry's request to adopt California's PM standard, which was not considered technology-forcing. Under those previous regulations, testing with federal test fuel involved an optional adjustment of measured PM levels to account for the higher PM emissions associated with the higher fuel sulfur content.

Effective with the Tier 2 standards (and Tier 1 standards for engines rated under 37 kW), EPA is eliminating the particulate adjustment factor for test fuels with different sulfur levels. Such an adjustment, while potentially appropriate for an initial, modest particulate emission control program for a newly regulated industry, is not appropriate as a long-term policy. EPA is now establishing PM standards that will require meaningful reductions from all sizes of engines used nationwide. The Clean Air Act requires EPA to ensure that the test procedure, including fuel specifications, adequately represent in-use operation. Moreover, EPA has significant concerns regarding the accuracy of the previously used adjustment factor equation, which was based on limited data. However, even if more complete data were available, it would not be possible for a single adjustment factor equation to accurately predict the effect of different sulfur levels on particulate emissions for each engine model. This is because the effect of sulfur levels on particulate emissions can vary significantly from engine family to engine family, especially for engines with and without aftertreatment.

EPA recognizes that the sulfur level of test fuels has an effect on the stringency of the standards, and that the elimination of the particulate adjustment factor has the effect of making the particulate standards more stringent than they otherwise would have been. Using the calculated adjustment to PM emission levels for fuel sulfur finalized in 1994, the difference between 0.20 and 0.05 wt% would result in an adjustment on the order of 0.03 grams per kilowatt-hour (g/

[5] For a description of the development of the D2 cycle, see ''Exhaust Emission Testing of Diesel Engines for Industrial Applications,'' (Docket A–96–40, item II-D–26).

kW-hr) (0.02 grams per horsepower-hour (g/hp-hr)) in PM emission levels. (Testing for NO_X, NMHC, CO, and smoke is not affected, since the 1994 final rule already specified that federal test fuel was appropriate without adjustment for measuring emissions of those pollutants.) However, EPA has considered this effect in making its determination that the standards being adopted in this rulemaking are feasible.

C. Durability

To achieve the full benefit of the emissions standards, programs are necessary to encourage manufacturers to design and build engines with durable emission controls and encourage the proper maintenance and repair of engines throughout their lifetime. The goal is for engines to maintain good emission performance throughout their in-use operation.

When the Tier 1 standards for engines rated at or above 37 kW were developed, deterioration was not expected to be a problem for two reasons. First, the Tier 1 standards were not considered by EPA to be technology forcing. Second, the focus was on NO_X control and NO_X emissions performance was thought not to deteriorate for these engines. As a result, there are few requirements in the current regulations that address deterioration concerns for nonroad diesel engines. As tighter standards are put into place, EPA believes that it becomes necessary to adopt measures to address concerns about possible in-use emission performance degradation.

EPA is making some changes to the existing durability program, as the new standards are phased in, to help ensure that engines meet applicable standards in use. The specific areas of the durability program that are being focused on here are useful life, warranty period, deterioration factors, allowable maintenance intervals, and rebuilding requirements.

1. Useful Life

Currently, nonroad diesel engines rated at or above 37 kW are defined, for emission control purposes, to have a useful life of 8,000 hours or 10 years, whichever occurs first. The in-use testing liability period is currently 6,000 hours or 7 years, whichever occurs first. Based on a study performed for EPA, this is representative of the average time until first rebuild for the majority of nonroad diesel engines.[6] EPA is making no changes to these requirements.

EPA is adopting a shorter useful life and liability period for engines rated under 37 kW than for larger engines. Based on EPA's current understanding, these smaller engines have a shorter life expectancy. Also, engines rated under 37 kW that operate constantly at high speeds (at or above 3000 revolutions per minute (rpm)) and very small engines (those rated under 19 kW) have a shorter life expectancy than other small engines. As a result, EPA has adjusted the useful lives and liability periods for these engines accordingly. Table 2 presents the specified useful lives and in-use testing liability periods being adopted.

TABLE. 2—USEFUL LIFE AND RECALL TESTING PERIODS

Power rating	Rated engine speed	Useful life		Recall testing period	
		Hours	Years	Hours	Years
<19 kW	All	3,000	5	2,250	4
19–37 kW	Constant speed engines @≥3,000 rpm	3,000	5	2,250	4
	All others	5,000	7	3,750	5

Liability periods were based on the ratio of useful life and liability periods established for engines rated at or above 37 kW. The purpose of having liability periods that are shorter than the useful lives is to ensure that engines used in recall testing are not statistical outliers with poor emissions durability. However, if a recall were ordered, all engines in that family would be subject to the recall regardless of their age.

2. Warranty Period

Tied to the useful life is the minimum warranty period imposed by the Clean Air Act on manufacturers of nonroad engines. Currently, the minimum warranty period for nonroad diesel engines rated at or above 37 kW is 3,000 hours or 5 years of use, whichever occurs first. EPA is extending this minimum warranty period to most engines rated between 19 and 37 kW; however, for engines under 19 kW and for 19 to 37 kW constant speed engines rated at 3000 rpm and above, EPA is specifying a warranty period of 1,500 hours or 2 years, whichever occurs first. The shorter warranty requirement for these engines is due to their shorter useful lives.

3. Deterioration Factors

In the Tier 1 nonroad engine rule, EPA did not require manufacturers to accumulate operating time on durability data engines or to generate deterioration factors for engine certification because that rule focused on modest reductions in NO_X emissions, requiring emission control technologies that were not expected to deteriorate. Analysis of highway engine data at that time led EPA to conclude that heavy-duty diesel engines do not generally produce more NO_X emissions as they get older. EPA believes that this stability of emission control can be attributed to the fact that diesel engine manufacturers have met emission standards through internal improvements to the engine and fuel systems, rather than relying on aftertreatment and other devices that would be more susceptible to in-use degradation. In fact, engine deterioration in current technology nonroad diesel engines could result in lower NO_X emission levels due to a loss in cylinder compression.

As NO_X, NMHC, and PM standards are made more stringent and nonroad diesel engine manufacturers introduce new technologies solely for emission control purposes, such as aftertreatment, sophisticated fuel delivery controls, and exhaust gas recirculation (EGR), long-term emissions performance becomes a greater concern. In addition, emission deterioration characteristics are not well known for aftertreatment, EGR, and other more sophisticated emission control strategies.

EPA will require the application of deterioration factors (DFs) to all engines covered by this rule. The DF is a factor applied to the certification emission test data to represent emissions at the end of the useful life of the engine. Separate DFs apply to each measured pollutant, except that a combined NMHC + NO_X DF applies to engines that do not use aftertreatment devices, consistent with the form of the standard. Consistent

[6] ICF Incorporated, ''Industry Characterization: Nonroad Heavy Duty Diesel Engine Rebuilders,'' prepared for U.S. Environmental Protection Agency, Contract 68–C5–0010, WAN 102, January 3, 1997, (Docket A–96–40, item II–A–02).

with the approach taken in other EPA programs, decreasing emissions of one pollutant over time would not be allowed to offset increasing emissions of the other pollutant in this combined DF. Currently, DFs are required for highway heavy-duty engines but are only required for nonroad diesel engines rated at or above 37 kW if engines use aftertreatment technologies. Deterioration factors for those engines are to be determined by the engine manufacturers in accordance with good engineering practices. EPA has not set a specified procedure. The deterioration factors are nevertheless subject to EPA approval.

It is not EPA's intent to force a great deal of data gathering on engines using established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. EPA's main interest is that technologies with unproven durability in nonroad applications, such as EGR, are demonstrated to meet emission requirements throughout their useful lives. However, because this rule creates a program that will introduce new standards and new technologies over many years, the DF requirement is being finalized for all engines so that EPA can be sure that reasonable methods are being used to ascertain the capability of engines to meet standards throughout their useful lives. This DF program will allow EPA to act in the traditional role of establishing emission performance standards, rather than putting EPA in a position in which it would appear to be prejudging the durability of specific technologies and designs.

Similar to the provisions for highway engines, EPA will allow the nonroad engine manufacturers the flexibility of using durability emission data from a similar engine that has either been certified to the same standard or for which all of the data applicable for certification has been submitted. In addition, EPA is extending this flexibility to allow deterioration data from highway engines to be used for similar nonroad engine families.

EPA is especially concerned that an unnecessarily burdensome durability demonstration not be required for engines using established technology for which the manufacturers have the experience to determine appropriate deterioration factors. In these cases, EPA will allow nonroad engine manufacturers to perform an analysis, based on good engineering practices, in place of actual service accumulation. For instance, in the case where no durability data exists for a certain engine but both smaller and larger engines using similar technology have been shown not to deteriorate for NO_X in use, it would be possible to build a case showing no NO_X deterioration for that engine. EPA is allowing engines to be considered as using established technologies if they do not meet the Tier 3 emission standards, unless they use EGR or aftertreatment devices. In addition, manufacturers of engines that do meet the Tier 3 standards but have technologies similar to those employed in Tier 2 designs may also rely on engineering analysis in lieu of actual service accumulation, with prior EPA approval.

Because there may be insufficient time for manufacturers of engines rated below 37 kW to verify DFs before the Tier 1 compliance dates, the Agency is allowing manufacturers to specify DFs for these engines in model years 1999 and 2000 based on good engineering judgement using reasonably available information. Any requests for carryover of these models into the 2001 model year would need to include justification of DFs under the new requirements.

4. Allowable Maintenance Intervals

Manufacturers are currently required to furnish the ultimate purchaser of each new nonroad engine with written instructions for the maintenance needed to ensure proper functioning of the emission control system. Generally, manufacturers require the owners to perform this maintenance as a condition of their emission warranties. Further, the performance of maintenance would be considered during any in-use recall testing conducted by the Agency.

For the engines covered in this action, EPA believes that there is a need to limit the minimum maintenance intervals specified by the manufacturers, to ensure that the technologies employed are practical in use. Because the actual maintenance intervals for nonroad engines are likely to be similar to highway engines, EPA proposed maintenance requirements parallel those for highway engines (40 CFR 86.094–25).

There are two aspects to the implementation of allowable maintenance interval requirements. The first relates to the maintenance instructions specified by manufacturers in users manuals. The second concerns how often maintenance has been or will be performed on engines undergoing testing to verify compliance with emission standards. Ideally these would be consistent. However, due to concerns about the need for more frequent maintenance in the severe operating environments that nonroad engines sometimes operate in, EPA is focusing its allowable maintenance interval requirements on testing performed by manufacturers to demonstrate compliance. This testing would not, of course, occur in severe operating environments. Manufacturers have a business incentive to avoid specifying overly frequent maintenance in user manuals, and so EPA is not, at this time, insisting that the intervals be reflected in user manuals. In addition, manufacturers may adopt shorter intervals for engines rated below 19 kW and 19 to 37 kW constant speed engines rated at 3000 rpm and above, subject to EPA approval. Subject to these modifications, the Agency is finalizing the proposed allowable maintenance interval requirements.

The following minimum intervals are being adopted for adjustment, cleaning, repair, or replacement of various components:

At 1,500 hours, and 1,500-hour intervals thereafter:

1. EGR related filters and coolers
2. Positive crankcase ventilation valve
3. Fuel injector tips (cleaning only)

At 3,000 hours, and 3,000-hour intervals thereafter for engines rated under 130 kW or 4,500-hour intervals thereafter for engines rated over 130 kW:

1. Fuel injectors
2. Turbocharger
3. Electronic engine control unit and its associated sensors and actuators
4. PM trap or trap-oxidizer system
5. EGR system (including all related control valves and tubing)
6. Catalytic convertor
7. Any other add-on emissions-related component

Add-on emission-related components are those whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control, yet not significantly affect the performance of the engine.

In addition, EPA is defining the following components as critical emission-related components:

1. Catalytic convertor
2. Electronic engine control unit and its associated sensors and actuators
3. EGR system (including all related filters, coolers, control valves and tubing)
4. Positive crankcase ventilation valve
5. PM trap or trap-oxidizer system
6. Any other add-on emissions-related component

If maintenance is scheduled on critical emission-related components in-use, EPA requires that the manufacturer show the reasonable likelihood that the maintenance will, in fact, be performed

in use. The regulations list options for this demonstration, including showing that performance would degrade without maintenance, providing survey data showing that the maintenance is performed, using a visible signal system, offering free maintenance, and other methods approved by the Administrator. These special provisions do not apply to critical emission-related components for which no maintenance is specified over the useful life of the engine.

5. Rebuilding Requirements

In this action, EPA is addressing two concerns regarding the rebuilding of nonroad diesel engines, both related to new emission-related components that may be added to the engine to meet the new standards. First, EPA is concerned that during engine rebuilding, there may not be an incentive to check and repair emission controls that do not affect engine performance. Second, EPA is concerned that there may be an incentive to rebuild engines to an older configuration due to real or perceived performance penalties associated with technologies that would be used to meet the standards finalized in this document. Such practices would likely result in a loss in emission control.

EPA is requiring that parties involved in the process of rebuilding or remanufacturing engines (which may include the removal of the engine, rebuilding, assembly, reinstallation and other acts associated with engine rebuilding) must follow the provisions listed below to avoid tampering with the engine and emission controls. The applicability for these provisions is based on the date the engine was originally built. The rebuild requirements only apply to engines subject to the new standards being established in this rule.

(1) During engine rebuilding, parties involved must have a reasonable technical basis for knowing that the rebuilt engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, and specifications), and must identify the model year(s) of the resulting engine configuration. This allows for a rebuilder who is unable to identify the original certified configuration to rebuild the engine to any certified configuration.

(2) When an engine is being rebuilt and remains installed or is reinstalled in the same piece of equipment, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a certified configuration that is equivalent, from an emissions standpoint, to the engine being replaced. This allows for rebuilt engine configurations that, although of a different model year than the original engine, were designed for the same tier of emission standards. If the replacement engine is new, it must also meet the requirements of 40 CFR 89.1003(b)(7), discussed in section II.E.3 below.

(3) At the time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes. Diagnostic systems must be free of all such codes when the rebuilt engines are returned to service. Further, such signals may not be rendered inoperative during the rebuilding process.

(4) When conducting an in-frame rebuild or the installation of a rebuilt engine, all emission-related components not otherwise addressed by the above provisions must be checked and cleaned, repaired, or replaced where necessary, following manufacturer recommended practices.

Under this final rule, any person or entity engaged in the process, in whole or part, of rebuilding engines who fails to comply with the above provisions may be liable for tampering. Parties are responsible for the activities over which they have control and as such there may be more than one responsible party for a single engine in cases where different parties perform different tasks during the engine rebuilding process (e.g., engine rebuild, full engine assembly, installation). EPA has included no certification or in-use emissions requirements for the rebuilder or engine owner in this final rule.

EPA has adopted modest recordkeeping requirements that EPA believes are in line with customary business practices. The records must be kept by persons involved in the process of nonroad engine rebuilding or remanufacturing and shall include the best available information on the total operating hours at time of rebuild and a list of the work performed on the engine and related emission control systems, including a list of replacement parts used, engine parameter adjustments, design element changes, and work performed as described in item (4) of the rebuild provisions above. EPA now requires that such records be kept for two years after the engine is rebuilt.

Under this final rule, parties are required to keep the information for two years but are allowed to use whatever format or system they choose, provided that the information can be readily understood by an EPA enforcement officer. EPA will not require that parties keep information that they do not have access to as part of normal business practice. In cases where it is customary practice to keep records for engine families rather than specific engines, where the engines within that family are being rebuilt or remanufactured to an identical configuration, such recordkeeping practices should be satisfactory. Rebuilders may use records such as build lists, parts lists, and engineering parameters of the engine families being rebuilt rather than keeping information on individual engines, provided that each engine is rebuilt in the same way to those specifications.

D. Averaging, Banking, and Trading

In this final rule, EPA is replacing the existing nonroad engine averaging, banking, and trading (ABT) program with a comprehensive new program. EPA believes the revised program is an important element in making the stringent emissions standards adopted in this final rule appropriate with regard to technological feasibility, lead time, and cost. The revised ABT program is intended to enhance the flexibility offered to engine manufacturers that will be needed in transitioning their entire product lines to meet the stringent NMHC + NO_X standards and the PM standards being adopted. The ABT program also encourages the early introduction of cleaner engines, thus securing earlier emission benefits. It should be noted that as part of the 2001 feasibility review described earlier, the Agency plans to reassess the appropriateness of the averaging, banking, and trading provisions applicable to nonroad diesel engines and modify the provisions if deemed necessary.

The revised ABT program will apply to all nonroad diesel engines subject to Part 89. The following discussion of the revised ABT provisions is divided into two sections. The first section describes the provisions for engines rated at or above 37 kW. The second section describes the provisions for those engines rated under 37 kW, including land-based and marine engines, both of which are currently unregulated by EPA.

1. Revised Program for Engines Rated at or Above 37 kW

The following section is divided into two subsections and describes the revised ABT program for engines at or above 37 kW. The first subsection describes the general provisions

applicable to all engines. The second subsection describes several provisions specific to engines certified to the existing Tier 1 standards for engines at or above 37 kW.

a. General Provisions. Beginning with the Tier 2 standards, the form of the standard changes from separate hydrocarbon and NO_X standards to a combined NMHC + NO_X standard. Therefore, once the Tier 2 standards take effect, credits will be based on combined NMHC + NO_X values. In the Tier 2 time frame, NMHC + NO_X credits will be generated against the Tier 2 standards, which vary from 6.4 to 7.5 g/kW-hr (4.8 to 5.6 g/hp-hr), depending on the power rating of the engine. In the Tier 3 time frame, NMHC + NO_X credits will be generated against the Tier 3 standards, which vary from 4.0 to 4.7 g/kW-hr (3.0 to 3.5 g/hp-hr), depending on the power rating of the engine.

The existing Tier 1 ABT program for nonroad engines does not cover PM emissions. Beginning with the introduction of Tier 2 engines, EPA is including PM emissions in the ABT program in order to provide manufacturers with greater flexibility in complying with the new PM standards. (As described later, EPA is allowing the early banking of PM credits from Tier 1 engines.) All PM credits will be generated against the Tier 2 standards until EPA adopts subsequent PM standards. Because EPA is including both NMHC + NO_X and PM in the ABT program and given the tradeoff between NO_X and PM emissions, manufacturers will not be allowed to generate credits against the applicable standard for one pollutant while using credits against the applicable standard for another pollutant on the same engine family.

EPA is setting upper limits to the family emission limit (FEL) values that may be declared under the new standards. EPA is adopting an NMHC + NO_X FEL upper limit of 10.5 g/kW-hr (7.9 g/hp-hr) for engines at or above 130 kW certified in the Tier 2 time frame. For Tier 2 engines at or above 37 kW and less than 130 kW, EPA is adopting a NMHC + NO_X FEL upper limit of 11.5 g/kW-hr (8.6 g/hp-hr). For Tier 3 engine families, the NMHC + NO_X FEL upper limits are the Tier 2 NMHC + NO_X standards for the same power category of engines.

For PM, EPA is adopting a PM FEL upper limit of 0.54 g/kW-hr (0.40 g/hp-hr) for engines at or above 130 kW certified in the Tier 2 time frame. Engines at or above 37 kW and less than 130 kW will have a PM FEL upper limit of 1.2 g/kW-hr (0.9 g/hp-hr) for Tier 2 engines. (EPA is not adopting a PM FEL upper limit beyond Tier 2 because EPA is not adopting Tier 3 PM standards at this time.)

There are several other provisions EPA is adopting for the revised ABT program. EPA is replacing the three year credit life provision of the existing ABT program with no limit on credit life. In addition, EPA is eliminating the ''buy high/sell low'' power conversion factor provision of the existing ABT regulations and replacing it with a sales-weighted average power value. EPA is including an adjustment in the calculation of credits for the useful life of the engine. (The existing ABT program does not include any adjustment for useful life to the credit calculations.) EPA is also allowing manufacturers to include engines certified to meet the State of California's standards in the revised ABT program because the California ARB is expected to adopt the same standards for their nonroad compression-ignition engine control program.

In a similar manner to the existing ABT provisions for Tier 1 engines at or above 37 kW, EPA is not requiring any discounting of credits from Tier 2 or Tier 3 engines with this final rulemaking. EPA plans to monitor the emission levels of engines and the use of the ABT program over the next few years. EPA will take this information into account and plans to reassess the appropriateness of not having any discounting of credits from Tier 2 and Tier 3 engines as part of the 2001 feasibility review.

Finally, EPA has decided not to finalize two ABT provisions discussed in the proposal for this rule. First, as discussed later in the equipment manufacturer flexibility section, EPA is not adopting the proposed provision that would have given engine manufacturers the option to trade the NMHC + NO_X and PM credits generated by their engines to equipment manufacturers. This is discussed further in Section II.E of this final rule. Second, EPA is not adopting a restriction which would have limited the use of PM credits to the power category in which the credits were generated. As with the existing Tier 1 ABT program, credits may be exchanged across all power categories at or above 37 kW. (As described below, there are some restrictions on the trading of credits for engines below 37 kW and trading credits between land-based applications and marine applications.)

b. Special Provisions for Tier 1 Engines. As described above, EPA is replacing the existing ABT program with a comprehensive new program. Based on EPA's experience with Tier 1 certification and because of implementation differences between the existing Tier 1 provisions and the newly adopted Tier 2 and later provisions, EPA is adopting two changes that will specifically affect engines certified to the existing Tier 1 standards. First, EPA is adopting a methodology for calculating NO_X credits earned from Tier 1 engines that can be used for showing compliance with the Tier 2 NMHC + NO_X standards. Second, EPA is allowing engine manufacturers to bank early PM credits from Tier 1 engines that can be used once the newly adopted Tier 2 standards take effect. The changes noted in the general provisions discussion above, including the unlimited life, use of average power for credit calculations, and useful life adjustment, will also apply to engines certified to the existing Tier 1 standards.

With regard to the generation of NO_X credits from engines certified to the existing Tier 1 standards, EPA will continue to allow manufacturers to earn NO_X credits, but not NMHC + NO_X credits. The NO_X credits earned on engines certified to the existing Tier 1 standards can be used to show compliance with the current Tier 1 NO_X standard or the newly adopted Tier 2 NMHC + NO_X standards. However, due to concerns over the potential to delay the Tier 3 standards with credits earned from Tier 1 engines, the NO_X credits earned on engines certified to the existing Tier 1 standards cannot be used to show compliance with the newly adopted Tier 3 NMHC + NO_X standards.

With regard to the calculation of NO_X credits from Tier 1 engines that are to be banked or traded and subsequently used for Tier 2 NMHC + NO_X compliance, EPA is requiring that the value of the NO_X credits be discounted unless the engine on which the credits were earned is below the applicable Tier 1 standard by a specified amount. EPA believes this requirement is appropriate due to concerns that manufacturers could potentially earn significant NO_X credits from their current Tier 1 engines and delay compliance with the Tier 2 standards, and also to encourage the pull-ahead of newer and cleaner technologies. (Credits from Tier 1 engines that are to be used to show compliance for other Tier 1 engines, are not required to be discounted.) EPA is adopting a trigger mechanism to distinguish between Tier 1 engine families which are eligible for no adjustment and those families which must be adjusted. For engine families certified with a NO_X FEL at or below 8.0 g/kW-hr (6.0 g/HP-hr), no discount will be applied to any NO_X credits. For engine families certified at a NO_X FEL above the 8.0 g/kW-hr trigger in the Tier

1 time frame, the value of the NO_X credits will be discounted by 35 percent.

With regard to PM credit generation, EPA is allowing early banking of PM credits from Tier 1 engines as soon as this final rule becomes effective. Under the revised program, the number of PM credits generated will be calculated against the Tier 2 standards and may only be used to show compliance once the Tier 2 PM standards take effect. Neither the trigger nor the credit discounting concept described above for Tier 1 NO_X credits, will apply to PM credits.

EPA requested comment on some additional limitations regarding the use of credits generated from Tier 1 engines. EPA is not adopting a provision that would apply a surcharge to NO_X credits used by a manufacturer to certify more than 20 percent of its fleet. EPA is also not adopting any limit on the number of years a manufacturer may earn early PM credits from Tier 1 engines.

2. Program for Engines Rated Under 37 kW

As noted earlier, EPA is adopting standards for engines rated under 37 kW. These engines are currently unregulated by EPA. Therefore, the existing ABT program did not apply to such engines. EPA is adopting provisions to include both land-based and marine engines rated under 37 kW in the revised ABT program. A number of issues have been addressed for these engines, including credit generation, credit life, credit calculation, trading across power categories, credit exchange between land-based and marine applications, and a special multi-year averaging and banking program. The following section addresses each of these issues.

With regard to credit generation, EPA is making credits available for both NMHC + NO_X emissions and for PM emissions as soon as the standards become effective. Because many of the engines below 19 kW use indirect injection technology, which tends to low-emitting, EPA is requiring that all credits generated from engines rated under 19 kW be calculated against the Tier 2 standards, even prior to the Tier 2 time frame. This requirement applies for both NMHC + NO_X credits and PM credits. For engines rated at or above 19 kW and less than 37 kW, where direct injection engines are more common, EPA is requiring that all engines generate credits against the applicable standards.

For Tier 1 engines below 37 kW, EPA is adopting FEL upper limits of 16.0 g/kW-hr (12.0 g/hp-hr) for NMHC + NO_X and 1.2 g/kW-hr (0.9 g/hp-hr) for PM. These levels are based on existing California ARB standards for nonroad diesel engines rated under 19 kW. The FEL upper limits for the Tier 2 standards are the Tier 1 standards.

With regard to credit life, EPA is adopting the unlimited life provisions for engines rated under 37 kW, as described earlier for engines rated at or above 37 kW, with one exception. Because of concerns over the amount of credits manufacturers could earn on indirect injection engines under the newly adopted Tier 1 standards and the potential for significant delay in implementation of the Tier 2 standards, EPA is requiring that all credits generated prior to the Tier 2 time frame on engines rated under 19 kW expire at the end of 2007.

With respect to credit generation and usage calculations, EPA is requiring that manufacturers use the sales-weighted average power for engines rated under 37 kW, as described earlier for engines rated at or above 37 kW. The inclusion of useful life in the calculation of credits, as described earlier, will also apply to the revised ABT program for engines rated under 37 kW.

With respect to trading across power categories, EPA is adopting two restrictions on such trading because of concerns regarding excessive credit generation by low-emitting indirect injection engines. First, EPA will not allow manufacturers to use credits generated on engines rated under 19 kW to demonstrate compliance for engines rated at or above 19 kW. Second, EPA is prohibiting manufacturers from trading credits earned on indirect injection engines rated at or above 19 kW to other manufacturers. (This restriction applies to engines at or above 37 kW as well.) Under this second restriction, a manufacturer would still be allowed to use such credits for averaging or banking purposes with other engines rated at or above 19 kW that the manufacturer produces itself. As part of the 2001 feasibility review described earlier, the Agency plans to reassess the appropriateness of these restrictions and modify them as appropriate.

With respect to the exchange of credits across applications, EPA is adopting provisions that will prohibit manufacturers from using credits generated on land-based engines to demonstrate compliance for marine engines. EPA is concerned that manufacturers making engines used in both marine and land-based applications could effectively trade out of the marine portion of the program giving them a competitive advantage over small marinizers who only sell marine engines. EPA will, however, allow manufacturers to use credits generated on marine engines to demonstrate compliance for land-based applications.

Finally, EPA is adopting a special four-year averaging and banking program for engines rated under 37 kW due to the short lead time before the Tier 1 standards begin to apply. The program would apply separately to engines rated under 19 kW and to engines rated at or above 19 kW and less than 37 kW. Under the special program, manufacturers will be allowed to create a negative balance of credits for the first two years the Tier 1 standards apply. This negative balance will have to be eliminated by the end of the fourth year after the Tier 1 standards become applicable along with a ten percent penalty for any negative balance of credits carried over from one year to the next. Under this special program, manufacturers will not be allowed to use emission credits obtained through trading with other engine manufacturers to offset their negative credit balances. The manufacturer must offset their negative balances within positive credits generated from their own engines.

E. Flexibility for Equipment Manufacturers

In implementing the new standards, EPA desires to avoid unnecessary hardship for equipment manufacturers (sometimes referred to as original equipment manufacturers or OEMs), who install diesel engines in their products. There is concern that engine suppliers may not always provide adequate lead time for the equipment redesigns needed to accommodate engine design changes such as mounting locations and heat rejection loads. For some OEMs, even timely information on the new engine designs may not be sufficient because of the sheer volume of redesign work needed to change diverse product offerings with limited engineering staffs.

In response to these concerns, the Agency is including in this final rule an OEM transition program to provide equipment manufacturers with some control of the transition process to new standards. The design of this program is based on extensive discussions with involved parties prior to the proposal, on recommendations made in the report of the panel convened for this rule under the Small Business Regulatory Enforcement Fairness Act of 1996

(SBREFA),[7] and on written comments received on the proposal. It represents an effort on the part of the Agency to accommodate the flexibility needs of an extremely diverse industry without introducing competitive advantages, and while maintaining the environmental benefit sought in the standard-setting program.

The OEM transition program consists of four major elements, each directed at a specific need. Although they involve certain planning and recordkeeping responsibilities if taken advantage of, all of these elements are voluntary. An OEM has the option to continue to do business as under the current regulations, subject to the prohibited acts provisions of 40 CFR Part 89, Subpart K.[8] The elements of the program are a percent-of-production allowance, a small-volume allowance, continuance of the Tier 1 allowance to use up existing inventories of engines, and availability of hardship relief. Each of these is discussed in detail below.

One element of the proposed program that is not being finalized is a provision for OEMs to obtain and use ABT program credits. The ABT provision is not being finalized because it would likely be little used and would greatly complicate the ABT program. It should be noted that OEMs may achieve a similar benefit by working to have their engine suppliers directly obtain and retire ABT credits in order to produce more previous-tier engines for the OEM. Further explanation of this decision is provided in the Summary and Analysis of Comments for this final rule.

Another proposed program element that is being approached differently concerns an expanded exemption allowance for farm and logging equipment. EPA's rationale for limiting special treatment to farm and logging equipment was not supported by commenters, even those who were likely to benefit from it. Commenters identified a wide range of other applications and special situations that involved the same or comparable considerations as those related to farm and logging applications. As described further in the Percent-of-Production Allowance discussion below, EPA is therefore allowing expanded flexibility for all applications equally, not just for farm and logging equipment.

1. Percent-of-Production Allowance

Each equipment manufacturer may install engines not certified to new emission standards in a limited percentage of machines produced for the U.S. market. This percentage applies separately to each power category and is expressed as a cumulative percentage of 80 percent over the 7 years beginning when the Tier 2 standard first applies in the category (Tier 1 for power categories under 37 kW). No exemptions are allowed after the seventh year. For example, an OEM may exempt 40 percent of its 1999 production of machines that use engines rated between 19 and 37 kW, 30 percent of its 2000 production, and 10 percent of its 2001 production. If the same OEM were to produce machines using engines rated between 8 and 19 kW, a separate cumulative percentage allowance of 80 percent would apply to these machines during the seven years beginning in 2000.

The Agency recognizes that the 80 percent exemption allowance, were it to be used to its maximum extent by all OEMs, would bring about the introduction of cleaner engines several months later than would have occurred if the new standards were to be fully implemented on their effective dates. However, the Agency notes too that the allowance is truly that—an allowance to be tapped as needed to assist OEMs in dealing with implementation problems that might arise. EPA is aware that many engine designs being planned for the new standards will fit the equipment with little change. Also, the desire of engine manufacturers to avoid producing two engine designs that, from an applications perspective, are redundant, will prompt them to change over to the new designs as quickly as they can accommodate their customers' needs. Although there is no way of knowing at this time how many exempted engines will be produced, the Agency believes it will be substantially less than the allowance. Moreover, the OEM flexibility program has been integrated with the standard-setting process from the beginning of this rulemaking, and as such it is a key factor in enabling the initiation of new standards according to the adopted schedule.

Machines that use engines built before the standard goes into effect need not be included in the exemption count. Engines that produce emissions at higher levels than the standards, but for which the engine manufacturer uses ABT program credits to demonstrate compliance, count as complying engines. In power categories above 37 kW, the exempted engines must comply with Tier 1 standards. In power categories below 37 kW, the exempted engines may be uncertified.

The Agency has expanded the percent-of-production allowance from the proposed level because numerous commenters pointed out that there are applications other than farm and logging equipment for which the proposed allowance is inadequate. The Agency reviewed these comments and concluded that some additional flexibility is warranted to meet the requirements of paragraph 213(a)(3) of the Clean Air Act calling for the ''greatest degree of emission reduction achievable'' given certain criteria, including ''the cost of applying such technology within the time available to manufacturers''. The Agency is also convinced by the comments and its own review of equipment redesign challenges that the need for this flexibility is widespread across the regulated power bands. For example, many smaller engines must fit into very compact equipment packages for which cost considerations are paramount; farm equipment predominates in the medium-size power bands; and the largest engines are typically used in very low sales-volume equipment models, for which aggressive redesign schedules may be costly or impossible.

This approach is superior to attempting to identify all applications and situations deserving of special treatment and either assigning individual allowances to them or granting exemptions on a request basis, because it maintains the proposal's focus on giving OEMs long-range control over how they use their assigned pool of exemptions for their products affected by each new set of standards, rather than on dictating category-by-category or model-by-model allowances. It also serves the goal of avoiding unnecessary complexity by avoiding the need for numerous equipment category definitions and exemption ''account'' calculations, a goal that was supported by several commenters.

The choice of a cumulative percent allowance of 80 percent is based on the Agency's best estimate of the degree of flexibility needed to meet the requirements of the Clean Air Act. EPA believes the 80 percent allowance responds to the need for flexibility identified by commenters while ensuring approximately the same level of emission reductions originally proposed. EPA has examined the impact on environmental benefits of the combination of changes being finalized

[7] ''Final Report of the SBREFA Small Business Advocacy Review Panel for Control of Emissions of Air Pollution from Nonroad Diesel Engines'', May 23, 1997 (available in Air Docket A–96–40).

[8] Section 89.1003(a)(6) has been revised in the final rule to clarify that certificates of conformity will not be required for engines and equipment manufactured in compliance with the flexibility provisions of the rule. See ''Revision of Prohibited Acts Regulatory Text,'' EPA memorandum from Charles Moulis to Docket A–96–40, August 26, 1998.

for this program, including this expanded allowance for all equipment and the decision to treat agricultural equipment as part of this pool. Although the actual impact will depend on the degree to which the industry takes advantage of the flexibility provisions, the Agency has determined that the net effect will be roughly equivalent to the impact of the proposed program. The Summary and Analysis of Comments document and the Final RIA provide additional information regarding this decision and its net environmental impact.

2. Small Volume Allowance

The percent-of-production approach described above may provide little benefit to small businesses focused on a small number of equipment models. Therefore EPA is allowing equipment manufacturers to exceed the percent-of-production allowances described above during the same years affected by the allowance program for general applications, provided they limit the number of exempted engines used in each power category to 700 total over the 7 years, and to 200 in any one year. In addition, manufacturers making use of this provision must limit exempted engines to a single engine family (or to a single manufacturer for engines rated under 37 kW) in each power category. These restrictions are considered necessary to maintain the intent of this provision—helping small businesses with limited product offerings—rather than giving bigger exemption allowances for larger OEMs who can effectively use the percent-of-production provisions.

3. Existing Inventory Allowance and Replacement Engines

The Tier 1 rule for engines rated at or above 37 kW included a provision for OEMs to continue to use uncertified engines built prior to the effective date of Tier 1 standards, until uncertified engine inventories are depleted. It also prohibited purposeful stockpiling of uncertified engines. EPA is extending this provision to the Tier 1-to-Tier 2 and Tier 2-to-Tier 3 transitions, as well as to the under 37 kW engines. The existing provision that provides an exception to the Tier 1 compliance regulations for the sale of replacement engines is also being extended to engines covered by this action. In extending this provision, the Agency is requiring that engines built to replace certified engines be identical in all material respects to an engine of a previously certified configuration that is of the same or later model year as the engine being replaced. The term ''identical in all material respects'' allows for minor differences that would not reasonably be expected to affect emissions.

4. Hardship Relief Provision

EPA is providing a safety valve provision whereby an OEM that does not make its own engines could obtain limited additional relief by providing evidence that, despite its best efforts, it cannot meet the implementation dates, even with the OEM transition program provisions outlined above. Such a situation might occur if an engine supplier without a major business interest in the OEM were to change or drop an engine model very late in the implementation process. This concept was put forward for consideration in this rulemaking by the Small Business Advocacy Review Panel convened under SBREFA, as a means of addressing small business concerns. Comments received on the proposal, however, have convinced the Agency that these concerns are not limited to small businesses.

Appeals for hardship relief must be made in writing, must be submitted before the earliest date of noncompliance, must include evidence that failure to comply was not the fault of the OEM (such as a supply contract broken by the engine supplier), and must include evidence that serious economic hardship to the company will result if relief is not granted. The Agency intends work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted before granting additional relief, and would limit the period of relief to no more than one year. Furthermore, applications for hardship relief will only be accepted during the first year after the effective date of an applicable new emission standard.

To avoid the creation of a self-fulfilling prophecy, by which the very existence of this provision prompts engine manufacturers to delay engine developments, the Agency wishes to make clear that it expects this provision to be rarely used. Each granting of relief would be treated as a separate agreement with no prior guarantee of success, and with the inclusion of measures, agreed to in writing by the OEM, for recovering the lost environmental benefit.

5. Enforcement and Recordkeeping Requirements

Engine manufacturers will be allowed to continue to build and sell the engines needed to meet the market demand created by the OEM transition program, provided they receive written assurance from the engine purchasers that such engines are being procured for this purpose. Engine manufacturers who participate in this program will be required to annually provide information on the number of such engines produced and on who they are provided to, in order to help EPA prevent abuse of the program.

OEMs choosing to take advantage of the allowances must: (1) keep records of the production of all pieces of equipment excepted under the allowance provisions for at least two full years after the final year in which allowances are available for each power category; (2) include in such records the serial and model numbers and dates of production of equipment and installed engines, rated power of each engine, and the calculations used to verify that the allowances have not been exceeded in each power category; and (3) make these records available to the Agency upon request. The Agency intends to conduct only limited audits of these records, and expects that scrutiny by the OEMs of their competitors' products will help identify potential candidates for audits.

Secondary manufacturers who modify or relabel and resell new equipment already introduced into commerce would be subject to the regulations in the same way as independent dealers and distributors. These regulations primarily concern tampering. EPA's desire to limit the number of machines using noncomplying engines is therefore satisfied by regulation of the original equipment manufacturers who install the engine into the machine, such that the secondary manufacturers do not need exemption allowances. They may sell as many machines with noncomplying engines as they are legally able to obtain.

All entities that are under the control of a common entity, and that meet the definition of a nonroad vehicle or nonroad equipment manufacturer, must be considered together for the purposes of applying exemption allowances. This provides certain benefits for the purpose of pooling exemptions but also precludes the abuse of the small volume allowances that would exist if companies could treat each operating unit as a separate OEM.

EPA recognizes that the OEM transition program may involve a certain amount of complexity and administrative burden that was not present for OEMs under the Tier 1 rule, which limited the compliance options for OEMs. However, this program is entirely voluntary and manufacturers wishing to implement the new standards in the same manner as for the

Tier 1 regulations are free to do so. The Agency intends to develop guidance to assist OEMs in taking advantage of these provisions, but also intends to fully enforce the regulations in order to ensure a fair implementation process that achieves the environmental benefit sought in setting new standards.

F. Flexibility for Post-Manufacture Marinizers

Post-manufacture marinizers (PMMs) produce marine engines by modifying engines purchased from other manufacturers. They are therefore subject to both the engine manufacturer's concern about certifying engines to the standards and the OEM's concern about timely delivery of redesigned engines from their engine suppliers.

EPA recognizes that the potential unavailability of certified base engines may make it difficult for PMMs to comply with the proposed emission control program, since they may not be able to obtain base engines in time to adjust their marinization process, especially considering that most of the marine engines affected by this rule are subject to standards beginning in 1999. Based on these concerns, EPA has determined that the proposed emission standards would not be feasible for PMMs who produce marine engines under 37 kW without some flexibility provisions beyond those available in the ABT program. As a result EPA is finalizing two additional flexibility provisions for PMMs.

First, the OEM flexibility provisions discussed above are being extended to PMMs, as proposed. Second, provided they inform EPA in writing before the date Tier 1 standards would take effect, PMMs may elect to delay the effective dates applicable to marine engines under 37 kW for one year, instead of using the OEM flexibility provisions. PMMs may not take advantage of both the delayed effective date provision and the OEM flexibility provisions.

Although it provides a substantial boost in certainty to PMMs, the optional 1-year delay provision will have a very small environmental impact. This is because: (1) the marine engines under 37 kW produced by PMMs are a very small part of the total nonroad diesel engine production, (2) these engines produce relatively low emissions due to their small size and low usage characteristics, and (3) the total number of engines potentially exempted under this flexibility provision is not much greater than that possible under the exemption allowance provisions.

G. Control of Crankcase Emissions

Crankcase gases are those exhaust gases that discharge (blowby) into the crankcase via the clearance between the piston and the cylinder wall. On most engines (those engines with open crankcases), these gases eventually escape from the crankcase into the atmosphere. Some manufacturers produce engines that route crankcase vapors to the air intake system of the equipment; such a design is called a closed crankcase. This method, also called positive crankcase ventilation, recirculates blowby gases through a valve back to the intake manifold to be burned in the combustion chamber.[9]

Since 1985, closed crankcases have been required in naturally aspirated (non-turbocharged) highway diesel engines (45 FR 4136, January 21, 1980). Turbocharged engines have not been required to have crankcase emission controls due to concerns related to problems associated with the durability and effectiveness of turbocharger and aftercooler components which can be affected by recycling gases containing particulate matter and corrosive gases. EPA is extending the closed crankcase requirement to nonroad engines, including the exemption for turbocharged diesel engines. Many naturally aspirated nonroad engines are already equipped with this technology; for those nonroad engine models still manufactured with open crankcases, EPA expects that closed-crankcase technology will be readily transferable. EPA has included the cost of closing crankcases in the analysis of the costs of complying with the new standards. EPA had originally proposed to apply the closed crankcase requirement to some Tier 1 engines, but has now decided to apply it only Tier 2 and later naturally aspirated engines because of lead-time concerns. This delay will not have a major environmental impact because it is short, directed at a small segment of the engine market, and confined to a minor emission source relative to exhaust emissions.

EPA will also allow manufacturers to comply with this requirement by routing the crankcase emissions into the exhaust. Manufacturers choosing this option would effectively be required to reduce their engine-out exhaust emissions further than other manufacturers that choose to route the crankcase emissions into the engine intake. It is important to note that this optional approach will require that the engine (and equipment) be designed so that the routing would occur under all in-use conditions. Manufacturers using this approach will be required to modify their deterioration factors to account for increases over time in crankcase emissions. EPA will also consider using this approach in the future for controlling crankcase emissions from turbocharged engines, which are currently uncontrolled. The advantage of this approach is that allows manufacturers the flexibility to either route crankcase emissions into the engine intake, thereby combusting the crankcase emissions of hydrocarbons and CO, or to route the emissions into the exhaust (where they would be measured as part of the exhaust emissions) and to reduce the total exhaust emissions using other means.

H. Control of Smoke

1. Standards and Procedures

In 1994, EPA finalized smoke standards for nonroad diesel engines rated at or above 37 kW. The specified measurement method and calculations are from 40 CFR Part 86, Subpart I, which was developed for highway engines. EPA is making no major changes to the smoke emission standards and procedures currently in place.

EPA is extending the smoke standards to diesel engines rated under 37 kW, bringing these engines under the same regulatory framework as the larger engines. While these new standards may lead to lower smoke levels from some engines, the principal intent of setting standards is to prevent increased levels of smoke as engines are redesigned to comply with Tier 2 and Tier 3 standards for gaseous and particulate emissions. The same numerical standards apply to the small engines. With minor exceptions, the same procedure, equipment, and calculation methods are also specified for these engines.

In applying the smoke standards and procedures to engines rated under 37 kW, EPA has chosen to exempt one-cylinder engines. EPA believes that operation and testing of these engines is unique in ways that would need to be addressed before applying smoke standards. For example, one-cylinder engines operating on the specified test procedure produce puffs of smoke that may make the smoke measurement erratic. EPA is therefore postponing the regulation of smoke from these one-cylinder engines until a later rulemaking. The Agency believes the air quality impact of this postponement will be minimal because the large majority of one-cylinder diesel engines are used in generator sets and other

[9] U.S. Environmental Protection Agency, Office of Mobile Sources, NEVES, Appendix I, Chapter 4, November 1991 (available in Air Docket A–96–40).

steady-state applications, which rarely experience acceleration modes—the principal focus of smoke standards. In a similar manner, because two-cylinder engines operating on the specified test procedure may also produce puffs of smoke that would make the smoke measurement erratic, though to a lesser degree than single-cylinder engines, EPA will permit manufacturers the option of testing two-cylinder engines with a preconditioned muffler of the type used in the field. Such an engine configuration is the same as that found in use, and thus will ensure meaningful control of in-use smoke, even though instantaneous smoke emissions may be flattened out somewhat, resulting in potentially reduced levels of measured smoke. Engines with more than two cylinders will continue to be tested without a muffler, which is a ''worst case'' condition.

EPA is also slightly modifying the exhaust pipe diameter specifications found in 40 CFR Part 86, Subpart I. The previous specifications called for a 2 inch (5 centimeters (cm)) inside diameter exhaust pipe for testing any engine rated under 101 horsepower (hp) maximum (75 kW), and a 5 inch (13 cm) inside diameter exhaust pipe for the testing any engine with a rated power of 301 hp (225 kW) or greater. In this action, the Agency is specifying that engines rated between 50 and 100 hp (37 and 75 kW) be tested with a 2 inch (5 cm) inside diameter exhaust pipe, while engines rated under 50 hp (37 kW) should be tested with an exhaust pipe of 1.5 inches (3.8 cm). EPA is also specifying that all engines rated over 500 hp (373 kW) should be tested with an exhaust pipe of 6 inches (15.2 cm).

EPA is not establishing smoke requirements for propulsion marine diesel engines rated under 37 kW. EPA has concluded that the existing smoke test procedures are not appropriate for small propulsion marine engines. The Agency believes that the small environmental risks associated with smoke emissions from such engines do not justify the creation of special smoke test procedures for them at this time. EPA expects to reconsider this issue in the future at the same time that it reconsiders other smoke issues. Finally, EPA is dropping smoke requirements for constant speed engines until a smoke test becomes available for these engines, because the current smoke test cannot effectively be performed on them. The Agency believes the air quality impact will be minimal because these engines do not often experience acceleration modes, which are the principal focus of smoke standards.

2. Future Reconsideration of Smoke Issues

An International Standards Organization committee (ISO TC70/SC8/WG1) has been developing a smoke test procedure specifically for nonroad engines. The EPA and regulated industry recognize the value of harmonized test procedures and standards limits. However, this ISO procedure has not been finalized and thus is not included in this rulemaking. EPA has analyzed the draft ISO procedure (8178–9) and concluded that most of its elements would be appropriate for adoption. Thus, the Agency expects that it will adopt the ISO smoke measurement procedure after it is finalized. At that time EPA may also reconsider the issues related to the use of mufflers, single-cylinder and two-cylinder engines, constant speed engines, marine engines and standard exhaust pipe diameters. It is important to note that the ISO 8178–9 smoke emissions test procedure is very different from the procedure specified in Subpart I of Part 86. As a consequence , if EPA adopts the ISO 8178–9 procedure, then it will also need to revise the numerical limit values to be associated with the ISO procedure. EPA believes the appropriate numerical standard that should be associated with ISO 8178–9 peak measurements is likely to be within the range of 20 to 30 percent opacity. It is important to note, however, that this is only a preliminary estimate.

EPA also expects to give future consideration to the need for an in-use smoke test. Some state governments have expressed a desire for a smoke regulatory program that would enable them to test in-use nonroad engines in a manner that would permit action against gross emitters of smoke. The main elements of such a program would be a certification smoke requirement for new engines, EPA guidance for state in-use smoke control programs (including an in-use smoke test procedure and accompanying limit values), and a means by which the data from the two programs could be related. The current smoke test procedure from Part 86, Subpart I, does not provide data comparable to the most practical in-use smoke test procedure (a snap acceleration with measured opacity). Based on the current draft ISO 8178–9 certification smoke test procedure, EPA believes the future ISO test will provide the desired linkage.

I. Voluntary Low-Emitting Engine Program

Officials representing certain cities, states, or regions in the U.S. have expressed interest in developing incentive programs to encourage the use of engines that go beyond federal emission standards. EPA also would like to encourage manufacturers to initiate demonstration projects to prove out these technologies in areas where there is a particular need for superior emission controls. EPA is therefore finalizing a set of voluntary standards that may be used to earn a designation as a ''Blue Sky Series'' low-emitting engine. The program, if successful, will lead to the introduction and more widespread use of these low-emission technologies. Possible incentives to encourage production of these engines are described below.

Central to the purpose of the voluntary standards is the need to demonstrate superior control of particulate emissions. Because of the sensitivity of particulate emissions to test cycles, as described in Section III, testing on a transient cycle is an important element of the program for Blue Sky Series engines. EPA has begun work toward developing transient test cycles for nonroad equipment, but there is not yet any established or proven nonroad transient cycle. The highway test cycle, while not developed for nonroad engine operation, would result in a significant degree of control for nonroad equipment. EPA has therefore specified the highway transient test cycle to evaluate emission levels relative to the voluntary standards. If EPA adopts a transient test for certifying nonroad engines in the future, the Agency will accordingly re-evaluate the test cycle and standards for Blue Sky Series engines.

To best align with future emission standards, Tier 3 emission levels, where applicable, were chosen as the best level for defining Blue Sky Series engines. This represents a reduction of approximately 40 percent beyond the Tier 2 NMHC + NO_X levels. For PM emissions and for engines with no Tier 3 standards, a calculated level corresponding to a 40 percent reduction beyond Tier 2 levels will be used to qualify as a Blue Sky Series engine (see Table 3).

TABLE 3.—VOLUNTARY EMISSION STANDARDS IN G/KW-HR (G/HP-HR)

Rated brake power (kW)	NMHC+NO_X	PM
kW<8	4.6 (3.4)	0.48 (0.36)

TABLE 3.—VOLUNTARY EMISSION STANDARDS IN G/KW-HR (G/HP-HR)—Continued

Rated brake power (kW)	NMHC+NO_X	PM
8≤kW<19	4.5 (3.4)	0.48 (0.36)
19≤kW<37	4.5 (3.4)	0.36 (0.27)
37≤kW<75	4.7 (3.5)	0.24 (0.18)
75≤kW<130	4.0 (3.0)	0.18 (0.13)
130≤kW≤560	4.0 (3.0)	0.12 (0.09)
kW>560	3.8 (2.8)	0.12 (0.09)

Blue Sky Series engines need to meet all the requirements that would otherwise be applicable to Tier 2 engines. This would include allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions. Manufacturers must demonstrate compliance with the CO standard by comparing the emission levels generated on the highway test cycle with the numerical value of the CO standard for the applicable tier of nonroad engines for that model year. Manufacturers must also demonstrate compliance with applicable smoke standards.

Repeating the certification process to develop and submit test data to make a highway engine available for nonroad use adds a significant hurdle to engines expected to sell in low volumes for nonroad applications. Under the Blue Sky Series engine program, manufacturers with highway-certified engines may waive the testing requirements for obtaining nonroad certification. This includes the need to comply with the provisions related to the durability of emission controls. EPA, however, needs to ensure that engine designs are not tailored to the transient cycle with much higher emissions on a steady-state cycle. To accommodate this, EPA retains the ability to conduct in-use testing to verify that engines are operating in steady-state modes with substantially the same level of emission control. EPA will therefore require that NO_X and PM emissions be no more than 20 percent higher on the appropriate nonroad steady-state test cycle compared with the highway test cycle. This is intended to provide relief for development testing needed to protect against in-use liability, while preventing any active strategies designed specifically for the transient test cycle at the expense of controlling emissions during steady-state operation. For evaluation of the performance of one of these engines in steady-state operation at any point in an engine's useful life, the Agency intends to conduct paired data generated on both the appropriate steady-state test cycle and the highway transient test cycle.

The Blue Sky Series program begins immediately upon promulgation and continues through the 2004 model year. EPA will evaluate the program to determine if it should be continued for 2005 and later engines, and if so, what changes are needed to reflect the transition to Tier 3 emission standards. This evaluation will be considered as part of the 2001 feasibility review. The experience gained with these engines and the Tier 3 resolution of certification test cycles and PM standards will factor into this evaluation.

The Agency sees substantial potential for users and state and local governments to establish these incentive programs. For example, the increasing public concern about the effects of diesel engine emissions on health raises the possibility that some construction companies will purchase Blue Sky Series engines to protect its workers or the public from localized emissions, especially if benefits can also be gained in employee or public relations, such as with highly visible projects in polluted city centers. Similarly, a mining company could select these low-emitting engines for underground applications to minimize miners' exposure to exhaust pollutants. A state or local government may be able to add incentives for companies committing to rely on Blue Sky Series engines in contract bidding on publicly funded construction projects in nonattainment areas. Some farmers may be willing to pay more for equipment with the cleaner engines to lower their field exposure to engine exhaust pollutants. In some of these applications, alternative fuels may be readily available, possibly even providing a cost savings compared to diesel fuel.

The Agency is concerned that incentive programs not lead to a net detriment to the environment through the double-counting of benefits. Also, manufacturers have indicated that the potential to participate in an averaging, banking, and trading program would not be an important factor leading to the development of Blue Sky Series engines. EPA has therefore concluded that manufacturers choosing to sell an engine with the Blue Sky Series designation will not generate averaging, banking, and trading credits for demonstrating compliance with EPA programs. Other groups are then free to design credit programs without concern for any double-counting or other unintended effect of overlapping programs.

J. Technical Amendments

This final rule contains technical amendments to the certification and emission test procedures previously adopted for nonroad diesel engines (40 CFR Part 89). The most significant changes are highlighted here; a complete description of the technical amendments is detailed in a memorandum to the docket.[10]

EPA is adding definitions of rated speed and intermediate speed. Rated speed is defined as the maximum full load speed for governed engines and speed of maximum horsepower for ungoverned engines. The definition for intermediate speed was based on peak torque speed and limits intermediate speed to 60 to 75 percent of rated speed. The maximum full load speed is the highest speed with an advertised power greater than zero. EPA is linking full load governed speed to advertisements at this time since no adequate language has been developed that mathematically defines full load governed speed as a point on the torque or power curve. Power curves in manufacturer's advertisements typically end at the governed speed. EPA believes that manufacturers will continue to advertise the full range of power of its engine. Manufacturers would therefore not set rated speed at less than full load governed speed. It is unlikely that manufacturers will advertise powers beyond the full load governed speed, since a manufacturer cannot guarantee power beyond this point. EPA is applying the new definitions to Tier 1, as well as Tier 2 and 3 programs. However, to avoid unnecessarily burdensome recertification, EPA is not requiring manufacturers to use the new definitions for Tier 1 engines certified prior to January 1, 1999. Engine families that are certified prior to January 1, 1999 may carry over certification under the old definitions into subsequent Tier 1 model years. All Tier 2 engines must meet the definitions for rated and intermediate speeds.

Engines are grouped into families that are expected to have similar emissions characteristics throughout their useful lives. EPA's regulations list a number of characteristics which distinguish engine families. EPA is concerned that the phasing in of the new standards by power categories, which is intended as an aid to implementation, may actually increase manufacturers' costs without a

[10] "Justification for Amendments to 40 CFR Part 89," EPA memorandum from Greg Orehowsky to Docket A–96–40, August 21, 1997.

significant emissions benefit in the situation where an engine family marginally straddles a power category cutpoint, and therefore must be split. This is especially of concern for Tier 1 engines below 37 kW because of the short lead time provided for the certification of these engines, and because this group is comprised of 3 rather narrow power bands. Therefore, EPA is allowing the creation of Tier 1 engine families that straddle the power band cutpoints at 8, 19, and 37 kW, subject to EPA approval. To avoid potential abuse of this provision by a manufacturer attempting to take advantage of the least stringent emission standards applicable to the engines in the family, such grouping will be allowed only if: (1) most of the engine family's sales in each year are from engines with rated power in the power band with which the engine family is certified, and (2) all power ratings in the engine family that are not within the power band with which the engine family is certified are within 10 percent of one of the two power levels that define this power band. The limitations would not apply if the emission standards for the power band in which the engine family is being certified are at least as stringent as those of the power band that the included engines would otherwise be in. EPA may extend this provision beyond Tier 1 in a future action, but first wishes to examine its effectiveness over time in providing sufficient flexibility without leading to abuse.

The amendments change the criteria for test engine selection. Test engine selection is no longer based on maximum fuel per stroke at maximum power, but is now based primarily on the highest fuel per stroke at peak torque and secondarily on the highest fuel per stroke at rated speed.

The calibration requirements for the gaseous emission measurement analyzers are modified in various ways. The requirements for measurement accuracy below fifteen percent of full scale are revised to include a specific number of gas concentrations at the low end of the calibration curve. Also, calibration requirements are simplified to allow laboratories to calibrate only one analyzer range and still ensure accurate measurements. Additional changes to calibration requirements for other equipment are described in the Summary and Analysis of Comments document.

Other modifications relate to the test sequence and calculation of emission results. A ''mode'' is defined and the procedure for dealing with void modes is included. The equations used to calculate emissions during raw sampling are corrected. The amendments also correct errors in the currently listed equations and include new equations that were mistakenly omitted.

III. 2001 Review and Ensuring Emissions Control In Use

A. 2001 Review

Over the next several years, EPA will be actively engaged in programs to evaluate technology developments and progress toward meeting the new standards. This process will involve engine research programs, coordination with the involved industries, and active interaction with other stakeholders. This effort will culminate in a special review, to be concluded in 2001, to reassess the appropriateness of the Tier 2 standards for engines rated under 37 kW and the Tier 3 standards for engines rated between 37 and 560 kW. The review will also include proposal and adoption of appropriate Tier 3 standards for PM. In addition to reviewing whether or not the new standards are technologically feasible and otherwise appropriate under the Clean Air Act, the Agency will examine the need for equipment redesign due to the new standards and will take appropriate action if significant adverse impacts on the nonroad equipment industry are identified.

Before making a final decision in this review, EPA intends to issue a proposal and offer an opportunity for public comment on whether the standards under review are technologically feasible for implementation according to the proposed schedule, and are otherwise appropriate under the Act. Any changes to certification test procedures or Tier 3 PM standards would also be proposed in that document. Following the close of the comment period, EPA intends to issue a final Agency decision under section 307 of the Act.

If, based on the information collected for the 2001 feasibility review, EPA finds the emission standards are not appropriate under the Act, EPA will propose changes to the program, possibly including adjustments to the levels of the standards. Consistent with the Statement of Principles, the adjusted standards may be more or less stringent than those already established or the schedule could be adjusted. For example, progress to date in the design of low-emitting heavy-duty highway diesel engines has been encouraging, and EPA believes that this progress may benefit designs of large nonroad diesel engines as well, due to the many similarities in these classes of engines. Therefore, the Agency believes that by 2001 it may well be appropriate to consider moving the standards for equal to or greater than 300 horsepower engines forward in time, and so expects to consider this issue in the 2001 feasibility review. Any change to the specified certification test procedure, including the possible adoption of a transient test cycle, will be factored into the evaluation of the appropriateness of the numerical standards. The standards finalized in this document will stay in effect unless revised by subsequent rulemaking procedure.

The review may include other topics as well. Some topics identified in this rulemaking that the Agency plans to review are test fuel sulfur specifications, ABT provisions, Blue Sky Series engine standards, established technologies for deterioration factor determinations, and engine family designations.

B. Ensuring Emissions Control In Use

Key among EPA activities directed toward completing the 2001 feasibility review are those related to adoption of a more effective PM control program for nonroad diesel engines.[11] The establishment of a more effective program will be informed not just by progress in engine designs but also by studies currently being performed by the Agency and by others on the relationship between diesel PM emissions and various health problems.

Establishing an appropriate test cycle is critical to the success of a more effective PM control program. Testing an engine for emissions consists of exercising it over a duty cycle of speeds and loads using an engine dynamometer. The test cycle used to measure emissions should represent operation typical of actual operation in the field. A test procedure that does not

[11] The current control program for PM and all other pollutants includes an emissions standard and related emissions test procedure. For control of PM, as well as other regulated pollutants, an engine may not be equipped with a defeat device, defined as a device, system, or element of design which senses operation outside normal emission test conditions and reduces emission control effectiveness, including any auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal operation and use unless the conditions are included in the test procedure (40 CFR 89.107). Manufacturers must provide a detailed description of all auxiliary emissions control devices when they apply for certification (40 CFR 89.115(d)(2)). The defeat device prohibition is designed to ensure that proper control of emission-related engine parameters is maintained during engine operation that is not substantially represented in the certification test cycle. Electronic controls may be considered an AECD, and subject to the defeat device provision.

adequately represent in-use operation might not lead to, on average, the level of control in use set by the emission standards. A test procedure that does reflect real world operating conditions will drive engine designers to develop technologies that achieve in-use control corresponding to the emission standards. EPA has addressed such concerns in the past; for example, the highway heavy-duty engine test cycles were changed to address transient operation (45 FR 4136, January 21, 1980) and, more recently, EPA has revised the test cycle for light-duty vehicles (61 FR 54852, October 22, 1996).

EPA has concerns that the current test cycle does not adequately reflect transient operation, and, therefore, will not lead to the level of average in-use emission control reflected by the PM standard. PM emissions, like NO_X emissions, depend somewhat on engine load characteristics that can be modeled in the steady-state test, but are most sensitive to the degree of transient engine operation. Most nonroad engines are used in applications that are largely transient in nature. Even equipment such as pumps and generators, that operate mostly at constant engine speeds, may depart from steady-state operation due to variation in engine loads over time. EPA believes that the Tier 2 PM emission standards, with the current steady-state test, will produce some degree of in-use emissions control from nonroad engines, especially from engines that typically operate at a constant speed. The level of control from the many nonroad engines that frequently operate in more transient modes, however, is less certain, especially in an engine design era involving stringent PM and NO_X standards and electronic engine controls, as is likely to be the case in Tier 3. Therefore, EPA is moving forward with developing a transient component to the nonroad engine test cycle to control the transient element of PM emissions generation; this component would supplement the steady-state test.

EPA has an additional concern that goes beyond choosing an appropriate test cycle. EPA has observed at times that manufacturers may tailor the design of their engines to narrowly meet the requirements of the emission test. This concern applies not just to PM emissions but to other pollutants such as NO_X and hydrocarbons, as well. The current nonroad test cycle, with a limited combination of steady-state speeds and loads, does not include some of the operating modes that are commonly experienced in the field. In fact, any single prescribed test cycle, although advantageous for test result repeatability and predictability, may not ensure that engine manufacturers design robust emission controls that achieve good control in use. This concern is increased with the advent of electronic controls, which greatly increases the level of sophistication available to manufacturers in controlling emissions levels over the full range of engine operation. To address this and other concerns, in the Tier 1 rulemaking EPA adopted the prohibition on defeat devices (see footnote 11), which the Agency intends to implement for all tiers of standards. EPA may also supplement existing regulations through changes in its nonroad diesel engine program to better control in-use emissions, in a manner that will ensure effective in-use emissions control without unduly increasing manufacturers' testing burden and certification uncertainty.

Although the Agency intends to establish its Tier 3 PM standards and a transient test cycle in the context of the 2001 feasibility review, other activities such as its investigation of in-use operation emissions, including possible regulatory action, may proceed on an earlier schedule. The concerns described above about in-use emissions apply to the pre-Tier 3 as well as the Tier 3 standards, and the Agency believes that prompt action in this area is appropriate. The two efforts discussed above, development of a transient test cycle for PM control and adoption of supplemental measures to better control in-use emissions, have the same overall focus—achieving effective control of emissions in the real world. As a result, the need for a separate transient test cycle may be eliminated if the measures EPA adopts to better control in-use emissions prove adequate for control of PM in use.

IV. Technological Feasibility

The emission standards finalized in this document apply to a broad range of diesel engines used in a wide variety of nonroad applications. Section 213 (a)(3) of the Clean Air Act calls for EPA to establish standards that provide for the ''greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.'' EPA has concluded, as described in the Final RIA, that the new standards will have no significant negative effect on noise, energy, or safety.

Because the emission standards for nonroad diesel engines are based largely on the standards for highway engines and rely on the evaluation of technologies for complying with the standards for highway engines, the discussion of technological feasibility in the highway engine rulemaking is central to supporting the feasibility of the new standards for nonroad engines. This analysis of diesel engine technologies is contained in Chapter 4 of the Final RIA for the highway rulemaking.[12] This analysis is considered and applied to nonroad engines in Chapter 3 of the Final RIA for this rulemaking.

The level and implementation timing of the standards finalized in this document are the most challenging that can be justified. Engine manufacturers will need to use the available lead time to develop the necessary emission control technologies, including transfer of technology from highway engines. This development effort will require not only achieving the targeted emission levels, but also ensuring that each engine will meet all performance and emission requirements over its useful life. The emission standards clearly represent major reductions compared with current emission levels.

Emission control technology for diesel engines is in a period of rapid development in response to the range of emission standards anticipated for the years ahead. This effort will need to continue to meet the requirements of this final rule. However, the emission targets are set in the framework of a long lead time with various flexibility provisions, which provide manufacturers the time they will need to apply emission control technology developments to nonroad engines. Also, the experience gained in response to EPA's emission standards for highway engines will be invaluable in meeting the comparable requirements for nonroad engines. Because the technology development for highway engines will to a large extent constitute basic research of diesel engine combustion, this effort will also benefit manufacturers that produce no highway engines.

On the basis of information currently available, EPA believes that it is feasible for nonroad diesel engine manufacturers

[12] ''Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines,'' U.S. EPA, September 16, 1997 (Docket A–95–27).

to meet the standards finalized in this document within the specified time frame, using combinations of the technological approaches discussed in the Final RIA. In addition, EPA believes that the flexibilities incorporated into this final rule will permit nonroad vehicle and equipment manufacturers to respond to engine changes in an orderly way. For both industries, EPA expects that meeting these requirements will pose a significant challenge. As described above, EPA plans to assess, as part of the 2001 feasibility review, the appropriateness of the Tier 3 standards, and the Tier 2 standards for engines rated under 37 kW.

V. Projected Impacts

A. Environmental Impacts

To assess the environmental impact of the new emission standards, EPA has used a draft version of the new NONROAD model, developed by EPA for predicting emissions from nonroad equipment. Chapter 5 of the Final RIA contains a thorough discussion of the methodology used to project the emission inventories and emission reductions from nonroad equipment covered by the new standards. The reader is directed to the RIA for more information on the environmental impact of this final rule.

The amount of growth experienced in the nonroad market will have a significant impact on the emission inventories and emission reductions expected from the new emission standards. For this environmental impact analysis, EPA has examined the impact of the emission standards under two different growth scenarios. (The growth rates used in the nonroad modeling are compounded growth rates.) The first scenario uses growth rates based on information developed by the Bureau of Economic Analysis (BEA). The BEA growth rates, which are prospective, are based on a variety of economic indicators and vary by nonroad segment (i.e., agriculture, construction, etc.). The BEA growth rates typically range from one to two percent per year. Based on trends in historical nonroad equipment sales, trends in nonroad fuel usage, and the continuing strong performance of the U.S. economy, EPA believes that the BEA growth rates may underestimate the future growth of the nonroad market. Therefore, EPA has also modeled the impact of the new standards using information on nonroad equipment population from a database developed by Power Systems Research (PSR). The growth rates based on a retrospective analysis of 1989 to 1996 PSR equipment population data result in typically higher growth rates compared to the BEA information. EPA believes the results from the two growth scenarios serve to bracket the expected environmental impact of the standards. The following discussion of environmental impacts presents the results from both the BEA growth scenario and the PSR growth scenario.

EPA modeled the impact of the new standards for NO_X, NMHC, and PM emissions. The modeling inputs conservatively assume that equipment manufacturers take full advantage of the flexibility provisions described earlier. EPA did not model the impacts of standards on CO because CO emissions from nonroad diesel equipment are a very small portion of the overall CO inventory and the standards are not expected to have a significant impact on CO levels.

Because of the uncertainties about the degree to which the steady-state test procedure will control PM emissions in use, especially from the many nonroad engines that frequently operate in transient modes, EPA cannot be certain that any assessment of expected PM emission reductions made at this time will be completely accurate. Nevertheless, EPA has attempted to make a reasonable estimate of these reductions by assuming that engines will certify at the level of the new emission standards, and applying EPA's best current estimates of adjustment factors for in-use PM emission levels, as reflected in the NONROAD model. These factors and other assumptions in the model are still under review, and will continue to be improved in the future as new information becomes available. The baseline levels used in this analysis are consistent with the position taken in the Tier 1 rule that no PM benefits are claimed from the Tier 1 PM standard. EPA believes that this approach provides a reasonable estimate of PM benefits from the new standards but actual benefits could vary significantly from these levels.

Based on the results of the modeling, the expected emission benefits from the new standards are quite substantial. Tables 4, 5, and 6 contain the nationwide NO_X, NMHC, and PM inventories, respectively, under the baseline scenario, which assumes only the current Tier 1 standards are in effect, and under the control scenario, which assumes the new standards take effect. (The PM reductions contained in Table 6 are direct PM and do not include secondary PM benefits, which are described below.) By 2020, the emission reductions due to the new standards exceed 50 percent for both NO_X and NMHC, and 40 percent for PM. All percentages are calculated relative to the baseline inventories, which assumes only the current Tier 1 standards are in effect.

TABLE 4.—NO_2 EMISSIONS INVENTORY FROM NONROAD DIESEL ENGINES

[Short tons]

Calendar year	PSR growth rates		BEA growth rates	
	With current standards	With new standards	With current standards	With new standards
2000	2,932,000	2,916,000	2,740,000	2,727,000
2010	3,787,000	2,576,000	2,827,000	1,954,000
2020	5,445,000	2,689,000	3,005,000	1,463,000

TABLE 5.—NMHC EMISSIONS INVENTORY FROM NONROAD DIESEL ENGINES

[Short tons]

Calendar year	PSR growth rates		BEA growth rates	
	With current standards	With new standards	With current standards	With new standards
2000	361,000	350,000	337,000	328,000

TABLE 5.—NMHC EMISSIONS INVENTORY FROM NONROAD DIESEL ENGINES—Continued

[Short tons]

Calendar year	PSR growth rates		BEA growth rates	
	With current standards	With new standards	With current standards	With new standards
2010	419,000	256,000	301,000	193,000
2020	619,000	258,000	317,000	138,000

TABLE 6.—PM EMISSIONS INVENTORY FROM NONROAD DIESEL ENGINES

[Short tons]

Calendar year	PSR growth rates		BEA growth rates	
	With current standards	With new standards	With current standards	With new standards
2000	294,000	292,000	271,000	269,000
2010	410,000	270,000	295,000	195,000
2020	604,000	338,000	315,000	170,000

In addition to the effect of the new emission standards on direct PM emissions noted above, the standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. Systems Applications International, under contract with EPA, evaluated the effect of the NO_X reductions on the formation of nitrate particulate.[13] The report concluded that, as a national average, each 100 tons of NO_X reduction will result in about 4 tons of secondary PM reduction. This conversion rate varies from region to region, and is greatest in the West. EPA estimates that the approximately 2.8 million tons per year of NO_X reduction projected in 2020 resulting from this final rule (assuming PSR growth rates) will result in a national average of about 110,000 tons per year reduction in secondary PM. This level of secondary PM reduction is equivalent to about 40 percent of the projected direct PM reductions determined from Table 6 (based on PSR growth rates).

As discussed below in section V.B, some technology upgrades associated with this program may have been introduced absent the changes in emission standards. Any emission reductions that would normally have occurred with improvements in technology should not be considered in determining the benefits and cost effectiveness of new emission standards. However, EPA believes that as manufacturers modernize and improve the technologies used on nonroad engines, they are faced with many choices on how to employ the new technologies to the greatest advantage for their customers. Many times, in the absence of requirements to meet tighter emission standards, the manufacturer will design the parameters of a new technology, or similarly, redesign the existing engine, to minimize fuel consumption or some other desirable trait, while not taking advantage of the emissions control capability of the new technology. Because none of these technologies leads to inherently lower emissions, EPA has not made any adjustments to the emission reduction or cost-effectiveness calculations to account for emission benefits that would have occurred independent of the new standards.

B. Economic Impacts

In assessing the economic impact of changing the emission standards, EPA has made a best estimate of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. EPA published detailed cost estimates with the proposed rule, which has been extensively revised based on information received during the public comment period. The principal change incorporated into the analysis for the final rule is the inclusion of estimated costs for adding or improving turbocharging and aftercooler systems. The substantial additional costs for these technologies are offset to a great degree by the expected savings from reduced fuel consumption. These and other changes to the estimated economic impact analysis are described in the Summary and Analysis of Comments.

While equipment manufacturers bear no responsibility for meeting emission standards, they will need to make changes in the design of their equipment models to accommodate the new engines. EPA's treatment of the impacts of the new emission standards therefore includes an analysis of costs for equipment manufacturers. Full details of EPA's cost and cost-effectiveness analyses can be found in Chapters 4 and 6 of the Final RIA.

Estimated cost increases are broken into purchase price and total life-cycle operating costs. The incremental purchase price for new engines and equipment is comprised of variable costs (for hardware and assembly time) and fixed costs (for research and development (R&D), retooling, and certification). Total operating costs include any expected increases in maintenance or fuel consumption. Cost estimates based on these projected technology packages represent an expected incremental cost of engines as they begin to comply with new emission standards. Costs in subsequent years are projected to decrease due to several factors, as described below. Separate projected costs were derived for engines and equipment used in six different ranges of rated power; costs were developed for engines near the middle of the listed ranges. All costs are presented in 1995 dollars. Life-cycle costs have been discounted to the year of sale using a discount rate of 7 percent.

1. Engine Technologies

The following discussion provides a brief description of those technologies

[13] ''Benefits of Mobile Source NO_X Related Particulate Matter Reductions,'' Systems Applications International, EPA Contract No. 68–C5–0010, WAN 1–8, October 1996 (available in Air Docket A–96–40).

EPA projects will be needed to comply with the new emission standards. In some cases it is difficult to make a distinction between technologies needed to reduce emissions for compliance with emission standards and those technologies that offer other benefits for improved fuel economy, power density, and other aspects of engine performance. EPA believes that without new emission standards, manufacturers would continue research on and eventually deploy many technological upgrades to improve engine performance or more cost-effectively control emissions. Modifications to fuel injection systems and the introduction of electronic controls are expected to continue, regardless of any change in emission standards, to improve engine performance. Some further development with a focus on NO_X, HC, and PM emissions will nevertheless play an important role in achieving emission reduction targets.

Because several technology upgrades have benefits that go beyond reducing emissions, a difficulty in assessing the impact of new emission standards is establishing the appropriate technology baseline from which to make projections. Ideally, the analysis would establish the mix of technologies that manufacturers would have introduced absent the changes in emission standards, then make a projection for any additional changes in hardware or calibration required to comply with those standards. The costs of those projected technology and calibration changes would then most accurately quantify the impact of setting new emission standards. While it is difficult to take into account the effect of ongoing technology development, EPA believes that assessing the full cost of the anticipated technologies as an impact of the new emission standards would inappropriately exclude from consideration the observed benefits for engine performance, fuel consumption, and durability. Short of having sufficient data to predict the future with a reasonable degree of confidence, EPA faces the need to devise an alternate approach to quantifying the true impact of the new emission standards. EPA believes the observed value of performance improvements in the field justifies the use of a discount based on equal weighting of emission and non-emission benefits of those technologies which clearly have substantial non-emission benefits, namely electronic controls, fuel injection changes, turbocharging, and engine modifications. For some or all of these technologies, a greater value for the non-emission benefits could likely be justified.

A variety of technological improvements are projected for complying with the multiple tiers of new emission standards. Selecting these technology packages requires extensive engineering analysis and judgment. The fact that manufacturers have nearly a full decade before implementation of the most challenging of the new standards ensures that technologies will develop significantly before reaching production. This ongoing development will lead to reduced costs in three ways. First, research will lead to enhanced effectiveness for individual technologies, allowing manufacturers to use simpler packages of emission control technologies than would be predicted given the current state of development. Similarly, the continuing effort to improve the emission control technologies will include innovations that allow lower-cost production. Finally, manufacturers will focus research efforts on any potential drawbacks, such as increased fuel consumption or maintenance costs, attempting to minimize or overcome any negative effects.

A combination of technology upgrades are anticipated as a result of the new emission standards. Modifications to basic engine design features, such as piston bowl shape and engine block and head geometry, can improve intake air characteristics and distribution during combustion. Manufacturers are expected to introduce electronic controls on most engines rated at or above 37 kW. Advanced fuel-injection techniques and hardware will allow designers to modify various fuel injection parameters for higher pressure, further rate shaping, and some split injection. For Tier 3 standards, EPA expects that many engines will see further fuel injection improvements and will incorporate a moderate degree of cooled exhaust gas recirculation. Details of the mix of technologies included in the cost analysis can be found in Chapter 4 of the Final RIA.

While the following analysis projects a relatively uniform emission control strategy for designing the different categories of engines, this should not suggest that EPA expects a single combination of technologies will be used by all manufacturers. In fact, depending on basic engine emission characteristics, EPA expects that control technology packages will gradually be fine-tuned to different applications. Furthermore, EPA expects manufacturers to use averaging, banking, and trading programs as a means to deploy varying degrees of emission control technologies on different engines. EPA nevertheless believes that the projections presented here provide a cost estimate representative of the different approaches manufacturers may ultimately take.

2. Engine Costs

The projected costs of these new technologies for meeting the new standards are itemized in the Final RIA and summarized in Table 7. For the Tier 1 standards for engines rated under 37 kW, estimated costs vary widely. Those engines that already operate with emissions low enough to meet the Tier 1 standards will bear costs only for certifying the engine, or about $10 per engine. For the remaining one-third of engines expected to need reduced emissions, adding engine modifications leads to total costs of around $90. The anticipated increase in operating costs will similarly be focused on the minority of engines that need design improvements, totaling about $130 in net present value (npv) over the lifetime of those engines. The calculated sales-weighted composite increase in both the purchase price and the operating costs for all engines rated under 37 kW is less than $50.

TABLE 7.—PROJECTED UNIT COSTS—ENGINES

Cost category	Year of production	Power (kW)					
		0–37	37–75	75–130	130–450	450–560	560+
Tier 1							
Incremental purchase price	1	$34					
Life-cycle Operating Costs (npv)	All	44					

TABLE 7.—PROJECTED UNIT COSTS—ENGINES—Continued

Cost category	Year of production	Power (kW)					
		0–37	37–75	75–130	130–450	450–560	560+
Tier 2							
Incremental purchase price	1	72	$124	$425	$464	$1,355	$683
Life-cycle Operating Costs (npv)	All	44	59	−147	−262	−1,347	0
Tier 3							
Incremental purchase price	1		240	511	758	1,858	
	6		120	297	435	535	
Life-cycle Operating Costs (npv)	All		97	−652	−826	−1,212	

Tier 2 standards, which apply to the full range of power ratings, involve higher estimated cost impacts. The set of technologies anticipated for Tier 2 engines include varying degrees of engine modifications, improved fuel injection, electronic controls, turbocharging, aftercooling, and exhaust gas recirculation. A small increase in operating costs is expected for engines rated between 37 and 75 kW, but for other engines operating costs are expected to remain unchanged or in some cases to decrease as a result of charge air cooling, as described in the Final RIA. The price of engines rated under 75 kW is expected to increase by about $100. Engines rated between 75 and 450 kW will likely see cost increases between $400 and $500, while larger engines may see price increases approaching or exceeding $1,000. The projected cost of compliance with Tier 3 standards entails increases from Tier 2 costs that follow a similar pattern to the increases for Tier 2 standards, though the Tier 3 standards apply only to engines rated between 37 and 560 kW.

Characterizing these estimated costs in the context of their fraction of the total purchase price and life-cycle operating costs is helpful in gauging the economic impact of the new standards. ICF conducted a study to characterize the range of current engine costs.[14] Although the incremental cost projections in Table 7 increase dramatically with increasing power rating, they in fact represent a comparable price change relative to the total price of the engine. The estimated cost increases for all engines are at most 13 percent of estimated engine prices (after typical discounts and rebates). Moreover, the cost savings described below further reduce the projected impact of the new emission standards; long-term cost increases are expected to be 8 percent of total engine price or less.

For the long term, EPA has identified two principal factors that would cause the estimated incremental costs to decrease over time. First, since fixed costs are assumed to be recovered over a fixed period, these costs disappear from the analysis after they have been fully recovered. This has a most striking effect on the projected costs for engines rated over 450 kW, for which the much higher projected costs are dominated by fixed costs. Second, the analysis incorporates the expectation that manufacturers will apply ongoing research to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[15] The analysis incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production and by reducing variable costs again by 20 percent starting with the sixth year of production. Table 7 lists the projected costs for each category of engine, including the set of numbers that illustrate the projected reduction in long-term costs for Tier 3 engines.

3. Equipment Costs

In addition to the costs directly associated with engines that are redesigned to meet new standards, costs may also result from the need to redesign the nonroad equipment in which these engines are used. Such redesigns could occur if the engine has a different shape or heat rejection rate, or is no longer made available in the configuration previously used. Based on their experience with the Tier 1 standards set in 1994, equipment manufacturers have told EPA that the main barrier to accommodating complying engines is the late delivery of such engines by engine manufacturers, which cuts into the lead time that equipment manufacturers need to properly redesign their equipment. Thus, attempts were made in developing this rulemaking to provide compliance flexibility to help equipment manufacturers avoid business disruptions resulting from the changes associated with new emission standards.

In addition, the Tier 3 emission standards and implementation dates for engines rated at or above 37 kW and Tier 2 emission standards and implementation dates for engines rated under 37 kW are based on the premise that no significant equipment redesign beyond that required to accommodate engines meeting the previous tier of standards will be required to accommodate the new engines. Equipment manufacturers may, of course, choose to spread equipment redesigning over the time frame for both first and second tiers of standards. This analysis accounts for this flexibility by projecting one major redesign for each equipment model, spreading the costs of this redesign over both tiers of standards. For each tier of standards, EPA projects that equipment manufacturers will have sufficient opportunity to accommodate complying engines and to market their product. EPA will consider the potential for multiple design changes to equipment models during the 2001 Feasibility Review.

In assessing the economic impact of the new emission standards, EPA has made a best estimate of the modifications to equipment that relate

[14] ''Engine Price (On-Highway and Nonroad) & Life-cycle Cost Methodology,'' memorandum from Thomas Uden, ICF, Inc. to Alan Stout, U.S. EPA, March 21, 1997 (available in Air Docket A–96–40).

[15] ''Learning Curves in Manufacturing,'' Linda Argote and Dennis Epple, Science, February 23, 1990, Vol. 247, pp. 920–924 (available in Air Docket A–96–40).

to packaging (installing engines in equipment engine compartments), power train (torque curve), and heat rejection effects of the new complying engines. The incremental purchase price for new engines is comprised of fixed costs (for R&D and retooling) and variable costs (for new or modified components). In its analysis, EPA attributes all changes in operating costs (i.e., additional maintenance and fuel economy benefit or penalty) to the cost estimates for engines. After a new standard takes effect, projected equipment costs in subsequent years would be reduced for the same reasons as described in the engine cost section above. Separate projected costs were determined for equipment using the same ranges of power ratings used above. Full details of EPA's equipment cost analysis can be found in Chapter 4 of the Final RIA.

a. Projected Equipment Changes. As described earlier, the amount of time that an equipment manufacturer has to integrate a new engine into a piece of equipment is of critical importance. These manufacturers have experienced that late engine delivery may prevent them from adequately engineering their equipment designs, resulting in the need for various improvised changes. In this case, the costs associated with the engine change would be for fabricated components and other hardware changes more than for engineering time. In contrast, with adequate lead time, an equipment manufacturer can invest enough engineering time to design around the new engine, usually with minimal increase in hardware costs. Depending on the degree of change required, sales volumes, and other factors, actual costs in either of these scenarios may be comparable. EPA's analysis follows the latter scenario, emphasizing engineering time over hardware costs.

The biggest change anticipated for equipment redesign is in changing the engine compartments to accommodate the physical changes to engines, especially for those engines that add air-to-air aftercoolers. The costs for engine development and the principal hardware components (radiator and plumbing) associated with air-to-air aftercooling are included as costs to the engines, as described above. What remains to be quantified for equipment manufacturers is then the effort to make space for the larger engine system and to integrate the engine into the overall functioning of the equipment. Extensive engineering time is allocated to this effort. In addition, significant costs are included for new, added, or improved materials that may be required, such as brackets, hoses, gaskets, or sheet metal.

b. Projected Equipment Costs. The costs of the projected equipment changes resulting from the new standards are itemized in the Final RIA and summarized in Table 8. For the Tier 1 emission standards that apply to equipment with engines rated under 37 kW, the estimated composite cost increase is $24 per piece of equipment. As described in the section on engine costs above, this estimate is based on the determination that many of the engines for this range of equipment already operate with emissions low enough to meet the Tier 1 standards.

TABLE 8.—PROJECTED UNIT COSTS

Tier	Power (kW)					
	0–37	37–75	75–130	130–450	450–560	560+
TIER 1						
Equipment	$24	.....	.....	.....	.....	.....
Total Engine and Equipment	59	.....	.....	.....	.....	.....
TIER 2						
Equipment	8	$125	$441	$340	$1,315	$404
Total Engine and Equipment	80	250	867	804	2,670	1,087
TIER 3: Short-Term						
Equipment	.....	42	147	113	439	.....
Total Engine and Equipment	.....	282	658	872	2,296	.....
TIER 3: Long-Term						
Equipment	.....	3	4	5	7	.....
Total Engine and Equipment	.....	122	301	440	543	.....

For Tier 2 standards, the relatively low equipment costs for equipment rated under 75 kW reflect the higher sales volume of this range. The highest projected cost of $1315 for equipment utilizing engines rated between 450 and 560 kW demonstrates that high unit equipment costs are due to amortizing large fixed costs over small sales volumes. These large fixed costs result from the effort to accommodate air-to-air aftercooling. Equipment with engines rated over 560 kW are expected to require less redesign, and have correspondingly lower costs, since no changes in aftercooling are anticipated for these models as a result of Tier 2 emission standards.

The projected incremental cost of complying with Tier 3 standards are lower than that for Tier 2 standards, because EPA expects most of the significant changes to equipment designs will occur for Tier 2 standards. For Tier 3 standards, projected equipment costs range from $42 to $439.

As discussed in the section on engine costs above, characterizing both these estimated incremental equipment and engine costs in the context of their fraction of the total equipment purchase price is useful for evaluating the economic impact of the new standards. EPA collected quoted retail (list) prices on several equipment pieces to characterize the range of current equipment prices. The combined incremental costs estimated for equipment and engines together for all power ranges are almost all under 2 percent of list prices, while many are well below 1 percent.

Furthermore, as described in the section on engine costs above, the cost savings from full amortization of fixed costs and application of a learning curve further reduce the projected cost impact of the new standards. Table 8 shows the projected equipment costs for each category of equipment, including the long-term cost projections for complying with Tier 3 standards. The table also presents the combined costs estimated

for equipment and engines (excluding changes to operating costs).

4. Aggregate Costs to Society

The above analysis presents unit cost estimates for each power category. With current data for equipment sales for each category and projections for the future, these costs can be translated into a total projected cost to the nation for the new emission standards in any year. Accounting for the projected favorable impact of the new standards on operating costs, primarily from fuel savings in larger engines, would produce negative aggregate costs (net economic gains) in future years. However, because it is difficult to accurately assess the fuel economy impacts of hardware changes and the degree to which these savings would have developed in the absence of new emission standards, EPA has conservatively chosen to present aggregate costs to society without factoring in the expected changes in operating costs. Using only the increased purchase prices leads to aggregate costs of about $5 million in the first year the new standards apply, increasing to a peak of about $550 million in 2010 as increasing numbers of engines become subject to the new standards. The following years show declining aggregate costs as the per-unit cost of compliance decreases, resulting in a minimum aggregate cost of about $390 million in 2017. After 2017, stable engine costs applied to a slowly growing market lead to slowly increasing aggregate costs.

As described earlier, EPA developed the cost and cost-effectiveness analyses by attributing half of the cost of certain technologies to benefits unrelated to emission control. To analyze the sensitivity of the cost analysis to this assumption, EPA estimated unit costs by attributing the full cost of these technologies to the new emission standards. EPA then estimated the effect of these increased costs on the 20-year costs to society. Assigning the full cost of technology as an to the emission control program, the 20-year fleetwide discounted cost is estimated to be $4.4 billion, approximately $1.2 billion higher than calculated using the base case. Similarly, the resulting 20-year annualized fleetwide costs are $411 million per year, approximately $115 million higher than the base case results.

EPA also developed alternative cost figures to test the sensitivity of distributing fixed costs over worldwide production of nonroad engines and equipment. Because some countries are not expected to adopt harmonized emission standards in the foreseeable future, manufacturers could choose to distribute fixed costs over a subset of foreign sales. Since it is very difficult to quantify sales volumes for individual countries for all the companies that participate in the U.S. market, EPA made the simplifying assumption that fixed costs could be distributed over only half of engines sold into other countries. Distributing costs over this smaller number of engines leads to a 20-year fleetwide discounted cost of $3.6 billion, approximately $0.4 billion higher than the base case results. The corresponding 20-year annualized fleetwide costs are $339 million per year, approximately $40 million higher than the base case results.

C. Cost-Effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the Tier 1, Tier 2 and Tier 3 standards for the same power categories of nonroad equipment highlighted earlier in this section. Chapter 6 of the Final RIA contains a more detailed discussion of the cost-effectiveness analysis.

As described above in the preceding section, the projected cost of complying with the new standards will vary by power category and model year. Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted costs (including increased engine costs and equipment costs), emission reductions (in short tons), and cost-effectiveness of the NMHC + NO_X standards are shown in Table 9 for the same model years discussed in the preceding section. EPA believes this is a conservative estimate because EPA assumed for the sake of this analysis that all of the increased costs presented earlier were attributable to NMHC + NO_X control and none of the costs were attributed to PM control. NO_X reductions represent approximately 90 percent of the total NMHC + NO_X emission reductions expected from the new standards. In addition, the costs presented in Table 9 do not include the expected effect on operating costs over the lifetime of the equipment. EPA expects the operating costs to offset much, if not all, of the increased engine and equipment costs presented in Table 9 for engines above 75 kW due to expected improvements in fuel economy for engines meeting the new standards.

TABLE 9.—COST-EFFECTIVENESS OF THE NEW NMHC+NO_X STANDARDS

Standard	Power (kW)	Year of production	Discounted engine and equipment cost	Discounted lifetime NMHC+NO_X reductions (tons)	Discounted lifetime cost-effectiveness per ton
Tier 1	0–37	1	$59	0.20	$300
Tier 2	0–37	1	80	0.04	2,090
	.....	6	35	.....	910
	37–75	1	249	0.49	510
	75–130	1	867	1.02	850
	130–450	1	804	1.82	440
	450–560	1	2,670	7.68	350
	>560	1	1,087	9.83	110
	.....	6	1,025	.....	100
Tier 3	37–75	1	282	0.51	560
	.....	6	160	.....	320
	75–130	1	658	0.82	800
	.....	6	442	.....	540
	130–450	1	872	1.46	600
	.....	6	545	.....	380
	450–560	1	2,296	5.91	390
	.....	6	1,991	.....	340

Weighting the projected cost and emission benefit numbers presented above by the populations of the individual power categories, EPA calculated the cost-effectiveness of the new NMHC + NO_X standards for the entire nonroad diesel engine fleet. Table 10 contains the resulting fleet-wide cost-effectiveness results for the Tier 2 and Tier 3 standards. The sensitivity analyses described in Section V.B.4. above would affect cost-effectiveness calculations in the same way as described for fleetwide total costs. The Appendix to the Final RIA includes cost-effectiveness results for the sensitivity analysis in which full costs are attributed to emissions control.

TABLE 10.—FLEET-WIDE COST-EFFECTIVENESS OF THE NEW NONROAD NMHC+NO_X STANDARDS

Standard	Discounted lifetime cost-effectiveness per ton
Tier 2	$600
Tier 3—Short term	650
Tier 3—Long term	410

For comparison to other PM control strategies, EPA has also analyzed the cost-effectiveness of the new standards by very conservatively assuming that half of the increased costs were attributable to PM control. Such a fleet-wide discounted lifetime cost-effectiveness represents the highest figure that could be expected for cost-effectiveness of the new standards and was calculated to provide an indication of the upper bound of PM cost-effectiveness values. The resulting fleet-wide discounted lifetime cost-effectiveness of the Tier 1 and Tier 2 PM standards is approximately $2,300 per ton.

In an effort to evaluate the cost-effectiveness of the NMHC + NO_X controls for nonroad engines, EPA has summarized the cost-effectiveness results for four other recent EPA mobile source rulemakings that required reductions in NO_X (or NMHC + NO_X) emissions. The heavy-duty vehicle portion of the Clean Fuel Fleet Vehicle Program yielded a cost-effectiveness of approximately $1,500/ton of NO_X, Phase II of the Reformulated Gasoline Program yielded approximately $5,000/ton of NO_X, the most recent NMHC + NO_X standards for highway heavy-duty diesel engines yielded a cost-effectiveness of $100–$600/ton of NMHC + NO_X, and the newly adopted standards for locomotive engines yielded a cost-effectiveness of $160–$250/ton of NO_X. The cost-effectiveness of the new NMHC + NO_X standards for nonroad diesel engines presented above are more favorable than the cost-effectiveness of both the clean fuel fleet vehicle program and reformulated gasoline. The cost-effectiveness of the new NMHC + NO_X standards for nonroad diesel engines is comparable to the cost-effectiveness of the most recent NMHC + NO_X standards for heavy-duty highway diesel engines and slightly less favorable than the cost-effectiveness of the locomotive standards.

EPA has also summarized the cost-effectiveness results for two other recent EPA mobile source rulemakings that required reductions in PM emissions. The cost-effectiveness of the most recent urban bus engine PM standard was estimated to be $10,000–$16,000/ton and the cost-effectiveness of the urban bus retrofit/rebuild program was estimated to be approximately $25,000/ton. The PM cost-effectiveness of the new emission standards presented above are more favorable than either of the urban bus programs.

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new standards are expected to have beneficial impacts with respect to crop damage, secondary particulate formation, acid deposition, eutrophication, visibility, and forests, as described earlier. Because of the difficulty of quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits. However, based on an analysis of existing studies that have estimated the value of such benefits in the past, the Agency believes that the actual monetary value of the multiple environmental and public health benefits produced by large NO_X reductions similar to those projected under this final rule will likely be greater than the estimated compliance costs.

VI. 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 (ANPRM) (60 FR 45580, August 31, 1995) announced EPA's intention to address emissions from nonroad diesel engines, and a Supplemental ANPRM (62 FR 199, January 2, 1997) detailed the framework for a proposed rule. Comments received during this period were considered in the development of the NPRM and are discussed in that document. These comments included information received from small businesses as a part of the multi-agency Small Business Advocacy Review Panel process which was completed prior to the NPRM and is described below under the discussion of the Regulatory Flexibility Act. The formal comment period and public hearing associated with the NPRM provided another opportunity for public input. EPA has also met with a variety of stakeholders at various points in the process, including environmental organizations, engine manufacturers, equipment manufacturers, and states.

EPA has prepared a detailed Summary and Analysis of Comments document which describes the comments received on the NPRM and presents the Agency's response to each of these comments. The Summary and Analysis of Comments document is available in the docket for this rule and on the Office of Mobile Sources internet home page.

VII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this rulemaking is a ''significant regulatory action'' because the new standards and other regulatory provisions, if implemented, are expected to have an annual effect on the economy in excess of $100 million. A

Final RIA has been prepared and is available in the docket associated with this rulemaking. This action was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. In response to the provisions of this statute, EPA identified industries that would be subject to this rulemaking and provided information to and received comment from small entities and representatives of small entities in these industries prior to the formal proposal of the program. Small entities submitted written comments on the January, 1997 Supplemental Advance Notice of Proposed Rulemaking and oral comments at an informal workshop in Chicago. From these and other interactions, EPA developed a list of potential provisions that might offer flexibility to small entities while meeting air quality goals.

The Agency convened a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act. The Panel distributed the list of potential flexibility provisions to the identified small entity contacts for further comment and held a teleconference which led to further improvement of the flexibility options. The Panel then received additional written comments on potential options. Based on suggestions from small entities before and after the convening of the Panel, the Panel identified a set of five flexibility provisions to address small business concerns which it recommended to the Agency for proposal in the rule. As detailed in Chapter 4 of the Final RIA, the five recommended provisions were the following: (1) flexibility for equipment manufacturers to aggregate and use exemption allowances on a schedule that best suited their needs, (2) equivalent flexibility for manufacturers of equipment using small engines as for those using larger engines, (3) provision for equipment manufacturers to purchase credits in the averaging, banking, and trading program and to use those credits to exempt more equipment, (4) dropping of the requirement that the small volume allowance be restricted to a single equipment model, and (5) adoption of a hardship relief provision. Subsequently, EPA incorporated all five recommended provisions into the Notice of Proposed Rulemaking. Subsequently, EPA incorporated all five recommended provisions into the Notice of Proposed Rulemaking.

After evaluating additional comments received on the proposed regulatory alternatives, EPA is adopting some of the provisions as they were recommended by the Panel as well as alternative flexibility provisions. The Agency is adopting the first two provisions, although by removing a special broader exemption for farming and logging equipment and instead increasing the allowances available to manufacturers of all types of equipment, the benefit to most small entities will actually be greater than under the proposed program. EPA is also adopting the fifth provision, establishing hardship relief.

The Agency agreed with commenters who said that the third provision, allowing equipment manufacturers to purchase ABT program credits, would not likely provide significant relief to equipment manufacturers while adding the complexity of credit accounting and recordkeeping. This provision was not finalized. The fourth provision was adopted in a revised form, expanding the small volume allowance to multiple equipment models while establishing limitations to prevent widespread use of this provision by larger companies for whom this allowance is not intended.

The Agency believes that, taken as a whole, the flexibility provisions established in this final rule provide small businesses with at least the same and probably greater flexibility compared to the set of provisions recommended by the Panel, while meeting the Agency's air quality goals. These provisions represent a very significant mitigation of the economic impacts on small equipment manufacturers compared to the impacts that might otherwise have occurred if small businesses had not been consulted. The final set of flexibility provisions and EPA's rationale for adopting these provisions are discussed in detail in Section II.E above and in the Summary and Analysis of Comments document.

EPA prepared an Initial Regulatory Flexibility Analysis which analyzed the economic impacts of the proposed rule on small companies and discussed related issues. EPA has now prepared a Final Regulatory Flexibility Analysis, which is incorporated in Chapter 4 (Economic Impact) of the Final Regulatory Impact Analysis associated with this final rule. The Final Regulatory Flexibility Analysis presents the Agency's final assessments of the impacts this rule is likely to have on small entities.

The Final Regulatory Flexibility Analysis incorporates comments received related to the Initial Regulatory Flexibility Analysis and reassesses the impact of the regulations on small entities. As did the Initial document, the Final Regulatory Flexibility Analysis analyzes the four separate but related industries that will be subject to this proposed rule and that contain small businesses as defined by regulations of the Small Business Administration (SBA): nonroad diesel engine manufacturing, manufacturing of nonroad diesel equipment, post-manufacturer marinizing of diesel engines, and the rebuilding or remanufacturing of diesel nonroad engines. A detailed economic analysis was conducted only for equipment manufacturers, for several reasons. First, there is only one manufacturer of diesel engines affected by the proposed rule that meets SBA's small business criteria, and this small engine manufacturer would have impacts from the proposal that are similar to those impacts experienced by large nonroad engine manufacturers as described elsewhere in this final rule. Second, marinizers are expected to experience impacts similar to those of nonroad equipment manufacturers since changes made by the original engine manufacturers might require changes in the parts and process involved in marinization. Finally, engine rebuilders/remanufacturers will not be significantly economically impacted, since the provisions of this final rule for these entities does not require a substantial change to their current practices.

As described above in Section II, this rule includes flexibility provisions for equipment manufacturers (both large and small manufacturers). The Final Regulatory Flexibility Analysis concludes that the final rule, with its compliance flexibility provisions, will result in an estimated 11 percent of small equipment manufacturers having annual compliance costs greater than 1 percent of their sales revenues. Also, an estimated 7 percent of small equipment manufacturers would experience a compliance cost impact greater than 3 percent of sales revenues. EPA believes the effects of the flexibility provisions are conservatively estimated, in part because the hardship relief provisions and the more generous exemption allowances finalized in this rule were not taken into account in the analysis. EPA considers the flexibility provisions

put in place by this rule to be a very effective way of minimizing significant economic impacts on small equipment manufacturers consistent with the Agency's air quality objectives.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit for OMB review and approval, federal requirements and activities that result in the collection of information from ten or more persons. Information collection requirements may include reporting, labeling, and recordkeeping requirements. Federal agencies may not impose penalties on persons who fail to comply with collections of information that do not display a currently valid OMB control number.

The information collection requirements in this final rule have been approved by OMB without comment under the Paperwork Reduction Act, except for the requirement that engine manufacturers' annual reports include information on engines produced for the equipment manufacturer flexibility program, discussed above in section II.E.5. This requirement was not included in the Information Collection Request (ICR) submitted to OMB because it was not formally proposed by EPA in the NPRM. This reporting requirement was, however, put forth in the NPRM for comment, and is being adopted in the final rule based on further analysis and consideration of comments received. EPA plans to submit a separate ICR for this requirement. The following ICR documents have been prepared by EPA:

EPA ICR No.	Title	OMB control No.
0011.09	Selective Enforcement Auditing and recordkeeping requirements for on-highway HDE, nonroad compression ignition engines, and on-highway light-duty vehicles and Light duty trucks.	2060–0604
0095.10	Pre-certification and testing exemption reporting and recordkeeping requirements	2060–0007
0282.10	Emission Defect Information and Voluntary Emission recall reports	2060–0048
1684.04	Compression Ignition Non-Road Engine Certification Application	2060–0104
1695.03	Amendment to the Information Collection Request Emission Standards for New Nonroad Spark-Ignition Engines.	2060–0104
1826.01	Information collection for equipment manufacturer flexibility	2060–0369

The Information Collection Requests (ICR) were subject to public notice and comment prior to OMB approval and, as a result, EPA finds that there is ''good cause'' under section 553(b) of the Administrative Procedures Act (5 U.S.C. 553 (b)) to include these information collection requirements in 40 CFR Part 9 without additional notice and comment. EPA received various comments on the rulemaking provisions covered by the ICRs, but no comments on the paperwork burden or other information in the ICRs. All comments that were submitted to EPA are considered in the Summary and Analysis of Comments, which can be found in the docket (A–96–40). A copy of any of the submitted ICR documents may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, DC 20460, or by calling (202) 260–2740.

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 for 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 final rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the final program will significantly or uniquely affect small governments. EPA has determined that this rule contains federal mandates that may result in expenditures of $100 million or more in any one year for the private sector. EPA believes that the proposed program represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The cost-benefit analysis required by UMRA is contained in the Final RIA. The reader is directed to Section VII.A for further information regarding these analyses.

E. 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).

F. 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 (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule involves technical standards. While commenters suggested the use of ISO 8178 test procedures for measuring emissions, the Agency has decided not to rely on these ISO procedures in this rulemaking. The Agency has determined that these procedures would be impracticable because they rely too heavily on reference testing conditions. Because the test procedures in these regulations need to represent in-use operation typical of operation in the field, they must be based on a range of ambient conditions. EPA has determined that the ISO procedures are not broadly usable in their current form, and therefore cannot be adopted by reference. EPA has instead chosen to continue to rely on the procedures outlined in 40 CFR Part 89. EPA is hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could then be adopted by reference. EPA also expects that any development of revised test procedures will be done in accordance with ISO procedures and in a balanced manner and thus include the opportunity for involvement of a range of interested parties (potentially including parties such as industry, EPA, state governments, and environmental groups) so that the resulting procedures can represent these different interests.

G. Protection of Children

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to a rule that is determined to be ''economically significant,'' as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045, because this rule does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Enhancing Intergovernmental Partnerships

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

This rule will be implemented at the federal level and imposes compliance obligations only on private industry. The rule thus creates no mandate on State, local or tribal governments, nor does it impose any enforceable duties on these entities. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

I. Consultation and Coordination With Indian Tribal Governments

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

This rule does not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of Executive Order 13084 do not apply to this rule.

VIII. Statutory Authority

In accordance with section 213(a) of the Clean Air Act, 42 U.S.C. 7547(a), EPA conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991. Based on the results of that study, EPA determined that emissions of NO_X, volatile organic compounds (including hydrocarbons), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area. See 59 FR 31306, June 17, 1994. Given this determination, section 213(a)(3) of the Act requires EPA to promulgate (and from time to time revise) emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in EPA's judgment cause or contribute to such air pollution. EPA has determined that the engines regulated under this final rule ''cause or contribute'' to such air pollution. See 59 FR 31306, June 17, 1994.

Where EPA determines that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that EPA determines cause or contribute to such air pollution. In the June 1994 final rule, EPA made this determination for emissions of PM and smoke from nonroad engines in general and for CI nonroad engines rated at or above 37 kW. This rule extends the same findings to nonroad diesel engines rated under 37 kW.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Diesel fuel, Imports, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: August 27, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 9, 86, and 89 of the Code of Federal Regulations are amended as set forth below.

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended in the table by removing the center heading ''Control of Emissions From New and In-Use Nonroad Engines'' and the entries under that center heading and adding a new center heading and entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Emissions From New and In-Use Nonroad Compression-Ignition Engines	
89.1	2060–0124
89.2	2060–0124
89.114–89.120	2060–0287
89.122–89.127	2060–0287
89.129	2060–0287
89.203–89.207	2060–0287
89.209–89.211	2060–0287
89.304–89.331	2060–0287
89.404–89.424	2060–0287
89.505–89.512	2060–0064
89.603–89.605	2060–0095
89.607–89.610	2060–0095
89.611	2060–0007, 2060–0095
89.612	2060–0095
89.801–89.803	2060–0048
89.903	2060–0124
89.905–89.911	2060–0007

* * * * *

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

3. The heading of part 86 is revised as set forth above.

4. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

5. Section 86.884–8 is amended by revising the table in paragraph (c)(4) to read as follows:

§ 86.884–8 Dynamometer and engine equipment.

* * * * *

(c) * * *

(4) * * *

Maximum rated horsepower	Exhaust pipe diameter (inches)
HP>50	1.5
50≤HP>100	2.0
100≤HP>200	3.0
200≤HP>300	4.0
300≤HP>500	5.0
HP≤5006.0.	

* * * * *

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

6. The heading of part 89 is revised as set forth above.

7. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

8. The following sections are redesignated as set forth in the following table:

Old designation	New designation
89.101–96	89.101
89.102–96	89.102
89.103–96	89.103
89.104–96	89.104
89.105–96	89.105
89.106–96	89.106
89.107–96	89.107
89.108–96	89.108
89.109–96	89.109
89.110–96	89.110
89.111–96	89.111
89.112–96	89.112
89.113–96	89.113
89.114–96	89.114
89.115–96	89.115
89.116–96	89.116
89.117–96	89.117
89.118–96	89.118
89.119–96	89.119
89.120–96	89.120
89.121–96	89.121
89.122–96	89.122
89.123–96	89.123
89.124–96	89.124
89.125–96	89.125
89.126–96	89.126
89.127–96	89.127
89.128–96	89.128
89.129–96	89.129
89.201–96	89.201
89.202–96	89.202
89.203–96	89.203
89.204–96	89.204
89.205–96	89.205
89.206–96	89.206
89.207–96	89.207
89.208–96	89.208
89.209–96	89.209
89.210–96	89.210
89.211–96	89.211
89.212–96	89.212
89.301–96	89.301
89.302–96	89.302
89.303–96	89.303
89.304–96	89.304
89.305–96	89.305
89.306–96	89.306
89.307–96	89.307
89.308–96	89.308
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89.318–96	89.318
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89.322–96	89.322
89.323–96	89.323
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89.327–96	89.327
89.328–96	89.328
89.329–96	89.329
89.330–96	89.330
89.331–96	89.331
89.401–96	89.401
89.402–96	89.402
89.403–96	89.403
89.404–96	89.404
89.405–96	89.405
89.406–96	89.406

Old designation	New designation
89.407–96	89.407
89.408–96	89.408
89.409–96	89.409
89.410–96	89.410
89.411–96	89.411
89.412–96	89.412
89.413–96	89.413
89.414–96	89.414
89.415–96	89.415
89.416–96	89.416
89.417–96	89.417
89.418–96	89.418
89.419–96	89.419
89.420–96	89.420
89.421–96	89.421
89.422–96	89.422
89.423–96	89.423
89.424–96	89.424
89.425–96	89.425
89.501–96	89.501
89.502–96	89.502
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89.516–96	89.516
89.601–96	89.601
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89.604–96	89.604
89.605–96	89.605
89.606–96	89.606
89.607–96	89.607
89.608–96	89.608
89.609–96	89.609
89.610–96	89.610
89.611–96	89.611
89.612–96	89.612
89.613–96	89.613

9. In part 89, all internal section references are revised as indicated in the above redesignation table.

Subpart A—[Amended]

10. Section 89.1 is amended by revising paragraphs (a) and (b)(4), by removing the word ''and'' at the end of paragraph (b)(3), and adding paragraph (b)(5), to read as follows:

§ 89.1 Applicability.

(a) This part applies to nonroad compression-ignition engines.

(b) * * *

(4) Engines used in marine vessels as defined in the General Provisions of the United States Code, 1 U.S.C. 3 , if those engines have a rated power at or above 37 kW; and

(5) Engines with a per cylinder displacement of less than 50 cubic centimeters.

11. Section 89.2 is amended by revising the definition of Nonroad vehicle or nonroad equipment manufacturer, removing the definition of Nonroad compression-ignition engine and adding new definitions in alphabetical order to read as follows:

§ 89.2 Definitions.

* * * * *

Auxiliary marine diesel engine means a marine diesel engine that is not a propulsion marine diesel engine.

Blue Sky Series engine means a nonroad engine meeting the requirements of § 89.112(f).

* * * * *

Compression-ignition means relating to a type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle to regulate intake air flow for controlling power during normal operation is indicative of a compression-ignition engine. This definition is applicable beginning January 1, 2000.

Constant-speed engine means an engine that is governed to operate only at rated speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems.

* * * * *

Exhaust gas recirculation means an emission control technology that reduces emissions by routing exhaust gases that had been exhausted from the combustion chamber(s) back into the engine to be mixed with incoming air prior to or during combustion. The use of valve timing to increase the amount of residual exhaust gas in the combustion chamber(s) that is mixed with incoming air prior to or during combustion is not considered to be exhaust gas recirculation for the purposes of this part.

* * * * *

Full load governed speed is the maximum full load speed as specified by the manufacturer in the sales and service literature and certification application. This speed is the highest engine speed with an advertised power greater than zero.

* * * * *

Intermediate speed means peak torque speed if peak torque speed occurs from 60 to 75 percent of rated speed. If peak torque speed is less than 60 percent of rated speed, intermediate speed means 60 percent of rated speed. If peak torque speed is greater than 75 percent of rated speed, intermediate speed means 75 percent of rated speed.

Marine diesel engine means a compression-ignition engine that is intended to be installed on a vessel.

* * * * *

Nonroad vehicle or nonroad equipment manufacturer means any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment or importing such vehicles or equipment for resale, or who acts for and is under the control of any such person in connection with the distribution of such vehicles or equipment. A nonroad vehicle or equipment manufacturer does not include any dealer with respect to new nonroad vehicles or equipment received by such person in commerce. A nonroad vehicle or equipment manufacturer does not include any person engaged in the manufacturing or assembling of new nonroad vehicles or equipment who does not install an engine as part of that manufacturing or assembling process. All nonroad vehicle or equipment manufacturing entities that are under the control of the same person are considered to be a single nonroad vehicle or nonroad equipment manufacturer.

* * * * *

Post-manufacture marinizer means a person who produces a marine diesel engine by substantially modifying a certified or uncertified complete or partially complete engine, and is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine. For the purpose of this definition, ''substantially modify'' means changing an engine in a way that could change engine emission characteristics.

* * * * *

Propulsion marine diesel engine means a marine diesel engine that is intended to move a vessel through the water or direct the movement of a vessel.

Rated speed is the maximum full load governed speed for governed engines and the speed of maximum horsepower for ungoverned engines.

Specific emissions means emissions expressed on the basis of observed brake power, using units of g/kW-hr. Observed brake power measurement includes accessories on the engine if these accessories are required for running an emission test (except for the cooling fan). When it is not possible to test the engine in the gross conditions, for example, if the engine and transmission form a single integral unit, the engine

may be tested in the net condition. Power corrections from net to gross conditions will be allowed with prior approval of the Administrator.

* * * * *

Tier 1 engine means an engine subject to the Tier 1 emission standards listed in § 89.112(a).

Tier 2 engine means an engine subject to the Tier 2 emission standards listed in § 89.112(a).

Tier 3 engine means an engine subject to the Tier 3 emission standards listed in § 89.112(a).

* * * * *

U.S.-directed production volume means the number of nonroad equipment, vehicle, or marine diesel engine units produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

* * * * *

Vessel has the meaning given to it in 1 U.S.C. 3.

12. Section 89.3 is amended by adding new acronyms in alphabetical order to read as follows:

§ 89.3 Acronyms and abbreviations.

* * * * *

EGR Exhaust gas recirculation.

* * * * *

NMHC Nonmethane hydrocarbon.

* * * * *

PM Particulate matter.

* * * * *

THC Total hydrocarbon.

* * * * *

§ 89.4 [Removed and Reserved]

13. Remove and reserve § 89.4.

14. Section 89.6 is amended by revising the last sentence in paragraph (b)(1) introductory text and the table in paragraph (b)(1) to read as follows:

§ 89.6 Reference materials.

* * * * *

(b) * * *

(1) * * * Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

Document number and name	40 CFR part 89 reference
ASTM D86–97:	
"Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure"	Appendix A to Subpart D.
ASTM D93–97:	
"Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester"	Appendix A to Subpart D.
ASTM D129–95:	
"Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)"	Appendix A to Subpart D.
ASTM D287–92:	
"Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products" (Hydrometer Method)	Appendix A to Subpart D
ASTM D445–97:	
"Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)".	Appendix A to Subpart D.
ASTM D613–95:	
"Standard Test Method for Cetane Number of Diesel Fuel Oil"	Appendix A to Subpart D.
ASTM D1319–98:	
"Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption".	Appendix A to Subpart D.
ASTM D2622–98:	
"Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry".	Appendix A to Subpart D.
ASTM D5186–96:	
"Standard Test Method for "Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Tubine Fuels By Supercritical Fluid Chromatography".	Appendix A to Subpart D.
ASTM E29–93a:	
"Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications"	89.120; 89.207; 89.509.

* * * * *

Subpart B—[Amended]

15. The newly designated § 89.102 is amended by revising the section heading and paragraph (a) and adding new paragraphs (c), (d), (e), (f), (g), and (h) to read as follows:

§ 89.102 Effective dates, optional inclusion, flexibility for equipment manufacturers.

(a) This subpart applies to all engines described in § 89.101 with the following power rating and manufactured after the following dates:

(1) Less than 19 kW and manufactured on or after January 1, 2000;

(2) Greater than or equal to 19 kW but less than 37 kW and manufactured on or after January 1, 1999;

(3) Greater than or equal to 37 kW but less than 75 kW and manufactured on or after January 1, 1998;

(4) Greater than or equal to 75 kW but less than 130 kW and manufactured on or after January 1, 1997;

(5) Greater than or equal to 130 kW but less than or equal to 560 kW and manufactured on or after January 1, 1996;

(6) Greater than 560 kW and manufactured on or after January 1, 2000.

* * * * *

(c) Engines meeting the voluntary standards described in § 89.112(f) may be designated as Blue Sky Series engines through the 2004 model year.

(d) *Implementation flexibility for equipment and vehicle manufacturers and post-manufacture marinizers.* Nonroad equipment and vehicle manufacturers and post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with respect to nonroad equipment and vehicles and marine diesel engines, subject to the requirements of paragraph (e) of this section. The following allowances apply separately to each engine power category subject to standards under § 89.112:

(1) *Percent-of-production allowances.* *(i) Equipment rated at or above 37 kW.* For nonroad equipment and vehicles with engines rated at or above 37 kW, a manufacturer may take any of the actions identified in § 89.1003(a)(1) for a portion of its U.S.-directed production volume of such equipment and vehicles during the seven years immediately following the date on which Tier 2 engine standards first apply to engines

used in such equipment and vehicles, provided that the seven-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 80, and provided that all such equipment and vehicles or equipment contain Tier 1 engines;

(ii) *Equipment rated under 37 kW.* For nonroad equipment and vehicles and marine diesel engines with engines rated under 37 kW, a manufacturer may take any of the actions identified in § 89.1003(a)(1) for a portion of its U.S.-directed production volume of such equipment and vehicles during the seven years immediately following the date on which Tier 1 engine standards first apply to engines used in such equipment and vehicles, provided that the seven-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 80.

(2) *Small volume allowances.* A nonroad equipment or vehicle manufacturer or post-manufacture marinizer may exceed the production percentages in paragraph (d)(1) of this section, provided that in each regulated power category the manufacturer's total of excepted nonroad equipment and vehicles and marine diesel engines:

(i) Over the years in which the percent-of-production allowance applies does not exceed 100 units times the number of years in which the percent-of-production allowance applies; and

(ii) Does not exceed 200 units in any year; and

(iii) Does not use engines from more than one engine family, or, for excepted equipment vehicles, and marine diesel engines using engines not belonging to any engine family, from more than one engine manufacturer.

(3) *Inclusion of previous-tier engines.* Nonroad equipment and vehicles and marine diesel engines built with previous tier or noncertified engines under the existing inventory provisions of § 89.1003(b)(4) need not be included in determining compliance with paragraphs (d)(1) and (d)(2) of this section.

(e) *Recordkeeping and calculation to verify compliance.* The following shall apply to nonroad equipment or vehicle manufacturers and post-manufacture marinizers who produce excepted equipment or vehicles or marine diesel engines under the provisions of paragraph (d) of this section:

(1) For each power category in which excepted nonroad equipment or vehicles or marine diesel engines are produced, a calculation to verify compliance with the requirements of paragraph (d) of this section shall be made by the nonroad equipment or vehicle manufacturer or post-manufacture marinizer. This calculation shall be made no later than December 31 of the year following the last year in which allowances are used, and shall be based on actual production information from the subject years. If both the percent-of-production and small volume allowances have been exceeded, then the manufacturer is in violation of section 203 of the Act and § 89.1003, except as provided under paragraphs (f) and (h) of this section.

(2) A nonroad equipment or vehicle manufacturer or post-manufacture marinizer shall keep records of all nonroad equipment and vehicles and marine diesel engines excepted under the provisions of paragraph (d) of this section, for each power category in which exceptions are taken. These records shall include equipment and engine model numbers, serial numbers, and dates of manufacture, and engine rated power. In addition, the manufacturer shall keep records sufficient to demonstrate the verifications of compliance required in paragraph (e)(1) of this section. All records shall be kept until at least two full years after the final year in which allowances are available for each power category, and shall be made available to EPA upon request.

(f) *Hardship relief.* Nonroad equipment and vehicle manufacturers and post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) if approved by the Administrator, and subject to the following requirements:

(1) Application for relief must be submitted to the Engine Programs and Compliance Division of the EPA in writing prior to the earliest date in which the applying manufacturer would be in violation of § 89.1003. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The applying manufacturer must not be the manufacturer of the engines used in the equipment for which relief is sought. This requirement does not apply to post-manufacture marinizers.

(3) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(4) The conditions causing the impending violation must be such that the applying manufacturer will experience serious economic hardship if relief is not granted.

(5) The applying manufacturer must demonstrate that no allowances under paragraph (d) of this section will be available to avoid the impending violation.

(6) Any relief granted must begin within one year after the implementation date of the standard applying to the engines being used in the equipment, or to the marine diesel engines, for which relief is requested, and may not exceed one year in duration.

(7) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(g) *Allowance for the production of engines.* Engine manufacturers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with regard to uncertified engines or Tier 1 engines, as appropriate, if the engine manufacturer has received written assurance from the equipment manufacturer that the engine is required to meet the demand for engines created under paragraph (d), (f), or (h) of this section.

(h) *Alternative Flexibility for Post-Manufacture Marinizers.* Post-manufacture marinizers may elect to delay the effective date of the Tier 1 standards in § 89.112 for marine diesel engines rated under 37 kW by one year, instead of using the provisions of paragraphs (d) and (f) of this section. Post-manufacture marinizers wishing to take advantage of this provision must inform the Director of the Engine Programs and Compliance Division of their intent to do so in writing before the date that the standards would otherwise take effect.

16. The newly designated § 89.104 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 89.104 Useful life, recall, and warranty periods.

(a) The useful life is based on the rated power and rated speed of the engine.

(1) For all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, the useful life is a period of 3,000 hours or five years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the useful life is a period of 5,000 hours or seven years of use, whichever first occurs.

(3) For all engines rated at or above 37 kW, the useful life is a period of 8,000 hours of operation or ten years of use, whichever first occurs.

(b) Engines are subject to recall testing for a period based on the rated power and rated speed of the engines. However, in a recall, engines in the subject class or category would be

subject to recall regardless of actual years or hours of operation.

(1) For all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, the engines are subject to recall testing for a period of 2,250 hours or four years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the engines are subject to recall for a period of 3,750 hours or five years of use, whichever first occurs.

(3) For all engines rated at or above 37 kW, the engines are subject to recall for a period of 6,000 hours of operation or seven years of use, whichever first occurs.

(c) The warranty periods for warranties imposed by the Clean Air Act and § 89.1007 for all engines rated under 19 kW, and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, are 1,500 hours of operation or two years of use, whichever first occurs. For all other engines, the warranty periods for warranties imposed by the Clean Air Act and § 89.1007 are 3,000 hours of operation or five years of use, whichever first occurs.

* * * * *

17. The newly designated § 89.109 is revised to read as follows:

§ 89.109 Maintenance instructions and minimum allowable maintenance intervals.

(a) The manufacturer must furnish or cause to be furnished to the ultimate purchaser of each new nonroad engine subject to standards under this part written instructions for the maintenance needed to ensure proper functioning of the emission control system. Paragraphs (b) through (h) of this section do not apply to Tier 1 engines with rated power at or above 37 kW.

(b) Maintenance performed on equipment, engines, subsystems or components used to determine exhaust emission deterioration factors is classified as either emission-related or nonemission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(c) This paragraph (c) specifies emission-related scheduled maintenance for purposes of obtaining durability data for nonroad engines. The maintenance intervals specified below are minimum intervals:

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same or longer hours of use intervals as those specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the engine under paragraph (a) of this section. This maintenance schedule may be updated as necessary throughout the testing of the engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test equipment or engine.

(2) Any emission-related maintenance which is performed on equipment, engines, subsystems, or components must be technologically necessary to ensure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to the purchasers under paragraph (a) of this section.

(i) The Administrator may require longer maintenance intervals than those listed in paragraphs (c)(3) and (c)(4) of this section where the listed intervals are not technologically necessary.

(ii) The Administrator may allow manufacturers to specify shorter maintenance intervals than those listed in paragraphs (c)(3) and (c)(4) of this section where technologically necessary for engines rated under 19 kW, or for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm.

(3) The adjustment, cleaning, repair, or replacement of items listed in paragraphs (c)(3)(i) through (c)(3)(iii) of this section shall occur at 1,500 hours of use and at 1,500-hour intervals thereafter.

(i) Exhaust gas recirculation system-related filters and coolers.

(ii) Positive crankcase ventilation valve.

(iii) Fuel injector tips (cleaning only).

(4) The adjustment, cleaning and repair of items in paragraphs (c)(4)(i) through (c)(4)(vii) of this section shall occur at 3,000 hours of use and at 3,000-hour intervals thereafter for nonroad compression-ignition engines rated under 130 kW, or at 4,500-hour intervals thereafter for nonroad compression-ignition engines rated at or above 130 kW.

(i) Fuel injectors.

(ii) Turbocharger.

(iii) Electronic engine control unit and its associated sensors and actuators.

(iv) Particulate trap or trap-oxidizer system (including related components).

(v) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (c)(3)(i) of this section.

(vi) Catalytic convertor.

(vii) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(d) Scheduled maintenance not related to emissions which is reasonable and technologically necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, lubrication of the exhaust manifold heat control valve, etc.) may be performed on durability vehicles at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (e.g., not the intervals recommended for severe service).

(e) Adjustment of engine idle speed on emission data engines may be performed once before the low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components; or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (e) of this section for emission data engines; or

(3) Specifically authorized by the Administrator.

(g) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 89.124.

(h)(1) The components listed in paragraphs (h)(1)(i) through (h)(1)(vi) of this section are defined as critical emission-related components.

(i) Catalytic converter.

(ii) Electronic engine control unit and its associated sensors and actuators.

(iii) Exhaust gas recirculation system (including all related filters, coolers, control valves, and tubing).

(iv) Positive crankcase ventilation valve.

(v) Particulate trap or trap-oxidizer system.

(vi) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. The manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (h)(2)(i) through (h)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

(i) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical operation.

(ii) Survey data are submitted which adequately demonstrate to the Administrator with an 80 percent confidence level that 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(iii) A clearly displayed visible signal system approved by the Administrator is installed to alert the equipment operator that maintenance is due. A signal bearing the message ''maintenance needed'' or ''check engine,'' or a similar message approved by the Administrator, shall be actuated at the appropriate usage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator. The system must not be designed to deactivate upon the end of the useful life of the engine or thereafter.

(iv) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (h)(2)(ii) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(v) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under paragraph (a) of this section.

(vi) The manufacturer uses any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(3) Visible signal systems used under paragraph (h)(2)(iii) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act.

18. The newly designated § 89.110 is amended by removing ''and'' at the end of paragraph (b)(9), by adding a semicolon at the end of paragraph (b)(10), and by adding new paragraphs (b)(11) and (b)(12) to read as follows:

§ 89.110 Emission control information label.

* * * * *

(b) * * *

(11) Engines belonging to an engine family that has been certified as a constant-speed engine using the test cycle specified in Table 2 of appendix B to subpart E of this part must contain the statement on the label: ''constant-speed only''; and

(12) Engines meeting the voluntary standards described in § 89.112(f)(1) to be designated as Blue Sky Series engines must contain the statement on the label: ''Blue Sky Series''.

* * * * *

19. The newly designated § 89.112 is amended by revising paragraphs (a), (b), and (d), and adding new paragraphs (e) and (f) to read as follows:

§ 89.112 Oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter exhaust emission standards.

(a) Exhaust emission from nonroad engines to which this subpart is applicable shall not exceed the applicable exhaust emission standards contained in Table 1, as follows:

BILLING CODE 6560–50–P

Table 1.—Emission Standards (g/kW-hr)

Rated Power (kW)	Tier	Model Year[1]	NOx	HC	NMHC + NOx	CO	PM
kW<8	Tier 1	2000	—	—	10.5	8.0	1.0
	Tier 2	2005	—	—	7.5	8.0	0.80
8≤kW<19	Tier 1	2000	—	—	9.5	6.6	0.80
	Tier 2	2005	—	—	7.5	6.6	0.80
19≤kW<37	Tier 1	1999	—	—	9.5	5.5	0.80
	Tier 2	2004	—	—	7.5	5.5	0.60
37≤kW<75	Tier 1	1998	9.2	—	—	—	—
	Tier 2	2004	—	—	7.5	5.0	0.40
	Tier 3	2008	—	—	4.7	5.0	
75≤kW<130	Tier 1	1997	9.2	—	—	—	—
	Tier 2	2003	—	—	6.6	5.0	0.30
	Tier 3	2007	—	—	4.0	5.0	
130≤kW<225	Tier 1	1996	9.2	1.3	—	11.4	0.54
	Tier 2	2003	—	—	6.6	3.5	0.20
	Tier 3	2006	—	—	4.0	3.5	
225≤kW<450	Tier 1	1996	9.2	1.3	—	11.4	0.54
	Tier 2	2001	—	—	6.4	3.5	0.20
	Tier 3	2006	—	—	4.0	3.5	
450≤kW≤560	Tier 1	1996	9.2	1.3	—	11.4	0.54
	Tier 2	2002	—	—	6.4	3.5	0.20
	Tier 3	2006	—	—	4.0	3.5	
kW>560	Tier 1	2000	9.2	1.3	—	11.4	0.54
	Tier 2	2006	—	—	6.4	3.5	0.20

[1] The model years listed indicate the model years for which the specified tier of standards take effect.

BILLING CODE 6560–50–C

(b) Exhaust emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and nonmethane hydrocarbon are measured using the procedures set forth in subpart E of this part.

* * * * *

(d) In lieu of the NO_X standards, NMHC + NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart C of this part. The manufacturer must set a family emission limit (FEL) not to exceed the levels contained in Table 2. The FEL established by the manufacturer serves as the standard for that engine family. Table 2 follows:

BILLING CODE 6560–50–P

Table 2.—Upper Limit for Family Emission Limits (g/kW-hr)

Rated Power (kW)	Tier	Model Year[1]	NOx FEL	NMHC+ NOx FEL	PM FEL
kW<8	Tier 1	2000	—	16.0	1.2
	Tier 2	2005	—	10.5	1.0
8≤kW<19	Tier 1	2000	—	16.0	1.2
	Tier 2	2005	—	9.5	0.80
19≤kW<37	Tier 1	1999	—	16.0	1.2
	Tier 2	2004	—	9.5	0.80
37≤kW<75	Tier 1	1998	14.6	—	—
	Tier 2	2004	—	11.5	1.2
	Tier 3	2008	—	7.5	
75≤kW<130	Tier 1	1997	14.6	—	—
	Tier 2	2003	—	11.5	1.2
	Tier 3	2007	—	6.6	
130≤kW<225	Tier 1	1996	14.6	—	—
	Tier 2	2003	—	10.5	0.54
	Tier 3	2006	—	6.6	
225≤kW<450	Tier 1	1996	14.6	—	—
	Tier 2	2001	—	10.5	0.54
	Tier 3	2006	—	6.4	
450≤kW≤560	Tier 1	1996	14.6	—	—
	Tier 2	2002	—	10.5	0.54
	Tier 3	2006	—	6.4	
kW>560	Tier 1	2000	14.6	—	—
	Tier 2	2006	—	10.5	0.54

[1] The model years listed indicate the model years for which the specified tier of limits take effect.

BILLING CODE 6560–50–C

(e) Naturally aspirated nonroad engines to which this subpart is applicable shall not discharge crankcase emissions into the ambient atmosphere, unless such crankcase emissions are permanently routed into the exhaust and included in all exhaust emission measurements. This provision applies to all Tier 2 engines and later models. This provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

(f) The following paragraphs define the requirements for low-emitting Blue Sky Series engines:

(1) *Voluntary standards.* Engines may be designated ''Blue Sky Series'' engines through the 2004 model year by meeting the voluntary standards listed in Table 3, which apply to all certification and in-use testing, as follows:

TABLE 3.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated Brake Power (kW)	NMHC+NO_X	PM
kW<8	4.6	0.48
8≤kW<19	4.5	0.48
19≤kW<37	4.5	0.36
37≤kW<75	4.7	0.24
75≤kW<130	4.0	0.18
130≤kW≤560	4.0	0.12
kW>560	3.8	0.12

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part, except as specified in paragraph (f)(3) of this section.

(3) *Test procedures.* NO_X, NMHC, and PM emissions are measured using the procedures set forth in 40 CFR part 86, subpart N, in lieu of the procedures set forth in subpart E of this part. CO emissions may be measured using the procedures set forth either in 40 CFR part 86, subpart N, or in Subpart E of this part. Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator. Engines meeting the requirements to qualify as Blue Sky Series engines must be capable of maintaining a comparable level of emission control when tested using the procedures set forth in paragraph (c) of this section and subpart E of this part. The numerical emission levels measured using the procedures from subpart E of this part may be up to 20 percent higher than those measured using the procedures from 40 CFR part 86, subpart N, and still be considered comparable.

20. The newly designated § 89.113 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 89.113 Smoke emission standard.

* * * * *

(b) Opacity levels are to be measured and calculated as set forth in 40 CFR part 86, subpart I. Notwithstanding the provisions of 40 CFR part 86, subpart I, two-cylinder nonroad engines may be tested using an exhaust muffler that is representative of exhaust mufflers used with the engines in use.

(c) The following engines are exempt from the requirements of this section:

(1) Single-cylinder engines;

(2) Propulsion marine diesel engines; and

(3) Constant-speed engines.

21. The newly designated § 89.114 is amended by revising the section heading, paragraph (a) and the heading of paragraph (b) to read as follows:

§ 89.114 Special and alternate test procedures.

(a) *Special test procedures.* The Administrator may, on the basis of written application by a manufacturer, establish special test procedures other than those set forth in this part, for any nonroad engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in subpart E of this part or 40 CFR part 86, subpart I.

(b) *Alternate test procedures.* * * *

22. The newly designated § 89.116 is amended by adding a new paragraph (e) to read as follows:

§ 89.116 Engine families.

* * * * *

(e)(1) This paragraph (e) applies only to the placement of Tier 1 engines with power ratings under 37 kW into engine families. The provisions of paragraphs (a) through (d) of this section also apply to these engines. The power categories referred to in this paragraph (e) are those for which separate standards or implementation dates are described in § 89.112.

(2) A manufacturer may place engines with power ratings in one power category into an engine family comprised of engines with power ratings in another power category, and consider all engines in the engine family as being in the latter power category for the purpose of determining compliance with the standards and other requirements of this part, subject to approval in advance by the Administrator and the following restrictions:

(i) The engines that have power ratings outside the engine family's power category must constitute less than half of the engine family's sales in each model year for which the engine family grouping is made; and

(ii) The engines that have power ratings outside the engine family's power category must have power ratings that are within ten percent of either of the two power levels that define the engine family's power category.

(3) The restrictions described in paragraphs (e)(2)(i) and (e)(2)(ii) of this section do not apply if the emissions standards and other requirements of this part are at least as stringent for the engine family's power category as those of the other power categories containing engines in the engine family.

23. The newly designated § 89.117 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 89.117 Test fleet selection.

(a) The manufacturer must select for testing, from each engine family, the engine with the most fuel injected per stroke of an injector, primarily at the speed of maximum torque and secondarily at rated speed.

* * * * *

(d) For establishing deterioration factors, the manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Engines, subsystems, or components shall be selected so that their emission deterioration characteristics are expected to represent those of in-use engines, based on good engineering judgment.

24. The newly designated § 89.118 is amended by revising the section heading and adding new introductory text and a new paragraph (e) to read as follows:

§ 89.118 Deterioration factors and service accumulation.

This section applies to service accumulation used to determine deterioration factors and service accumulation used to condition test engines. Paragraphs (a) and (b) of this section apply only for service accumulation used to condition test engines. Paragraph (e) of this section applies only for service accumulation used to determine deterioration factors. Paragraphs (c) and (d) of this section apply for all service accumulation required by this part.

* * * * *

(e) This paragraph (e) describes service accumulation and alternative requirements for the purpose of developing deterioration factor.

(1) *Service accumulation on engines, subsystems, or components selected by the manufacturer under § 89.117(d).* The manufacturer shall describe the form and extent of this service accumulation in the application for certification.

(2) *Determination of exhaust emission deterioration factors.* The manufacturer shall determine the deterioration factors in accordance with the applicable provisions of this part based on service accumulation and related testing, according to the manufacturer's procedures, except as provided in paragraph (e)(3) of this section.

(3) *Alternatives to service accumulation and testing for the determination of a deterioration factor.* A written explanation of the appropriateness of using an alternative must be included in the application for certification.

(i) *Carryover and carryacross of durability emission data.* In lieu of testing an emission data or durability data engine selected under § 89.117(d), a manufacturer may, with Administrator approval, use exhaust emission deterioration data on a similar engine for which certification to the same standard has previously been obtained or for which all applicable data required under § 89.124 has previously been submitted. This data must be submitted in the application for certification.

(ii) *Use of on-highway deterioration data.* In the case where a manufacturer produces a certified on-highway engine that is similar to the nonroad engine to be certified, deterioration data from the on-highway engine may be applied to the nonroad engine. This application of deterioration data from an on-highway engine to a nonroad engine is subject to Administrator approval, and the determination of whether the engines are similar must be based on good engineering judgment.

(iii) *Engineering analysis for established technologies.* (A) In the case where an engine family uses established technology, an analysis based on good engineering practices may be used in lieu of testing to determine a deterioration factor for that engine family, subject to Administrator approval.

(B) Engines for which the certification levels are not at or below the Tier 3 NMHC+NO_X standards described in § 89.112 are considered established technology, except as provided in paragraph (e)(3)(iii)(D) of this section.

(C) Manufacturers may petition the Administrator to consider an engine with a certification level below the Tier 3 NMHC+NO_X standards as established technology. This petition must be based on proof that the technology used is not significantly different than that used on engines that have certification levels that are not below the Tier 3 NMHC+NO_X levels.

(D) Engines using exhaust gas recirculation or aftertreatment are excluded from the provision set forth in paragraphs (e)(3)(iii)(A) through (e)(3)(iii)(C) of this section.

(E) The manufacturer shall provide a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the deterioration factor is based, are available to the Administrator upon request.

(iv) *Interim provision for engines rated under 37 kW.* For model year 1999 and 2000 engines rated under 37 kW, manufacturers may determine deterioration factors based on good engineering judgement and reasonably available information. The manufacturer must maintain and provide to the Administrator, if requested, all information used to determine deterioration factors for these engines.

25. The newly designated § 89.119 is amended by revising paragraph (d) to read as follows:

§ 89.119 Emission tests.

* * * * *

(d) The provisions of this paragraph (d) apply only to Tier 1 nonroad engines without exhaust aftertreatment rated at or above 37 kW.

(1) Particulate emission measurements from Tier 1 nonroad engines without exhaust aftertreatment rated at or above 37 kW may be adjusted to a sulfur content of 0.05 weight percent.

(2) Adjustments to the particulate measurement shall be made using the following equation:

$$PM_{adj}=PM-[BSFC \times 0.0917 \times (FSF-0.0005)]$$

Where:

PM_{adj}=adjusted measured PM level [g/Kw-hr].

PM=measured weighted PM level [g/Kw-hr].

BSFC=measured brake specific fuel consumption [G/Kw-hr].

FSF=fuel sulfur weight fraction.

(3) Where a manufacturer certifies using test fuel with a sulfur content less than or equal to 0.050 weight percent, EPA shall not use emission data collected using test fuel with a sulfur content greater than 0.050 weight percent to determine compliance with the Tier 1 PM standards.

(4) Where a manufacturer certifies using test fuel with a sulfur content greater than 0.050 weight percent, EPA shall not use emission data collected using test fuel with a sulfur content greater than 0.050 weight percent to determine compliance with the Tier 1 PM standards, unless EPA adjusts the PM measurement using the equation specified in paragraph (d)(2) of this section.

26. The newly designated § 89.120 is amended by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 89.120 Compliance with emission standards.

* * * * *

(c) For each nonroad engine family, except Tier 1 engine families with rated power at or above 37 kW that do not employ aftertreatment, a deterioration factor must be determined and applied.

(1) The applicable exhaust emission standards (or family emission limits, as appropriate) for nonroad compression-ignition engines apply to the emissions of engines for their useful life.

(2) [Reserved]

(3)(i) This paragraph (c)(3) describes the procedure for determining compliance of an engine with emission standards (or family emission limits, as appropriate), based on deterioration factors supplied by the manufacturer. The NMHC + NO_X deterioration factors shall be established based on the sum of the pollutants, except as provided in paragraph (c)(3)(iv) of this section. When establishing deterioration factors for NMHC + NO_X, a negative deterioration (emissions decrease from the official emissions test result) for one pollutant may not offset deterioration of the other pollutant.

(ii) Separate emission deterioration factors, determined by the manufacturer according to the requirements of § 89.118, shall be provided in the certification application for each engine-system combination. Separate deterioration factors shall be established for each regulated pollutant, except that a combined NMHC + NO_X deterioration factor shall be established for compression-ignition nonroad engines not utilizing aftertreatment technology. For smoke testing, separate deterioration factors shall also be established for the acceleration mode (designated as ''A''), the lugging mode (designated as ''B''), and peak opacity (designated as ''C'').

(iii) *Compression-ignition nonroad engines not utilizing aftertreatment technology (e.g., particulate traps).* For CO, NMHC + NO_X, and particulate, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is

less than zero, it shall be zero for the purposes of this paragraph (c)(3)(iii).

(iv) *Compression-ignition nonroad engines utilizing aftertreatment technology (e.g., particulate traps).* For CO, NMHC + NO_X, and particulate, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. Separate NMHC and NO_X deterioration factors shall be applied to the results for these pollutants prior to combining the results. If the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph (c)(3)(iv).

(v) For acceleration smoke (''A''), lugging smoke (''B''), and peak opacity (''C''), the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However if the deterioration supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph (c)(3)(v).

(vi) The emission values to compare with the standards (or family emission limits, as appropriate) shall be the adjusted emission values of paragraphs (c)(3)(iii) through (v) of this section, rounded to the same number of significant figures as contained in the applicable standard in accordance with ASTM E29–93a, for each emission data engine. This procedure has been incorporated by reference at § 89.6.

(4) Every test engine of an engine family must comply with all applicable standards (or family emission limits, as appropriate), as determined in paragraph (c)(3)(vi) of this section, before any engine in that family will be certified.

* * * * *

(e) For the purposes of setting an NMHC + NO_X certification level or FEL, one of the following options shall be used for the determination of NMHC for an engine family. The manufacturer must declare which option is used in its application for certification of that engine family.

(1) The manufacturer may assume that up to two percent of the measured THC is methane (NMHC = 0.98 × THC).

(2) The manufacturer may measure NMHC emissions using a method approved by the Administrator prior to the start of testing. This option allows the determination of NMHC emissions by subtracting measured methane emissions from measured THC emissions.

27. The newly designated § 89.124 is amended by adding paragraph (a)(3) to read as follows:

§ 89.124 Record retention, maintenance, and submission.

(a) * * *

(3) Information required to be kept by the manufacturer in § 89.118(e)(3) for alternatives to service accumulation and testing for the determination of a deterioration factor.

* * * * *

28. The newly designated § 89.125 is amended by revising paragraph (b) to read as follows:

§ 89.125 Production engines, annual report.

* * * * *

(b) The manufacturer must annually, within 30 days after the end of the model year, notify the Administrator of the number of engines produced by engine family, by gross power, by displacement, by fuel system, and, for engines produced under the provision of § 89.102(g), by engine model and purchaser (or shipping destination for engines used by the engine manufacturer), or by other categories as the Administrator may require.

29. The newly designated § 89.126 is amended by revising paragraph (c) to read as follows:

§ 89.126 Denial, revocation of certificate of conformity.

* * * * *

(c) If a manufacturer knowingly commits an infraction specified in paragraph (b)(1) or (b)(4) of this section, knowingly commits any other fraudulent act which results in the issuance of a certificate of conformity, or fails to comply with the conditions specified in § 89.203(d), § 89.206(c), § 89.209(c) or § 89.210(g), the Administrator may deem such certificate void ab initio.

* * * * *

30. A new § 89.130 is added to subpart B to read as follows:

§ 89.130 Rebuild practices.

(a) The provisions of this section are applicable to engines subject to the standards prescribed in § 89.112 and are applicable to the process of engine rebuilding (or rebuilding a portion of an engine or engine system). This section does not apply to Tier 1 engines rated at or above 37 kW. The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and also may include the removal of the engine from the vehicle and other acts associated with rebuilding an engine.

(b) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications), and the model year(s) of the resulting engine configuration must be identified. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emission control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(c) When an engine is being rebuilt and remains installed or is reinstalled in the same equipment, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a certified configuration that is equivalent, from an emissions standpoint, to the engine being replaced.

(d) At time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy requirements in § 89.109 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(e) When conducting a rebuild without removing the engine from the equipment, or during the installation of a rebuilt engine, all critical emission-related components listed in 40 CFR part 86, subpart B, not otherwise addressed by paragraphs (b) through (d) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(f) Records shall be kept by parties conducting activities included in paragraphs (b) through (e) of this section. The records shall include at

minimum the hours of operation at time of rebuild, a listing of work performed on the engine, and emission-related control components including a listing of parts and components used, engine parameter adjustments, emission-related codes or signals responded to and reset, and work performed under paragraph (e) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

Subpart C—[Amended]

31. The newly designated § 89.203 is revised to read as follows:

§ 89.203 General provisions.

(a) The averaging, banking, and trading programs for NO_X, NMHC+NO_X, and PM emissions from eligible nonroad engines are described in this subpart. Participation in these programs is voluntary.

(b) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A nonroad engine family is eligible to participate in the averaging, banking, and trading program for NO_X emissions and the banking and trading program for PM emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (b)(2) of this section. No averaging, banking, and trading program is available for meeting the Tier 1 HC, CO, or smoke emission standards specified in subpart B of this part. No averaging program is available for meeting the Tier 1 PM emission standards specified in subpart B of this part.

(2) Nonroad engines may not participate in the averaging, banking, and trading programs if they are exported or are sold as Blue Sky Series engines as described in § 89.112(f). Nonroad engines certified on a special test procedure under § 89.114(a), may not participate in the averaging, banking and trading programs unless the manufacturer has requested that the engines be included in the averaging, banking, and trading programs at the time the request for the special test procedure is made and has been granted approval by the Administrator for inclusion in the averaging, banking, and trading programs.

(3) A manufacturer may certify one or more nonroad engine families at NO_X family emission limits (FELs) above or below the Tier 1 NO_X emission standard, provided the summation of the manufacturer's projected balance of all NO_X credit transactions in a given model year is greater than or equal to zero, as determined under § 89.207(a). A manufacturer may certify one or more nonroad engine families at PM FELs below the Tier 2 PM emission standard that will be applicable to those engine families.

(i) FELs for NO_X may not exceed the Tier 1 upper limit specified in § 89.112(d).

(ii) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the emission standard for the family participating in the averaging, banking, and trading program.

(iii) A manufacturer of an engine family with a NO_X FEL exceeding the Tier 1 NO_X emission standard must obtain NO_X emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(iv) An engine family with a NO_X FEL below the applicable Tier 1 standard may generate emission credits for averaging, banking, trading, or a combination thereof. An engine family with a PM FEL below the Tier 2 standard that will be applicable to that engine family may generate emission credits for banking, trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(4) NO_X credits generated in a given model year may be used to address credit shortfalls with other engines during that model year or in any subsequent model year except as noted under paragraph (b)(5)(ii) of this section. PM credits may be used to address credit shortfalls with Tier 2 and later engines greater than or equal to 37 kW and Tier 1 and later engines less than 37 kW and greater than or equal to 19 kW. Credits generated in one model year may not be used for prior model years.

(5) The following provisions apply to the use of Tier 1 NO_X credits for showing compliance with the Tier 2 or Tier 3 NMHC+NO_X standards.

(i) A manufacturer may use NO_X credits from engines subject to the Tier 1 NO_X standard to address NMHC+NO_X credit shortfalls with engines in the same averaging set subject to Tier 1 NMHC+NO_X or Tier 2 NMHC+NO_X emission standards.

(ii) A manufacturer may not use NO_X credits from engines subject to the Tier 1 standards to address NMHC+NO_X credit shortfalls with engines subject to the Tier 3 NMHC+NO_X emission standards.

(c) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.*

(1) A nonroad engine family is eligible to participate in the averaging, banking, and trading programs for NMHC+NO_X emissions and PM emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (c)(2) of this section. No averaging, banking, and trading program is available for meeting the CO or smoke emission standards specified in subpart B of this part.

(2) Nonroad engines may not participate in the averaging, banking, and trading programs if they are exported or are sold as Blue Sky Series engines as described in § 89.112(f). Nonroad engines certified on a special test procedure under § 89.114(a), may not participate in the averaging, banking and trading programs unless the manufacturer has requested that the engines be included in the averaging, banking, and trading programs at the time the request for the special test procedure is made and has been granted approval by the Administrator for inclusion in the averaging, banking, and trading programs.

(3)(i) A manufacturer may certify one or more nonroad engine families at FELs above or below the applicable NMHC+NO_X emission standard and PM emission standard, provided the summation of the manufacturer's projected balance of all NMHC+NO_X credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions in a given model year in a given averaging set is greater than or equal to zero, as determined under § 89.207(b).

(A) FELs for NMHC+NO_X and FELs for PM may not exceed the upper limits specified in § 89.112(d).

(B) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the emission standard for the family participating in the averaging, banking, and trading program.

(C) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading, within the restrictions described in § 89.204(c) and § 89.206(b)(4).

(D) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(ii)(A) In lieu of generating credits under paragraph (c)(3)(i) of this section, a manufacturer may certify one or more nonroad engine families rated under 37 kW at family emission limits (FELs) above or below the applicable NMHC+NO_X emission standard and PM emission standard. The summation of the manufacturer's projected balance of all NMHC+NO_X credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions in a given model year, as determined under § 89.207(b), are each allowed to be less than zero. Separate calculations shall be required for the following two categories of engines: engines rated under 19 kW and engines rated at or above 19 kW and under 37 kW.

(B) For each calendar year a negative credit balance exists as of December 31, a penalty equal to ten percent of the negative credit balance as of December 31 of the calendar year shall be added to the negative credit balance. The resulting negative credit balance shall be carried into the next calendar year.

(C) For engines rated under 19 kW, a manufacturer will be allowed to carry over a negative credit balance until December 31, 2003. For engines rated at or above 19 kW and under 37 kW, a manufacturer will be allowed to carry over a negative credit balance until December 31, 2002. As of these dates, the summation of the manufacturer's projected balance of all NMHC+NO_X credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions must each be greater than or equal to zero.

(D) FELs for NMHC+NO_X and FELs for PM may not exceed the upper limits specified in § 89.112(d).

(E) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable NMHC+NO_X FEL or PM FEL replaces the NMHC+NO_X emission standard or PM emission standard for the family participating in the averaging and banking program.

(F) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging or banking. The exchange of emission credits generated under this program with other nonroad engine manufacturers in trading is not allowed.

(G) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(4)(i) Except as noted in paragraphs (c)(4)(ii), (c)(4)(iii), and (c)(4)(iv) of this section, credits generated in a given model year may be used during that model year or used in any subsequent model year. Except as allowed under paragraph (c)(3)(ii) of this section, credits generated in one model year may not be used for prior model years.

(ii) Credits generated from engines rated under 19 kW prior to the implementation date of the applicable Tier 2 standards, shall expire on December 31, 2007.

(iii) Credits generated from engines rated under 19 kW under the provisions of paragraph (c)(3)(ii) shall expire on December 31, 2003.

(iv) Credits generated from engines rated at or above 19 kW and under 37 kW under the provisions of paragraph (c)(3)(ii) of this section shall expire on December 31, 2002.

(5) Except as provided in paragraph (b)(3) of this section, engine families may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(d) Manufacturers must demonstrate compliance under the averaging, banking, and trading programs for a particular model year within 270 days of the end of the model year. Except as allowed under paragraph (c)(3)(ii) of this section, manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standards and the FEL for such engine families will be in violation of the conditions of the certificate of conformity for such engine families. The certificates of conformity may be voided ab initio under § 89.126(c) for those engine families.

32. The newly designated § 89.204 is revised to read as follows:

§ 89.204 Averaging.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by a NO_X FEL above the applicable emission standard. NO_X credits used in averaging may be obtained from credits generated by another engine family in the same model year, credits banked in a previous model year, or credits obtained through trading.

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by an NMHC+NO_X FEL or a PM FEL above the applicable emission standard. Credits used in averaging may be obtained from credits generated by another engine family in the same model year, credits banked in previous model years that have not expired, or credits obtained through trading. The use of credits shall be within the restrictions described in paragraph (c) of this section, § 89.206(b)(4) and § 89.203(b)(5)(ii).

(c) *Averaging sets for emission credits.* The averaging and trading of NO_X emission credits, NMHC + NO_X emission credits, and PM emissions credits will only be allowed between engine families in the same averaging set. The averaging sets for the averaging and trading of NO_X emission credits, NMHC + NO_X emission credits, and PM emission credits for nonroad engines are defined as follows:

(1) Eligible engines rated at or above 19 kW, other than marine diesel engines, constitute an averaging set.

(2) Eligible engines rated under 19 kW, other than marine diesel engines, constitute an averaging set.

(3) Marine diesel engines rated at or above 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated at or above 19 kW may be used to address credit shortfalls for eligible engines rated at or above 19 kW other than marine diesel engines.

(4) Marine diesel engines rated under 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated under 19 kW may be used to address credit shortfalls for eligible engines rated under 19 kW other than marine diesel engines.

33. The newly designated § 89.205 is revised to read as follows:

§ 89.205 Banking.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A manufacturer of a nonroad engine family with a NO_X FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any subsequent model year.

(2) A manufacturer of a nonroad engine family may bank NO_X credits up to one calendar year prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(3)(i) A manufacturer of a nonroad engine family may bank PM credits from Tier 1 engines under the provisions specified in § 89.207(b) for use in averaging and trading in the Tier 2 or later timeframe.

(ii) Such engine families are subject to all provisions specified in subparts A, B, D, E, F, G, H, I, J, and K of this part, except that the applicable PM FEL replaces the PM emission standard for the family participating in the banking and trading program.

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A manufacturer of a nonroad engine family with an NMHC + NO_X FEL or a PM FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any following model year.

(2) For engine rated under 37 kW, a manufacturer of a nonroad engine family may bank credits prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(c) A manufacturer may bank actual credits only after the end of the model year and after EPA has reviewed the manufacturer's end-of-year reports. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous model year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

34. The newly designated § 89.206 is revised to read as follows:

§ 89.206 Trading.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A nonroad engine manufacturer may exchange emission credits with other nonroad engine manufacturers within the same averaging set in trading.

(2) Credits for trading can be obtained from credits banked in a previous model year or credits generated during the model year of the trading transaction.

(3) Traded credits can be used for averaging, banking, or further trading transactions within the restrictions described in § 89.204(c).

(b) *Requirements for Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A nonroad engine manufacturer may exchange emission credits with other nonroad engine manufacturers within the same averaging set in trading.

(2) Credits for trading can be obtained from credits banked in previous model years that have not expired or credits generated during the model year of the trading transaction.

(3) Traded credits can be used for averaging, banking, or further trading transactions within the restrictions described in § 89.204(c) and paragraph (b)(4) of this section.

(4) Emission credits generated from engines rated at or above 19 kW utilizing indirect fuel injection may not be traded to other manufacturers.

(c) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases deemed involving fraud. Certificates of all engine families participating in a negative trade may be voided ab initio under § 89.126(c).

35. The newly designated § 89.207 is revised to read as follows:

§ 89.207 Credit calculation.

(a) *Requirements for calculating NO_X credits from Tier 1 engines rated at or above 37 kW.* (1) For each participating engine family, emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-hundredth of a megagram (Mg). This ASTM procedure has been incorporated by reference (see § 89.6). Consistent units are to be used throughout the equation.

(i) For determining credit availability from all engine families generating credits: Emission credits = (Std − FEL) × (Volume) × (AvgPR) × (UL) × (Adjustment) × (10^{-6})

(ii) For determining credit usage for all engine families requiring credits to offset emissions in excess of the standard:

Emission credits = (Std − FEL) × (Volume) × (AvgPR) × (UL) × (10^{-6})

Where:

Std = the applicable Tier 1 NO_X nonroad engine emission standard, in grams per kilowatt-hour.

FEL = the NO_X family emission limit for the engine family in grams per kilowatt-hour.

Volume = the number of nonroad engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year. Engines sold to equipment or vehicle manufacturers under the provisions of § 89.102(g) shall not be included in this number. Quarterly production projections are used for initial certification. Actual applicable production/sales volume is used for end-of-year compliance determination.

AvgPR = the average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

UL = the useful life for the engine family, in hours.

Adjustment = a one-time adjustment, as specified in paragraph (a)(2) of this section, to be applied to Tier 1 NO_X credits to be banked or traded for determining compliance with the Tier 1 NO_X standards or Tier 2 NO_X+NMHC standards specified in subpart B of this part. Banked credits traded in a subsequent model year will not be subject to an additional adjustment. Banked credits used in a subsequent model year's averaging program will not have the adjustment restored.

(2) If an engine family is certified to a NO_X FEL of 8.0 g/kW-hr or less, an Adjustment value of 1.0 shall be used in the credit generation calculation described in paragraph (a)(1)(i) of this section. If an engine family is certified to a NO_X FEL above 8.0 g/kW-hr, an Adjustment value of 0.65 shall be used in the credit generation calculation described in paragraph (a)(1)(i) of this section. If the credits are to be used by the credit-generating manufacturer for averaging purposes in the same model year in which they are generated, an Adjustment value of 1.0 shall be used for all engines regardless of the level of

the NO_X FEL. If the credits are to be banked by the credit-generating manufacturer and used in a subsequent model year for another Tier 1 engine family, an Adjustment value of 1.0 shall be used for all engines regardless of the level of the NO_X FEL.

(b) *Requirements for calculating NMHC + NO_X Credits from Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW and PM credits from all engines.* (1) For each participating engine family, NO_X + NMHC emission credits and PM emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-hundredth of a megagram (Mg). This procedure has been incorporated by reference (see § 89.6). Consistent units are to be used throughout the equation.

(i) For determining credit availability from all engine families generating credits:

Emission credits = (Std-FEL) x (Volume) x (AvgPR) x (UL) x (10^{-6})

(ii) For determining credit usage for all engine families requiring credits to offset emissions in excess of the standard:

Emission credits = (Std-FEL) x (Volume) x (AvgPR) x (UL) x (10^{-6})

Where:

Std = the current and applicable nonroad engine emission standard, in grams per kilowatt-hour, except for PM calculations where it is the applicable nonroad engine Tier 2 PM emission standard, and except for engines rated under 19 kW where it is the applicable nonroad engine Tier 2 emission standard, in grams per kilowatt-hour. (Engines rated under 19 kW participating in the averaging and banking program provisions of § 89.203(c)(3)(ii) shall use the Tier 1 standard for credit calculations.)

FEL = the family emission limit for the engine family in grams per kilowatt-hour.

Volume = the number of nonroad engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year. Engines sold to equipment or vehicle manufacturers under the provisions of § 89.102(g) shall not be included in this number. Quarterly production projections are used for initial certification. Actual applicable production/sales volume is used for end-of-year compliance determination.

AvgPR = the average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

UL = the useful life for the given engine family, in hours.

36. The newly designated § 89.208 is revised to read as follows:

§ 89.208 Labeling.

For all nonroad engines included in the averaging, banking, and trading programs, the family emission limits to which the engine is certified must be included on the label required in § 89.110.

37. The newly designated § 89.209 is amended by revising paragraph (a) to read as follows:

§ 89.209 Certification.

(a) In the application for certification a manufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and trading programs.

(2) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's engine families participating in the averaging, banking, and trading programs, except as allowed under § 89.203(c)(3)(ii).

(3) Declare the applicable FELs for each engine family participating in averaging, banking, and trading.

(i) The FELs must be to the same number of significant digits as the emission standard for the applicable pollutant.

(ii) In no case may the FEL exceed the upper limits prescribed in § 89.112(d).

(4) Indicate the projected number of credits generated/needed for this family; the projected applicable production/sales volume, by quarter; and the values required to calculate credits as given in § 89.207.

(5) Submit calculations in accordance with § 89.207 of projected emission credits (positive or negative) based on quarterly production projections for each participating family.

(6)(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family or reserved) of the credits necessary to offset the credit deficit according to quarterly projected production, or, if the engine family is to be included in the provisions of § 89.203(c)(3)(ii), state that the engine family will be subject to those provisions.

(ii) If the engine family is projected to generate credits, state specifically (manufacturer/engine family or reserved) where the quarterly projected credits will be applied.

* * * * *

38. The newly designated § 89.210 is amended by revising paragraphs (b) and (c) to read as follows:

§ 89.210 Maintenance of records.

* * * * *

(b) The manufacturer of any nonroad engine family that is certified under the averaging, banking, and trading programs must establish, maintain, and retain the following adequately organized and indexed records for each such family:

(1) EPA engine family;

(2) Family emission limits (FEL);

(3) Power rating for each configuration tested;

(4) Projected applicable production/sales volume for the model year; and

(5) Actual applicable production/sales volume for the model year.

(c) Any manufacturer producing an engine family participating in trading reserved credits must maintain the following records on a quarterly basis for each engine family in the trading program:

(1) The engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 89.207;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

* * * * *

39. The newly designated § 89.211 is amended by revising paragraphs (a) and (c) to read as follows:

§ 89.211 End-of-year and final reports.

(a) End-of-year and final reports must indicate the engine family, the actual applicable production/sales volume, the values required to calculate credits as given in § 89.207, and the number of credits generated/required. Manufacturers must also submit how and where credit surpluses were dispersed (or are to be banked) and/or how and through what means credit deficits were met. Copies of contracts related to credit trading must be included or supplied by the broker, if applicable. The report shall include a calculation of credit balances to show that the summation of the manufacturer's use of credits results in a credit balance equal to or greater than zero, except as allowed under § 89.203(c)(3)(ii). Manufacturers participating under the program

described in § 89.203(c)(3)(ii) shall include the NMHC + NO_X credit balance and the PM credit balance as of December 31 of that calendar year.

* * * * *

(c)(1) End-of-year reports must be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405-J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

(2) Final reports must be submitted within 270 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405-J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

* * * * *

40. The newly designated § 89.212 is revised to read as follows:

§ 89.212 Notice of opportunity for hearing.

Any voiding of the certificate under §§ 89.203(d), 89.206(c), 89.209(c) or 89.210(g) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 89.512 and 89.513 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

Subpart D—[Amended]

41. The newly designated § 89.302 is revised to read as follows:

§ 89.302 Definitions.

The definitions in subpart A of this part apply to this subpart. For terms not defined in this part, the definitions in 40 CFR part 86, subparts A, D, I, and N, apply to this subpart.

42. The newly designated § 89.304 is amended by revising paragraph (c) to read as follows:

§ 89.304 Equipment required for gaseous emissions; overview.

* * * * *

(c) Analyzers used are a non-dispersive infrared (NDIR) absorption type for carbon monoxide and carbon dioxide analysis; a heated flame ionization (HFID) type for hydrocarbon analysis; and a chemiluminescent detector (CLD) or heated chemiluminescent detector (HCLD) for oxides of nitrogen analysis. Sections 89.309 through 89.324 set forth a full description of analyzer requirements and specifications.

43. The newly designated § 89.307 is amended by revising paragraphs (b)(7) and (b)(8) to read as follows:

§ 89.307 Dynamometer calibration.

* * * * *

(b) * * *

(7) The measured torque must be within either 2 percent of point or 1 percent of the engine maximum torque of the calculated torque.

(8) If the measured torque is not within the above requirements, adjust or repair the system. Repeat steps in paragraphs (b)(1) through (b)(6) of this section with the adjusted or repaired system.

* * * * *

44. The newly designated § 89.308 is amended by revising paragraph (b) to read as follows:

§ 89.308 Sampling system requirements for gaseous emissions.

* * * * *

(b) If water is removed by condensation, the sample gas temperature shall be monitored within the water trap or the sample dewpoint shall be monitored downstream. In either case, the indicated temperature shall not exceed 7°C.

45. The newly designated § 89.309 is amended by removing and reserving paragraph (a)(3) and revising paragraphs (a)(4)(iii), (a)(5)(i)(C), and (a)(5)(i)(D) to read as follows:

§ 89.309 Analyzers required for gaseous emissions.

(a) * * *

(3) [Reserved]

(4) * * *

(iii) The FID oven must be capable of maintaining temperature within 5.5°C of the set point.

* * * * *

(5) * * *

(i) * * *

(C) For raw analysis, an ice bath or other cooling device located after the NO_X converter (optional for dilute analysis).

(D) A chemiluminescent detector (CLD or HCLD).

* * * * *

46. The newly designated § 89.310 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 89.310 Analyzer accuracy and specifications.

(a) * * *

(1) *Response time.* As necessary, measure and account for the response time of the analyzer.

* * * * *

(c) *Emission measurement accuracy—Bag sampling.* (1) Good engineering practice dictates that exhaust emission sample analyzer readings below 15 percent of full-scale chart deflection should generally not be used.

(2) Some high resolution read-out systems, such as computers, data loggers, and so forth, can provide sufficient accuracy and resolution below 15 percent of full scale. Such systems may be used provided that additional calibrations of at least 4 non-zero nominally equally spaced points, using good engineering judgement, below 15 percent of full scale are made to ensure the accuracy of the calibration curves. If a gas divider is used, the gas divider must conform to the accuracy requirements specified in § 89.312(c). The procedure in paragraph (c)(3) of this section may be used for calibration below 15 percent of full scale.

(3) The following procedure shall be followed:

(i) Span the analyzer using a calibration gas meeting the accuracy requirements of § 89.312(c), within the operating range of the analyzer, and at least 90% of full scale.

(ii) Generate a calibration over the full concentration range at a minimum of 6, approximately equally spaced, points (e.g. 15, 30, 45, 60, 75, and 90 percent of the range of concentrations provided by the gas divider). If a gas divider or blender is being used to calibrate the analyzer and the requirements of paragraph (c)(2) of this section are met, verify that a second calibration gas between 10 and 20 percent of full scale can be named within 2 percent of its certified concentration.

(iii) If a gas divider or blender is being used to calibrate the analyzer, input the value of a second calibration gas (a span gas may be used for the CO2 analyzer) having a named concentration between 10 and 20 percent of full scale. This gas shall be included on the calibration curve. Continue adding calibration points by dividing this gas until the requirements of paragraph (c)(2) of this section are met.

(iv) Fit a calibration curve per § 89.319 through § 89.322 for the full scale range of the analyzer using the calibration data obtained with both calibration gases.

* * * * *

47. The newly designated § 89.312 is amended by removing and reserving paragraph (b)(2), revising paragraphs (c)(2), (d), and (f) and adding a new paragraph (g) to read as follows:

§ 89.312 Analytical gases.

* * * * *

(b) * * *

(2) [Reserved].

(c) * * *

(2) Mixtures of gases having the following chemical compositions shall be available:

(i) C_3H_8 and purified synthetic air ;

(ii) C_3H_8 and purified nitrogen (optional for raw measurements);

(iii) CO and purified nitrogen;

(iv) NO_X and purified nitrogen (the amount of NO_2 contained in this calibration gas must not exceed 5 percent of the NO content);

(v) CO_2 and purified nitrogen.

* * * * *

(d) Oxygen interference check gases shall contain propane with 350 ppmC ±75 ppmC hydrocarbon. The three oxygen interference gases shall contain 21% ± 1% O_2, 10% ± 1% O_2, and 5% ± 1% O_2. The concentration value shall be determined to calibration gas tolerances by chromatographic analysis of total hydrocarbons plus impurities or by dynamic blending. Nitrogen shall be the predominant diluent with the balance oxygen.

* * * * *

(f) Hydrocarbon analyzer burner air. The concentration of oxygen for raw sampling must be within 1 mole percent of the oxygen concentration of the burner air used in the latest oxygen interference check (%O_2I). If the difference in oxygen concentration is greater than 1 mole percent, then the oxygen interference must be checked and, if necessary, the analyzer adjusted to meet the %O_2I requirements. The burner air must contain less than 2 ppmC hydrocarbon.

(g) Gases for the methane analyzer shall be single blends of methane using air as the diluent.

48. The newly designated § 89.314 is amended by revising paragraphs (a) and (b) to read as follows:

§ 89.314 Pre-and post-test calibration of analyzers.

* * * * *

(a) The calibration is checked by using a zero gas and a span gas whose nominal value is between 75 percent and 100 percent of full-scale, inclusive, of the measuring range.

(b) After the end of the final mode, a zero gas and the same span gas will be used for rechecking. As an option, the zero and span may be rechecked at the end of each mode or each test segment. The analysis will be considered acceptable if the difference between the two measuring results is less than 2 percent of full scale.

§ 89.316 [Amended]

49. The newly designated § 89.316 is amended by removing and reserving paragraph (b).

50. The newly designated § 89.317 is amended by revising paragraphs (g), (h), and (k) to read as follows:

§ 89.317 NO_X converter check.

* * * * *

(g) Turn on the NO_X generator O_2 (or air) supply and adjust the O_2 (or air) flow rate so that the NO indicated by the analyzer is about 10 percent less than indicated in paragraph (f) of this section. Record the concentration of NO in this NO+O_2 mixture.

(h) Switch the NO_X generator to the generation mode and adjust the generation rate so that the NO measured on the analyzer is 20 percent of that measured in paragraph (f) of this section. There must be at least 10 percent unreacted NO at this point. Record the concentration of residual NO.

* * * * *

(k) Turn off the NO_X generator O_2 (or air) supply. The analyzer will now indicate the NO_X in the original NO-in-N_2 mixture. This value should be no more than 5 percent above the value indicated in paragraph (f) of this section.

* * * * *

51. The newly designated § 89.318 is amended by revising paragraphs (c)(2) heading, (c)(2)(i) and (c)(2)(iv) to read as follows:

§ 89.318 Analyzer interference checks.

* * * * *

(c) * * *

(2) *NO_x analyzer water quench check.* (i) This check applies to wet measurements only. An NO span gas having a concentration of 80 to 100 percent of full scale of a normal operating range shall be passed through the CLD (or HCLD) and the response recorded as D. The NO span gas shall then be bubbled through water at room temperature and passed through the CLD (or HCLD) and the analyzer response recorded as AR. Determine and record the bubbler absolute operating pressure and the bubbler water temperature. (It is important that the NO span gas contains minimal NO_2 concentration for this check. No allowance for absorption of NO_2 in water has been made in the following quench calculations. This test may be optionally run in the NO mode to minimize the effect of any NO_2 in the NO span gas.)

* * * * *

(iv)(A) The maximum raw or dilute exhaust water vapor concentration expected during testing (designated as Wm) can be estimated from the CO_2 span gas (or as defined in the equation in this paragraph and designated as A) criteria in paragraph (c)(1) of this section and the assumption of a fuel atom H/C ratio of 1.8:1 as:

$$Wm(\%)=0.9\times A(\%)$$

Where:

A = maximum CO2 concentration expected in the sample system during testing.

(B) Percent water quench shall not exceed 3 percent and shall be calculated by:

$$\%\text{Water Quench} = 100 \times \frac{D1 - AR}{D1} \times \frac{Wm}{Z1}$$

52. The newly designated § 89.319 is amended by revising paragraphs (b)(1), (b)(2), (c), (d) heading, (d) introductory text, (d)(2), and (d)(6) to read as follows:

§ 89.319 Hydrocarbon analyzer calibration.

* * * * *

(b) * * *

(1) Follow good engineering practices for initial instrument start-up and basic operating adjustment using the appropriate fuel (see § 89.312(e)) and zero-grade air.

(2) Optimize the FID's response on the most common operating range. The response is to be optimized with respect to fuel pressure or flow. Efforts shall be made to minimize response variations to different hydrocarbon species that are expected to be in the exhaust. Good engineering judgment is to be used to trade off optimal FID response to propane-in-air against reductions in relative responses to other hydrocarbons. A good example of trading off response on propane for relative responses to other hydrocarbon species is given in Society of Automotive Engineers (SAE) Paper No. 770141, ''Optimization of Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts''; author Glenn D. Reschke. It is also required that the response be set to optimum condition with respect to air flow and sample flow. Heated Flame Ionization Detectors (HFIDs) must be at their specified operating temperature. One of the following procedures is required for FID or HFID optimization:

(i) The procedure outlined in Society of Automotive Engineers (SAE) paper No. 770141, ''Optimization of a Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts''; author, Glenn D. Reschke. This procedure has been incorporated by reference at § 89.6.

(ii) The HFID optimization procedures outlined in 40 CFR part 86, subpart D.

(iii) Alternative procedures may be used if approved in advance by the Administrator.

(iv) The procedures specified by the manufacturer of the FID or HFID.

* * * * *

(c) *Initial and periodic calibration.* Prior to introduction into service, after any maintenance which could alter

calibration, and monthly thereafter, the FID or HFID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges using the steps in this paragraph (c). Use the same flow rate and pressures as when analyzing samples. Calibration gases shall be introduced directly at the analyzer, unless the ''overflow'' calibration option of 40 CFR part 86, subpart N, for the HFID is taken. New calibration curves need not be generated each month if the existing curve can be verified as continuing to meet the requirements of paragraph (c)(3) of this section.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero-grade air.

(3) Calibrate on each used operating range with propane-in-air (dilute or raw) or propane-in-nitrogen (raw) calibration gases having nominal concentrations starting between 10–15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent of that range) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at each non-zero data point and within ±0.3 percent of full scale on the zero, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

(d) *Oxygen interference optimization (required for raw).* Choose a range where the oxygen interference check gases will fall in the upper 50 percent. Conduct the test, as outlined in this paragraph, with the oven temperature set as required by the instrument manufacturer. Oxygen interference check gas specifications are found in § 89.312(d).

* * * * *

(2) Span the analyzer with the 21% oxygen interference gas specified in § 89.312(d).

* * * * *

(6) Calculate the percent of oxygen interference (designated as percent O_2I) for each mixture in paragraph (d)(4) of this section.

percent $O_2I = ((B–C) \times 100)/B$

Where:

A = hydrocarbon concentration (ppmC) of the span gas used in paragraph (d)(2) of this section.

B = hydrocarbon concentration (ppmC) of the oxygen interference check gases used in paragraph (d)(4) of this section.

C = analyzer response (ppmC) = A/D; where

D = (percent of full-scale analyzer response due to A) × (percent of full-scale analyzer response due to B).

* * * * *

53. The newly designated § 89.320 is amended by revising paragraph (c) to read as follows:

§ 89.320 Carbon monoxide analyzer calibration.

* * * * *

(c) *Initial and periodic calibration.* Prior to its introduction into service, after any maintenance which could alter calibration, and every two months thereafter, the NDIR carbon monoxide analyzer shall be calibrated. New calibration curves need not be generated every two months if the existing curve can be verified as continuing to meet the requirements of paragraph (c)(3) of this section.

(1) Adjust the analyzer to optimize performance.

(2) Zero the carbon monoxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Calibrate on each used operating range with carbon monoxide-in-N_2 calibration gases having nominal concentrations starting between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

* * * * *

54. The newly designated § 89.321 is amended by revising paragraph (c) to read as follows:

§ 89.321 Oxides of nitrogen analyzer calibration.

* * * * *

(c) *Initial and periodic calibration.* Prior to its introduction into service, after any maintenance which could alter calibration, and monthly thereafter, the chemiluminescent oxides of nitrogen analyzer shall be calibrated on all normally used instrument ranges. New calibration curves need not be generated each month if the existing curve can be verified as continuing to meet the requirements of paragraph (c)(3) of this section. Use the same flow rate as when analyzing samples. Proceed as follows:

(1) Adjust analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero-grade air or zero-grade nitrogen.

(3) Calibrate on each normally used operating range with NO-in-N_2 calibration gases with nominal concentrations starting at between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

* * * * *

55. The newly designated § 89.322 is amended by revising paragraph (a) to read as follows:

§ 89.322 Carbon dioxide analyzer calibration.

(a) Prior to its introduction into service, after any maintenance which could alter calibration, and bi-monthly thereafter, the NDIR carbon dioxide analyzer shall be calibrated on all normally used instrument ranges. New calibration curves need not be generated each month if the existing curve can be verified as continuing to meet the requirements of paragraph (a)(3) of this section. Proceed as follows:

(1) Follow good engineering practices for instrument start-up and operation. Adjust the analyzer to optimize performance.

(2) Zero the carbon dioxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Calibrate on each normally used operating range with carbon dioxide-in-N_2 calibration or span gases having nominal concentrations starting between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each

non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

* * * * *

56. The newly designated § 89.324 is revised to read as follows:

§ 89.324 Calibration of other equipment.

(a) Other test equipment used for testing shall be calibrated as often as required by the instrument manufacturer or necessary according to good practice.

(b) If a methane analyzer is used, the methane analyzer shall be calibrated prior to introduction into service and monthly thereafter:

(1) Follow the manufacturer's instructions for instrument startup and operation. Adjust the analyzer to optimize performance.

(2) Zero the methane analyzer with zero-grade air.

(3) Calibrate on each normally used operating range with CH_4 in air with nominal concentrations starting between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

57. The newly designated § 89.328 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 89.328 Inlet and exhaust restrictions.

* * * * *

(b) * * *

(1) Equip the test engine with an air inlet system presenting an air inlet restriction within 5 percent of the upper limit at maximum air flow, as specified by the engine manufacturer for a clean air cleaner. A system representative of the installed engine may be used. In other cases a test shop system may be used.

(2) The exhaust backpressure must be within 5 percent of the upper limit at maximum declared power, as specified by the engine manufacturer. A system representative of the installed engine may be used. In other cases a test shop system may be used.

58. The newly designated § 89.330 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 89.330 Lubricating oil and test fuels.

* * * * *

(b) *Test fuels.* * * *

(2) Use petroleum fuel meeting the specifications in Table 4 in Appendix A of this subpart, or substantially equivalent specifications approved by the Administrator, for exhaust emission testing. The grade of diesel fuel used must be commercially designated as ''Type 2–D'' grade diesel fuel and recommended by the engine manufacturer.

(3) Testing of Tier 1 engines rated under 37 kW or Tier 2 engines rated at or above 37 kW that is conducted by the Administrator shall be performed using test fuels that meet the specifications in Table 4 in Appendix A of this subpart and that have a sulfur content no higher than 0.20 weight percent.

* * * * *

59–63. Tables 1 through 4 of Appendix A to subpart D are revised and Table 5 is removed to read as follows:

Appendix A To Subpart D—Tables

TABLE 1.—ABBREVIATIONS USED IN SUBPART D

CLD	Chemiluminescent detector.
CO	Carbon monoxide.
CO_2	Carbon dioxide.
HC	Hydrocarbons.
HCLD	Heated chemiluminescent detector.
HFID	Heated flame ionization detector.
GC	Gas chromatograph.
NDIR	Non-dispersive infra-red analyzer.
NIST	National Institute for Standards and Testing.
NO	Nitric Oxide.
NO_2	Nitrogen Dioxide.
NO_X	Oxides of nitrogen.
O_2	Oxygen.

TABLE 2.—SYMBOLS USED IN SUBPARTS D AND E

Symbol	Term	Unit
conc	Concentration (ppm by volume)	ppm
f	Engine specific parameter considering atmospheric conditions	
F_{FCB}	Fuel specific factor for the carbon balance calculation	
F_{FD}	Fuel specific factor for exhaust flow calculation on dry basis	
F_{FH}	Fuel specific factor representing the hydrogen to carbon ratio	
F_{FW}	Fuel specific factor for exhaust flow calculation on wet basis	
FR	Rate of fuel consumed	g/h
G_{AIRW}	Intake air mass flow rate on wet basis	kg/h
G_{AIRD}	Intake air mass flow rate on dry basis	kg/h
G_{EXHW}	Exhaust gas mass flow rate on wet basis	kg/h
G_{Fuel}	Fuel mass flow rate	kg/h
H	Absolute humidity (water content related to dry air)	g/kg
i	Subscript denoting an individual mode	
K_H	Humidity correction factor	
L	Percent torque related to maximum torque for the test mode	%
mass	Pollutant mass flow	g/h
$n_{d,i}$	Engine speed (average at the i'th mode during the cycle)	1/min
P_s	Dry atmospheric pressure	kPa
P_d	Test ambient saturation vapor pressure at ambient temperature	kPa
P	Observed brake power output uncorrected	kW
P_{AUX}	Declared total power absorbed by auxiliaries fitted for the test	kW
P_M	Maximum power measured at the test speed under test conditions	kW
P_i	$P_i = P_{M,i} + P_{AUX,i}$	
P_B	Total barometric pressure (average of the pre-test and post-test values)	kPa
P_v	Saturation pressure at dew point temperature	kPa

TABLE 2.—SYMBOLS USED IN SUBPARTS D AND E—Continued

Symbol	Term	Unit
R_a	Relative humidity of the ambient air	%
S	Dynamometer setting	kW
T	Absolute temperature at air inlet	K
T_{be}	Air temperature after the charge air cooler (if applicable) (average)	K
T_{clout}	Coolant temperature outlet (average)	K
T_{Dd}	Absolute dewpoint temperature	K
$T_{d,i}$	Torque (average at the i'th mode during the cycle)	N-m
T_{SC}	Temperature of the intercooled air	K
$T_{ref.}$	Reference temperature	K
V_{EXHD}	Exhaust gas volume flow rate on dry basis	m^3/h
V_{AIRW}	Intake air volume flow rate on wet basis	m^3/h
P_B	Total barometric pressure	kPa
V_{EXHW}	Exhaust gas volume flow rate on wet basis	m^3/h
WF	Weighing factor	
WF_E	Effective weighing factor	

TABLE 3.—MEASUREMENT ACCURACY AND CALIBRATION FREQUENCY

No.	Item	Calibration accuracy [1]	Calibration frequency
1	Engine speed	± 2%	30 days.
2	Torque	Larger of ± 2% of point or ± 1% of engine maximum.	30 days.
3	Fuel consumption (raw measurement)	± 2% of engine maximum	30 days.
4	Air consumption (raw measurement)	± 2% of engine maximum	As required.
5	Coolant temperature	±2°K	As required.
6	Lubricant temperature	±2°K	As required.
7	Exhaust backpressure	± 1.0% of engine maximum	As required.
8	Inlet depression	1.0% of engine maximum	As required.
9	Exhaust gas temperature	±15°K	As required.
10	Air inlet temperature (combustion air)	±2°K	As required.
11	Atmospheric pressure	± 0.5%	As required.
12	Humidity (combustion air) (g of H_2O/Kg of dry air).	± 0.5	As required.
13	Fuel temperature	±2°K	As required.
14	Temperature with regard to dilution tunnel	±2°K	As required.
15	Dilution air humidity (g of H_2O/Kg of dry air)	± 0.5	As required.
16	HC analyzer	± 2%	Monthly or as required.
17	CO analyzer	± 2%	Once per 60 days or as required.
18	NO_X analyzer	± 2%	Monthly or as required.
19	Methane analyzer	± 2%	Monthly or as required.
20	NO_X converter efficiency check	90%	Monthly.
21	CO_2 analyzer	± 2%	Once per 60 days or as required.

[1] All accuracy requirements pertain to the final recorded value which is inclusive of the data acquisition system.

TABLE 4.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM) [1]	Value (type 2–D)
Cetane	D613–95	40–48
Distillation Range:		
IBP, °C	D86–97	171–204
10% point, °C	86–97	204–238
50% point, °C	86–97	243–282
90% point, °C	86–97	293–332
EP, °C	86–97	321–366
Gravity, API	D287–92	32–37
Total Sulfur, %mass	D129–95 or D2622–98	0.03—0.40
Hydrocarbon composition:		
Aromatics, %vol	D1319–98 or D5186–96	[2] 10
Paraffins, Naphthenes, Olefins	D1319–98	([3])
Flashpoint, °C (minimum)	D93–97	54
Viscosity @ 38°C, Centistokes	D445–97	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 89.6.
[2] Minimum.
[3] Remainder.

Subpart E—[Amended]

64. The newly designated § 89.401 is amended by revising paragraph (b) to read as follows:

§ 89.401 Scope; applicability.

* * * * *

(b) Exhaust gases, either raw or dilute, are sampled while the test engine is operated using the appropriate test cycle on an engine dynamometer. The exhaust gases receive specific component analysis determining concentration of pollutant, exhaust volume, the fuel flow (raw analysis), and the power output during each mode. Emissions are reported as grams per kilowatt hour (g/kW-hr).

* * * * *

65. The newly designated § 89.402 is revised to read as follows:

§ 89.402 Definitions.

The definitions in subpart A of this part apply to this subpart. For terms not defined in this part, the definitions in 40 CFR part 86, subparts A, D, I, and N, apply to this subpart.

66. The newly designated § 89.404 is amended by revising paragraph (b) and removing paragraph (e) to read as follows:

§ 89.404 Test procedure overview.

* * * * *

(b) The test is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter. For more information on particulate matter sampling see § 89.112(c). The test cycles consist of various steady-state operating modes that include different combinations of engine speeds and loads. These procedures require the determination of the concentration of each pollutant, exhaust volume, the fuel flow (raw analysis), and the power output during each mode. The measured values are weighted and used to calculate the grams of each pollutant emitted per kilowatt hour (g/kW-hr).

* * * * *

67. The newly designated § 89.405 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 89.405 Recorded information.

* * * * *

(d) *Test data; pre-test.*

(1) Date and time of day.

(2) Test number.

(3) Intermediate speed and rated speed as defined in § 89.2 and maximum observed torque for these speeds.

(4) Recorder chart or equivalent. Identify the zero traces for each range used, and span traces for each range used.

(5) Air temperature after and pressure drop across the charge air cooler (if applicable) at maximum observed torque and rated speed.

(e) *Test data; modal.*

(1) Recorder chart or equivalent. Identify for each test mode the emission concentration traces and the associated analyzer range(s). Identify the start and finish of each test.

(2) Observed engine torque.

(3) Observed engine rpm.

(4) Record engine torque and engine rpm continuously during each mode with a chart recorder or equivalent recording device.

(5) Intake air flow (for raw mass flow sampling method only) and depression for each mode.

(6) Engine intake air temperature at the engine intake or turbocharger inlet for each mode.

(7) Mass fuel flow (for raw sampling) for each mode.

(8) Engine intake humidity.

(9) Coolant temperature outlet.

(10) Engine fuel inlet temperature at the pump inlet.

(f) *Test data; post-test.*

(1) Recorder chart or equivalent. Identify the zero traces for each range used and the span traces for each range used. Identify hangup check, if performed.

(2) Total number of hours of operation accumulated on the engine.

68. The newly designated § 89.406 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 89.406 Pre-test procedures.

* * * * *

(b) Replace or clean the filter elements and then vacuum leak check the system per § 89.316(a). Allow the heated sample line, filters, and pumps to reach operating temperature.

(c) * * *

(1) Check the sample-line temperatures (see § 89.309(a)(4)(ii) and (a)(5)(i)(A)).

* * * * *

69. The newly designated § 89.407 is amended by revising paragraphs (a), (c), and (d)(2) to read as follows:

§ 89.407 Engine dynamometer test run.

(a) Measure and record the temperature of the air supplied to the engine, the fuel temperature, the intake air humidity, and the observed barometric pressure during the sampling for each mode. The fuel temperature shall be less than or equal to 43C during the sampling for each mode.

* * * * *

(c) The following steps are taken for each test:

(1) Install instrumentation and sample probes as required.

(2) Perform the pre-test procedure as specified in § 89.406.

(3) Read and record the general test data as specified in § 89.405(c).

(4) Start cooling system.

(5) Precondition (warm up) the engine in the following manner:

(i) For variable-speed engines:

(A) Operate the engine at idle for 2 to 3 minutes;

(B) Operate the engine at approximately 50 percent power at the peak torque speed for 5 to 7 minutes;

(C) Operate the engine at rated speed and maximum horsepower for 25 to 30 minutes;

(ii) For constant-speed engines:

(A) Operate the engine at minimum load for 2 to 3 minutes;

(B) Operate the engine at 50 percent load for 5 to 7 minutes;

(C) Operate the engine at maximum load for 25 to 30 minutes;

(iii) Optional. It is permitted to precondition the engine at rated speed and maximum horsepower until the oil and water temperatures are stabilized. The temperatures are defined as stabilized if they are maintained within 2 percent of point on an absolute basis for 2 minutes. The engine must be operated a minimum of 10 minutes for this option. This optional procedure may be substituted for the procedure in paragraph (c)(5)(i)or (c)(5)(ii) of this section;

(iv) Optional. If the engine has been operating on service accumulation for a minimum of 40 minutes, the service accumulation may be substituted for the procedure in paragraphs (c)(5)(i) through (iii) of this section.

(6) Read and record all pre-test data specified in § 89.405(d).

(7) Start the test cycle (see § 89.410) within 20 minutes of the end of the warmup. (See paragraph (c)(13) of this section.) A mode begins when the speed and load requirements are stabilized to within the requirements of § 89.410(b). A mode ends when valid emission sampling for that mode ends. For a mode to be valid, the speed and load requirements must be maintained continuously during the mode. Sampling in the mode may be repeated until a valid sample is obtained as long the speed and torque requirements are met.

(8) Calculate the torque for any mode with operation at rated speed.

(9) During the first mode with intermediate speed operation, if applicable, calculate the torque corresponding to 75 and 50 percent of the maximum observed torque for the intermediate speed.

(10) Record all modal data specified in § 89.405(e) during a minimum of the last 60 seconds of each mode.

(11) Record the analyzer(s) response to the exhaust gas during the a minimum of the last 60 seconds of each mode.

(12) Test modes may be repeated, as long as the engine is preconditioned by running the previous mode. In the case of the first mode of any cycle, precondition according to paragraph (c)(5) of this section.

(13) If a delay of more than 20 minutes, but less than 4 hours, occurs between the end of one mode and the beginning of another mode, precondition the engine by running the previous mode. If the delay exceeds 4 hours, the test shall include preconditioning (begin at paragraph (c)(2) of this section).

(14) The speed and load points for each mode are listed in Tables 1 through 4 of Appendix B of this subpart. The engine speed and load shall be maintained as specified in § 89.410(b).

(15) If at any time during a test mode, the test equipment malfunctions or the specifications in paragraph (c)(14) of this section are not met, the test mode is void and may be aborted. The test mode may be restarted by preconditioning with the previous mode.

(16) Fuel flow and air flow during the idle load condition may be determined just prior to or immediately following the dynamometer sequence, if longer times are required for accurate measurements.

(d) * * *

(2) Each analyzer range that may be used during a test mode must have the zero and span responses recorded prior to the execution of the test. Only the zero and span for the range(s) used to measure the emissions during the test are required to be recorded after the completion of the test .

* * * * *

70. The newly designated § 89.408 is amended by revising paragraph (e) to read as follows:

§ 89.408 Post-test procedures.

* * * * *

(e) For a valid test, the zero and span checks performed before and after each test for each analyzer must meet the following requirements:

(1) The span drift (defined as the change in the difference between the zero response and the span response) must not exceed 3 percent of full-scale chart deflection for each range used.

(2) The zero response drift must not exceed 3 percent of full-scale chart deflection.

71. The newly designated § 89.410 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 89.410 Engine test cycle.

(a) Emissions shall be measured using one of the test cycles specified in Tables 1 through 4 of Appendix B of this subpart, subject to the provisions of paragraphs (a)(1) through (a)(4) of this section. These cycles shall be used to test engines on a dynamometer.

(1) The 8-mode test cycle described in Table 1 of Appendix B of this subpart shall be used for all engines, except constant speed engines, engines rated under 19 kW, and propulsion marine diesel engines.

(2) The 5-mode test cycle described in Table 2 of Appendix B of this subpart shall be used for constant-speed engines as defined in § 89.2. Any engine certified under this test cycle must meet the labeling requirements of § 89.110(b)(11).

(3) The 6-mode test cycle described in Table 3 of Appendix B of this subpart shall be used for variable speed engines rated under 19 kW.

(4) Notwithstanding the provisions of paragraphs (a)(1) through (a)(3) of this section, the 4-mode test cycle described in Table 4 of Appendix B of this subpart shall be used for propulsion marine diesel engines.

(5) Notwithstanding the provisions of paragraphs (a)(1) through (a)(4) of this section:

(i) Manufacturers may use the 8-mode test cycle described in Table 1 of Appendix B of this subpart for:

(A) Constant speed engines, or variable speed engines rated under 19 kW; or

(B) Propulsion marine diesel engines, provided the propulsion marine diesel engines are certified in an engine family that includes primarily non-marine diesel engines, and the manufacturer obtains advance approval from the Administrator.

(ii) The Administrator may use the 8-mode test cycle specified in Table 1 of Appendix B of this subpart during testing of any engine which was certified based on emission data collected from that test cycle.

(b) During each non-idle mode, hold the specified load to within 2 percent of the engine maximum value and speed to within ±2 percent of point. During each idle mode, speed must be held within the manufacturer's specifications for the engine, and the throttle must be in the fully closed position and torque must not exceed 5 percent of the peak torque value of mode 5.

(c) For any mode except those involving either idle or full-load operation, if the operating conditions specified in paragraph (b) of this section cannot be maintained, the Administrator may authorize deviations from the specified load conditions. Such deviations shall not exceed 10 percent of the maximum torque at the test speed. The minimum deviations above and below the specified load necessary for stable operation shall be determined by the manufacturer and approved by the Administrator prior to the test run.

* * * * *

72. The newly designated § 89.411 is amended by revising paragraphs (d)(5) and (e)(5) to read as follows:

§ 89.411 Exhaust sample procedure—gaseous components.

* * * *

(d) * * *

(5) Zero and span each range to be used on each analyzer operated prior to the beginning of the test cycle. The span gases shall have a concentration between 75 and 100 percent of full-scale chart deflection. The flow rates and system pressures shall be approximately the same as those encountered during sampling. The HFID analyzer shall be zeroed and spanned either through the overflow sampling system or through the analyzer port.

* * * * *

(e) * * *

(5) If the difference between the readings obtained greater than or equal to 2 percent of full scale deflection, clean the sample probe and the sample line.

* * * * *

73. The newly designated § 89.412 is amended by revising paragraph (c)(3) and removing and reserving paragraph (g)(1) to read as follows:

§ 89.412 Raw gaseous exhaust sampling and analytical system description.

* * * * *

(c) * * *

(3) The location of optional valve V16 may not be greater than 61 cm from the sample pump.

* * * * *

(g) * * *

(1) [Reserved].

* * * * *

74. The newly designated § 89.413 is amended by revising paragraph (d) and removing paragraph (e) to read as follows:

§ 89.413 Raw sampling procedures.

* * * * *

(d) All gaseous heated sampling lines shall be fitted with a heated filter to extract solid particles from the flow of gas required for analysis. The sample

line for CO and CO_2 analysis may be heated or unheated.

75. The newly designated § 89.414 is amended by revising paragraph (a) to read as follows:

§ 89.414 Air flow measurement specifications.

(a) The air flow measurement method used must have a range large enough to accurately measure the air flow over the engine operating range during the test. Overall measurement accuracy must be ±2 percent of the maximum engine value for all modes. The Administrator must be advised of the method used prior to testing.

* * * * *

76. The newly designated § 89.415 is revised to read as follows:

§ 89.415 Fuel flow measurement specifications.

The fuel flow rate measurement instrument must have a minimum accuracy of 2 percent of the engine maximum fuel flow rate. The controlling parameters are the elapsed time measurement of the event and the weight or volume measurement.

77. The newly designated § 89.418 is amended by revising paragraphs (b), (c), (d), (f) introductory text, (f)(1), and (g) and the table in paragraph (e) to read as follows:

§ 89.418 Raw emission sampling calculations.

* * * * *

(b) The exhaust gas flow rate G_{EXHW} and V_{EXHW} shall be determined for each mode.

(1) For measurements using the mass flow method, see § 89.416(a).

(2) For measurements using the fuel consumption and exhaust gas concentrations method, use the following equations:

$$G_{EXHW} = G_{fuel} + G_{aird}\left(1+\left(\frac{H}{1000}\right)\right)$$

Where:

$$G_{aird} = \frac{G_{fuel}}{(fla)} = \frac{\text{Mass Fuel Measured}}{G_{airw}\times\left(1-\frac{H}{1000}\right)}$$

$$(fla) = \frac{4.77\,(1+\alpha/4)\,(fla)_{stoich}}{\frac{1}{X}-\left(\frac{DCO}{2\,X\,(10)^6}\right)-\left(\frac{DHC}{X\,(10)^6}\right)+\frac{\alpha}{4}\left(1-\frac{DHC}{X\,(10)^6}\right)-\frac{0.75\,\alpha}{\left(\frac{K}{\left(\frac{DCO}{X\,(10)^6}\right)}\right)+\left(\frac{(1-K)}{\left(1-\frac{DHC}{X\,(10)^6}\right)}\right)}}$$

$$(fla)_{Stoich} = \frac{M_c + \alpha M_H}{138.18\,(1+\alpha/4)}$$

$$X = \frac{DCO_2}{10^2} + \frac{DCO}{10^6} + \frac{DHC}{10^6}$$

K = 3.5

(3) Humidity values may be calculated from either one of the following equations:

$$H = \frac{6.22\times R_a \times p_d}{p_R - \left(p_d \times R_a \times 10^{-2}\right)}$$

or

$$H = \frac{622\times P_v}{\left(P_B - P_v\right)}$$

(c) When applying G_{EXHW}, the measured ''dry'' concentration shall be corrected to a wet basis, if not already measured on a wet basis. This section is applicable only for measurements made on raw exhaust gas. Correction to a wet basis shall be according to the following formula:

$Conc_{WET} = K_w \times Conc_{DRY}$

Where: K_W is determined according to the equations in paragraph (c)(1) or (c)(2) of this section.

(1) For measurements using the mass flow method (see § 89.416(a)):

$$K_W = \left[1 - F_{FH}\times\frac{G_{fuel}}{G_{aird}}\right] - K_{W1}$$

Where:

$$F_{FH} = ALF \times 0.1448 \times \frac{1}{1+\left(\frac{G_{fuel}}{G_{aird}}\right)} \text{ for diesel fuel only}$$

$$ALF = \text{Hydrogen mass percentage of fuel} = \frac{1.008\times\alpha}{12.01+1.008\times\alpha}\times 100 = 13.12 \text{ for } CH_{1.8}\text{fuel}$$

α = H/C mole ratio of the fuel.

(2) For measurements using the fuel consumption and exhaust gas concentrations method (see § 89.416(b)):

$$K_W = \frac{1}{1+1.8\times 0.005\times\left[\frac{DCO}{10^4} = DCO_2\right]} - K_{W1}$$

Where:

$$K_{W1} = \frac{1.608 \times H}{1000 + 1.608 \times H}$$

(d) As the NO_X emission depends on intake air conditions, the NO_X concentration shall be corrected for intake air temperature and humidity with the factor K_h given in the following formula. For engines operating on alternative combustion cycles, other correction formulas may be used if they can be justified or validated. The formula follows:

$$K_H = \frac{1}{1 - 0.0182(H - 10.71)}$$

(e) * * *

Gas	u	v	w	conc.
NO_X	0.001587	0.00205	0.00205	ppm.
CO	0.000966	0.00125	0.00125	ppm.
HC	0.000478		0.000618	ppm.
CO_2	15.19	19.64	19.64	percent.

NOTE: The given coefficients u, v, and w are calculated for 273.15 °K (0 °C) and 101.3 kPa. In cases where the reference conditions vary from those stated, an error may occur in the calculations.

(f) The following equations may be used to calculate the coefficients u, v, and w in paragraph (e) of this section for other conditions of temperature and pressure:

(1) For the calculation of u, v, and w for NO_X (as NO_2), CO, HC (in paragraph (e) of this section as $CH_{1.80}$), CO_2, and O2:

Where:

$w = 4.4615.10^{-5} \times M$ if conc. in ppm

$w = 4.4615.10^{-1} \times M$ if conc. in percent

$v = w$

$u = w/\rho_{Air}$

M = Molecular weight

ρ_{Air} = Density of dry air at 273.15 °K (0 °C), 101.3 kPa = 1.293 kg/m³

* * * * *

(g)(1) The emission shall be calculated for all individual components in the following way where power at idle is equal to zero:

$$\text{individualgas} = \frac{\sum_{i=1}^{i=n}(g_i \times WF_i)}{\sum_{i=1}^{i=n}(P_i \times WF_i)}$$

(2) The weighting factors and the number of modes (n) used in the calculation in paragraph (g)(1) of this section are according to § 89.410.

78. The newly designated § 89.420 is amended by revising paragraph (a) introductory text to read as follows:

§ 89.420 Background sample.

(a) Background samples are produced by continuously drawing a sample of dilution air during the exhaust collection phase of each test cycle mode.

* * * * *

79. The newly designated § 89.422 is amended by revising the table in paragraph (d)(3) to read as follows:

§ 89.422 Dilute sampling procedures—CVS calibration.

* * * * *

(d) * * *

(3) * *

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P_B	kPa (Inches Hg)	0.034 (0.01).
Air temperature, flowmeter	ETI	deg.C (deg.F)	0.14 (0.25).
Pressure depression upstream of LFE	EPI	kPa(Inches H_2O)	0.012 (0.05).
Pressure drop across LFE matrix	EDP	kPa (Inches H_2O)	0.001 (0.005).
Air flow	Q_s	m³/min. (Ft³/min)	0.5 pct.
CFV inlet depression	PPI	kPa (Inches Hg)	0.055 (0.016).
CFV outlet pressure	PPO	kPa (Inches Hg)	0.17 (0.05).
Temperature at venturi inlet	T_v	deg.C (deg.F)	0.28 (0.5)
Specific gravity of manometer fluid	Sp.Gr		(1.75 oil).

* * * *

§ 89.423 [Removed and Reserved]

80. Remove and reserve the newly designated § 89.423.

81. The newly designated § 89.424 is amended by revising paragraphs (a), (d)(6), and (e), and the definition for M^1 in the CO_{2e} equation in paragraph (d)(3) to read as follows:

§ 89.424 Dilute emission sampling calculations.

(a) The final reported emission test results are computed by use of the following formula:

$$A_{WM} = \frac{\sum_{i=1}^{i=n}(g_i \times WF_i)}{\sum_{i=1}^{i=n}(P_i \times WF_i)}$$

Where:

A_{wm} = Weighted mass emission level (HC, CO, CO_2, PM, or NO_X) in g/kW-hr.

g_i = Mass flow in grams per hour, = grams measured during the mode divided by the sample time for the mode.

WF_i = Effective weighing factor.

P_i = Power measured during each mode (Power set = zero for the idle mode).

* * * * *

(d) * * *

(3) * * *

M^1 = Fuel mass consumed during the mode.

* * * * *

(6) Measured ''dry'' concentrations shall be corrected to a wet basis, if not already measured on a wet basis. This section is applicable only for measurements made on dilute exhaust gas. Correction to a wet basis shall be according to the following formula:

$Conc_{WET} = K_W \times Conc_{DRY}$

Where: K_W is determined according to the equation in paragraph (d)(6)(i) or (d)(6)(ii), of this section.

(i) For wet CO_2 measurement:

$$K_w = \left(1 - \frac{\alpha \times CO_2\%conc(wet)}{200}\right) - K_{w1}$$

(ii) For dry CO_2 measurement:

$$K_w = \left(\frac{(1 - K_{W1})}{1 + \frac{\alpha \times CO_2\%conc(dry)}{200}}\right)$$

(iii) For the equations in paragraph (d)(6)(i) and (d)(6)(ii) of this section, the following equation applies:

$$K_{w1} = \frac{1.608 \times \left[H_d \times \left(1 - {}^1{}_{DF}\right) + H_a \times \left({}^1{}_{DF}\right)\right]}{1000 + \left\{1.608 \times \left[H_d \times \left(1 - {}^1{}_{DF}\right) + H_a \times \left({}^1{}_{DF}\right)\right]\right\}} +$$

Where: H_a and H_d are the grams of water per kilogram of dry air; as illustrated in the following equations:

$$H_d = \frac{6.22 \times R_d \times p_d}{p_B - \left(p_d \times R_d \times 10^{-2}\right)}$$

$$H_a = \frac{6.22 \times R_a \times p_a}{p_B - \left(p_a \times R_a \times 10^{-2}\right)}$$

(e) The final modal reported brake-specific fuel consumption (bsfc) shall be computed by use of the following formula:

$$bsfc = \frac{M}{kW - hr}$$

Where:

bsfc = brake-specific fuel consumption for a mode in grams of fuel per kilowatt-hour (kW-hr).

M = mass of fuel in grams, used by the engine during a mode.

kW-hr = total kilowatts integrated with respect to time for a mode.

* * * * *

§ 89.425 [Removed and Reserved]

82. Remove and reserve the newly designated § 89.425.

83–87. Appendix B to Subpart E of part 89 is revised to read as follows:

Appendix B To Subpart E of Part 89—Tables

TABLE 1.—8-MODE TEST CYCLE FOR VARIABLE-SPEED ENGINES

Test segment	Mode number	Engine speed [1]	Observed torque [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	1	Rated	100	5.0	0.15
1	2	Rated	75	5.0	0.15
1	3	Rated	50	5.0	0.15
1	4	Rated	10	5.0	0.10
2	5	Int	100	5.0	0.10
2	6	Int	75	5.0	0.10
2	7	Int	50	5.0	0.10
2	8	Idle	0	5.0	0.15

[1] Engine speed (non-idle): ±2 percent of point. Engine speed (idle): Within manufacturer's specifications. Idle speed is specified by the manufacturer.

[2] Torque (non-idle): Throttle fully open for 100 percent points. Other non-idle points: ±2 percent of engine maximum value. Torque (idle): Throttle fully closed. Load less than 5 percent of peak torque.

TABLE 2.—5-MODE TEST CYCLE FOR CONSTANT-SPEED ENGINES

Mode number	Engine[1] Speed	Observed torque [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	Rated	100	5.0	0.05
2	Rated	75	5.0	0.25
3	Rated	50	5.0	0.30
4	Rated	25	5.0	0.30
5	Rated	10	5.0	0.10

[1] Engine speed: ±2 percent of point.

[2] Torque: Throttle fully open for 100 percent point. Other points: ±2 percent of engine maximum value.

TABLE 3.—6-MODE TEST CYCLE FOR ENGINES RATED UNDER 19 KW

Mode number	Engine speed [1]	Observed torque [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	Rated	100	5.0	0.09
2	Rated	75	5.0	0.20
3	Rated	50	5.0	0.29
4	Rated	25	5.0	0.30
5	Rated	10	5.0	0.07
6	Idle	0	5.0	0.05

[1] Engine speed (non-idle): ±2 percent of point. Engine speed (idle): Within manufacturer's specifications. Idle speed is specified by the manufacturer.
[2] Torque (non-idle): Throttle fully open for operation at 100 percent point. Other nonidle points: ±2 percent of engine maximum value. Torque (idle): Throttle fully closed. Load less than 5 percent of peak torque.

TABLE 4.—4-MODE TEST CYCLE FOR PROPULSION MARINE DIESEL ENGINES

Mode number	Engine speed [1] (percent of max. observed)	Observed power [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	91	75	5.0	0.50
3	80	50	5.0	0.15
4	63	25	5.0	0.15

[1] Engine speed: ±2 percent of point.
[2] Power: Throttle fully open for operation at 100 percent point. Other points: ±2 percent of engine maximum value.

Subpart F—[Amended]

88. The newly designated § 89.505 is amended by revising paragraph (e) to read as follows:

§ 89.505 Maintenance of records; submittal of information.

* * * * *

(e) All reports, submissions, notifications, and requests for approvals made under this subpart are addressed to: Director, Engine Programs and Compliance Division (6405–J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

89. The newly designated § 89.506 is amended by revising paragraph (g) to read as follows:

§ 89.506 Right of entry and access.

* * * * *

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) or EPA authorized representative(s) from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

90. The newly designated § 89.509 is amended by revising paragraphs (a) and (b) to read as follows.

§ 89.509 Calculation and reporting of test results.

(a) Initial test results are calculated following the applicable test procedure specified in § 89.508(a). The manufacturer rounds these results, in accordance with ASTM E29–93a, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure. This procedure has been incorporated by reference. See § 89.6.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding in accordance with the procedure specified in paragraph (a) of this section to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

* * * * *

91. The newly designated § 89.512 is amended by revising paragraph (b) to read as follows.

§ 89.512 Request for public hearing.

* * * * *

(b) The manufacturer's request must be filed with the Administrator not later than 15 days after the Administrator's notification of the decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer must simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, at her or his discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

* * * * *

92. The newly designated § 89.513 is amended by revising paragraph (e)(2) to read as follows.

§ 89.513 Administrative procedures for public hearing.

* * * * *

(e) Filing and service. * * *

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division (6405–J), U.S. Environmental Protection Agency, 401

M Street SW., Washington, DC 20460. Service by registered mail is complete upon mailing.

* * * * *

Subpart G—[Amended]

93. The newly designated § 89.602 is amended by revising the definition for ''Fifteen working day hold period'' to read as follows:

§ 89.602 Definitions.

* * * * *

Fifteen working day hold period. The period of time between a request for final admission and the automatic granting of final admission (unless EPA intervenes) for a nonconforming nonroad engine conditionally imported pursuant to § 89.605 or § 89.609. Day one of the hold period is the first working day (see definition for ''working day'' in this section) after the Engine Programs and Compliance Division of EPA receives a complete and valid application for final admission.

* * * * *

94. The newly designated § 89.603 is amended by revising paragraph (d) to read as follows:

§ 89.603 General requirements for importation of nonconforming nonroad engines.

* * * * *

(d) The ICI must submit to the Engine Programs and Compliance Division of EPA a copy of all approved applications for certification used to obtain certificates of conformity for the purpose of importing nonconforming nonroad engines pursuant to § 89.605 or § 89.609. In addition, the ICI must submit to the Engine Programs and Compliance Division a copy of all approved production changes implemented pursuant to § 89.605 or subpart B of this part. Documentation submitted pursuant to this paragraph (d) must be provided to the Engine Programs and Compliance Division within 10 working days of approval of the certification application (or production change) by EPA.

95. The newly designated § 89.604 is amended by revising paragraphs (c)(4) and (d) to read as follows:

§ 89.604 Conditional admission.

* * * * *

(c) * * *

(4) A copy of the written record is to be submitted to the Engine Programs and Compliance Division of EPA within five working days of the transfer date.

(d) Notwithstanding any other requirement of this subpart or U.S. Customs Service regulations, an ICI may also assume responsibility for the modification and testing of a nonconforming nonroad engine which was previously imported by another party. The ICI must be a holder of a currently valid certificate of conformity for that specific nonroad engine or authorized to import it pursuant to § 89.609 at the time of assuming such responsibility. The ICI must comply with all the requirements of § 89.603, § 89.604, and either § 89.605 or § 89.609, as applicable. For the purposes of this subpart, the ICI has ''imported'' the nonroad engine as of the date the ICI assumes responsibility for the modification and testing of the nonroad engine. The ICI must submit written notification to the Engine Programs and Compliance Division of EPA within 10 working days of the assumption of that responsibility.

96. The newly designated § 89.605 is amended by revising paragraphs (a)(2)(i), (a)(3)(vi), and (c) to read as follows:

§ 89.605 Final admission of certified nonroad engines.

(a) * * *

(2) * * *

(i) The ICI attests that the nonroad engine has been modified in accordance with the provisions of the ICI's certificate of conformity; presents to EPA a statement written by the applicable Original Engine Manufacturer that the Original Engine Manufacturer must provide to the ICI, and to EPA, information concerning production changes to the class of nonroad engines described in the ICI's application for certification; delivers to the Engine Programs and Compliance Division of EPA notification by the ICI of any production changes already implemented by the Original Engine Manufacturer at the time of application and their effect on emissions; and obtains from EPA written approval to use this demonstration option; or.

* * * * *

(3) * * *

(vi) A report concerning these production changes is to be made to the Engine Programs and Compliance Division of EPA within ten working days of initiation of the production change. The cause of any failure of an emission test is to be identified, if known;

* * * * *

(c) Except as provided in paragraph (b) of this section, EPA approval for final admission of a nonroad engine under this section is presumed to have been granted if the ICI does not receive oral or written notice from EPA to the contrary within 15 working days of the date that the Engine Programs and Compliance Division of EPA receives the ICI's application under paragraph (a) of this section. EPA notice of nonapproval may be made to any employee of the ICI. It is the responsibility of the ICI to ensure that the Engine Programs and Compliance Division of EPA receives the application and to confirm the date of receipt. During this 15 working day hold period, the nonroad engine is to be stored at a location where the Administrator has reasonable access to the nonroad engine for the Administrator's inspection. The storage is to be within 50 miles of the ICI's testing facility to allow the Administrator reasonable access for inspection and testing. A storage facility not meeting this criterion must be approved in writing by the Administrator prior to the submittal of the ICI's application under paragraph (a) of this section.

97. The newly designated § 89.609 is amended by revising paragraph (d) to read as follows:

§ 89.609 Final admission of modification nonroad engines and test nonroad engines.

* * * * *

(d) Except as provided in paragraph (c) of this section, EPA approval for final admission of a nonroad engine under this section is presumed to have been granted if the ICI does not receive oral or written notice from EPA to the contrary within 15 working days of the date that the Engine Programs and Compliance Division of EPA receives the ICI's application under paragraph (b) of this section. Such EPA notice of nonapproval may be made to any employee of the ICI. It is the responsibility of the ICI to ensure that the Engine Programs and Compliance Division of EPA receives the application and to confirm the date of receipt. During this 15 working day hold period, the nonroad engine is stored at a location where the Administrator has reasonable access to the nonroad engine for the Administrator's inspection. The storage is to be within 50 miles of the ICI's testing facility to allow the Administrator reasonable access for inspection and testing. A storage facility not meeting this criterion must be approved in writing by the Administrator prior to the submittal of the ICI's application under paragraph (b) of this section.

* * * * *

98. The newly designated § 89.610 is amended by revising paragraph (b)(1) to read as follows:

§ 89.610 Maintenance instructions, warranties, emission labeling.

* * * * *

(b) * * * (1) ICIs must submit to the Engine Programs and Compliance Division of EPA sample copies (including revisions) of any warranty documents required by this section prior to importing nonroad engines under this subpart.

* * * * *

99. The newly designated § 89.611 is amended by revising paragraph (g) to read as follows:

§ 89.611 Exemptions and exclusions.

* * * * *

(g) An application for exemption and exclusion provided for in paragraphs (b), (c), and (e) of this section is to be mailed to: U.S. Environmental Protection Agency, Office of Mobile Sources, Engine Programs and Compliance Division (6405–J), 401 M Street, SW, Washington, DC 20460, Attention: Imports.

Subpart J—[Amended]

100. Section 89.903 is amended by revising paragraph (b) to read as follows:

§ 89.903 Application of section 216(10) of the Act.

* * * * *

(b) EPA will maintain a list of nonroad engines that have been determined to be excluded because they are used solely for competition. This list will be available to the public and may be obtained by writing to the following address: Chief, Selective Enforcement Auditing Section, Engine Programs and Compliance Division (6405–J), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

* * * * *

101. Section 89.905 is amended by revising paragraph (f) to read as follows:

§ 89.905 Testing exemption.

* * * * *

(f) A manufacturer of new nonroad engines may request a testing exemption to cover nonroad engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the record-keeping and control procedures that will be employed to assure that the engines are used for purposes consistent with paragraph (a) of this section.

102. Section 89.906 is amended by revising paragraphs (a)(3) introductory text, (a)(3)(iii)(D), and (b) to read as follows:

§ 89.906 Manufacturer-owned exemption and precertification exemption.

(a) * * *

(3) Unless the requirement is waived or an alternate procedure is approved by the Director, Engine Programs and Compliance Division, the manufacturer must permanently affix a label to each nonroad engine on exempt status. This label should:

* * * * *

(iii) * * *

(D) The statement ''This nonroad engine is exempt from the prohibitions of 40 CFR 89.1003.''

* * * * *

(b) Any independent commercial importer that desires a precertification exemption pursuant to § 89.611(b)(3) and is in the business of importing, modifying, or testing uncertified nonroad engines for resale under the provisions of subpart G of this part, must apply to the Director, Engine Programs and Compliance Division. The Director may require such independent commercial importer to submit information regarding the general nature of the fleet activities, the number of nonroad engines involved, and a demonstration that adequate record-keeping procedures for control purposes will be employed.

103. Section 89.911 is revised to read as follows:

§ 89.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Chief, Selective Enforcement Auditing Section, Engine Programs and Compliance Division (6405–J), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

104. Section 89.1003 is amended by revising paragraphs (a)(3), (a)(5), (a)(6), (b)(4), and (b)(7) to read as follows:

§ 89.1003 Prohibited acts.

(a) * * *

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a nonroad engine, vehicle or equipment in compliance with regulations under this part prior to its sale and delivery to the ultimate purchaser, or for a person knowingly to remove or render inoperative such a device or element of design after the sale and delivery to the ultimate purchaser; or

(ii) For a person to manufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a nonroad engine, vehicle or equipment, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a nonroad engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use; or

(iii) for a person to deviate from the provisions of § 89.130 when rebuilding an engine (or rebuilding a portion of an engine or engine system).

* * * * *

(5) For a person to circumvent or attempt to circumvent the residence time requirements of paragraph (2)(iii) of the nonroad engine definition in § 89.2.

(6) For a manufacturer of nonroad vehicles or equipment to distribute in commerce, sell, offer for sale, or introduce into commerce a nonroad vehicle or piece of equipment which contains an engine not covered by a certificate of conformity, except as otherwise allowed by this part.

(b) * * *

(4) Certified nonroad engines shall be used in all vehicles and equipment manufactured on or after the applicable model years in § 89.112 that are self-propelled, portable, transportable, or are intended to be propelled while performing their function, unless the manufacturer of the vehicle or equipment can prove that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 89.2. After the date on which a new standard takes effect, nonroad vehicle and equipment manufacturers may continue to use nonroad engines built prior to this date that are not certified to the standard until inventories of those engines are depleted; however, stockpiling of such nonroad engines will be considered a violation of this section.

* * * * *

(7) A new nonroad engine intended solely to replace a nonroad engine in a piece of nonroad equipment, where the engine requiring replacement is not certified or is certified to emission standards that are less stringent than those in effect when the replacement engine is built, shall not be subject to the prohibitions of paragraph (a)(1) of this section or to the requirements of § 89.105 and paragraph (b)(4) of this section, provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or by the manufacturer of the engine that is being replaced, if different, and certified to the

requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the equipment; and

(ii) The engine manufacturer or its agent takes ownership and possession of the engine being replaced in partial exchange for the replacement engine; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved by the Administrator: THIS ENGINE DOES NOT COMPLY WITH FEDERAL NONROAD OR ON-HIGHWAY EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1 [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY; and

(iv) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(7), the term ''engine manufacturer'' shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part; and

(v) Where the replacement engine is intended to replace an engine that is certified to emission standards that are less stringent than those in effect when the replacement engine is built, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(vi) Engines sold pursuant to the provisions of this paragraph (b)(7) will neither generate nor use emission credits and will not be part of any accounting under the averaging, banking and trading program.

105. Section 89.1007 is amended by revising paragraph (c) to read as follows:

§ 89.1007 Warranty provisions.

* * * * *

(c) For the purposes of this section, the owner of any nonroad engine warranted under this part is responsible for the proper maintenance of the engine. Proper maintenance includes replacement and service, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices related to emission control (but not designed for emission control) under the terms of the last sentence of section 207(a)(3) of the Act, unless such part, item, or device is covered by any warranty not mandated by this Act.

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October 23, 1998

Part III

Environmental Protection Agency

40 CFR Parts 239, 257, and 258

Subtitle D Regulated Facilities: State Permit Program Determination of Adequacy, State Implementation; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239, 257 and 258

[FRL–6178–8]

RIN 2050–AD03

Subtitle D Regulated Facilities; State Permit Program Determination of Adequacy; State Implementation Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Resource Conservation and Recovery Act (RCRA) requires states to adopt and implement permit programs or other systems of prior approval to ensure that municipal solid waste landfills (MSWLFs) and non-municipal, non-hazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) hazardous waste comply with the federal revised criteria established for these disposal units. RCRA further directs the Environmental Protection Agency (EPA or the Agency) to determine whether state permit programs or other systems of prior approval are adequate to ensure compliance with the federal revised criteria. This final rule provides a flexible framework for modifications of approved programs, establishes procedures for withdrawal of approvals, and confirms the process for future program approvals so that standards that safeguard human health and the environment are maintained.

EFFECTIVE DATE: November 23, 1998.

ADDRESSES: Supporting materials for this rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–STIF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section of this document for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; 800–424–9346; TDD 800–553–7672 (hearing impaired); in the Washington, DC metropolitan area, the number is 703–412–9810; TDD 703–486–3323.

For more detailed information on specific aspects of this rulemaking, contact Karen Rudek, Office of Solid Waste (5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460; 703–308–1682, rudek.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA's response to comments received on the proposed STIR is included in section IV., B., of the preamble to today's final rule. Follow these instructions to obtain electronic access:

World Wide Web: http://www.epa.gov/osw/
FTP: ftp.epa.gov
Login: anonymous
Password: your internet address
Files are located in /pub/epaoswer

Preamble Outline

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I. Authority

The U.S. Environmental Protection Agency (EPA or the Agency) is promulgating these regulations under the authority of sections 2002(a)(1) and 4005(c) of the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended by the Hazardous and Solid Waste Amendments of 1984.

Subtitle D of RCRA, at section 4005(c)(1)(B), requires each state to develop and implement a permit program or other system of prior approval to ensure that facilities that receive household hazardous waste or conditionally exempt small quantity generator (CESQG) hazardous waste are in compliance with the federal revised criteria promulgated under section 4010(c) of Subtitle D of RCRA. Section 4005(c)(1)(C) further directs EPA to determine whether state permit programs are adequate to ensure compliance with the revised federal criteria. Section 2002(a)(1) of RCRA authorizes EPA to promulgate regulations necessary to carry out its functions under the Act.

II. Regulated Entities

Regulated entities include state governments requesting full or partial approvals of permit programs or other systems of prior approval, or revisions to existing fully or partially approved programs.

III. Background

On October 9, 1991, EPA promulgated the ''Solid Waste Disposal Facility Criteria: Final Rule,'' which established 40 CFR part 258 (56 FR 50978). These criteria include location restrictions and standards for design, operation, ground-water monitoring, corrective action,

financial assurance, and closure and post-closure care for MSWLFs. On July 1, 1996, EPA amended 40 CFR part 257 by adding subpart B, ''Federal Disposal Standards for the Receipt of CESQG Wastes at Non-Municipal, Non-Hazardous Waste Disposal Units'' (61 FR 34252). The 40 CFR part 257, subpart B criteria include location restrictions, ground-water monitoring, and corrective action standards for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous wastes. The 40 CFR part 257, subpart B and 40 CFR part 258 criteria, henceforth referred to as the ''Subtitle D federal revised criteria,'' establish minimum federal standards that take into account the practical capability of owners and operators and ensure that both MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous wastes are designed and managed in a manner that is protective of human health and the environment. Every standard in the Subtitle D federal revised criteria is designed to be implemented by the owner or operator, with or without oversight or participation by a regulatory agency (e.g., an approved state permit program). States with approved programs may choose to permit the Subtitle D federal revised criteria exactly, or they may choose to allow owners and operators to use site-specific alternative approaches to meet the federal performance standards. The flexibility that an owner or operator may be allowed under an approved state program can provide a significant reduction in the burden associated with complying with the federal criteria.

Both the proposed State/Tribal Implementation Rule (STIR) (61 FR 2584, Jan. 26, 1996) and the promulgated 40 CFR part 257, subpart B, contain language pertaining to waste disposal in Indian Country as well as in states. Due to a recent decision by the U.S. Court of Appeals for the District of Columbia Circuit (*Backcountry Against Dumps* v. *EPA*, 100 F. 3d 147 (DC Cir. 1996)), tribes are viewed as municipalities rather than as states under RCRA and, therefore, the Agency cannot approve tribal landfill permitting programs. To reflect the court decision, references to tribes have been deleted from this final rule. Thus, although the proposed rule was titled STIR, we refer to today's final regulation as the State Implementation Rule (SIR).

A. Effect of SIR on State Programs

The regulation of solid waste management has historically been a state and local function. Under the final SIR, EPA intends that states will continue their lead role in implementing the federal revised MSWLF requirements. States with approved programs may choose to enforce the federal standards by requiring owners and operators of permitted facilities to implement the federal revised criteria exactly as written in 40 CFR part 257, subpart B and 40 CFR part 258, with no consideration given to an owner or operator's proposed implementation of alternative approaches to meet federal performance standards. States with approved programs also may choose, however, to take advantage of the significant flexibility incorporated into the 40 CFR part 257, subpart B and part 258 criteria by allowing owners and operators of permitted facilities to use alternative approaches to meet federal performance requirements.

To date, 40 states and one U.S. territory have obtained EPA's full approval of their MSWLF programs, and another six states have received partial program approval. This final rule is designed to minimize disruption of those approved programs while assuring that facilities comply with the Subtitle D federal revised criteria. The following is a brief summary of EPA's requirements for state authorities and the Agency's rights of review.

■ The Agency's goal is for states to apply for and receive permit program approval. To that end, this rule stipulates basic authorities, rather than prescriptive programmatic elements. Today's rule takes an approach which allows states flexibility in the structure of their individual permit programs or other systems of prior approval (henceforth collectively referred to as ''permit programs'') while assuring that the states have the necessary authorities and procedures, including staffing and technical capabilities, to allow them to take action as needed to enforce compliance with the Subtitle D federal revised criteria. Under the SIR, states may use their own design standards, performance standards, or a combination of the two to implement the basic elements required in the criteria.

■ EPA generally will defer to the state certifications of legal authority. If the Agency receives information indicating that a state's legal certification is inaccurate, however, EPA reserves the right to conduct its own review of the state's legal certification and authorities.

B. Subtitle D Federal Revised Criteria Permit Program Adequacy Determinations

For initial determinations of partial or full state program adequacy for 40 CFR part 258 regulated facilities, and for determinations of adequacy for revisions in already-approved state MSWLF permitting programs, EPA will follow the procedures contained in today's rule at 40 CFR 239.10.

To make adequacy determinations for non-municipal, non-hazardous waste permit programs in states with already-approved permit programs where the state disposal requirements meet or exceed the 40 CFR part 257, subpart B requirements, EPA believes it is appropriate to use a streamlined approval process. The Agency plans to publish streamlined adequacy determinations in the near future for states with programs that meet the criteria for streamlined approval. Currently, some states require that all hazardous waste disposal, including CESQG hazardous waste disposal, must occur only in hazardous waste disposal facilities that comply with the hazardous waste disposal requirements of RCRA Subtitle C. Other states require that CESQG hazardous wastes be managed in facilities that comply with the requirements of 40 CFR part 258. Many of these same states have EPA authorized Subtitle C permit programs and/or EPA approved MSWLF permit programs which, to meet EPA requirements for authorization or approval, must include all of the criteria enumerated in 40 CFR part 257, subpart B as well as additional criteria required by Subtitle C or part 258. Such states, therefore, have requirements for CESQG hazardous waste disposal that are equal to or more stringent than the federal requirements found in 40 CFR part 257, subpart B, since their permitted Subtitle C or MSWLF facilities must comply with design and operating criteria that include all of the 40 CFR part 257, subpart B criteria. Thus, in states where EPA has already authorized a Subtitle C permit program and/or approved a MSWLF permit program, and where the state requires CESQG hazardous waste disposal in permitted facilities, EPA need only verify, using documentation previously submitted by the state for its Subtitle C or MSWLF permit program approval application, that the state is already in compliance with the 40 CFR part 257, subpart B disposal criteria. In such cases, there is no need for the state to submit additional information for 40 CFR part 257, subpart B permit program approval.

C. Summary of Today's Final Rule

1. Rationale for Today's Final Rule

Significant flexibility for owners and operators in meeting the Subtitle D federal revised criteria is only available in approved states; therefore, the Agency has actively encouraged states to seek early approval of their permit programs. EPA used the draft STIR as guidance in interpreting the statutory authorities and requirements, in identifying the necessary components of an application, and in determining the adequacy of state MSWLF permit programs. Although, to date, EPA has fully or partially approved 47 state/territorial MSWLF permit programs and anticipates approval of programs in the remaining states in the near future, the Agency believes it remains necessary to promulgate this final rule to provide a framework for modifications of approved permit programs, to establish procedures for withdrawal of approvals, and to confirm the process for future program approvals.

Public comments on the proposed rule, and public hearings on the state permit programs that have been approved to date, have yielded few significant comments on the process used for approval. Thus, it is not the Agency's intent that states with already approved MSWLF permit programs reapply for approval upon promulgation of this final rule.

2. Approval Procedures for State Permit Programs

To secure an EPA determination of adequacy under RCRA section 4005(c), a state must submit an application for permit program approval to the appropriate EPA regional administrator for review. This final rule describes the program elements to be included in the state application and sets forth the criteria EPA will use to determine state program adequacy.

The Agency encourages states to develop and submit draft applications to the regions as a first step in the approval process. Preparing a draft application allows the state to perform a detailed review of its current program and identify areas that may not meet the Subtitle D federal revised criteria. Submitting a draft application also enables the Region to provide more effective guidance to the state early in the process.

Pursuant to 40 CFR 239.10, Table 1 presents the schedule and timelines for EPA in the SIR application approval process. Submission of an application for program approval does not ensure automatic approval should the Agency fail to meet the application review timeframe presented in Table 1.

TABLE 1.—SCHEDULE FOR SIR APPLICATION APPROVAL PROCESS

Milestones and associated tasks	Timeframe
1. EPA Receives Application:	
■ Determine whether the application is administratively complete	Timeframe: Within 30 days of receiving application.
■ Prepare docket.	
2. EPA Reviews Application for Adequacy (After Administratively Complete):	Timeframe: Within 180 days.
■ Submit comments to state	
■ Review state's response to comments	
■ Determine adequacy of implementation support (e.g., permitting and enforcement authorities)	
■ Determine adequacy of technical landfill provisions	
■ Make tentative determination	
■ Prepare tentative determination notice	
■ Determine strategy for holding a public hearing	
■ Obtain Regional Administrator's signature.	
3. EPA Submits Notice for Publication in the **Federal Register**:	
■ Specify the tentative determination reached	
■ Allow at least a 30-day public comment period	
■ Describe any areas of concern	
■ Note availability of the application for public inspection	
■ Indicate that a public hearing will be scheduled if warranted	
4. Public Comment Period.	
5. EPA Holds Public Hearing (If sufficient interest is expressed).	
6. EPA Prepares Final Determination Notice:	
■ Address public comments	
■ Prepare **Federal Register** preamble, including summary of comments received	
■ Obtain Regional Administrator's signature	
7. Final Determination Published in the **Federal Register**.	

3. Partial Approval Procedures for State Permit Programs

In view of the comprehensive nature of the Subtitle D federal revised criteria, it is likely that some state permit programs will meet the procedural and legal requirements of 40 CFR part 239, but not meet all of the technical requirements of 40 CFR part 257, subpart B or 40 CFR part 258, as promulgated under sections 1008 (a)(3), 4004(a) and 4010(c) of RCRA. Such programs will require statutory, regulatory, and/or guidance changes for full program approval. The potential for technical voids concerns the Agency, because it could produce delays in final adequacy determinations. These delays could place substantial burdens on owners and operators by postponing the availability of flexibility that may be afforded by states with approved programs.

To address this issue, 40 CFR 239.10 and 40 CFR 239.11 of the final SIR include procedures for full and partial state program approvals. With a partial approval, the state permitting agency can allow owners and operators to take advantage of flexibility for those portions of the state program that meet the federal requirements while the state makes necessary changes to the remaining portions of its program. If a state MSWLF program meets all but the federal ground-water monitoring criterion, for example, all portions of its program except ground-water monitoring would be approved. The

state could then allow owners and operators flexibility for approved criteria while having additional time to modify its program to bring it into compliance with federal ground-water monitoring requirements. For those criteria where the state program is not approved, the owner or operator must self-implement the federal criteria, thus ensuring that the solid waste facility is in compliance with the Subtitle D federal revised criteria. Section 239.11(d) of today's final rule provides that states with partially approved permit programs are approved to implement flexibility proposals from owners and operators only in those portions of the technical requirements that are included in the partial approval.

The partial approval process is not intended to create a two-step process by which a state first gains approval for those parts of its permit program that are currently adequate and then revises the remainder of the program. Applications for partial approval must include a schedule, agreed to by the state and by the appropriate regional administrator, for completing the changes to the laws, regulations, and/or guidance needed to comply with the remaining technical requirements. States whose programs require procedural, legal, or substantial technical changes are encouraged to complete all necessary program modifications before submitting an application for approval.

States that receive partial approval should submit an amended application meeting all requirements of 40 CFR part 239 and have that application approved within two years of the effective date of the final determination for partial program adequacy. States should be sensitive to this deadline and submit amended, complete applications well in advance of the deadline to allow regions ample time for public participation, to make tentative and final adequacy determinations, and to publish these determinations in the **Federal Register**.

To encourage states to pursue full program approval in a timely manner, EPA has limited the life span for partial approvals to two years. The Agency views the partial approval process as a temporary measure, but believes that states may require up to two years to make the changes to their laws, regulations, and/or guidance which may be needed for full program approval. The Agency believes, however, that it would be counterproductive to determine an entire program inadequate if a state has good cause to exceed the two-year timeframe. For this reason, the Agency will accommodate state program development by providing a mechanism to allow partial approval of programs to extend beyond two years if the state demonstrates good cause to the EPA region. In such cases, the Regional Administrator will publish the expiration date extension for the partial approval in the **Federal Register**.

4. Role of Guidance

While states must have the authority to issue, monitor compliance with, and enforce permits adequate to ensure compliance with the Subtitle D federal revised criteria, the specific requirements of the applicable Subtitle D federal revised criteria need not be contained in state laws or regulations. Guidance documents may be used to supplement state laws and regulations if the state demonstrates in its legal certification that the guidance will be used to develop enforceable permits or other mechanisms that will ensure compliance with the criteria. Guidance may be used only to supplement state laws and regulations; it cannot correct laws and regulations that are inconsistent with the guidance. If a state's laws or regulations require three inches of earthen material daily as a cover, for example, the state could not meet the daily cover requirement of 40 CFR 258.21 by issuing guidance that owners and operators apply six inches of earthen material at the end of each operating day.

The narrative description of the state program must explain how the state will use guidance to develop enforceable permits or other mechanisms of prior approval that ensure compliance with the Subtitle D federal revised criteria. Use of guidance gives the states added flexibility in meeting the requirements of 40 CFR part 239, yet maintains the requirement that states have the authority to ensure owner and operator compliance with the revised criteria. The flexibility afforded by the use of guidance should limit the need for states to restructure existing laws and regulations.

D. Differences From the Subtitle C Authorization Process

The approach for determining the adequacy of state permit programs under section 4005(c) of Subtitle D of RCRA differs from the approach taken for authorizing state hazardous waste programs under section 3006 of Subtitle C of RCRA. The differences in approach reflect differences in the statutory framework of each subtitle.

Under Subtitle C, prior to authorization of a state program, EPA has primary responsibility for permitting of hazardous waste facilities. Federal law, including the issuance and enforcement of permits, applies until EPA authorizes a state to operate the state program in lieu of the federal program. Subtitle C requires authorized state programs to be at least equivalent to and consistent with the federal program and other authorized state programs, and to have requirements that are no less stringent than the federal Subtitle C requirements. Once authorized, state programs operate in lieu of the federal program and, if federal enforcement of requirements is necessary, EPA must enforce the authorized state's requirements under Subtitle C, rather than the federal law that was superseded by the state requirements. EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003, although authorized states have primary enforcement responsibility. Citizens may also enforce the requirements of an authorized state hazardous waste program through citizen suits in federal court under RCRA section 7002.

In contrast, under Subtitle D, facility permitting is a state responsibility. EPA's role includes establishing technical design and operating criteria for facilities, determining the adequacy of state permitting programs, and enforcing compliance with the Subtitle D federal revised criteria only after determining that the state permitting program is inadequate. Subtitle D does not provide for state requirements to operate in lieu of the Subtitle D federal revised criteria. The Subtitle D federal revised criteria and state requirements operate concurrently, regardless of whether a state permit program is deemed adequate or inadequate.

E. Enforcement

1. EPA Enforcement

Approved states have primary responsibility for ensuring compliance with the Subtitle D federal revised criteria through the enforcement element of their programs. RCRA does not give EPA the authority to take enforcement actions in approved states or in states pending an adequacy determination; therefore, adequate state enforcement authorities are crucial to ensure compliance.

EPA retains enforcement and response authority, however, in a number of ways, including the following:

■ Under RCRA section 4005(c)(2)(A), the Agency has the authority to enforce the Subtitle D federal revised criteria only where it determines the state permit program to be inadequate.

■ Under RCRA section 7003 and section 106 of the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA), EPA retains enforcement authority to address situations that may pose imminent and substantial endangerment to human health or the environment.

■ Under CERCLA section 104(a), EPA may take response actions in situations where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance, pollutant, or contaminant into the environment.

Where a citizen brings a concern to EPA's attention, the Agency will respond in an appropriate manner on a case-by-case basis.

2. Citizen Enforcement

In light of recent federal court decisions in the case of *Ashoff* v. *City of Ukiah,* questions have been raised by members of the public as to the Agency's position on the ability of citizens to enforce requirements where EPA has approved a state permit program under Subtitle D of RCRA. The district court in the *Ashoff* case held that citizens cannot enforce the requirements of an approved state MSWLF permit program under RCRA Subtitle D and dismissed the citizen suit which the plaintiff had brought under RCRA. *Ashoff* v. *City of Ukiah* No. C–96–1302 VRW (N.D. Calif. Nov. 21, 1996). On appeal, the United States Court of Appeals for the Ninth Circuit affirmed the district court's dismissal of the RCRA citizen suit, but held that citizens could maintain actions under RCRA section 7002 to enforce those elements of an approved state Subtitle D permit program which had become effective pursuant to RCRA. *Ashoff* v. *City of Ukiah,* 130 F.3d 409, 411–412 (9th Cir. 1997). At the same time, the Court held that citizens could not bring RCRA citizen suit actions to enforce those elements of an EPA-approved Subtitle D state permit program that are more stringent than the federal MSWLF criteria. *Id.* at 412. While the district court opinion misconstrued a number of statements EPA has made in the **Federal Register**, the Ninth Circuit's opinion is essentially consistent with the Agency's position as set forth below.

a. Types of Subtitle D federal revised criteria. The Subtitle D federal revised criteria applicable to MSWLFs and non-municipal, non-hazardous disposal units that receive CESQG waste are of three general types. The first type establishes a single federal standard that all MSWLFs and non-municipal, nonhazardous disposal units that receive CESQG waste must meet and that leaves no discretion to the state or the owner or operator. An example of the first type of criterion can be found in 40 CFR 258.24(b) of the federal MSWLF revised criteria, which prohibits open burning of solid waste at MSWLFs, except for the infrequent burning of certain specifically-identified types of waste. The federal MSWLF revised criteria do not allow states to waive or alter this prohibition so that it would be a less stringent prohibition. Thus, owners and operators of MSWLFs in states with EPA-approved programs and those states whose programs have not yet been fully reviewed by the Agency must comply with this federal minimum open burning prohibition. States could choose, however, to make the prohibition more exacting by not permitting the infrequent open burning of the identified wastes. As discussed below, however, such a complete open burning prohibition adopted by the state would not be enforceable by citizens under RCRA sections 4005(a) and 7002(a)(1)(A).

A similar type of provision, which leaves no discretion to the state or the owner or operator, is contained in 40 CFR 257.8(a) of the revised criteria for non-municipal, non-hazardous waste disposal units. Owners or operators of waste disposal units that receive CESQG hazardous waste and are located in 100-year flood plain must demonstrate that the units will not restrict the flow of the 100-year flood, reduce the capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment. The owner or operator must notify the state director that the demonstration has been placed in the operating record of the unit. The state director cannot waive this demonstration requirement. If, by January 1, 1998, the owner or operator of an existing unit cannot make the flood plains demonstration, the unit must not accept CESQG waste for disposal (40 CFR 257.13). The demonstration requirement and the prohibition against the continued receipt of CESQG waste if the requirement is not met apply whether the unit is located in an approved state or not.

The second type of criterion establishes a federal standard, but allows an approved state to establish an alternative standard, compliance with which constitutes compliance with the relevant federal standard. The revised MSWLF criteria, for example, establish two alternative means of compliance with requirements for daily cover of landfills. Under 40 CFR 258.21, MSWLF owners or operators must either use six inches of earthen material as cover at the end of each operating day or use alternative materials of an alternative thickness that the director of an approved state has approved. The owner or operator must demonstrate that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Other areas of the revised MSWLF criteria that provide approved states with the right to establish alternative standards include certain design, operating, location, ground-water monitoring, corrective action, closure and post-closure care, and financial assurance requirements. The revised criteria for non-municipal, non-hazardous waste disposal units that receive CESQG waste also provide that directors of approved states may establish alternative standards in a variety of circumstances. For example, see 40 CFR 257.21(h) and (I) (alternative ground-water monitoring systems for certain small CESQG waste disposal units in arid or remote locations); 40 CFR 257.22(b) (alternative use of a multi-unit ground-water monitoring system); and 40 CFR 257.24(a)(2) (alternative list of indicator parameters for which detection monitoring is required).

Where an approved state implements an alternative standard specifically provided for by the Subtitle D federal revised criteria, compliance with that approved state alternative standard constitutes compliance with the relevant federal criterion. The following **Federal Register** citations reference state alternative standards: 61 FR 2584, 2593, ''EPA expects the owner or operator who complies with the requirements of an approved state's or tribe's permit program will be found by federal courts to have complied with the requirements in the Subtitle D federal revised criteria;'' and 56 FR 50978, 50995, ''EPA expects that owners or operators in approved states who use the state standard will be found by federal courts to have complied with the design requirements of part 258.'' An owner or operator must comply, as appropriate, with either the Subtitle D federal revised criteria or the alternative approved state standard provided for in the revised criteria; failure to comply with the federal standard or the alternative approved state standard, as appropriate, constitutes open dumping. For more information, see 40 CFR 257.1(a)(1) and (2); and 40 CFR 258.1(g) and (h).

A third type of federal criterion gives the owner or operator discretion to implement fully the federal standard based on site-specific information. This type of criterion contemplates instances

where site-specific definition must be given to make the federal criterion meaningful. EPA promulgated the revised criteria so that owners and operators could implement the standards on their own if states chose not to adopt permit programs (61 FR 2584, 2595, Jan. 26, 1996 and 56 FR 50978, 50992–50993, Oct. 9, 1991). The Subtitle D federal revised criteria thus establish some performance standards that an owner or operator must meet by considering a number of identified site-specific factors. If ground-water contamination at a MSWLF or a CESQG waste disposal unit requires clean up, for example, the Subtitle D federal revised criteria provide that the owner or operator must select both the cleanup remedy and the schedule for implementing it (40 CFR 257.27(a)–(d); and 40 CFR 258.57(a)–(d)). Once the owner or operator considers the necessary factors and selects the remedy and the schedule, the revised criteria require the owner or operator to comply with that plan (40 CFR 257.28(a)(1) and (2); and 40 CFR 258.58(a)(1) and (2)). These choices made by the owner or operator are specifically required by the revised criteria. As such, they are incorporated into the Subtitle D federal revised criteria (which include open dumping criteria) and become effective pursuant to RCRA.

In practice, a state often stands in the shoes of an owner or operator and exercises the discretion reserved by the Subtitle D federal revised criteria to set a cleanup remedy and schedule. A state may establish such standards via a permit or other mechanism, for example, as part of the state's Subtitle D program. Where a state selects a remedy and schedule using the factors provided for in the revised criteria (*e.g.*, 40 CFR 257.27(a)–(d); and 40 CFR 258.57(a)–(d)), and stands in the owner's or operator's shoes to make the decision reserved by the Subtitle D federal revised criteria, the state's cleanup plan and schedule are incorporated into the federal criteria and become effective pursuant to RCRA.

b. Citizen enforcement under RCRA Sections 4005 and 7002. RCRA authorizes citizens to enforce Subtitle D requirements pursuant to two separate provisions of the Act. First, RCRA section 7002(a)(1)(A) authorizes any person to commence a civil action against ''any person* * *alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this Act'' (42 U.S.C. 6972(a)(1)(A)). Second, RCRA section 4005(a) states that once EPA promulgates criteria under section 1008(a)(3) of RCRA, any practice which constitutes open dumping (as defined by those criteria) is prohibited (42 U.S.C. 6945(a)). Importantly, this section also provides that the open dumping prohibition ''shall be enforceable under section 7002 of this title against persons engaged in the act of open dumping.'' *Id.* The three types of Subtitle D federal revised criteria discussed above are enforceable by federal citizen suit under RCRA because they become the criteria for the open dumping prohibition in section 4005(a) and, thus, they become requirements and a prohibition which has become effective pursuant to RCRA for purposes of section 7002(a)(1)(A).

Section 4005(a) of RCRA prohibits ''any solid waste management practice which constitutes the open dumping of solid waste or hazardous waste'' (42 U.S.C. 6945(a)). RCRA defines an ''open dump'' as ''any facility or site where solid waste is disposed'' that does not meet criteria promulgated under RCRA section 4004 (42 U.S.C. 6903(14)). RCRA section 4004(a) directs the Administrator to promulgate criteria for determining ''which facilities shall be classified as sanitary landfills and which shall be classified as open dumps'' (42 U.S.C. 6944(a)). Similarly, RCRA section 1008 requires the Administrator to publish guidelines that ''provide minimum criteria to be used by the states to define those solid waste management practices which constitute the open dumping'' prohibited by RCRA Subtitle D (42 U.S.C. 6907(a)(3)). In 1984, Congress further directed EPA to promulgate revised open dumping criteria ''for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators'' (*i.e.*, CESQG wastes) (42 U.S.C. 6949a(c)).

EPA promulgated the revised criteria for MSWLFs and for non-municipal, non-hazardous waste disposal units receiving CESQG waste under the authority of RCRA sections 1008(a)(3), 2002(a)(1), 4004(a), and 4010(c) (56 FR 50978, 50979 and 61 FR 34252, 34253 and 34269). Any violation of either the 40 CFR part 257 or 40 CFR part 258 criteria constitutes ''open dumping,'' under the plain language both of RCRA, 42 U.S.C. 6903(14), and of the regulations, 40 CFR 257.1(a)(1) and (a)(2) (facilities and practices failing to satisfy the criteria in part 257 are considered open dumps and constitute open dumping, respectively); 40 CFR 257.2 (definition of ''open dump''); and 40 CFR 258.1(h) (''Municipal solid waste landfill units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.'').

Because RCRA prohibits open dumping, any violation of these criteria is illegal as a matter of federal law (42 U.S.C 6945(a)). Nothing in RCRA suggests that the federal open dumping prohibition is diminished by EPA's determination, under RCRA section 4005(c)(1)(C), that a state Subtitle D permit program is adequate. On the contrary, ''the Subtitle D federal revised criteria are applicable to all Subtitle D regulated facilities, regardless of whether EPA has approved the state/tribal permit program'' (61 FR 2584, 2593, Jan. 26, 1996 (preamble to proposed STIR rule)). Because Congress has specifically authorized citizens to enforce the open dumping prohibition under RCRA section 4005(a), citizens may certainly enforce the first type of ''open dumping'' criteria which are contained in the Subtitle D federal revised criteria in either an approved or unapproved state.

State alternative standards that are part of the Subtitle D federal revised criteria also define open dumping, the prohibition of which is enforceable under RCRA sections 4005(a) and 7002. This conclusion follows inescapably from the following reasoning (based on the plain language of RCRA and EPA's implementing regulations): (1) citizens may enforce the open dumping prohibition under RCRA section 4005(a); (2) state alternative standards specifically allowed by the revised criteria are a part of those criteria, and, thus, define (in part) ''open dumping,'' *see, e.g.*, 40 CFR 257.1(a)(1) and (a)(2); 40 CFR 258.1(g) and (h); therefore, (3) citizens may enforce compliance with these approved state alternative standards through the open dumping prohibition of RCRA section 4005(a) and the citizen suit provision of RCRA section 7002(a)(1)(A).

The same reasoning applies to citizen suit enforcement in federal courts of those requirements of a state permit program that are within the scope of discretion afforded by the revised criteria (*i.e.*, the third type of criterion where the state steps into the shoes of the owner or operator to make certain site-specific decisions). The Subtitle D federal revised criteria, for example, afford the owner or operator significant discretion to select a corrective action remedy and schedule (40 CFR 257.27(a)–(d) and 40 CFR 258.57(a)–(d)). If the state issues a standard that exercises that discretion on behalf of the owner or operator, that state standard becomes part of the federal open dumping criteria.

RCRA's principal citizen suit provision, section 7002, authorizes ''any person'' to file suit against any other person ''alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to [RCRA]'' (42 U.S.C. 6972(a)(1)(A)). Those approved state alternative standards expressly provided for by EPA's revised criteria do ''become effective pursuant to'' RCRA because EPA's approval of the state program gave that alternative state standard legal effect. The revised criteria only allow state alternatives in approved states; therefore, the alternative compliance options that states may implement under the Subtitle D federal revised criteria are of no effect under RCRA unless and until EPA approves the state program under RCRA section 4005(c).

Similarly, citizens also may enforce under RCRA section 7002 the requirements of a state program where those requirements are within the scope of discretion afforded by the Subtitle D federal revised criteria. The revised criteria contemplate instances, for example, where site-specific definition must be given to make the federal criteria meaningful, such as where an owner or operator must select a schedule for cleanup of contaminated ground water. See 40 CFR 257.27(d)(1–8) and 40 CFR 258.57(d)(1–8). Once such a schedule is selected, it implements the discretion reserved by the federal criterion, and, thus, is effective pursuant to RCRA, within the meaning of section 7002(a)(1)(A). Where the state stands in the shoes of an owner or operator in exercising the discretion reserved by the revised criteria, then the state standard would similarly become enforceable by federal citizen suit.[1]

c. State permit program provisions which are not federally enforceable. EPA believes, however, that elements of a state permit program which are not specifically provided for in the revised criteria as alternative standards or which are not within the scope of discretion afforded by the Subtitle D federal revised criteria have no effect pursuant to federal law, and, therefore, are not enforceable in federal court under RCRA sections 4005(a) or 7002(a)(1)(A). The MSWLF revised criteria, for example, require owners or operators of MSWLFs to ensure that the concentration of methane (an explosive gas) does not exceed 25 percent of the lower explosive limit for methane in facility structures, and that the methane concentration does not exceed the lower explosive limit for methane at the facility property boundary (40 CFR 258.23(a)). This provision, which guards against potentially catastrophic explosions and/or fires at MSWLFs (56 FR at 51051–52), neither leaves room for an approved state to set a more specific standard nor provides the owner or operator with the discretion to determine how some general standard should be articulated based on site-specific factors. Thus, if a state establishes a more stringent requirement for controlling explosive gases, that different state standard would not fill in an area of discretion reserved by the Subtitle D federal revised criteria, would not become effective pursuant to RCRA, and would not be enforceable in federal court by RCRA citizen suit. Similarly, state standards that regulate activities beyond the scope of the revised criteria—*e.g.*, regulating wastes not regulated by the federal standards—would not be effective pursuant to RCRA.

State adoption of such a different MSWLF requirement, however, does not preclude citizen enforcement under RCRA section 7002 of the Subtitle D federal revised criteria. Even in a state which requires that methane gas concentrations not exceed 10 percent of the lower explosive limit in facility structures, for example, a citizen could still enforce the less stringent federal minimum requirement of not exceeding 25 percent of the lower explosive limit in facility structures.

RCRA does not authorize citizen enforcement in federal court of such divergent state requirements for several reasons. The federal open dumping criteria do not incorporate either state standards beyond those provided for in the Subtitle D federal revised criteria or those state standards which fall outside the scope of the discretion afforded by those revised criteria. While RCRA section 7002(a)(1)(A) permits citizen enforcement of requirements that ''become effective pursuant to'' RCRA, nothing in RCRA Subtitle D or its implementing regulations gives additional state requirements—beyond those allowed by the revised criteria—any legal effect. In evaluating state permit programs under RCRA Subtitle D, EPA is making only a determination as to whether the state program will ensure that MSWLFs and waste disposal units receiving CESQG waste comply with the minimum federal criteria (42 U.S.C. 6945(c)(1)(B) and (C)). The statutory language of RCRA Subtitle D clearly contemplates that while states may develop their own permit programs, compliance with the Subtitle D federal revised criteria was to be the primary goal of those state programs.

Significantly, unlike the state authorization provisions in RCRA Subtitle C, Subtitle D state permit programs do not operate ''in lieu'' of the federal MSWLF program. *Cf.* 42 U.S.C. 6926(b). This has two consequences. First, the Subtitle D federal revised criteria remain in effect in approved states, as explained by EPA in the STIR proposed rule (61 FR 2593, Jan. 26, 1996). Second, except for the alternative standards issued by an approved state Subtitle D permit program, which are specifically provided for in the revised criteria (the second type of criterion discussed), EPA's adequacy determination under RCRA Subtitle D does not make the state program ''effective pursuant to'' RCRA under RCRA section 7002(a)(1)(A).

Moreover, RCRA section 3009 specifically allows states to impose hazardous waste requirements under Subtitle C that are more stringent than the federal requirements (42 U.S.C. 6929). In contrast, RCRA Subtitle D contains no statutory language specifically retaining a state's authority to impose more stringent requirements than those EPA has promulgated under RCRA sections 1008, 2002, 4004, and 4010. While the Agency believes that states are free to establish more stringent requirements for facilities receiving hazardous household waste and CESQG waste, such requirements are not federally enforceable under Subtitle D's statutory scheme (unlike the more stringent provisions of an EPA-authorized state hazardous waste program).

Thus, divergent state Subtitle D standards, which fall outside the scope of requirements provided in the revised criteria or which are more stringent than the revised criteria are not ''effective pursuant to'' RCRA and, therefore, not enforceable by citizen suit in federal court. The state's decision to impose a different requirement, including a more stringent requirement, is solely a matter of state law and policy. Allowing citizen suits in federal court to enforce the federal minimum standards, but not to enforce purely state standards not contemplated by the revised criteria,

[1] Such a state standard is enforceable by citizens without regard to whether the state has a permit program that has been approved as ''adequate'' by EPA under RCRA section 4005(c)(1)(C). 42 U.S.C. 6945(c)(1)(C). This is so because when the state exercises the discretion afforded to the owner or operator to define a site-specific federal requirement under the revised criteria, that state choice becomes incorporated into the federal definition prohibiting open dumping and, thus, is effective pursuant to RCRA. This situation is distinguishable from the second type of criteria discussed above, i.e., the alternative standards of an approved state, where the approval of the state's permit program is necessary before the alternative standard becomes incorporated into the federal open dumping criteria.

respects Congress's intent for a limited federal role under RCRA Subtitle D (as compared to RCRA Subtitle C). See 42 U.S.C. 6901(a)(4) (collection and disposal of solid wastes should continue to be primarily the function of state, regional, and local agencies).[2]

d. Citizen enforcement of EPA-authorized state hazardous waste programs. EPA's longstanding view is that citizens can enforce the elements of an authorized state hazardous waste program under RCRA Subtitle C by bringing an action under RCRA section 7002. *See* 49 FR 48300, 48304 (Dec. 12, 1984) (''it is the EPA's position that the citizen suit provision of RCRA is available to all citizens whether or not a state is authorized.''). The Agency's position that authorized state hazardous waste programs are enforceable by citizens is supported by the statutory structure of RCRA Subtitle C.

In adopting hazardous waste programs, states must ensure that their programs are at least equivalent to the federal program, although state programs can be more stringent. 42 U.S.C. sections 6926(b) and 6929. Once the (potentially more stringent) state program is authorized by EPA, that program operates ''in lieu of'' the federal program. 42 U.S.C. 6926(b). Moreover, RCRA specifically envisions that EPA will enforce the requirements of an authorized state hazardous waste program by authorizing EPA to take enforcement action against violations which occur in a state with an authorized Subtitle C program. 42 U.S.C. 6928(a)(2); *see U.S.* v. *Bethlehem Steel Corp.,* 829 F.Supp. 10123, 1045 (N.D. Ind. 1993) (''United States has concurrent authority to enforce those portions of the RCRA hazardous waste management program that EPA has authorized a state to enforce.''), *aff'd,* 38 F.3d 862 (7th Cir. 1994). In such circumstances, EPA authorization of the state program gives that state program legal effect under federal law—*i.e.,* the state program ''becomes effective pursuant to RCRA.'' The state program thus is citizen enforceable under the plain language of RCRA section 7002.

Given that Subtitle C specifically allows states to develop more stringent requirements for hazardous waste and provides that such state requirements operate in lieu of federal requirements, EPA believes that citizens can enforce requirements of an authorized state hazardous waste program which are more stringent than the federal requirements. However, those requirements of an authorized state hazardous waste program which are broader in scope than those in the federal hazardous waste program are not federally-authorized and are not enforceable by citizens in federal courts. *See* 40 CFR 271.1(I)(1) and (2)(states are authorized to adopt more stringent standards but standards which have a greater scope of coverage than the federal requirements do not become part of the federally-authorized program).

IV. Summary of Comments and EPA Response

A. Overview

More than twenty entities submitted comments in response to the proposed STIR. Commenters represented various interests, including state agencies, tribal governments, a waste management company, and a nonaffiliated individual. Because the D.C. Circuit Court's decision in *Backcountry Against Dumps* v. *EPA* precludes approval by EPA of tribal programs under RCRA Subtitle D, the Agency is not responding to comments that relate solely to Indian Country and has deleted the mechanism for approving tribal programs from today's final SIR.

Additionally, the Agency has carefully considered all other comments during development of today's final rule. Apart from the deletion of references to tribal permit programs, the final SIR contains only minor changes from the proposed rule. Commenters clearly did not favor imposing additional requirements or incorporating major changes to the proposed rule. This section presents a summary of the major comments on the proposed STIR.

B. General Comments and Agency Response

1. Already Approved Programs

Comment: Several commenters expressed concern that today's rule would include changes from the proposed STIR that would necessitate major revisions to already approved programs. These commenters requested assurance that the final rule would not require reapproval of already approved permit programs.

Response: Except for the modifications discussed in Section V of this preamble, today's rule is unchanged from the draft proposed STIR that states used as guidance in developing their Subtitle D permit programs. The Agency provided opportunities for public comments and public hearings on the state MSWLF permit programs that have been approved to date and received few significant comments on the criteria used as a basis for approval. Since this final rule establishes essentially the same approval procedures and standards used in approving those states, states with approved permit programs need not reapply for approval. Language clearly stating that previously approved Subtitle D state permit programs will not require resubmission of an application for approval to meet the requirements of today's final rule has been added to § 239.2(a)(2). New applications for such already-approved states will only be necessary when state permit programs are modified as described in § 239.12. It remains necessary, however, to promulgate today's rule to provide a framework for modifications of approved permit programs, to establish procedures for withdrawal of approvals, and to finalize the process for future program approvals, including approvals for programs that allow for CESQG waste disposal at non-municipal, non-hazardous waste disposal units.

2. Adequacy Determinations

Comment: Several commenters expressed concern that the regulations as proposed do not provide adequate review of state programs to determine if they are sufficient to enforce the prohibition on open dumping and meet the Subtitle D federal revised criteria. These commenters believed that the proposed rule should require EPA to review the level of staffing and the technical capabilities of state programs as a component of the adequacy determination.

Response: Due to the site-specific nature of ensuring compliance with the Subtitle D federal revised criteria, the Agency is not requiring specific resources and/or staffing for approved programs. Today's rule requires that approved state programs have adequate authorities and procedures to allow them to take action as needed to ensure compliance with the requirements, including staffing and technical capabilities. It does not prescribe specific permitting procedures or enforcement and compliance monitoring activity levels or tasks. Different states will have different resource requirements. State strategies for ensuring compliance must allow the states flexibility in determining the best allocation of resources. State program applications must include a discussion of the resources that the state has available to carry out its program and,

[2] Because of the unique structure and language of RCRA Subtitle D, EPA's position on whether state requirements contained within an EPA-approved RCRA Subtitle D permit or other prior approval program are enforceable by citizens does not have any bearing on issues related to citizen suit enforcement of state programs under other environmental statutes, such as the Clean Water Act and the Clean Air Act.

in certain cases (*e.g.*, where state resources clearly are insufficient), resource information provided by the state may be used to make a determination of inadequacy.

3. State Self-Certification

Comment: Several commenters suggested that EPA include state self-certification provisions in the final rule to reduce the burden on states and EPA. Commenters suggested that such provisions would allow states to make their own determinations for permit program approvals and modifications.

Response: RCRA section 4005(c)(1)(C) directs EPA to determine whether state permit programs are adequate to ensure compliance with the Subtitle D federal revised criteria. EPA does not believe allowing self-certification without an independent EPA determination fulfills its obligations under RCRA section 4005(c)(1)(C), which requires the Agency, rather than the state, to make the final determination of adequacy for state Subtitle D permit programs. EPA recognizes the potential benefits of flexibility to MSWLF owners and operators in states with approved programs, and will make every effort to complete its adequacy determinations in accordance with the timeframe cited in section III. C. 2., Table 1, of this preamble.

As indicated previously, EPA has developed a streamlined process that simplifies the adequacy determination process for certain state permit programs or other systems of prior approval that address requirements for non-hazardous, non-municipal waste disposal units that receive CESQG hazardous waste. In many states, disposal units receiving CESQG hazardous waste are already subject to standards contained in a state MSWLF permit program that EPA has approved or in a state hazardous waste permit program that EPA has authorized (61 FR 34252, 34264, July 1, 1996). In such cases, as discussed previously in this preamble, the Agency believes that a streamlined review process is appropriate. EPA expects that such a process will significantly reduce burdens on states.

4. Criminal Penalty Authority

Comment: Several commenters expressed the belief that states should not be required to have criminal penalty authority for permit violations because, while not all states have criminal penalty authority, many have strong civil enforcement authority.

Response: The Agency agrees with the commenters. Although EPA asked for comment on the issue of criminal penalty authority for permit violations (61 FR 2584, 2597, Jan. 26, 1996), the Agency did not propose that states must have such authority as a prerequisite for program approval. Effective enforcement programs include an appropriate means to deter violations and, when violations occur, to take action to bring violators into compliance. Although several environmental statutes other than RCRA contain language requiring states to have criminal penalty authority, the Agency believes that effective administrative and civil enforcement programs can ensure compliance under RCRA Subtitle D. The decision to establish criminal enforcement penalty provisions for Subtitle D criteria has been and will continue to be at the discretion of individual states.

5. Judicial Review

Comment: Two commenters expressed their view that strong public participation can only be ensured by allowing judicial review of state agency permit decisions.

Response: RCRA Subtitle D does not require judicial review of the requirements for approval of state permit programs, nor does it mandate states to require judicial review of individual permit decisions. Further, not all states have judicial review provisions for permitting decisions. Providing a requirement for judicial review would require a change in statutory authority and is beyond the scope of today's rulemaking.

Under RCRA section 7004(b), EPA is to encourage public participation. The public participation provisions in section 7004(b) and in this rule are designed to ensure that the public is informed of decisions affecting solid waste management in their community. This rule requires approved states to have public participation procedures for permit issuance and post-permit action and to provide for public intervention in civil enforcement proceedings. EPA believes these requirements encourage public participation as prescribed under RCRA section 7004(b).

In addition, under RCRA section 7002(a), citizens may file actions in federal court to enforce the Subtitle D federal revised criteria for MSWLFs and non-municipal, non-hazardous disposal units that receive CESQG hazardous waste. Further, as discussed earlier, EPA believes that citizens may also file actions under RCRA section 7002(a) to enforce (1) alternative state standards specifically provided for in the Subtitle D federal revised criteria and (2) state standards that exercise the discretion which the revised criteria provide to the owner or operator, *e.g.*, selection of a corrective action remedy and schedule.

6. Public Notification

Comment: A commenter stated that the rule should be modified to provide public notice in the **Federal Register** whenever the Agency has information that may potentially lead to withdrawal of a previous adequacy determination for a state program. The commenter suggested that 40 CFR 239.12 and 40 CFR 239.13 be modified to assure adequate public notice, including notice to the regulated community, of information that could threaten the approved status of a state program.

Response: EPA agrees with the commenter that public notice and participation in evaluating a state's permit program is important. Existing regulations found in 40 CFR part 256 do require states to solicit public reaction and recommendations by allowing for public input when state legislation or regulations are being considered. 40 CFR 256.62. Thus, if regulations underlying a state's approved permit program are being revised because of the Agency's re-evaluation of that program, the state may hold a public hearing in accordance with the state administrative procedure act. 40 CFR 256.2(a). In addition, states are free to use their own public involvement provisions to solicit public comments and involvement when a question arises as to the continued adequacy of an approved program which does not involve a change to state legislation or regulations.

Furthermore, to provide for a greater level of public input concerning the withdrawal of an approved state program, EPA has decided to extend the time for public comment of a Regional Administrator's tentative withdrawal determination and on revised and amended applications from 30 days to 60 days. These revisions to the proposed rule can be found in §§ 239.12(g)(1) and 239.13(g).

In conclusion, with these revisions, the Agency believes that the public notification and participation procedures delineated in 40 CFR 239.12, ''Modifications of State Programs,'' and 40 CFR 239.13, ''Criteria and Procedures for Withdrawal of Determination of Adequacy,'' in this final rule will provide sufficient public involvement in the determination process. EPA believes that these modified procedures for public involvement are protective of public interest, human health, and the environment, and, at the same time, discourage unwarranted claims against adequate programs.

7. Conflicts of Interest

Comment: One commenter was concerned about the potential conflict of interest involved when local government entities issue landfill permits to themselves. The commenter suggested that the final rule should include a provision to preclude local government agencies from issuing and enforcing permits where they own or operate the facility.

Response: Because the effort required to manage and regulate municipal solid waste and non-municipal, non-hazardous solid waste dictates that the actual day-to-day work take place at both state and local levels, the final rule allows local agencies an implementation role where lead state agencies demonstrate, in the application for permit program approval, that the local agencies will ensure compliance and will operate under statewide authorities. As it did in the preamble to the proposed rule (61 FR 2594, Jan. 26, 1996), the Agency continues to encourage states to work closely with local implementing agencies and provide oversight so that problems, such as local conflicts of interest, are prevented. Under § 239.4, the narrative description of state permit programs must include a delineation of the jurisdiction and responsibilities of all implementing agencies and a description of the procedures for coordinating responsibilities among those agencies. EPA does not believe it necessary to preclude a local implementing agency from issuing and enforcing permits when there is state compliance oversight.

8. Permit Program Modifications

Comment: One commenter noted that, as proposed, 40 CFR 239.12(d), which addresses notification requirements for states, could be interpreted to require approved states to notify EPA of all permit program modifications. The commenter recommended revising the language to identify those program modifications that require notification.

Response: The Agency agrees that the program modifications for which notification would be required under § 239.12(d) are only those delineated elsewhere in § 239.12. Section 239.12(d) now reads: ''states must notify the appropriate Regional Administrator of all permit program modifications *required in paragraphs (b) and (c) of this section* within a time-frame agreed upon by the State Director and the Regional Administrator.''

9. Partial Withdrawal of State Permit Programs

Comment: One commenter stated that because the rule would provide that a state's permit program could be partially approved, the rule should also provide that EPA could withdraw approval for only certain portions or elements of a state's permit program, e.g. issuance of a partial withdrawal determination.

Response: The Agency agrees with this comment and believes that in certain cases it may be appropriate to withdraw approval of only certain elements of a state's approved permit program rather than to withdraw an adequacy determination for an entire program. EPA has included language in § 239.13 which clarifies that EPA could, if appropriate, withdraw approval for only certain portions or elements of a state's permit program.

V. Changes to Final Rule

A. Revised Wording in 40 CFR 239.2(a)(2)

Several commenters requested assurance that promulgation of the final SIR would not require major revisions to, or reapproval of, already approved state permit programs. 40 CFR 239.2(a)(2) contains clear language stating EPA's belief that today's rule does not contain changes from the proposed STIR that would require such revisions or reapprovals for fully approved programs or for approved elements of partially approved programs.

B. Revised Wording in 40 CFR 239.12(d)

As noted in section IV, Response 8, because of potential confusion involving the proposed wording of 40 CFR 239.12(d), the Agency has revised the wording in today's final rule to clarify the intent of that section. In the proposed STIR, § 239.12(d) could have been interpreted to require approved states to notify EPA of all permit program modifications. The Agency has modified § 239.12(d) to now read: ''states must notify the appropriate Regional Administrator of all permit program modifications *required in paragraphs (b) and (c) of this section* within a time-frame agreed by the State Director and the Regional Administrator.'' This change should clarify the reference in § 239.12(d).

C. Revised Wording in 40 CFR 239.13

One commenter requested that the Agency allow issuance of a partial withdrawal of a determination of adequacy for only certain portions or elements of a state's permit program. EPA has modified § 239.13 to allow for such partial withdrawals.

D. Increase in Public Comment Period for Revisions and Withdrawals

To ensure that the public has adequate time to provide input on an Agency re-evaluation of already approved state permit program, EPA is extending the time for public comment on tentative withdrawal determinations (40 CFR 239.12(g)(1)) and on revised and amended applications (40 CFR 239.13(g)) from 30 to 60 days.

E. Deletion of References to Tribes

On October 29, 1996, the United States Court of Appeals for the DC Circuit (in *Backcountry Against Dumps* v. *EPA*, 100 F. 3d 147 (D.C. Cir. 1996)) rejected EPA's argument that section 4005(c)(1)(C) of RCRA, which requires EPA to review and determine the adequacy of state permitting programs or other systems of prior approval, authorized the Agency to review and approve tribal programs. Because the Court ruled that EPA cannot approve tribal MSWLF permitting programs under RCRA, owners and operators in Indian Country cannot, through tribal program approval, take advantage of the flexibility in implementing the Subtitle D federal revised criteria that is available in states with approved permit programs. To reflect the court decision, references to tribes have been deleted from this final rule, and definitions for state and state director have been revised. With regard to providing flexibility to MSWLF owners and operators in Indian Country, the Court noted that EPA need not wait for Congress to revise section 4005(c)(1)(C) of RCRA. Without suggesting any disagreement, the Court indicated that all parties to the case (EPA, the Campo Band, and Backcountry Against Dumps) ''agreed that the Campo Band could seek EPA approval for a site-specific regulation which would satisfy both RCRA and the tribe's desire for flexibility in designing and monitoring a landfill on its reservation'' (*Backcountry Against Dumps* v. *EPA*, 100 F.3d at 150). To meet its goal of providing warranted flexibility quickly and efficiently to owners and operators in Indian country, including tribal government owners and operators, the Agency proactively issued site-specific rulemaking guidance consistent with the Court's suggestion. Owners or operators wishing to request such rules should consult the document entitled ''Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country'' (EPA 530–R–97–016). The document is available through the

RCRA Hotline (see For Further Information Contact above).

F. Approval Standards for State CESQG Permit Programs

In accordance with RCRA section 4010(c), EPA has promulgated revised criteria for both facilities receiving hazardous household waste (40 CFR part 258) and facilities that receive CESQG hazardous waste (40 CFR part 257, subpart B). Under RCRA section 4005(c)(1)(B), states are required to adopt and implement permit programs or other systems of prior approval (here, collectively termed ''permit programs) for both sets of revised criteria.

In January 1996, when EPA proposed the STIR rule (61 FR 2584), the Agency had already promulgated the MSWLF revised criteria (56 FR 50978, Oct. 9, 1991), but was still developing the standards for non-municipal, non-hazardous disposal units that receive CESQG hazardous waste. Thus, although EPA has since promulgated the CESQG revised criteria (61 FR 34252, July 1, 1996), the proposed STIR focused mainly on criteria for evaluating state MSWLF permit programs. It has always been EPA's intent, however, that the approval, modification, and withdrawal standards to be established in the STIR (now SIR) would also apply to state programs for disposal units receiving CESQG hazardous waste. This is evidenced by the proposed rule language itself and a number of statements EPA has made in **Federal Register** notices related to both this rulemaking and the CESQG revised criteria.

First, EPA proposed that the provisions of the SIR rule would be applicable to all state permit programs that RCRA section 4005(c)(1)(B) requires states to adopt and implement (61 FR 2584, 2601, Jan. 26, 1996 (proposed § 239.1)). As discussed above, such permit programs include state programs for disposal units receiving CESQG hazardous waste.

Second, EPA proposed that states seeking an adequacy determination would need to submit an application that identified the scope of the program for which the state is seeking approval, i.e., which class of ''Subtitle D regulated facilities'' are covered by the application (61 FR 2584, 2602 (proposed § 239.3)). The Agency proposed to define ''Subtitle D regulated facilities'' to mean all ''solid waste disposal facilities subject to the revised criteria promulgated by EPA under RCRA section 4010(c)'' (61 FR 2584, 2602 (proposed § 239.2)). Such facilities include disposal units that receive CESQG hazardous waste.

Third, although the STIR proposal indicated that the CESQG rulemaking may address ''as appropriate'' the requirements for EPA approval of non-municipal, non-hazardous state permit programs (61 FR 2584, 2585), the Agency also has indicated in the CESQG rulemaking notices that the standards to be established in the SIR rule would be generally applicable to the Agency's evaluation of state permit programs for disposal units that accept CESQG hazardous waste. In proposing the revised criteria for non-municipal, non-hazardous waste disposal units, for example, EPA stated that ''the process that the Agency will use in evaluating the adequacy of state programs will be set forth in a separate rulemaking, the State/Tribal Permit Program Determination of Adequacy'' (60 FR 30964, 30979, June 12, 1995). EPA also stated in the proposed CESQG rule that the process for evaluating state CESQG programs would be the same as that process used for evaluating state MSWLF permitting programs and that states would need to meet the procedural and administrative requirements identified in the STIR rulemaking. *Id.*

Finally, in that same Federal Register notice, EPA indicated that in determining the adequacy of state programs established to permit disposal units receiving CESQG hazardous waste, the Agency intended to evaluate the state's program for its comparability to the Subtitle D federal revised criteria for location, ground-water monitoring, and corrective action standards to be promulgated for those waste disposal units receiving CESQG hazardous waste. (See 60 FR 30979, June 12, 1995, ''* * * for the purpose of determining adequacy and granting approval of state CESQG programs, only the proposed technical amendments to 40 CFR 257.5 through 257.30 will be evaluated.'') Thus, to clarify this intent, EPA has added provisions to 40 CFR 239.6 that set forth the requirements for state permit programs pertaining to non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste.

These provisions (40 CFR 239.6(f)) require that states have the authority to impose standards for waste disposal units receiving CESQG hazardous waste. These standards are comparable to those found in the Subtitle D federal revised criteria (40 CFR part 257, subpart B). States must also ensure that new and existing waste disposal units receiving CESQG hazardous waste have permits that incorporate conditions to ensure compliance with the Subtitle D federal revised criteria in 40 CFR part 257, subpart B. The other requirements for public participation, compliance monitoring, and enforcement contained in the SIR rule must also be satisfied to obtain EPA approval of a state CESQG permit program.

G. Process for Approval of State CESQG Permit Programs

EPA proposed not to use a streamlined process to review revised applications for approval of state permit programs that relate to additional classifications of Subtitle D regulated facilities (61 FR 2584, 2599). Such additional classifications would include non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste. However, in promulgating the revised criteria for such CESQG hazardous waste disposal units (40 CFR part 257, subpart B), EPA indicated it was re-evaluating the use of a streamlined process, and that a final decision would be reached when the Agency issued the final STIR (now SIR) rule (61 FR 34252, 34264, July 1, 1996).

EPA has discussed this issue with states and has decided to utilize a streamlined process for review of state CESQG permit programs in certain circumstances. As indicated above, for example, the Agency intends to use a streamlined review process to make adequacy determinations for state CESQG permit programs where EPA has previously reviewed a state permitting program, determined that it meets statutory requirements, and thus authorized the program under RCRA Subtitle C or approved it under Subtitle D (40 CFR part 258), if the state requires that CESQG hazardous waste be disposed of in permitted facilities meeting Subtitle C requirements or the MSWLF criteria. In such cases, EPA believes the state is already meeting the 40 CFR part 257, subpart B CESQG hazardous waste disposal requirements because the location restrictions, ground-water monitoring, and corrective action standards required by 40 CFR part 257, subpart B are a subset of the requirements for authorized RCRA Subtitle C permit programs or approved Subtitle D MSWLF programs. Because these programs have been approved by EPA, there is no need for the Agency to conduct an additional review for the part 257, subpart B program. Further, EPA believes that, because the requirements of an authorized Subtitle C program or an approved MSWLF program are clearly equal to or more stringent than those contained in the Subtitle D federal revised criteria for CESQG hazardous waste disposal units, a more streamlined approval process is appropriate. Streamlined adequacy determinations will be published in the

near future for states with programs that meet the criteria for streamlined approval.

VI. Regulatory Assessments

A. Executive Order 12866: Assessment of Potential Costs and Benefits

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

(a) 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;

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

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

(d) 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 Office of Management and Budget (OMB) has notified EPA that it considers this a ''significant regulatory action.'' EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Requirements for state permit programs as outlined in this rule will not add substantial costs beyond those already imposed under the Subtitle D federal revised criteria. Regardless of this regulation, RCRA section 4005(c)(1)(B) requires all states to develop and implement permit programs to ensure compliance with the Subtitle D federal revised criteria. EPA believes that the final SIR does not impose a major increase in costs over and above any costs that RCRA section 4005(c)(1)(B) already imposes on states. The use of the streamlined process for state CESQG permit program approval when the Agency has previously deemed a state permitting program to meet all statutory requirements and if the state requires CESQG disposal in a permitted facility, further minimizes any additional costs likely to be incurred by the states.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Agency has determined that today's final rule will not have a significant economic impact on a substantial number of small entities, since the rule has direct effects only on state agencies. Therefore, no RFA has been prepared. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

C. 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 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 UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA 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 UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate (under the regulatory provisions of Title II of the UMRA) that may result in expenditures of $100 million or more for state and local governments in the aggregate, or for the private sector in any one year. EPA estimates that it costs a state approximately $15,000 to develop and submit to EPA an application for approval of a state MSWLF permit program. For a state preparing an application for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste permit program, EPA estimates that it costs approximately $7,000. The lower estimated cost for CESQG program applications reflects the fact that CESQG requirements are a subset of the MSWLF criteria. Since the number of criteria that must be addressed by the application is fewer, time and resources needed to complete the application are decreased. EPA expects that a state applying for the streamlined approval process will incur no cost, since the required information will have been submitted to EPA by the state for previous program approval requests, and should already be in the Agency's files.

EPA's approval of state programs has a deregulatory effect on the private sector. Once a state permit program or other system of prior approval for MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste is determined to be ''adequate'' under RCRA section 4005(c)(1)(C), the flexibility the state may exercise tends to reduce, not increase, compliance costs for the private sector.

EPA has determined that the final SIR will not significantly or uniquely affect small governments (UMRA section 203). The Agency recognizes that small

governments may own and/or operate solid waste disposal facilities, including MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste, that will be subject to the requirements of an approved state permit program under this rule. However, small governments that own and/or operate MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste are already subject to the requirements in the Subtitle D federal revised criteria. Once EPA approves state permit programs under the SIR, these same small governments may own and operate their MSWLFs or non-municipal, non-hazardous waste disposal units that accept CESQG hazardous waste with increased levels of flexibility and generally lower compliance costs.

D. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1608.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. EPA (2137), 401 M Street SW., Washington, DC 20460, or by email at farmer.sandy@epamail.epa.gov., or by calling (202) 260–2740.

The need for this collection of information from the states derives from section 4005(c) of RCRA. This section requires the EPA Administrator to review state permit programs to determine if they are adequate to ensure that MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste comply with the federal requirements established for these disposal units. To carry out this mandate and make a determination, EPA must collect information from states in the form of an application for permit program approval. The universe of respondents involved in this information collection will be limited to those states seeking approval of their permit programs. The information that states will submit is public information; no problems of confidentiality or sensitive questions arise.

EPA is preparing to publish a streamlined approval process for state CESQG permit programs when the state already has an Agency-authorized Subtitle C or an Agency-approved MSWLF permit program and the state requires that CESQG hazardous waste disposal occur only in a permitted facility that meets the requirements of Subtitle C or the MSWLF criteria. The Agency believes the use of a streamlined approval process is appropriate in such cases because the hazardous waste regulations and the MSWLF criteria include disposal requirements that are equal to or more stringent than the requirements of 40 CFR part 257, subpart B. Additionally, in all cases where a state program is eligible for streamlined approval, the Agency has already authorized the Subtitle C permitting program or approved the MSWLF permitting program in that state, as appropriate. EPA expects that 23 states will be processed under the streamlined approval process. For these states, there is no burden, because EPA expects to use information contained in existing Agency files to conduct the review. The Agency estimates that 32 states and territories will be approved under the SIR review process for their CESQG waste disposal requirements.

To date, EPA has fully or partially approved 47 state/territorial MSWLF permit programs using the draft STIR as guidance. EPA has received 3 new, first time MSWLF permit program applications from states/territories and expects 3 states/territories to modify pending applications. Therefore, EPA estimates 38 states/territories will be subject to information collection requests in the form of an application for permit program approval.

The projected burden estimate for the submittal of a schedule or an application by the projected 38 states/territories within a 3-year timeframe is 9,900 hours, or about 3,300 hours per year for the three year period. Given these parameters, the final cost estimate for the states is $294,000 over three years. The projected three year burden for the Agency to review 38 new or revised state applications and to provide streamlined review of 23 state CESQG hazardous waste disposal requirements is 10,300 hours and $309,000. The total burden for states and EPA over a three year period is 20,200 hours and $603,000. This cost estimate reflects costs for reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; to adjust the existing ways to comply with any previously-applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Comments are requested By November 23, 1998. Include the ICR number in any correspondence.

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

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (*see* 62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or

otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the State Implementation final rule on low-income populations and minority populations and concluded that today's final rule will potentially advance environmental justice causes. The state permit program approval process set forth in today's final rule allows all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a proposed Agency action under the rule. In addition, the rule's civil suit provision provides citizens with various mechanisms to help ensure compliance with 40 CFR part 257, subpart B or 40 CFR part 258 criteria.

H. Executive Order 12875: Enhancing the Intergovernmental Partnership

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

In developing this rule, EPA consulted with various states and state organizations to enable them to provide meaningful and timely input in the development of this rule. EPA worked closely with state governments in the development of the final SIR. EPA distributed drafts of the proposed rule to 14 states for their review and comments and provided copies of the draft proposed STIR to the Association of State and Territorial Solid Waste Management Officials, which distributed it to all of its state and territorial members. EPA also conducted a pilot program where the Agency worked with the states of California, Connecticut, Virginia, and Wisconsin to develop their applications for program approval using the draft STIR as guidance.

EPA provided notice to small governments of the requirements of the Subtitle D federal revised criteria and the SIR; obtained meaningful and timely input from them; and informed, educated, and advised small governments on how to comply with the requirements of the SIR and the Subtitle D federal revised criteria. Through notice, EPA sought input from small governments during the rulemaking process. However, today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact on these communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VII. Submission to Congress and the General Accounting Office

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). This rule will be effective November 23, 1998.

List of Subjects

40 CFR Part 239

Environmental protection, Adequacy, Administrative practice and procedure, Municipal solid waste landfills, Non-hazardous solid waste, Non-municipal solid waste, State permit program approval.

40 CFR Part 257

Environmental protection, Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 258

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

Dated: October 15, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as set forth below:

PART 239—REQUIREMENTS FOR STATE PERMIT PROGRAM

1. Part 239 is added to read as follows:

PART 239—REQUIREMENTS FOR STATE PERMIT PROGRAM DETERMINATION OF ADEQUACY

Subpart A—General

Sec.
239.1 Purpose.
239.2 Scope and definitions.

Subpart B—State Program Application

239.3 Components of program application.
239.4 Narrative description of state permit program.
239.5 State legal certification.

Subpart C—Requirements for Adequate Permit Programs 239.6 Permitting requirements.

239.7 Requirements for compliance monitoring authority.
239.8 Requirements for enforcement authority.
239.9 Intervention in civil enforcement proceedings.

Subpart D—Adequacy Determination Procedures

239.10 Criteria and procedures for making adequacy determinations.
239.11 Approval procedures for partial approval.
239.12 Modifications of state programs.
239.13 Criteria and procedures for withdrawal of determination of adequacy.

Authority: 42 U.S.C. 6912, 6945.

Subpart A—General

§ 239.1 Purpose.

This part specifies the requirements that state permit programs must meet to be determined adequate by the EPA under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA or the Act) and the procedures EPA will follow in determining the adequacy of state Subtitle D permit programs or other systems of prior approval and conditions required to be adopted and implemented by states under RCRA section 4005(c)(1)(B).

§ 239.2 Scope and definitions.

(a) Scope. (1) Nothing in this part precludes a state from adopting or enforcing requirements that are more stringent or more extensive than those required under this part or from operating a permit program or other system of prior approval and conditions with more stringent requirements or a broader scope of coverage than that required under this part.

(2) All states which develop and implement a Subtitle D permit program must submit an application for an adequacy determination for purposes of this part. Except as provided in § 239.12, state Subtitle D permit programs which received full approval prior to November 23, 1998 need not submit new applications for approval under this part. Similarly, except as provided in § 239.12, states that received partial approval of their Subtitle D permit programs prior to November 23, 1998 need not reapply under this part for approval for those program elements EPA has already determined to be adequate.

(3) If EPA determines that a state Subtitle D permit program is inadequate, EPA will have the authority to enforce the Subtitle D federal revised criteria on the RCRA section 4010(c) regulated facilities under the state's jurisdiction.

(b) Definitions. (1) For purposes of this part:

Administrator means the Administrator of the U.S. Environmental Protection Agency or any authorized representative.

Approved permit program or *approved program* means a state Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA that has been determined to be adequate by EPA under this part.

Approved state means a state whose Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA has been determined to be adequate by EPA under this part.

Guidance means policy memorandum, an application for approval under this Part, or other technical or policy documents that supplement state laws and regulations. These documents provide direction with regard to how state agencies should interpret their permit program requirements and must be consistent with state laws and regulations.

Implementing agency means the state and/or local agency(ies) responsible for carrying out an approved state permit program.

Lead state agency means the state agency which has the legal authority and oversight responsibilities to implement the permit program or other system of prior approval and conditions to ensure that facilities regulated under section 4010(c) of Subtitle D of RCRA comply with the requirements of the approved state permit program and/or has been designated as lead agency.

Permit or *prior approval and conditions* means any authorization, license, or equivalent control document issued under the authority of the state regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

Permit documents means permit applications, draft and final permits, or other documents that include applicable design and management conditions in accordance with the Subtitle D federal revised criteria, found at 40 CFR part 257, subpart B and 40 CFR part 258, and the technical and administrative information used to explain the basis of permit conditions.

Regional Administrator means any one of the ten Regional Administrators of the U.S. Environmental Protection Agency or any authorized representative.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for Subtitle D regulated facilities.

State program or *permit program* means all the authorities, activities, and procedures that comprise the state's system of prior approval and conditions for regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

Subtitle D regulated facilities means all solid waste disposal facilities subject to the revised criteria promulgated by EPA under the authority of RCRA Section 4010(c).

(c) The definitions in 40 CFR part 257, subpart B and 40 CFR part 258 apply to all subparts of this part.

Subpart B—State Program Application

§ 239.3 Components of program application.

Any state that seeks a determination of adequacy under this part must submit an application to the Regional Administrator in the appropriate EPA

Region. The application must identify the scope of the program for which the state is seeking approval (i.e., which class of Subtitle D regulated facilities are covered by the application). The application also must demonstrate that the state's authorities and procedures are adequate to ensure compliance with the relevant Subtitle D federal revised criteria and that its permit program is uniformly applicable to all the relevant Subtitle D regulated facilities within the state's jurisdiction. The application must contain the following parts:

(a) A transmittal letter, signed by the State Director, requesting program approval. If more than one state agency has implementation responsibilities, the transmittal letter must designate a lead agency and be jointly signed by all state agencies with implementation responsibilities or by the State Governor;

(b) A narrative description of the state permit program in accordance with § 239.4;

(c) A legal certification in accordance with § 239.5;

(d) Copies of all applicable state statutes, regulations, and guidance.

§ 239.4 Narrative description of state permit program.

The description of a state's program must include:

(a) An explanation of the jurisdiction and responsibilities of all state agencies and local agencies implementing the permit program and description of the coordination and communication responsibilities of the lead state agency to facilitate communications between EPA and the state if more than one state agency has implementation responsibilities;

(b) An explanation of how the state will ensure that existing and new facilities are permitted or otherwise approved and in compliance with the relevant Subtitle D federal revised criteria;

(c) A demonstration that the state meets the requirements in §§ 239.6, 239.7, 239.8, and 239.9;

(d) The number of facilities within the state's jurisdiction that received waste on or after the following dates:

(1) For municipal solid waste landfill units, October 9, 1991.

(2) For non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste, January 1, 1998.

(e) A discussion of staff resources available to carry out and enforce the relevant state permit program.

(f) A description of the state's public participation procedures as specified in § 239.6(a) through (c).

§ 239.5 State legal certification.

(a) A state must submit a written certification from the state Attorney General that the laws, regulations, and any applicable guidance cited in the application are enacted at the time the certification is signed and are fully effective when the state permit program is approved. This certification may be signed by the independent legal counsel for the state rather than the Attorney General, provided that such counsel has full authority to independently represent the lead state agency in court on all matters pertaining to the state program.

(b) If guidance is to be used to supplement statutes and regulations, the state legal certification must discuss that the state has the authority to use guidance to develop enforceable permits which will ensure compliance with relevant standards issued pursuant to RCRA section 4010(c) and that the guidance was duly issued in accordance with state law.

(c) If any laws, regulations, or guidance are not enacted or fully effective when the legal certification is signed, the certification should specify what portion(s) of laws, regulations, or guidance are not yet enacted or fully effective and when they are expected to be enacted or fully effective.

The Agency may make a tentative determination of adequacy using this legal certification. The state must submit a revised legal certification meeting the requirements of paragraph (a) of this section and, if appropriate, paragraph (b) of this section along with all the applicable fully enacted and effective statutes, regulations, or guidance, prior to the Agency making a final determination of adequacy. If the statutes, regulations or guidance originally submitted under § 239.3(d) and certified to under this section are modified in a significant way, the Regional Administrator will publish a new tentative determination to ensure adequate public participation.

Subpart C—Requirements for Adequate Permit Programs

§ 239.6 Permitting requirements.

(a) State law must require that:

(1) Documents for permit determinations are made available for public review and comment; and

(2) Final determinations on permit applications are made known to the public.

(b) The state shall have procedures that ensure that public comments on permit determinations are considered.

(c) The state must fully describe its public participation procedures for permit issuance and post-permit actions in the narrative description required under § 239.4 and include a copy of these procedures in its permit program application.

(d) The state shall have the authority to collect all information necessary to issue permits that are adequate to ensure compliance with the relevant 40 CFR part 257, subpart B or 40 CFR part 258 federal revised criteria.

(e) For municipal solid waste landfill units, state law must require that:

(1) Prior to construction and operation, all new municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section;

(2) All existing municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section by the deadlines identified in 40 CFR 258.1;

(3) The state shall have the authority to impose requirements for municipal solid waste landfill units adequate to ensure compliance with 40 CFR part 258. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 258, subpart A;

(ii) Location restrictions for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart B;

(iii) Operating criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart C;

(iv) Design criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart D;

(v) Ground-water monitoring and corrective action standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart E;

(vi) Closure and post-closure care standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart F; and

(vii) Financial assurance standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258, subpart G.

(f) For non-municipal, non-hazardous waste disposal units that receive CESQG waste, state law must require that:

(1) Prior to construction and operation, all new non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall have a permit incorporating the conditions identified in paragraph (f)(3) of this section;

(2) All existing non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste shall

have a permit incorporating the conditions identified in paragraph (f)(3) of this section by the deadlines identified in 40 CFR 257.5;

(3) The state shall have the authority to impose requirements for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste adequate to ensure compliance with 40 CFR part 257, subpart B. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 257, subpart B (§ 257.5);

(ii) Location restrictions for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.7 through 257.13;

(iii) Ground-water monitoring and corrective action standards for non-municipal, non-hazardous waste disposal units which achieve compliance with 40 CFR 257.21 through 257.28; and,

(iv) Recordkeeping for non-municipal, non-hazardous waste disposal units which achieves compliance with 40 CFR 257.30.

§ 239.7 Requirements for compliance monitoring authority.

(a) The state must have the authority to:

(1) Obtain any and all information necessary, including records and reports, from an owner or operator of a Subtitle D regulated facility, to determine whether the owner or operator is in compliance with the state requirements;

(2) Conduct monitoring or testing to ensure that owners and operators are in compliance with the state requirements; and

(3) Enter any site or premise subject to the permit program or in which records relevant to the operation of Subtitle D regulated facilities or activities are kept.

(b) A state must demonstrate that its compliance monitoring program provides for inspections adequate to determine compliance with the approved state permit program.

(c) A state must demonstrate that its compliance monitoring program provides mechanisms or processes to:

(1) Verify the accuracy of information submitted by owners or operators of Subtitle D regulated facilities;

(2) Verify the adequacy of methods (including sampling) used by owners or operators in developing that information;

(3) Produce evidence admissible in an enforcement proceeding; and

(4) Receive and ensure proper consideration of information submitted by the public.

§ 239.8 Requirements for enforcement authority.

Any state seeking approval must have the authority to impose the following remedies for violation of state program requirements:

(a) To restrain immediately and effectively any person by administrative or court order or by suit in a court of competent jurisdiction from engaging in any activity which may endanger or cause damage to human health or the environment.

(b) To sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation, order, or permit which is part of or issued pursuant to the state program.

(c) To sue in a court of competent jurisdiction to recover civil penalties for violations of a statute or regulation which is part of the state program or of an order or permit which is issued pursuant to the state program.

§ 239.9 Intervention in civil enforcement proceedings.

Any state seeking approval must provide for intervention in the state civil enforcement process by providing either:

(a) Authority that allows intervention, as a right, in any civil action to obtain remedies specified in § 239.8 by any citizen having an interest that is or may be adversely affected; or,

(b) Assurance by the appropriate state agency that:

(1) It will provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); and,

(2) It will investigate and provide responses to citizen complaints about violations; and,

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Subpart D—Adequacy Determination Procedures

§ 239.10 Criteria and procedures for making adequacy determinations.

(a) The State Director seeking an adequacy determination must submit to the appropriate Regional Administrator an application in accordance with § 239.3.

(b) Within 30 days of receipt of a state program application, the Regional Administrator will review the application and notify the state whether its application is administratively complete in accordance with the application components required in § 239.3. The 180-day review period for final determination of adequacy, described in paragraph (d) of this section, begins when the Regional Administrator deems a state application to be administratively complete.

(c) After receipt and review of a complete application, the Regional Administrator will make a tentative determination on the adequacy of the state program. The Regional Administrator shall publish the tentative determination on the adequacy of the state program in the **Federal Register**. Notice of the tentative determination must:

(1) Specify the Regional Administrator's tentative determination;

(2) Afford the public at least 30 days after the notice to comment on the state application and the Regional Administrator's tentative determination;

(3) Include a specific statement of the areas of concern, if the Regional Administrator indicates the state program may not be adequate;

(4) Note the availability for inspection by the public of the state permit program application; and

(5) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period. The Regional Administrator may determine when such a hearing is necessary to clarify issues involved in the tentative adequacy determination. If held, the public hearing will be scheduled at least 45 days from public notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(d) Within 180 days of determining that a state program application is administratively complete, the Regional Administrator will make a final determination of adequacy after review and consideration of all public comments, unless the Regional Administrator, after consultation with the State Director, agrees to extend the review period. The Regional Administrator will give notice of the final determination in the **Federal Register**. The document must include a statement of the reasons for the determination and a response to significant comments received.

(e) For all states that do not submit an application, the Administrator or Regional Administrator may issue a final determination of inadequacy in the **Federal Register** declaring those state

permit programs inadequate to ensure compliance with the relevant Subtitle D federal revised criteria. Such states may apply later for a determination of adequacy.

§ 239.11 Approval procedures for partial approval.

(a) EPA may partially approve state permit programs that do not meet all of the requirements in § 239.6(e)(3) (i.e., do not incorporate all of the relevant Subtitle D federal revised criteria). Such permit programs may be partially approved if:

(1) The appropriate Regional Administrator determines that the state's permit program largely meets the technical requirements of § 239.6 and meets all other requirements of this part;

(2) Changes to a specific part(s) of the state permit program are required in order for the state program to fully meet the requirements of § 239.6; and

(3) Provisions not included in the partially approved portions of the state permit program are clearly identifiable and separable subsets of the relevant Subtitle D federal revised criteria.

(b) A state applying for partial approval must include in its application a schedule to revise the necessary laws, regulations, and/or guidance to obtain full approval within two years of final approval of the partial permit program. The Regional Administrator and the State Director must agree to the schedule.

(c) The application for partial approval must fully meet the requirements of subparts B and C of this part.

(d) States with partially approved permit programs are only approved for those relevant provisions of the Subtitle D criteria included in the partial approval.

(e) Any partial approval adequacy determination made by the Regional Administrator pursuant to this section and § 239.10 shall expire two years from the effective date of the final partial program adequacy determination unless the Regional Administrator grants an extension. States seeking an extension must submit a request to the appropriate Regional Administrator, must provide good cause for missing the deadline, and must supply a new schedule to revise necessary laws, regulations, and/or guidance to obtain full approval. The appropriate Regional Administrator will decide if there is good cause and if the new schedule is realistic. If the Regional Administrator extends the expiration date, the Region will publish a document in the **Federal Register** along with the new expiration date. A state with partial approval shall submit an amended application meeting all of the requirements of this part and have that application approved by the two-year deadline or the amended date set by the Regional Administrator.

(f) The Regional Administrator will follow the adequacy determination procedures in § 239.10 for all initial applications for partial program approval and follow the adequacy determination procedures in § 239.12(f) for any amendments for approval for unapproved sections of the relevant Subtitle D federal revised criteria.

§ 239.12 Modifications of state programs.

(a) Approved state permit programs may be modified for various reasons, such as changes in federal or state statutory or regulatory authority.

(b) If the federal statutory or regulatory authorities that have significant implications for state permit programs change, approved states may be required to revise their permit programs. These changes may necessitate submission of a revised application. Such a change at the federal level and resultant state requirements would be made known to the states either in a **Federal Register** document containing the change or through the appropriate EPA Regional Office.

(c) States that modify their programs must notify the Regional Administrator of the modifications. Program modifications include changes in state statutory or regulatory authority or relevant guidance or shifting of responsibility for the state program within the lead agency or to a new or different state agency or agencies. Changes to the state's permit program, as described in its application which may result in the program becoming inadequate, must be reported to the Regional Administrator. In addition, changes to a state's basic statutory or regulatory authority or guidance which were not part of the state's initial application, but may have a significant impact on the adequacy of the state's permit program, also must be reported to the Regional Administrator.

(d) States must notify the appropriate Regional Administrator of all permit program modifications required in paragraphs (b) and (c) of this section within a time-frame agreed to by the State Director and the Regional Administrator.

(e) The Regional Administrator will review the modifications and determine whether the State Director must submit a revised application. If a revised application is necessary, the Regional Administrator will inform the State Director in writing that a revised application is necessary, specifying the required revisions and establishing a schedule for submission of the revised application.

(f) For all revised municipal solid waste landfill permit program applications, and for all amended applications in the case of partially approved programs, the state must submit to the appropriate Regional Administrator an amended application that addresses those portions of its program that have changed or are being amended. For such revised programs, as well as for those from states seeking EPA approval of permit programs for state regulation of non-municipal, non-hazardous waste disposal units which receive conditionally exempt small quantity generator hazardous waste, the Regional Administrator will make an adequacy determination using the criteria found in § 239.10.

(g) For revised applications that do not incorporate permit programs for additional classifications of Subtitle D regulated facilities and for all amended applications in the case of partially approved programs, the appropriate Regional Administrator shall provide for public participation using the procedures outlined in § 239.10 or, at the Regional Administrator's discretion, using the following procedures.

(1) The Regional Administrator will publish an adequacy determination in the **Federal Register** summarizing the Agency's decision and the portion(s) of the state permit program affected and providing an opportunity to comment for a period of at least 60 days.

(2) The adequacy determination will become effective 60 days following publication, if no adverse comments are received. If EPA receives comments opposing its adequacy determination, the Regional Administrator will review these comments and publish another **Federal Register** document responding to public comments and either affirming or revising the initial decision.

§ 239.13 Criteria and procedures for withdrawal of determination of adequacy.

(a) The Regional Administrator may initiate withdrawal of all or part of a determination of state program adequacy when the Regional Administrator has reason to believe that:

(1) All or a part of a state program is no longer adequate, or

(2) The state no longer has adequate authority to administer and enforce all or part of an approved program in accordance with this part.

(b) Upon receipt of substantive information sufficient to indicate that all or a part of a state program may no longer be adequate, the Regional

Administrator shall inform the state in writing of the information.

(c) If, within 45 days of the state's receipt of the information in paragraph (b) of this section, the state demonstrates to the satisfaction of the Regional Administrator that the state program is adequate (i.e., in compliance with this part), the Regional Administrator shall take no further action toward withdrawal of determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's program and authorities.

(d) If the State Director does not demonstrate the state's compliance with this part to the satisfaction of the Regional Administrator, the Regional Administrator shall list the deficiencies in the program and negotiate with the state a reasonable time for the state to complete such action to correct deficiencies as the Regional Administrator determines necessary. If these negotiations reach an impasse, the Regional Administrator shall establish a time period within which the state must correct any program deficiencies and inform the State Director of the time period in writing.

(e) Within the schedule negotiated by the Regional Administrator and the State Director, or set by the Regional Administrator, the state shall take appropriate action to correct deficiencies and shall file with the Regional Administrator a statement certified by the State Director describing the steps taken to correct the deficiencies.

(f) If the state takes appropriate action to correct deficiencies, the Regional Administrator shall take no further action toward withdrawal of determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's permit program. If the state has not demonstrated its compliance with this part to the satisfaction of the Regional Administrator, the Regional Administrator shall inform the State Director and may initiate withdrawal of all or part of the determination of state program adequacy.

(g) The Regional Administrator shall initiate withdrawal of determination of adequacy by publishing the tentative withdrawal of determination of adequacy of the state program in the **Federal Register**. Notice of the tentative determination must:

(1) Afford the public at least 60 days after the notice to comment on the Regional Administrator's tentative determination;

(2) Include a specific statement of the Regional Administrator's areas of concern and reason to believe the state program may no longer be adequate; and

(3) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period or when the Regional Administrator determines that such a hearing might clarify issues involved in the tentative adequacy determination. If held, the public hearing will be scheduled at least 45 days from notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(h) If the Regional Administrator finds, after the public hearing (if any) and review and consideration of all public comments, that the state is in compliance with this part, the withdrawal proceedings shall be terminated and the decision shall be published in the **Federal Register**. The document must include a statement of the reasons for this determination and a response to significant comments received. If the Regional Administrator finds that the state program is not in compliance with this Part by the date prescribed by the Regional Administrator or any extension approved by the Regional Administrator, a final notice of inadequacy shall be published in the **Federal Register** declaring the state permit program inadequate to ensure compliance with the relevant Subtitle D federal revised criteria. The document will include a statement of the reasons for this determination and response to significant comments received.

(i) States may seek a determination of adequacy at any time after a determination of inadequacy.

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

2–3. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c); 33 U.S.C. 1345(d) and (e).

4. Section 257.5 is amended by revising the definitions for *State* and *State Director* to read as follows:

§ 257.5 Disposal standards for owners/operators of non-municipal, non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

* * * * *

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.

* * * * *

PART 258—SOLID WASTE DISPOSAL CRITERIA

5. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949(c); 33 U.S.C. 1345(d) and (e).

6. Section 258.2 is amended by revising the definitions for ''Director of an Approved State'' and ''State Director'' to read as follows:

§ 258.2 Definitions.

* * * * *

Director of an Approved State means the chief administrative officer of a state agency responsible for implementing the state permit program that is deemed to be adequate by EPA under regulations published pursuant to sections 2002 and 4005 of RCRA.

* * * * *

State Director means the chief administrative officer of the lead state agency responsible for implementing the state permit program for 40 CFR part 257, subpart B and 40 CFR part 258 regulated facilities.

* * * * *

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

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